



Victorian Equal Opportunity  
& Human Rights Commission

# Responding to diversity and equity

HACC and homelessness in Yarra – 22 November 2012



# Responding to diversity and equity

- Homelessness is a human rights issue
- Link between discrimination and disadvantage
- Legal obligation to eliminate discrimination
- Positive duty in service and systems contexts



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# EOA 2010

- commenced **1 August 2011**
- discrimination requires range of responses
- supports right to equality in the Charter
- recognition of systemic discrimination
- need to move towards substantive equality
- clear onus on duty holders - positive duty
- **recognises and makes explicit link between discrimination and disadvantage**



# National numbers prove the link

- Census 2011= 105,237 people homeless
- Up from 95,314 in 2006
- 22,789 in Victoria ( 22% of national)
- **Nationally around 75% of the increase since 2006 was accounted for by people who were born overseas**



# National numbers prove the link

- Nationally 41.8% of homeless were under 25 years ( 42.8% in Vic)
- Gender violence (family violence) as driver of homelessness for women
- Indigenous people make up 2.5 % of Australian population but 25% of national homeless (but 3.6% in Vic)
- Note undercount for Indigenous, youth etc



# National numbers prove the link

- Most of the increase since 2006 was people living in severely crowded dwellings- young people, women and kids
- note also increase in boarding house residents ( male, older, disability) – rooming house experience in Victoria of women and children, refugees etc



# Supported accommodation and diversity

- Second largest group is in supported accommodation – 20%
- But 31% of homeless children aged under 12 years in SA
- 28% of youth aged 12 to 18 years
- Slightly more females than males in supported accommodation while across all other homeless groups males outnumber females by 39%
- Reflects historic patterns of funding for SAAP but may also reflect practice and systemic barriers to access



# The legal framework

- **Charter of Human Rights and Responsibilities Act 2006**

Binds ‘public authorities’, including social housing and homelessness providers, disability providers etc

- **Equal Opportunity Act 2010**

Binds private landlords, agents, welfare, social housing and homelessness providers- that means you!





# Is there a right to housing?

- At international law – yes

## In the Charter

- No “right” to be provided with a home, but allocation must be made without discrimination etc
- Privacy, family life and children’s best interests re eviction



# Areas of public life covered by EOA

- Employment
- Education
- **Goods and services**
- **Accommodation**
- Sport
- Clubs and club membership
- Local government
- Disposal of land



# Protected attributes does not include homelessness

- Age
- Employment activity
- Gender identity
- Disability
- Industrial activity
- Lawful sexual activity
- Martial status
- Parental status or status as a carer
- Breastfeeding
- Physical features
- Political belief or activity
- Pregnancy
- Race
- Religious belief or activity
- Sex
- Sexual orientation
- Personal association with someone identified with an attribute above



# Positive duty – s 15

- A **positive duty** to take reasonable and proportionate measures to eliminate discrimination, sexual harassment and victimisation, as far as possible.
- Private landlords, agents, government, housing and homelessness agencies are all bound by this new duty



# Factors when considering what is reasonable and proportionate:

Size of the business or operations

Nature and circumstances of the business or operations

Resources

Business and operational priorities

Practicability and the cost of the measures



# Breach of the positive duty

- Not the subject of individual complaints, but might be raised in dispute resolution
- Can be investigated by Commission
- Don't forget can still bring individual complaint for direct or indirect discrimination



# What you can do ...as a service

- **Scan:** Understand your obligations and know your environment –  
what are the potential issues?
- **Plan:** What do you need to do differently?
- **Act:** Do it!
- **Review:** are your actions making a difference? What else needs to be done?



# What are some examples for you?

## Consider

- Are there policies that could be disadvantaging people from CALD and refugee backgrounds, transgender people etc?
- Are there particular groups that are having difficulty accessing or are not qualifying for services?
- Are particular groups having trouble with processes or the environment in which services are delivered?





## Possible examples- taking proactive steps

- Having the data/information available to test who is/is not using services- where are your missing service users?
- Consumer involvement and control- on equal footing?  
What access changes do you need to facilitate consumer involvement ( not tokenistic)
- All attributes, plus how they intersect e.g. older CALD women, children with disability, same sex attracted young people



## Possible examples- taking proactive steps

- Simple things - what about your application forms?
- do they ask questions that are not relevant but may lead to discrimination
- are they in plain language, many languages and formats?



## Possible examples- taking proactive steps

- Practice support – e.g. awareness of trauma issues for some refugee women and children in family violence response services
- Attitudinal support e.g. unintended bias-assumptions re refugee parents and child protection, cooking smells etc
- Reviewing and supporting improved cultural practice among front line staff – cultural and religious practices are not a barrier to getting work completed- e.g. cultural etiquette on home visits is not a burden



## Possible examples- taking proactive steps

- Safety review of clients and staff including physical environment and feelings of cultural safety
- Changing practice to reflect cultural preferences e.g. if people do not like strangers coming into their home to provide care and so rely on family members – is there another way to do this?



# EOA positive duty and systemic issues

- Supports positive obligation in section 38 of the Charter:  
‘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’ .



# Public policy considerations

- *Pathways to a Fair and Sustainable Social Housing System* – apply the Charter and EOA positive duty test to this conundrum



# Public policy considerations

- Removing security of tenure will engage Charter and Equal Opportunity Act rights and protections
- Determining which tenants lose their tenancies risks indirect discrimination and will require significant workforce capacity enhancement
- Each eviction will need to comply with human rights in the Charter



# Public policy considerations

- Private rental market conditions and discrimination are likely to lead to churn of public tenants back through the homelessness system and into public housing
- “Locked Out”: report showed that parental status, age, marital status, race and disability are barriers to private rental





# Public policy considerations

- Limiting security of tenure may create an incentive for tenants not to engage in work, get well or stabilise due to fear of eviction- will policy aim be achieved?



# Making the system fairer

- Use the EOA positive duty to reviewing key policies for unintended but potentially discriminatory effects – e.g. segmented waiting list/ allocations policy
- Applying the positive duty requires effective data on who is waiting for housing and establishing an allocation system that does not indirectly discriminate
- Needs and rights of largest cohorts (children and older people)



# Making the system fairer

- Low asset limits may adversely impact on people with a disability and older people.
- No history of eviction from public housing for (non-arrears) breaches in the last 12 months ( DV and disability).
- Short timeframes for acceptance of offers
- Previous debts – lower segments must find the \$200
- More flexible transfer and short term absence rules



# Why not go back to your organisation and try out the positive duty?

- Scan, Plan, Act, Review
- In providing services
- In individual and systemic advocacy



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# Contact

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