
HOMELESSNESS, HUMAN RIGHTS AND THE LAW RESOURCE BULLETIN
Edition No 12 – September 2006

Published by [Homelessness Legal Rights Project](#)
Gilbert + Tobin Centre of Public Law, UNSW, Australia
in partnership with the [PILCH Homeless Persons Legal Clinic](#)
Funded by the NSW Law and Justice Foundation

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CAMPAIGNS, CASE LAW AND ADVOCACY

*** Urgent Alert – Impending Forced Eviction of Caravan Residents at Casa Paloma Caravan Park – Liverpool City Council, New South Wales – Immediate Action Required****

Source: Nassim Arrage, Solicitor, Tenants Union of NSW

Liverpool City Council is set to approve a development application that will result in the eviction of over 60 residents of Casa Paloma Caravan Park. These residents are battlers who experience social and economic disadvantage. If forced to leave, many of them do not have the means to relocate and establish a new tenancy. Many face the real risk of homelessness.

It is anticipated that final development consent will be made by **16 October 2006** by Mr Phil Tolhurst, Liverpool City Council's Corporate Manager City Planning. The residents have exhausted all legal options currently available to them. All they can do now is lobby the Council, which unfortunately is under administration.

Help us help these residents! They have no where else to go!

Below is a form letter that you can fill in and/or adapt and send to the Council by post or by email (p.tolhurst@liverpool.nsw.gov.au). For more information follow the link for Casa Paloma under the heading "what's new" at www.tenants.org.au. Thank you for your support.

Draft Letter to Council

Mrs Gabrielle Kibble
Administrator
Liverpool City Council
1 Hoxton Park Road
LIVERPOOL 2170

Cc: Mr Phil Tolhurst
Corporate Manager City Planning
Liverpool City Council
1 Hoxton Park Road
LIVERPOOL 2170

Email: p.tolhurst@liverpool.nsw.gov.au

Dear Mrs Kibble and Mr Tolhurst,

RE: The Development of Casa Paloma Caravan Park

I am aware of the Liverpool City Council's pending decision regarding the proposal to redevelop Casa Paloma Caravan Park.

It is widely known that the re-development will impact adversely - financially, socially and emotionally - on the current residents. I am also aware that the developer will not consider including some low-income accommodation in the new park. This will result in a significant loss of affordable housing in the Liverpool Local Government area. I am seriously concerned about the un-enviable plight of the current residents of Casa Paloma.

Liverpool City Council has a moral obligation and civic duty to not leave these residents out in the cold. Unless Council meets that obligation and duty, there are going to be dreadful outcomes for them. These people are the battlers in our community. They deserve the consideration and support you are in the position to provide.

I understand that the intention of Council is to ensure that each resident will only paid a small sum between \$1000 and \$2000.

I appeal to your decency and humanity to put the residents' needs and rights on the same level as that of the developer. The Residents should be given the same consideration. I implore you make the provisions that are within your power to reduce the impact and the burden of forced relocation on these residents so that they will not be thrown out onto the streets to fend for themselves. Many of them have nowhere else to go.

Ends

*** United Nations Special Rapporteur on Adequate Housing undertakes Official Visit to Australia – July and August 2006 – Release of Preliminary Observations – 15 August 2006****

The United Nations Special Rapporteur on Adequate Housing, Miloon Kothari, visited Australia from 31 July to 15 August 2006 at the invitation of the Federal Government and met with a range of people who had experienced homelessness, as well as government and non-government representatives in a variety of locations, including Canberra, Sydney, Lightning Ridge, Brisbane, Townsville, Palm Island, Darwin, Alice Springs, Adelaide, Melbourne and Bendigo. The Special Rapporteur was investigating the extent to which Australian governments are fulfilling their human rights obligations to progressively realise the right to adequate housing, particularly under art 11 of the *International Covenant on Economic, Social and Cultural Rights*, to which Australia is a signatory.

Prior to his departure from Australia on 15 August 2006, the Special Rapporteur released his Preliminary Observations. The Special Rapporteur expressed serious concern about the 'hidden national housing crisis' in Australia, and recommended that the Federal Government develop a National Housing Policy, and consider establishing a Federal Ministry for Housing, making housing and homelessness a national priority. The Special Rapporteur described the housing rights situation of Indigenous people in Australia as a 'humanitarian tragedy' that needs to be urgently addressed. He also reiterated previous criticism by the UN human treaty bodies about the lack of protection of human rights, including the right to adequate housing, in the Australian domestic legal system.

To view the Preliminary Observations of the Special Rapporteur, go to:

http://www.ohchr.org/english/issues/housing/docs/preliminary_observations_230806.doc.

Final Call for Submissions – UN Special Rapporteur on Adequate Housing Official Mission to Australia - October 2006 *

The Special Rapporteur on Adequate Housing is continuing to receive written submissions from individuals, community groups and other stakeholders regarding the extent to which Australian governments are fulfilling their obligation to progressively realise the human right to adequate housing in the lead up to the release of his Final Report on the Right to Adequate Housing in Australia. The Final Report will be submitted to the United Nations Human Rights Council in March 2007.

For background on the role of the Special Rapporteur on the Right to Adequate Housing, go to <http://www.ohchr.org/english/issues/housing/index.htm>.

To submit further information to the Special Rapporteur, please forward information to Bahram Ghazi, Assistant to the Special Rapporteur by October 2006. Email: bghazi@ohchr.org.

*** Online and Press Publicity regarding the UN Special Rapporteur's Official Visit to Australia – Various Dates****

The Preliminary Observations of the UN Special Rapporteur regarding Australia's human rights record on housing rights have received both domestic and international attention. Samples of coverage are set out below:

- ABC Radio: <http://www.abc.net.au/worldtoday/content/2006/s1709845.htm>
- BBC News: <http://news.bbc.co.uk/2/4796027.stm>
- The Australian: <http://www.theaustralian.news.com.au/story/0,20867,20142290-23109,00.html>
- SBS News: <http://www9.sbs.com.au/theworldnews/region.php?id=130778®ion=7>
- The Age: <http://www.theage.com.au/news/national/homeless-plight-stuns-un-delegate/2006/08/14/1155407742387.html>
- The Age: <http://www.theage.com.au/articles/2006/09/03/1157222002196.html?page=fullpage>
- ABC Online: <http://www.abc.net.au/news/australia/nt/summer/200608/s1708897.htm>
- Sydney Morning Herald: <http://www.smh.com.au/news/opinion/no-favours-for-aboriginal-developer/2006/09/05/1157222129854.html>
- CAAMA Radio: http://www.caama.com.au/caama/a8_publish/modules/publish/content.asp?id=20100&navgrp=1794
- Arafura Indymedia: <http://arafura.axxs.org/node/64>
- Melbourne Indymedia: <http://melbourne.indymedia.org/news/2006/08/119375.php>
- NT Shelter: <http://www.ntshelter.org.au/public/index.php?pageid=10062&newsid=8>

- South Australia Liberal Party:
http://www.saliberals.org.au/news/news_item.asp?NewsID=5048
- The Greens: http://wa.greens.org.au/items/Media_Release.2006-08-24.3036
- StreetSmartAustralia:
<http://www9.sbs.com.au/theworldnews/region.php?id=130778®ion=7>
- National Indigenous Times:
<http://www.nit.com.au/breakingNews/story.aspx?id=7614>
- Community Housing Federation of Australia:
<http://www.chfa.com.au/Docs/Downloads/CHFA%20eBulletin%20Edition%202013%20Sept%201.pdf#search=%22kothari%20australian%20housing%22>
- Rights Australia: Go to <http://www.rightsaustralia.org.au/index.php>
- Domain.com.au:
<http://www.domain.com.au/Public/Article.aspx?id=1155407802234&index=NationalIndex>
- Shelter SA: <http://www.sheltersa.asn.au/>
- New Matilda:
http://www.humanrightsact.com.au/index.php?option=com_content&task=view&id=94&Itemid=30
- Unrepresented Nations and Peoples Organisation:
<http://www.unpo.org/article.php?id=5169>
- Habitat International Coalition: <http://www.hic-net.org/articles.asp?PID=516>
- UN News Service:
<http://www.un.org/apps/news/story.asp?NewsID=19605&Cr=Australia&Cr1=>
- Mercy International Justice Network:
http://www.mercyworld.org/projects/mijn/pdfs/2006/asia_pacific_news_15.pdf#search=%22kothari%20housing%20australia%22
- European Network for Indigenous Australian Rights:
<http://www.eniar.org/news/abc4.html>
- We the Women Network: <http://www.wethewomen.org/entry/un-expert-australia-suffering-from-hidden-housing-crises/>
- International Union of Tenants: <http://www.iut.nu/>.

*** Homelessness Legal Rights Project – Submission to UN Special Rapporteur – 28 September 2006****

On 29 September 2006, the Homelessness Legal Rights Project of the Gilbert + Tobin Centre of Public Law, publisher of this Resource Bulletin, provided written submissions to the UN Special Rapporteur on Adequate Housing, following the release of his Preliminary Observations. The Submission deals with (1) Treatment of People Living in Public Space; (2) Discrimination in Public Housing Programmes; (3) Homelessness Census Statistics in Australia: Differential Definition of Indigenous Homelessness in Remote Communities; (4) Failure to Use the Maximum of Available Resources to Fulfil the Right to Adequate Housing; and (6) Lack of Domestic Remedies for Violations of Human Rights including ESC Rights.

To view the Submission, go to the News section at <http://www.gtcentre.unsw.edu.au/>.

NEWS AND EVENTS

‘Youth Homelessness in Australia – A Nation’s Shame’ – Seminar with The Hon Alastair Nicholson AO, RFD, QC – Melbourne, Victoria – Thursday 26 October 2006*

PILCH Homeless Persons’ Legal Clinic in conjunction with Youthlaw is hosting a Seminar entitled ‘Youth Homelessness in Australia – A Nation’s Shame’ on Thursday 26 October 2006 at the offices of Blake Dawson Waldron. The Seminar features presentations by The Hon Alastair Nicholson AO, RFD, QC, former Chief Justice of the Family Court of Australia, Dr Shelley Mallet, Research Director of Project i, (a collaborative project between the University of Melbourne and UCLs involving a five year longitudinal study of homeless youth in Melbourne and Los Angeles), and Anna Forsyth, Youth Policy Officer for the Council to Homeless Persons.

For more information or registration by 19 October 2006, contact the PILCH Homeless Persons Legal Clinic. Go to http://www.pilch.org.au/html/s01_home/home.asp?

Land Supply and Housing Affordability: Where do the Homeless Fit In? – Seminar – Prosper Australia – Melbourne, Victoria – Friday 13 October 2006*

The issue of affordability has now extended beyond home ownership aspirations to the private rental market, where rental costs and supply are making rental housing unaffordable and inaccessible for many. In this environment, where do people who are homeless fit in? What genuine housing options are available for people on low incomes that deliver basic housing rights standards such as security of tenure under art 11(1) of the *International Covenant on Economic, Social and Cultural Rights*. Most crisis and medium term accommodation services for people who are homeless do not meet these standards, failing to provide security of tenure or meeting basic adequacy standards of privacy and facilities. The UN Special Rapporteur has noted in his Preliminary Observations that the inaccessibility of housing options is now affecting the middle income population as well, and that ‘there is a growing class of people that are living with a level of revenue that neither entitles them to neither state benefits nor to access private market housing. For these households, the economic pressure of rent is increasing growing (up to 50% of their revenue) and it is feared that they will constitute the future poor class of the population.’

A Seminar will be held at 7.15 pm on Friday 13 October 2006 at the Prosper Australia Rooms, 1/27 Hardware Lane Melbourne, Victoria to discuss the current debates about housing affordability in Australia. Gold coin donation appreciated. Key note speakers are:

Ken Fernandes, Coordinator, Eviction Watch and Housing Rights Programme, Asian Coalition on Housing Rights

Bryan Kavanah , Director Land Values Research Group <http://www.lvrg.org.au/>

For more information, go to <http://prosper.org.au/files/supply%20affordability.jpg>

‘The Criminal Justice System, Tenancy Laws, Criminalisation of Homelessness and New Ways of Dealing with fines – information and advocacy skills for support workers’ Training Workshop – Fitzroy Legal Service – Melbourne, Victoria – Friday 5 October 2006*

Fitzroy Legal Centre, based in Fitzroy, Melbourne, is offering training on providing support to people dealing with the criminal justice system, tenancy problems and evictions, criminalisation of people who are homeless, and unpaid fines. The training is designed for people working in non-legal areas, such as health care and drug and alcohol workers. The program includes presentations by Kristen Hilton (Coordinator and Principal Solicitor, Homeless Persons Legal Clinic), Dee Bohan (Tenants Union of Victoria), Stan Winford (Policy and Projects Officer, Fitzroy Legal Service) and William Crawford (Drug Outreach Lawyer, Fitzroy Legal Service). The training will be held at the Richmond Town Hall from 9am – 3pm.

For more information, go to <http://www.fitzroy-legal.org.au/events.html>.

*** ‘Adelaide Legal Outreach Service’ Homeless Persons Legal Advice Clinic, Adelaide, South Australia –University of Adelaide Law School, Clinical Legal Education Programme – Ongoing**

Contribution by Kathleen McEvoy, Senior Lecturer, University of Adelaide Law School
Commencing in February 2005, the Law School of the University of Adelaide has operated a legal advice clinic, known as the Adelaide Legal Outreach Service (ALOS), for people experiencing homelessness or at risk of homelessness. The Service is provided by final year law students supervised by legal practitioners from the Law School as part of the Clinical Legal Education Programme. This is an elective subject in the LLB.

The ALOS operates each Friday at the premises of Westcare, a day centre in the city. The Service has also been engaged in outreach to some other day centres. The Service has a wide range of clients, and has had some very real successes, including recovering money overpaid, recovering drivers licences previously cancelled, and general ongoing advice in a variety of matters, ranging from family law to bail, and everything in between! The ALOS has developed a number of presentations and training regimes supporting the service, and it has been very successful. The Service operates on a minimum of external grants of about \$10,000, including support from the Law Foundation of South Australia. Most costs have been absorbed by the provision of pro bono work by law school staff as legal practitioners, and the commitment of students, who operate the Service on a volunteer basis out of semester time.

For more information, contact Kathleen McEvoy at kathleen.mcevoy@adelaide.edu.au.

*** Launch of South Australian Housing Legal Clinic – Adelaide, South Australia - Friday 25 August 2006****

The newly-established South Australian Housing Legal Clinic commenced operation on 1 July 2006 with its official launch on Friday 25 August 2006 with over 70 people in attendance. Based on successful models now established in Melbourne, Brisbane and Sydney, the new Service in Adelaide is designed to assist people who are homeless or at risk of becoming homeless. It relies on the provision of pro bono services of private law firms, with national law firm Minter Ellison once again taking a lead role. Minter Ellison provides pro bono assistance to the Clinics in Melbourne, Sydney and Brisbane. The other law firm currently involved in the Adelaide Clinic is Thomson Playford. Minter Ellison lawyers provide free legal services on Tuesdays from 1 – 3pm at the Magdalene Centre (go to http://www.anglicare-sa.org.au/magdalene_centre/). Thomson Playford provides free legal services at the Byron Place Community Centre. More than 40 lawyers from these firms will be involved. Most recently, law firm Kain C & C has agreed to assist.

The Clinic is a project of the Welfare Rights Centre of South Australia and has secured funding from the South Australian Government through the Department of Families and Communities, with active support from the responsible minister, Jay Weatherill. The Morialta Trust has also granted \$20 000 to the new Clinic to assist in it expanding services to families and young people.

For more information, contact Bill Manallack, Coordinator of the new Clinic on 8226 4126 or bill-m@wrcsa.org.au.

Consumer Forum on the Right to Adequate Housing – Melbourne, Victoria – 9 August 2006*

As part of facilitating the evidence-gathering of the UN Special Rapporteur on Adequate Housing, a consumer forum was organised by the Consumer Advisory Group to the PILCH Homeless Persons Legal Clinic. Fifty two people who had experience of homelessness attended the event which was an excellent achievement. As part of the Forum, the Advisory Group conducted a written survey in which 33 people participated. Eighty percent of those surveyed felt that they had been subjected to cruel and degrading treatment during their experience of being homeless and overwhelming, participants felt that their voices were not heeded when accessing services or endeavouring to deal with their homeless condition.

A report of the Forum has been prepared and can be obtained by emailing Kristen Hilton, Coordinator and Principal Solicitor of the PILCH Homeless Persons Legal Clinic at projects.pilch@vicbar.com.au.

INTERNATIONAL DEVELOPMENTS

***Roma communities in Bulgaria litigate to challenge Forced Evictions and Housing Rights Violations by Bulgarian authorities using Anti-Discrimination Laws – Sofia, Bulgaria – July 2006**

Three Romani communities in Sofia, Bulgaria, have launched legal action to challenge discrimination against them in the fulfilment of their housing rights. The cases concern past and current threats of housing demolition, as well as refusal by the Sofia Municipality to provide public transport to Sofia's largest Roma settlement.

The Roma are a heterogeneous ethnic group with a long experience of subjection to racial discrimination throughout Europe. Roma families have traditionally led travelling, nomadic lifestyles in extended family groups with strong cultural practices. The discrimination they face has been a major contributor towards the poor living conditions under which many Roma people now live, often involving sub-standard housing in unauthorised areas as 'squatters' or 'trespassers'. Roma communities are disproportionately disadvantaged in homelessness and other socio-economic indicators.

The three cases that have been commenced in Bulgaria involve (1) an application for restitution, compensation and adequate relocation for a community that was forcibly evicted some six years ago; (2) an application for an injunction to prevent a threatened forced eviction of another community on land they have occupied as 'squatters' for at least 50 years; and (3) an application seeking an order that a large Roma community be provided with public transport services on an equal basis with non-Roma communities.

For further information about these cases, go to the Centre on Housing Rights and Eviction Website on European Projects at http://www.cohre.org/view_page.php?page_id=209.

Eviction Alert – 200 Year Old Village Faces Demolition – Karachi, Pakistan – Letters of Support Needed – Ongoing*

Contribution by Ken Fernandes, Coordinator, Eviction Watch and Housing Rights Programme, Asian Coalition on Housing Rights

The Governor of Sindh in Pakistan has ordered the demolition of a 200 year old village in Karachi to make way for the controversial Lyari Expressway. The homes of over 1300 families will be destroyed. Your support is vitally needed. Please take the trouble and write a letter to the Governor of Sindh and register your concern and protest against this impending eviction that will violate thousands of people's human rights and cause an enormous amount of suffering.

Just think for a moment. If the Governor receives hundreds of letters, he will have to consider the issue seriously, knowing that it is getting world wide attention! Let us globalize local people's struggle. Together, we can continue to tell governments that they are acting illegally and violating poor people's rights when they evict people. There are alternatives. The Governments know that they are doing wrong when they are evicting

people. However, they are much more cautious to violate people's rights if they know that the world is paying attention to their action.

If you do not want to craft your own protest letter just cut and paste the sample letter and email it. Go to

<http://www.achr.net/Evictions%20Asia/Sample%20letter%20Karachi.html>.

You can write a letter and get your friends and colleagues to sign it too. Or they can send separate letters. The more letters the government gets the bigger the impact.

Please send a copy of your letter to Ken Fernandes of ACHR at stopevictions@yahoo.com.au and the Urban Resource Centre in Karachi, at urckhi@yahoo.com. Please remember: your letters do make a difference!! Please pass this on to your friends and networks also urging them to write letters of concern and protest to the Governor of Sindh, Pakistan.

PUBLICATIONS AND RESEARCH

Brendan Edgeworth, 'Access to Justice in Court and Tribunals: Residential Tenancies in New South Wales (1971-2001)' (2006) 31 (2) *Alternative Law Journal* 75*

This article reports on the findings of Australian Research Council funded-research into the justice outcomes of courts and tribunals dealing with private residential tenancy disputes. For further details, see item below.

Brendan Edgeworth, 'Landlords, Tenants and Access to Justice in NSW' (2006), May-June 48-49*

Contributed by Brendan Edgeworth, Associate Professor, Law School, UNSW

This publication and the related article in the *Alternative Law Journal*, cited above, examine the findings from an Australian Research Council-funded empirical study comparing justice delivery in courts and tribunals in private residential tenancy disputes.

The study looked at all tenancy disputes heard at Waverley Local Court in the census years from 1971-86 inclusive, and then compared these results with tenancy disputes from the same area that were dealt with by the Consumer, Trader and Tenancy Tribunal (and its predecessors) from 1991-2001. The most striking statistic is that the number of disputes heard by the Tribunal increased dramatically (roughly 6-fold over the period examined, from a mean of 420 per annum before the court to 2476 per annum in the Tribunal in 2001). Moreover, tenant participation as applicants seeking redress from landlords (in respect to repairs, quiet enjoyment, bonds) dramatically increased, from zero before the court (in the 4 census years there was not a single tenant applicant), to a mean of 490 tenant applications per annum over the 3 census years of operation of the tribunal. So, now more tenants commence actions against landlords than landlords commenced actions against tenants under the old regime.

There is a flip side to this story, however. Landlords now commence proceedings against tenants much more frequently than before the courts. The former application rate mean figure of 420 per annum (all landlord) is dwarfed by the 1113 mean number of termination applications to the Tribunal by landlords. Furthermore, landlords are now pursuing tenants for compensation for damage to premises and unpaid rent frequently. There was no evidence of this before Waverley court: invariably landlords only sought possession orders. Now, on average, 444 applications per year are made by landlords for matters other than termination of tenancy.

Overall, one can conclude that the tribunal has ushered in a much tighter compliance regime for landlords and tenants than was the case under the court. Without doubt, it represents a far more effective system for justice delivery than the old court-based model, especially for tenants. But somewhat disturbingly, it means that tenants can now have their tenancies more swiftly terminated than before, and often before they are in a position to be able to remedy the breach, and thus retain their home. Reform efforts should be directed to this area, in order to afford tenants greater security of tenure under the legislation.

Antoine Buyse, 'Strings Attached: The Concept of "Home" in the Case Law of the European Court of Human Rights' (2006) 3 *European Human Rights Law Review* 294*

This article provides an analysis of the meaning of the term 'home' in the context of judicial interpretation of the human right to respect for the home, protected under art 8 of the *European Convention on Human Rights and Fundamental Freedoms*, and art 17 of the *International Covenant on Civil and Political Rights*. This human right is now also protected under s 12 of the *Human Rights Act 2004* (ACT) and will be protected under s 13 of the *Charter of Human Rights and Responsibilities 2006* (Vic) The author suggests that the concept of attachment to the site is the primary determinant of whether a location is considered to be a person's home in order to engage human rights protection, as distinct to whether the site currently offers personal privacy, legal security of tenure or physical security. Factors such as length of occupancy, or absence, establishment of another home, or the breaking of a continuing link with the site will be taken into account.

Martin Scheinin, 'The Proposed Optional Protocol to the Covenant on Economic, Social and Cultural Rights: A Blueprint for UN Human Rights Treaty Body Reform - Without Amending the Existing Treaties' (2006) 6 *Human Rights Law Review* 131*

This article makes the case for giving to the UN Human Rights Committee the responsibility for handling individual complaints that may be brought under an Optional Protocol to the *International Covenant on Economic, Social and Cultural Rights*. An Option Protocol to the *ICESCR* is currently being drafted, and is likely to be the subject of continuing debate within the UN Human Rights Council for some time. An Optional Protocol to *ICESCR* would enable a person whose housing rights have been violated to make an individual complaint to the UN to seek a determination. One of the advantages

of the proposed expansion of the role of the Human Rights Committee, which currently deals with individual complaints under the *International Covenant on Civil and Political Rights*, is that it would enable a single complaint to be lodged under both conventions, the *ICESCR* and the *ICCPR*, a significant advantage when human rights abuses often engage civil and political rights as well as economic, social and cultural rights.

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