

7 February 2017

Future Melbourne Committee
City of Melbourne
90 – 120 Swanston Street
MELBOURNE VIC 3000

Dear Lord Mayor and Councillors

Justice Connect Homeless Law: Homelessness in Melbourne and the Activities (Public Amenity and Security) Local Law 2017

We refer to the Report to the Future Melbourne (Finance and Governance) Committee, item 6.2: homelessness and public amenity, including the proposed amendments to the Activities Local Law 2009 (**Local Law**) in the Activities (Public Amenity and Security) Local Law 2017 (**Amending Law**).

Firstly, we congratulate the Council on the leadership you have provided in relation to homelessness over an extended period. In particular, Justice Connect Homeless Law (**Homeless Law**) has been proud to work with the City of Melbourne in relation to Project Connect Respect, Homeless Service Coordination, the Women's Homelessness Prevention Project and the updated Protocol for Responding to People Experiencing Homelessness in Public Places.

Secondly, in the context of this positive, collaborative work, we raise our concerns with the proposed Amending Law, particularly its impacts on people experiencing homelessness, its ineffectiveness and the burden of responsibility it creates for authorised officers and the Council.

This brief submission:

- Summarises the changes proposed to the Amending Law;
- Identifies existing powers of authorised officers and Victoria Police in relation to regulation of public places;
- Summarises Homeless Law's concerns with the Amending Law;
- Provides a copy of a detailed international research paper that considers the challenges you are currently facing regarding homelessness and the regulation of public space (**Annexure 1**);¹ and
- Asks that you avoid taking the Amending Law any further and, instead, continue the effective leadership, collaboration and advocacy that the Council is so active in.

We urge you not to rush into this response, which will not achieve the results the Council or the community is seeking and will undermine the significant amount of positive work the Council is part of.

Justice Connect Homeless Law

As many of you will know, Justice Connect Homeless Law (formerly the PILCH Homeless Persons' Legal Clinic) was established in 2001 and provides specialist legal services to people experiencing or at risk of homelessness in Victoria. Homeless Law staff work closely with approximately 430 pro bono lawyers from eight law firms (six of which are based in the City of Melbourne) to provide legal advice and representation to almost 500 people experiencing or at risk of homelessness each year.

¹ See Lucy Adams, *Churchill Fellowship Report: Addressing the Negative Impact of Laws Regulating Public Space on People Experiencing Homelessness* (2014) (Churchill Report).

Our services are outreach based and client centred, and our two staff social workers allow us to respond to clients' legal and non-legal needs.

In 2015–16, Homeless Law:

- Opened 445 new client files to provide ongoing legal representation to people experiencing or at risk of homelessness;
- Delivered direct social work support to 113 clients;
- Provided criminal legal advice or representation to 45 clients;
- Assisted 88 clients to resolve overwhelming fines directly related to homelessness; and
- Prevented the eviction of 111 clients and their families into homelessness.

In addition to our integrated model of service delivery, which focusses on early intervention and preventing legal issues escalating to crisis point, Homeless Law uses the evidence from our direct casework to inform constructive law reform and policy conversations.

The Amending Law

Key aspects of the Amending Law are:

- **Broadening the ban on camping.** In removing the reference to 'a vehicle, tent, caravan or any type of temporary or provisional form of accommodation', clause 2.8 will provide: 'Unless in accordance with a permit, a person must not camp in or on any public place'.
- **Providing for confiscation and disposal of unattended items.** The Amending Law suggests a new clause 2.12, which would provide that a person must not leave any item unattended in a public place. If an item is left unattended, an authorised officer may confiscate and impound the item, and can sell, destroy or give away the item if a fee is not paid within 14 days.

The proposed ban on camping is extremely broad and, although this may not be the intention, it effectively makes it an offence to sleep on the streets (noting that 'camp' is not defined).

The provisions regarding unattended items also have potential to impact harshly on rough sleepers, including because of the inevitability that goods may be temporarily left (e.g. while someone is getting food or using the toilet) and the requirement to pay a fee to get belongings back.

Existing relevant laws

As the City of Melbourne's website notes:

The Activities Local Law 2009 helps us protect the amenity of public places for all citizens by addressing behaviour in public places.

It prohibits people from causing damage to public places or acting in a socially unacceptable manner.

It's not against the law to sleep rough, but this local law includes provisions around camping in public places, portable advertising and causing obstruction.

If items and rubbish accumulate, or block pedestrian access, our officers may ask people who are sleeping rough to tidy up or leave a site. If this happens we will work closely with services to make sure that people have the opportunity to access shelter, clothing, medical and other basic needs.²

In summary, the existing powers under the Local Law to regulate public space include:

² See City of Melbourne, *Homelessness and local laws* (available at: <http://www.melbourne.vic.gov.au/community/health-support-services/social-support/Pages/homelessness-and-local-laws.aspx>).

- The existing prohibition on camping, which provides that 'a person must not camp in or on any public place in a vehicle, tent, caravan or any type of temporary or provisional form of accommodation' (clause 2.8).
- The prohibitions on the following activities in, on or within the hearing or sight of a public place:
 - Causing or committing any nuisance (nuisance is defined as having its 'ordinary common meaning')
 - Adversely affecting the amenity of that public place;
 - Interfering with the use or enjoyment of that public place or the personal comfort of another person in or on that public place;
 - Annoying, molesting or obstructing any other person in or on that public place;
 - Defecating or urinating except in a toilet or urinal in a public convenience;
 - Committing an indecent or offensive act; or
 - Using any threatening, abusive or insulting words (clause 2.1).

Part 14 of the Local Law provides that it is an offence to (amongst other things):

- Fail to comply with the Local Law;
- Fail to do anything directed to be done under the Local Law;
- Refuse or fail to obey directions of an authorised officer to leave a public place where in the opinion of that authorised officer the person has failed to comply or is failing to comply with the Local Law.

An authorised officer may:

- Either orally or in writing direct a person to leave a public place if in the opinion of the authorised officer the person is failing to comply or has failed to comply with the Local Law (clause 14.8).
- Charge and prosecute a person for the above offences or issue an infringement notice of \$388.65 (2.5 penalty units). If a person is found guilty of an offence in court, they are liable to a penalty of up to \$3109.20.
- Serve a written Notice to Comply (specifying the time and date for compliance) on a person who the authorised officer reasonably suspects to be in breach of the Local Law. This notice can direct the person to comply with the Local Law; stop conduct which breaches the Local Law; remove or cause to be removed any item, goods, equipment or other thing that constitutes a breach of this Local Law; or leave an area within the time specified in the notice.

Clause 14.17 of the Local Law also provides detailed provisions regarding the power of authorised officers to confiscate goods and items, including: 'Where a person owning or responsible for items, goods, equipment, vessel, bicycle or other property or thing has ignored a direction from an authorised officer to remove them, the items, goods, equipment, vessel, bicycle or other property or thing may be confiscated and impounded'.

In addition, the *Summary Offences Act 1966* (Vic) provides a range of powers for Victoria Police to regulate behaviour in public places, including in relation to public drunkenness;³ using offensive language in public;⁴ or begging.⁵ Existing move-on powers can be used when someone is breaching the peace, endangering another person or presenting a risk to public safety.⁶

In light of the above, it is not the case that there are inadequate powers to respond to people experiencing homelessness or their possessions under existing laws.

Concerns about the Amending Law

Informed by 15 years experience providing legal representation to Victorians experiencing homelessness, together with international research regarding the regulation of public space and homelessness, Homeless Law raises the following significant concerns with the Amending Law:

³ *Summary Offences Act 1966* (Vic) s 13.

⁴ *Summary Offences Act 1966* (Vic) s 17.

⁵ *Summary Offences Act 1966* (Vic) s 49A.

⁶ *Summary Offences Act 1966* (Vic) s 6.

- **Impact on people experiencing homelessness.** The proposed amendments risk pushing people to the edges of the city and isolating them further from services. Their relationship with services and authorised officers will deteriorate and they will become harder to engage.⁷ There is also a risk that people will become caught up in the justice system through fines or charges. For personal perspectives on the experience of being fined or moved-on when you are experiencing homelessness, watch and listen to these stories, *In the Public Eye: Personal Stories of Homelessness and Fines*.
- **Ineffectiveness.** As part of my Churchill Fellowship, I travelled to nine cities and spoke with over 60 experts about the challenges of regulating public space and responding effectively to homelessness. None of this research identified laws of this nature to be a helpful component of an effective response to homelessness. It is the type of measure that leading cities are moving away from. By way of example, the United States Interagency Council on Homelessness has said:

... there is ample evidence that alternatives to criminalization policies can adequately balance the needs of all parties. Community residents, government agencies, businesses, and men and women who are experiencing homelessness are better served by solutions that do not marginalize people experiencing homelessness, but rather strike at the core factors contributing to homelessness.⁸

We know what works here and internationally. It is a Housing First approach, like Street to Home, which focusses on housing people in long-term homes with support.⁹ We need to persist with effective responses, rather than resort to reactive measures that will undermine rather than support solutions.

- **Burden on authorised officers and unhelpful messaging to the community.** It is an important part of the Council's messaging to remind the community that 'homelessness is not a crime'. The Amending Law would make it difficult to stand by this messaging. In this way, the Amending Law is in fact likely to increase the Council's challenges, as it will burden authorised officers with responsibility for addressing homelessness, when only services (with housing attached) can do this effectively. It also sends a message to the public that homelessness can be addressed through stronger laws, which is not the case.
- **Deteriorating interactions and staff morale.** The role of authorised officers is a difficult one, but increased enforcement powers will not make it easier and may in fact exacerbate these challenges. Although we understand that there will be discretion about when to enforce the provisions in the Amending Law, the pressure to use an enforcement-based approach will reduce the ability of authorised officers to effectively engage with people sleeping rough.
- **Undermines leadership role.** Importantly, the Amending Law distracts from the effective leadership on homelessness that the City of Melbourne can otherwise pride itself on, including through Project Connect Respect, Homeless Service Coordination, funding for housing and the Women's Homelessness Prevention Project.

Addressing challenges

There is no question that the challenges you are facing as a Council are significant. The figures are well-known: in Victoria there are 22,000 people experiencing homelessness and 33,000 people on the waiting list for public

⁷ See, eg, Churchill Report, above n 1, 38 – 43.

⁸ United States Interagency Council on Homelessness, *Searching Out Solutions: Constructive Alternatives to the Criminalization of Homelessness* (2012) 2 (available at: https://www.usich.gov/resources/uploads/asset_library/RPT_SoS_Merch2012.pdf).

⁹ See, eg, Mollie Lowery, 'Housing first: What L.A. can learn from Utah on homelessness' in *Los Angeles Times* (3 June 2015) (available at: <http://www.latimes.com/nation/la-ca-0603-lowery-homeless-utah-la-20150603-story.html>): 'Utah announced recently that, in the last 10 years, it has successfully housed 91% of its chronically homeless population: 1,764 out of 1,932 people. There are now fewer than 200 chronically homeless people in the entire state. By contrast, Los Angeles County's chronically homeless population rose from 7,475 in 2013 to 12,356 this year, according to the latest estimate ... The city of Los Angeles has increased the number of anti-homeless laws on the books by 59% since 1990. There are now 23 restrictions and 19 laws that criminalize homelessness in some way. Each year, the city spends \$80 million enforcing these rules — containing, moving and jailing people who have no choice but to sleep, stand and eat in public'.

housing.¹⁰ There has been a 74% increase in Melbourne's rough sleeping population since 2014, with 247 people sleeping rough in 2016.¹¹

We understand that contacts to the Council in relation to amenity have significantly increased and the heavy negative media coverage throughout January has also placed pressure on the Council to take action.

Recognising all this, we urge you to stand strong in the face of this pressure. To react by progressing the Amending Law beyond today will not deliver the results the Council or the community is seeking.

Increased enforcement powers have failed to tackle homelessness overseas and they will fail here.

We look forward to discussing this information with you at this evening's meeting.

Yours sincerely

Justice Connect Homeless Law

¹⁰ See Australian Bureau of Statistics, *Census of Population and Housing: Estimating Homelessness* (November 2012) 19 (available at: <http://www.abs.gov.au/ausstats/abs@.nsf/mf/2049.0>); and Victorian State Government, *Public housing waiting and transfer list* (September 2016) (available at: <http://www.dhs.vic.gov.au/about-the-department/documents-and-resources/research,-data-and-statistics/public-housing-waiting-and-transfer-list>).

¹¹ See also City of Melbourne, *StreetCount highlights number of people sleeping rough* (9 June 2016) (available at: <http://www.melbourne.vic.gov.au/news-and-media/Pages/streetcount-highlights-number-of-people-sleeping-rough.aspx>).

From: Wufoo <no-reply@wufoo.com>
Sent: Friday, 17 March 2017 10:32 AM
To: CoM Meetings
Subject: Meeting submissions form [#249]

Name *

Email address *

Agenda item title Proposed Activities (Public Amenity and Security) Local Law 2017

Please write your submission in the space provided below

.."here is ample evidence that alternatives to criminalization policies can adequately balance the needs of all parties. Community residents, government agencies, businesses, and men and women who are experiencing homelessness are better served by solutions that do not marginalize people experiencing homelessness, but rather strike at the core factors contributing to homelessness"...

Homelessness is symptomatic of the failure of social and economic policies. It is a direct reflection of lack of "duty of care" ie humanitarianism... by local, state and federal government departments. An enlightened society is measured by how well it cares for its most vulnerable and poor. This country is not proving to be so. Human beings are every country's greatest resource. If policies are not nurturing and nourishing this resource at every level we can only backslide on an evolutionary scale. Beethoven is a classic example of who/what might be lost to civilization. If 'it is not illegal to be homeless' why take a path that has been recognised as punitive, expensive and ineffective ?

Informed by 15 years of providing specialist legal services to people who are homeless or at risk of it, Homeless Law has significant concerns with the proposed changes. These include:

Impact on people who are experiencing homelessness. These laws risk pushing people to the edges of the city and isolating them further from services and supports. There is also a significant risk that people will get caught up in the justice system through fines (of \$250) or charges. Homeless Law already assists approximately 100 clients every year dealing with overwhelming fines and charges for 'public space offences'; we shouldn't be adding to these numbers. For a personal perspective on the experience of being fined or moved-on when you are experiencing homelessness, watch and listen to these stories, In the Public Eye: Personal Stories of Homelessness and Fines.

Ineffectiveness. Tougher enforcement will not deliver the solutions the City of Melbourne or the community is seeking. The law doesn't solve homelessness, long-term housing with support does. Los Angeles had one of the world's toughest enforcement-based approaches to homelessness, including a ban on sitting, sleeping or lying on the sidewalk. They also had the highest concentration of people sleeping rough in the United States – approximately 5000

people in a 50 block area. It didn't work there and it won't work here.

Challenges for the Council and authorised officers. The role of authorised officers is a difficult one, but increased enforcement powers won't make it easier. The pressure to use an enforcement-based approach to homelessness will reduce the ability of authorised officers to effectively engage with people sleeping rough. The laws also imply that the Council is responsible for solving homelessness when, in reality, significant efforts are needed from State and Federal Governments to address our homelessness crisis (including Victoria's public housing waiting list of 33,000 people).

Please indicate No
whether you
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address the
Submission
(Section 223)
Committee in
support of your
submission *

Privacy I have read and acknowledge how Council will use and disclose my personal information.
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*

From: Wufoo <no-reply@wufoo.com>
Sent: Friday, 17 March 2017 11:10 AM
To: CoM Meetings
Subject: Meeting submissions form [#250]

Name *

Email address *

**Contact phone
number (optional)**

Agenda item title Proposed Activities (Public Amenity and Security) Local Law 2017

*

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I work as a Financial Counsellor in a community organisation. Most of the people I work with are experiencing some level of homelessness. For these people they are traumatised from life events and the experience of homelessness. Those most unfortunate that are rough sleeping cannot find temporary or crisis accommodation that is safe, affordable or suitable. Sleeping rough is extremely difficult and dangerous and expensive at many different levels for the individual and for society.

The fact of the matter is that there is not enough safe and affordable accommodation for homeless people. The alternatives include the different options including crisis accommodation, couch surfing, rooming houses and sometimes the option of crisis assistance at hotels. Unfortunately often even when a person in crisis can access this assistance there are many stories of safety risks and bad experiences. I've had many clients badly affected from experiences in all of these options so sometimes sleeping rough is the only option left.

The increased number of homelessness occurring is a result of many things including more people in hardship, less affordable housing, greater unemployment, casualization of employment, family violence and breakdown, mental health issues, drug and alcohol dependency, gambling, childhood trauma, deinstitutionalisation, non permanent residential status, lack of access to support services and employment in rural and remote towns and more.

These new laws proposed by the Council will not address the above issues causing homelessness. They will result in further penalising and making things difficult for our most vulnerable and disadvantaged members of our community. To impose penalties for camping and having belongings on the streets is only punitive and harsh. This will ultimately only result in further financial hardship and potential end up in the infringements system with further demands and drains of community sector and legal services resources as these people would be eligible for special circumstances.

Melbourne might be striving to be the worlds most liveable city but this cannot be by pushing out the most disadvantaged and vulnerable members. This does nothing to resolve the problems of homelessness. Making Melbourne look better by sweeping homeless people off the streets is shameful. Given the Council's other areas of work in assisting homelessness I find these ideas contradictory. However it is acknowledged that the Council has at least given a public forum to these issues.

Melbourne City Council must do what they can for the bigger picture issues if they truly want to address the issues of homelessness.

As said by Mahatma Ghandi "A nation's greatness is measured by how it treats it weakest members"

Please indicate Yes
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(Section 223)
Committee in
support of your
submission *

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From: Wufoo <no-reply@wufoo.com>
Sent: Friday, 17 March 2017 11:16 AM
To: CoM Meetings
Subject: Meeting submissions form [#251]

Name *

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Agenda item title *

Proposed Activities (Public Amenity and Security) Local Law 2017

Please write your submission in the space provided below

It should not be against the law to be homeless when greedy big developers manipulate the system to hurry through projects to make bigger profits. The Government should look after Australians first and provide proper long and sustainable housing so people can be employed and contribute to their country. Without proper support that is becoming harder as more multinationals put profits before people. Bring back our great country. Thank you.

Please indicate whether you would like to address the Submission (Section 223)

No

Committee in support of your submission *

Privacy acknowledgement: *

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Sent: Friday, 17 March 2017 11:34 AM
To: CoM Meetings
Subject: Meeting submissions form [#218]

Name *

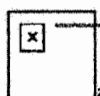
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Contact phone number (optional)

Agenda item title *

Proposed Activities (Public Amenity and Security) Local Law 2017

Alternatively you may attach your written submission by uploading your file here



[architectsforpeace_com_activitieslocallaw.pdf](#) 105.42 KB · PDF

Please indicate whether you would like to address the Submission (Section 223)

Yes

Committee in support of your submission *

Privacy acknowledgement: *

I have read and acknowledge how Council will use and disclose my personal information.

architects for peace is a humanitarian, not for profit, professional organisation for architects, urban designers, engineers, planners, landscape architects and environmentalists, seeking urban development based on social justice, solidarity, respect and peace. Architects for Peace has Special Consultative Status (category II) with the United Nations Economic and Social Council (ECOSOC).

<http://www.architectsforpeace.org/>



17 March 2017

**To: Manager Governance and Legal, Melbourne City Council
City of Melbourne
GPO Box 1603
Melbourne 3001**

Re: Proposed Activities (Public Amenity and Security) Local Law 2017

Preface

Architects for Peace is a not-for-profit organisation that champions equitable and sustainable urbanism, including urban spaces that are planned, designed and used in the interests of social equity, quality affordable housing and the right to shelter.

Introduction

Architects for Peace strongly opposes the proposed amendments to the Activities (Public Amenity and Security) Local Law 2017. It is our belief that the proposed amendments will adversely impact persons currently experiencing homelessness, and further limit the options afforded to this highly vulnerable societal group.

The proposed amendments to the City of Melbourne's Activities Local Law 2009 run contrary to Council's own strategic long-term aims, by effectively criminalising primary homelessness within the municipality, and allowing the seizure and impoundment of the belongings of people experiencing homelessness.

Architects for Peace respectfully requests the right to be heard before a meeting of the Committee in support of this submission.

Qualifications

Prior to responding directly to Council's survey, we wish to qualify information provided to the public by the City of Melbourne concerning contributing factors towards homelessness:

*"People can become homeless for many reasons. We know that factors like unemployment, housing affordability, mental illness, family violence or substance abuse can be triggers."*¹

Whilst other factors are certainly present, we contend that shortage in supply of *affordable housing*² is the area of most pressing concern.

Submission Responses

1. How do you feel about the proposed changes to the local law to broaden the definition of camping? Why do you feel that way?

We are concerned that a broadened definition of 'camping' will deny homeless persons their legal right to stay in a public place. The broadened definition of 'camping' comes without limitation, and can include persons who are out in the open resting or 'sleeping rough', without the shelter of a tent or a vehicle.

We note that these concerns are shared by Leilani Farha, UN Special Rapporteur on the Right to Adequate Housing, and on the right to non-discrimination in this context. Ms Farha clearly states that the proposed amendments are discriminatory, and likely to be in violation of international human rights law:

*"The criminalisation of homelessness is deeply concerning and violates international human rights law..the proposed law goes further and is discriminatory - stopping people from engaging in life sustaining activities, and penalising them because they are poor and have no place to live,"*³

The City of Melbourne has itself acknowledged that capital cities (and by extension, city centres) are likely to attract persons in need of assistance, due to the concentration and availability of support and services⁴. This includes persons experiencing *Primary Homelessness*⁵, a group understood to be the most vulnerable, often suffering from significant health issues⁶. Architects for Peace is concerned that, in addition to its discriminatory nature, the proposed amendment could push homeless persons out of the inner city, and out of reach of existing essential support networks and services.

¹ City of Melbourne. "Proposed Amendments to the Activities Local Law 2009". *Participate Melbourne*. Web

² We note the importance of precisely defining and applying the term 'affordable housing', which is often used indiscriminately. One reasonable measure is the 30/40 rule, housing that does not require households in the lowest two income quintiles to spend more than 30% of gross income on housing costs AHURI report, "Do current measures of housing affordability reflect well-being?" March 2014.

³ Farha, Leilani "Proposed Homeless Ban in Australia cause for concern" United Nations Human Rights Office of the High Commissioner. Web. 13th March 2017

⁴ City of Melbourne. *Pathways Homelessness Strategy 2014-2017*

⁵ Primary Homelessness is defined as "People without conventional accommodation such as people living on the streets, sleeping in derelict buildings, or using cars for temporary shelter." Chamberlain and Mackenzie 1992, p291.

⁶ City of Melbourne, *Pathways: Homelessness Strategy 2014-2017*.

2. Can you suggest what else we could do so that people are not forced to sleep rough in the city? We know affordable housing options are the best way to end homelessness and the Victorian Government is working to address this issue - however we are interested in your thoughts on alternative solutions.

While Architects for Peace does expect the City of Melbourne to employ experts in relevant fields to investigate ways of reducing homelessness, we do offer the following recommendations:

- Work to increase the provision of direct and indirect homelessness support services, including, but not limited to, social/case workers, medical assistance, food, clothing, washing facilities and storage lockers.
- Identify Council-owned assets that may be suitable for permanent supportive housing. Work with State and Federal Governments and Registered Community Housing Providers to secure funding and operational commitments.
- Work with Council's partners to coordinate and facilitate supportive housing projects on privately owned assets. Work with State and Federal Governments and Registered Community Housing Providers to secure funding and operational commitments.
- Devise appropriate incentives for private developers to supply affordable and supportive housing in new residential projects, without adversely affecting the quality of the public realm.
- Support the Victorian State Government's recently announced Vacancy Property Tax and work with government to implement this important measure.
- Advocate to higher levels of government for a greater provision of social and affordable housing, both within the municipality and throughout the state of Victoria.
- Advocate to State Government, in concert with other councils, for introduction of Planning Scheme amendments – such as Inclusionary Zoning and developer levies – to mandate provision of a proportion of social and supported housing on privately owned and Council-owned land. In this regard, we call attention to Council's commendable previous work with the Inner Melbourne Action Plan on a draft affordable housing overlay⁷ and regret that Council has withdrawn support from this endeavour, and withdrawn related policy actions from its own housing strategy, prior to approval in 2014.

⁷ Inner Melbourne Action Plan Briefing Paper - Proposed Affordable Housing Overlay (Inclusionary Zoning), 30 May 2008.

3. How do you feel about the proposed changes to the local law that would allow the removal of unattended belongings? Why do you feel that way?

We believe that removing unattended belongings is in violation of the Charter of Human Rights and Responsibilities Act 2006 – Protection from torture and cruel, inhuman or degrading treatment, specifically: “A person must not be treated or punished in a cruel, inhuman or degrading way.”

How do you feel about the proposed changes to the local law that would require people to pay a fee to reclaim their unattended belongings?

We assert that having one’s possessions confiscated, then being required to pay an exorbitant fine of \$338 for the release of one’s own possessions is degrading to an individual. This change to the local law would compound the stress and financial disadvantage of persons experiencing homelessness.

4. Can you suggest other actions that could reduce the number of items blocking access for other city users?

Please refer to our response to Question #2.

5. Do you have other ideas that could encourage people not to leave their goods unattended?

Please refer to our response to Question #2.

Conclusion

The Proposed Activities Local Law 2017 discriminates against people experiencing homelessness by denying them rightful access to public places, and by allowing for the confiscation and impoundment of their belongings. Both amendments would have a devastating impact on people experiencing homelessness and would likely complicate their access to essential support and services. The amendments may also result in further stigmatisation within the wider community.

Persons experiencing homelessness are in most cases not homeless out of choice, and find themselves sleeping on the streets as a last resort. Rough sleepers should not be penalised for seeking refuge; people who have no home should be welcome in public places and afforded dignity and respect.

The City of Melbourne has historically shown leadership in the area of homelessness policy, and should renew the human rights approach outlined in its own published document *Pathways: Homelessness Strategy 2014-17*. In the long-term, the focus should always be on providing sustainable and appropriate pathways out of homelessness, especially with greater access to affordable and supported housing, rather than transitional or temporary solutions. However, it is unacceptable, in the short term or otherwise, to impinge upon the rights of homeless persons in the way proposed by these changes.

Architects for Peace rejects Proposed Activities Local Law 2017, and urges Council to do the same.

architectsforpeace

afp@architectsforpeace.org

From: Wufoo <no-reply@wufoo.com>
Sent: Friday, 17 March 2017 11:55 AM
To: CoM Meetings
Subject: Meeting submissions form [#255]

Name *

Email address *

Contact phone number (optional)

Agenda item title * Proposed Activities (Public Amenity and Security) Local Law 2017

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Yes

Privacy acknowledgement: * I have read and acknowledge how Council will use and disclose my personal
information.

17th March 2017

City of Melbourne
120 Swanston Street
Melbourne, Victoria

TO: City of Melbourne
RE: Proposed Activities (Public Amenity and Security) Local Law 2017
FROM: Transforming Housing

Thank you for the opportunity to provide feedback on proposed amendments the Activities (Public Amenity and Security) Local Law 2017.

Transforming Housing oppose the proposed amendments based on their impact on people experiencing homelessness in Melbourne, their ineffectiveness and the messaging these amendments send to other stakeholders.

As outlined in a recent report, The case for investing in last resort housing, by SGS Economics and Planning and the University of Melbourne, homelessness is now at emergency levels. Key causes are the unaffordability of housing, domestic violence and a structural lack of social housing. In addition, there has been a reduction in the supply of "last resort housing" such as rooming and boarding houses and emergency accommodation.

The ABC Homeless Australian Fact File (2016) reveals a growth in the numbers of homeless not only in the inner suburbs but across the metropolitan area. However, this increase is most noticeable in inner city areas.

Transforming Housing believes that people experiencing homelessness are some of the most vulnerable people in our society. They stand to be further marginalised by proposals to broaden the ban on camping in the city, allow for the confiscation of items and impose fines for leaving items unattended.

Transforming Housing opposes the amendments based on the following reasons:

- Impact on people who are experiencing homelessness
- Inefficiency of the proposal
- Poor leadership and messaging from the City of Melbourne

The proposed changes risk simply displacing people into nearby municipalities and further isolating them from services and support. Similarly, imposing fines on people without the

capacity to pay them creates additional stress for people experiencing homelessness and the stakeholders that support them.

In addition to unfairly targeting vulnerable members of society, we also oppose the amendment as it is an inefficient and ineffectual mechanism for dealing with homelessness. As *The case for investing in last resort housing* (Witte, 2017) states, it is cheaper to provide last resort housing to homeless people than to leave them sleeping rough. Governments and society benefit more than they spend by providing last resort housing to homeless individuals. This is mainly through reduced healthcare costs, reduced crime, and helping people get back into employment or education. For every \$1 invested in last resort beds to address the homelessness crisis, \$2.70 worth of benefits are generated for the community (over 20 years) (Witte, 2017).

Finally, the City of Melbourne has a stated goal to “be inclusive - respect, hear, welcome and include those who are homeless in our services, activities and events” (City of Melbourne, 2014, p. 3). Similarly, the recently adopted Future Melbourne 2026 includes Goal 2: A City for People. Within this Goal, *Priority 2.4 Affordable for All to Live* states that “Melbourne will provide affordable options for accommodation, food and services. It will offer a mix of housing, facilities and recreation to support a diverse and inclusive community.” *Priority 2.9 Support the Homeless* states “there will be accessible, safe and supportive services and spaces for homeless people and effective pathways out of homelessness” (City of Melbourne, 2016, p. 12). Forcing people experiencing homelessness out of the CBD is a direct contradiction to these goal and sends an unhelpful message to other government agencies, businesses and community members.

For these reasons, Transforming Housing strongly opposes changes to the Activities (Public Amenity and Security) Local Law 2017. We strongly encourage the City of Melbourne to work with State Government, philanthropies and social housing providers to seek more inclusive and just ways of dealing with rising levels of homelessness in Melbourne. In particular, we advocate for use of local government land, and pursuing partnerships like Common Ground as an efficient use of government resources and a humane way to support Melbourne’s most vulnerable people.

Sincerely,

r, Transforming Housing research network

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From: Wufoo <no-reply@wufoo.com>
Sent: Friday, 17 March 2017 12:02 PM
To: CoM Meetings
Subject: Meeting submissions form [#256]

Name *

Email address *

Agenda item title *

Proposed Activities (Public Amenity and Security) Local Law 2017

Please write your submission in the space provided below

I passionately believe this will NOT help, and the evidence supports my view. Please reconsider and find ways to support the homeless rather than demonise.

Please indicate whether you would like to address the Submission (Section 223)

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From: Wufoo <no-reply@wufoo.com>
Sent: Friday, 17 March 2017 12:08 PM
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Subject: Meeting submissions form [#259]

Name * The LEAG

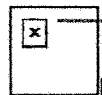
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Agenda item title * Proposed Activities (Public Amenity and Security) Local Law 2017

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LEAG

Lived Experience Advisory Group
C/- Launch Housing
68 Oxford Street
COLLINGWOOD VIC 3066

Submission

To

Proposed amendments to the Activities Local Law
2009

March 17, 2017

LEAG (Lived Experience Advisory Group)

LEAG was established in June, 2016 under the umbrella of Launch Housing. The twelve person members of the LEAG consist of people who have been consumers of homelessness services, their carers and members of the community. All twelve members have extensive knowledge of people experiencing homelessness in the community and some participate in a number of other support groups which has increased their expertise. The knowledge and experience of the group is highly regarded. In nine short months we have been invited to, among other initiatives:

- Provide advocacy services to over 300 Public Transport Victoria AOs;
- Joined local council homelessness advisory groups;
- Consult and provide information to numerous Launch Housing departments;
- Assist with input in the development of policy;
- Provide advocacy to the community regarding new developments;
- Assist Launch Housing with the development of the 'Meet and Greet' proposal overseeing consumer feedback reports.

The group is supported by Launch Housing Deputy CEO and other designated staff.

The Submission

The LEAG submission is in response to the Proposed Amendments to the Amendments to Activities (Public Amenity and Security) Local Law 2017.

Background

As Melbourne City Council are well aware, there have been a number of media reports over the past few months which have raised the profile of people sleeping on the streets under the jurisdiction of Melbourne City Council. Many of these reports have looked at the serious issues of the people themselves, while other reports have condemned and criticized them.

The number of people sleeping rough in Melbourne has increased by 70% since 2014 and at the same time, the number of beds available to the people experiencing homelessness has plummeted. A survey of undertaken in 2016 found 247 sleeping rough compared to 142 in 2014. Contributing to these higher numbers is the fact that a number of rooming houses have been taken off the market due to redevelopment. In total, 640 emergency accommodation beds have been lost in just 4 years. While these figures are for the City of Melbourne only, there are currently 22,773 people experiencing homelessness in Victoria overall.

At the current time there is still some emergency housing available, however, much of it is not safe for either gender and that will often be the reason why offers of emergency overnight accommodation is turned down. People can be exposed to violence, theft, drug use or drunkenness, verbal and sexual abuse. For many, it is safer to stay on the streets with people they know as they tend to all look out for each other.

Research by Homeless Law, found that 54% of people begging in the CBD had a mental illness: 73% were experiencing long term unemployment, 23% were victims of domestic or family violence. In a city such as Melbourne, this is a tragedy. Many of these people are on government housing waiting lists with some waiting for years. Obviously, those with physical and mental health issues will not be receiving the help they require while on the streets. As the Council has itself stated, it is not a crime to be homeless, but until real housing options are available, confiscating people's personal possessions and fining them for their loss is punitive at best.

We are concerned that out of fear of these proposed amendments, some of the people experiencing homelessness may move to less safe areas in adjoining suburbs exposing them to a higher risk of assault, intimidation and robbery. For many of these people the CBD is the only place they feel safe, knowing that it's well lit, has security cameras and regular police patrols.

The CBD also provides resources of meals, support and drop in services. These services and supports are vital to the people experiencing homelessness and keep many of them reasonably healthy, connected, and for some, alive.

Amendments to Activities (Public Amenity and Security)

Local Law 2017

The LEAG have concerns with the following proposed amendments:-

2.12.1 Unless in accordance with a permit, a person must not leave any item unattended in a public place.

If the Melbourne City Council acknowledges, that there are indeed 247 people who are homeless in the CBD at the current time, where is the solution as to where the person experiencing homelessness is to leave their items? Many of these items are personal, such as medications, identification, photos of loved ones, bedding.

2.12.2 If any item is left unattended in contravention of this Local Law, an authorized officer may confiscate and impound the item in accordance with this clause.

Who will constitute an authorized officer? Will it be police, council workers or persons given the specific role? As many of the people experiencing homelessness have already had negative experiences with authority, can the council advise how it will undertake this method and by whom? Specifically acknowledging that some will be mentally ill and/or drug affected.

2.12.3 Any item confiscated and impounded under clause 2.12.2 will be returned to its owner on payment of any fee or charge prescribed by the Council for its release.

Not all people experiencing homelessness are beggars and some do not even receive Centrelink benefits because of their lack of a permanent address. By fining people to collect their confiscated goods, which again could be medication or other items that are essential to them, is not going to assist them to retrieve their items. What amount will the fines be? How will Council determine who they belong to if they are left unprotected? They could be mixed with someone else's belongings. This will lead to even more distress to those least able to deal with it.

Additionally, if the owner of the confiscated items is required to pay a fine and they have no money then there is every possibility that the person would then get caught up in a lengthy justice system process. Again, being punished for being homeless.

If the person is connected with a homeless organization, then they will more than likely pay the fines, replace important medical items such as asthma or heart medications. Money that should be used to provide housing will be used for punitive action.

2.12.4 If the owner of the item has not paid any fee or charge required for its release, the Council may sell, destroy or give away the item.

Can the Council please explain what 'any fee or **charge**' means? Does the word '**charge**' constitute being charged legally?

2.12.5 Before exercising the power conferred by clause 2.12.4, the council must take reasonable steps to notify the owner of the item that the item has been impounded and may be sold, destroyed or given away unless the specified fee or charge is paid within 14 days.

LEAG would like to make a recommendation to the Council regarding the above proposed amendments. Taking into consideration that many of the people experiencing homelessness are on the streets due to family violence, childhood trauma, mental health issues, sexual abuse etc. the effect of the confiscation of their items will only traumatize them more, exacerbate mental health issues and generally stress people who are already trying to survive in a distressing situation. They are vulnerable and fearful and to not only lose their possessions, but to have to pay to retrieve them is lacking in any sort of understanding of their predicament.

Conclusion

We implore the Council to delay the amendments to this policy while waiting for the recent State Policy regarding housing to take effect as well as other recent local government initiatives to address people sleeping on the streets. At least a 6 month delay would allow some of the other actions to be implemented.

That Melbourne City Council install somewhere in the CBD full length lockers than can be used by the people experiencing homelessness to store their items. This could be in an unused shopfront or office that the council could lease or already owns. People could obtain a key and have use of it 24/7.

The advantages of this are it saves the Council money in the long term by not having to confiscate and store the items. The difficulty with clause 2.12.2 is not knowing who owns the items when they are confiscated. The amount of staffing, paperwork and extra monitoring would be more cost effective to the Council regarding the costs of installing lockers. The lockers can store sleeping bags, pillows and any other items they require. Additionally, it will show goodwill by the Council that they are serious about caring for the people experiencing homelessness.

One of the very important outcomes of this suggestion is that it will also provide dignity to those who have been shown so little. It will give them a sense of ownership and instead of punishment, will encourage people to help themselves.

The LEAG would like to state that our contribution is to address those issues which we feel are the most urgent.

This submission has been prepared for and on behalf of the LEAG.

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Sent: Friday, 17 March 2017 12:11 PM
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Name *

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Proposed Activities (Public Amenity and Security) Local Law 2017

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[20170307_law_institute_of_victoria_homelessness_and_amenity_final.pdf](#)

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Homelessness and Public Amenity

**FUTURE MELBOURNE (FINANCE AND
GOVERNANCE) COMMITTEE**

Contact

 Policy Lawyer



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INTRODUCTION

1. The Law Institute of Victoria (LIV) is Victoria's peak body for lawyers and those who work with them in the legal sector, representing 19,000 members. We advocate on behalf of our profession and the wider community, lead the debate on law reform and policy, lobby and engage with government and provide informed and expert commentary.
2. This submission is informed by contributions from the LIV's Administrative Law and Human Rights Section ("ALHR Section"). The ALHR Section is deeply concerned by the impact the proposed amendment to the *Activities (Public Amenity and Security) Local Law 2017* ("local law") will have on Melbourne's most vulnerable residents. The LIV raised these concerns in a letter to the Hon. Robert Doyle and fellow Councillors on the 7 February 2017 and by LIV President, Belinda Wilson in the March issue of the Law Institute Journal.
3. The LIV welcomes the opportunity to provide an additional submission to the Future Melbourne (Finance and Governance) Committee on the proposed local law. This submission intends to provide further detail on why the proposed local law would breach obligations under the Victorian Charter for Human Rights and international human rights law. Additionally, this submission seeks to illustrate that relying on move-on and infringement powers to address issues of homelessness and poverty is ineffective.
4. The LIV understands the pressure Council is experiencing from media and the increased public complaints on amenity. We offer our support and will stand strong with the Council in refusing to progress the amendments to the local law.

PROPOSED CHANGES TO MELBOURNE'S CITY COUNCIL LOCAL LAW

5. The number of people falling victim to homelessness in the City of Melbourne has increased by 74% since 2014. The drastic increase has made homelessness more visible, which has spurred negative media coverage in the last few months. The dialogue has sadly drifted from a solution-focused conversation, to shaming those most unfortunate who have fallen through the cracks of our community's safety net. The LIV is further concerned by the language used in the title of the proposed local law. The word 'security' suggests a connection between homeless people and terrorism which fuels public perceptions and further stigmatizes homeless people.
6. The proposed changes to the local law has two key effects:
 - a. It broadens the restriction on camping in the Melbourne CBD and provides expanded powers to move on rough sleepers.
 - b. It provides for the confiscation and impoundment of unattended items, which can be destroyed after 14 days if a fine is not paid.
7. Under Part 14 of the local law, it is an offence to:
 - Fail to comply with the local law;
 - Fail to do anything directed to be done under the local law;
 - Refuse or fail to obey directions of an authorized officer to leave a public place where in the opinion of that authorized officer the person has failed to comply or is failing to comply with the local law.
8. As noted in a statement made by the United Nations Special Rapporteur on adequate housing, the proposed local law criminalises homelessness and discriminates against people by stopping them from engaging in life-sustaining activities, such as leaving their belongings while they wash or go to the toilet.¹ If a person fails to comply with the local law, they have committed an offence and can be given an infringement notice for \$250 (2.5 penalty units) or charged and brought before the Magistrates Court.
9. The LIV submits that expanded move on powers for authorized officers are unnecessary as Victoria Police have sufficient power to regulate behavior in public places in relation to public drunkenness, using offensive language in public or begging pursuant to the *Summary Offences Act 1966* (Vic).

¹ Office of the High Commission, *Proposed "Homeless Ban" in Australia cause for concern- UN Expert* (13 March 2017) United Nations <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21357&LangID=E>>

10. While the LIV acknowledges that public spaces should be regulated to promote community health and safety, this should not be achieved through increased penalties or move-on laws that victimise some of the most vulnerable members in our community.²

² LIV President, Belinda Wilson, *LIV Rejects Homelessness Ban* (1 March 2017) Law Institute Journal <<https://www.liv.asn.au/Staying-Informed/LIJ/LIJ/March-2017/LIV-rejects-homelessness-ban>>

INTERNATIONAL HUMAN RIGHTS LAW

11. International human rights law recognises that every person has the right to adequate housing.

Article 11 of the International Covenant on Economic, Social and Cultural Rights, which Australia is a party, states:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right.

12. The seriousness of the potential violation of international human rights law is illustrated in a statement released by the United Nations Special Rapporteur on the Right to Housing, Leilani Farha from the Office of the High Commissioner for Human Rights in Geneva on the 13 March 2017.³

Leilani Farha condemns the proposed local law and reminds local government that they have an obligation to uphold international human rights law:

Under international human rights law, which applies to national as well as local governments, homelessness is a gross violation of the right to adequate housing. Discrimination against and social exclusion of people who are homeless is strictly prohibited. Governments are required to take immediate steps to ensure the right to housing is enjoyed on a short and long-term basis.⁴

13. The LIV notes that this is not the first time the United Nations have urged governments in Australia to address the homelessness crisis. In 2006, Dr Miloon Kothari, the United Nations Special Rapporteur on Adequate Housing, visited Australia. He described Australia's homeless issue as a serious "hidden" crisis, stating;

The Special Rapporteur was particularly troubled by the inadequate housing and living conditions he witnessed in some parts of the country, given that Australia is one of the wealthiest developed countries with a comparatively small population. He fails to understand why housing is not considered a national priority... The response to high demands and the lack of public housing stock has been a constant tightening of the public housing eligibility process resulting in significant numbers of people unable to access public housing in a timely manner.⁵

14. Homelessness is not just about the lack of secure and safe housing, homelessness affects various other rights too. The Australian Human Rights Commission found that homelessness impacts a person's right to freedom of movement and freedom of association, the right to freedom of

³ Above n, 1.

⁴ Ibid.

⁵ Dr Miloon Kothari, *United Nations Special Rapporteur on Adequate Housing* (15 August 2016) 5.

expression, the right to be free from cruel, inhumane, degrading treatment or punishment, the right to adequate standard of living, the right to liberty and security of the person, the right to be free from discrimination, and many others.⁶ Under international human rights law States (including local government) have an obligation to combat discrimination, stigma and negative stereotyping of homeless people as a matter of urgency and provide legal protection from discrimination because of social and economic situation, which includes homelessness. The proposed local law effectively discriminates against homeless people by penalizing them for their situation.

15. Public space laws have the effect of criminalizing homelessness which violates people's right to freedom from cruel, inhuman or degrading treatment. As noted by the Australian Human Rights Commission ("AHRC"), public space laws, like the proposed local law, have a disproportionate impact on people who are particularly vulnerable to homelessness, including Aboriginal and Torres Strait Islander people and young people. In the 2009 Inquiry into Homelessness Report, the AHRC recommended the Australian Government should give a high priority to establishing a national review of public space laws that impact on the rights of people who are homeless.⁷

⁶ Australian Human Rights Commission, *Homelessness a Human Rights Issue*
<<https://www.humanrights.gov.au/publications/homelessness-human-rights-issue#6>>

⁷ Australian Human Rights Commission, *Inquiry into national homelessness legislation* (1 September 2009)
<https://www.humanrights.gov.au/inquiry-national-homelessness-legislation-2009>

THE VICTORIAN CHARTER OF HUMAN RIGHTS

16. As the only state in Australia to have a human rights instrument, the *Charter of Human Rights and Responsibilities* ("the Charter"), Victoria can be proud of the steps it has taken towards ensuring greater human rights protections for its residents.
17. The LIV welcomes the fact that an assessment will be made of the compatibility of the proposed local law amendments with the human rights set out in the Charter. In the LIV's opinion, the proposed amendment unjustifiably and unreasonably limits rights protected by the Charter, particularly the right to freedom of movement, right to be free from discrimination and the right to freedom from cruel, inhuman or degrading treatment.
18. The right to freedom of movement is set out in s12 of the Charter and includes, for example, freedom from being forced to move to, or from, a particular place.⁸ The proposed local law amendment broadens the definition of camping, providing council officers with increased powers to request people to move on from a public place, or risk prosecution or an infringement. While the local laws do not specifically state that it targets people sleeping rough, the practical effect of the law is discriminatory and it is clear from statements made by the City of Melbourne Council that the intention of the amendments is to target homeless people.
19. The right to freedom of movement is not absolute and may be limited in accordance with s 7(2) of the Charter, however, in this case it appears that the limitations are not reasonable or demonstrably justified. The aim of the amendments, as set out in the purpose and background is to address concerns relating to amenity, pedestrian flow, the use of drug paraphernalia and aggressive begging, as well as the cost to council of removing belongings to landfill. While such public amenity aims are important, they should not take precedence over the rights of people sleeping rough to not be discriminated against and to be moved on or face penalties simply because they have no choice but to live in a public space. As noted by the Special Rapporteur, laws such as this are frequently 'framed under the guise of public health and safety but, in reality, the aim is to 'beautify' an area for the promotion of tourism and business or to increase property values'.⁹ Criminalising homelessness can also violate people's rights to be free from cruel, inhuman or degrading treatment.
20. A Local Council is a public authority under the Charter and is subject to section 38(1) which makes it '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.' However, the courts have found that the requirement on councils not to act in a way that is incompatible with human rights is

⁸ Judicial College of Victoria, *Charter of Human Rights Bench Book* (10 May 2016) [6.6.2].

⁹ Above n, 1.

not applicable to the making of local laws under the *Local Government Act 1989*.¹⁰ To address this issue, the 2015 Charter Review recommended that item 2(f) of schedule 8 to the *Local Government Act 1989* be amended to refer to the human rights in the Charter, making incompatibility with the human rights in the Charter a factor for the Minister's consideration when deciding whether to recommend revocation of a local law.¹¹ The LIV welcomes the Victorian Government's support of the recommendation that the making of a local law should involve consideration of the local law's compatibility with human rights.¹²

21. It should be noted, if the Full Court of the Federal Court's approach to s 38(1) of the Charter is followed by the Victorian courts, and Councils are not required to apply the Charter when making local laws, any policies, guidance, direction or actions issued or taken by the Council do need to be consistent with the Charter.

¹⁰ *Kerrison v Melbourne City Council* [2014] FCAFC 130 (3 October 2014).

¹¹ Michael Brett Young, *From Commitment to Culture: the 2015 Review of the Charter of Human Rights and Responsibilities Act 2006* (September 2015) recommendation 45 <<https://engage.vic.gov.au/human-rights-charter-review>>.

¹² Above n. 2.

AN EFFECTIVE RESPONSE TO HOMELESSNESS

22. Moving homeless individuals away from Melbourne CBD will not solve the problems that are creating homelessness and will merely move people elsewhere. People may be pushed out to areas that do not have adequate services, limiting their opportunity to access the support they need. Moving homeless people out of the CBD may also expose them to a greater risk of violence.
23. The LIV notes the tragic fire in Footscray this month that claimed the lives of three homeless people sheltering in an abandoned warehouse. As noted in Justice Connects Homeless Law submission to this Committee on the 7 February 2017, “[t]he proposed amendments risk pushing people to the edges of the city and isolating them further from services. Their relationship with services and authorized officers will deteriorate and they will become harder to engage.”¹³ There is also a risk that people will become caught up in the justice system through fines or charges.¹⁴
24. Criminalising homelessness will impose a significant burden on the courts, legal aid and police, and will result in highly vulnerable people becoming caught up in the justice system and exacerbating the difficulties that come with homelessness and poverty. Data from the Australian Bureau of Statistics Census of Population and Housing showed 68,500 men, women and children accessed homelessness services and almost 60% of homelessness service users are under the age of 25.¹⁵ Research indicates that homelessness and inadequate housing are key factors on remand rates, and are likely to play a role in Victoria.¹⁶ The LIV urges the Committee to consider the flow on effects the proposed law will have on social outreach and legal services, which are already struggling to meet the current demand and are severely under-resourced.
25. The LIV welcomes the Victorian Government’s recent announcement of a new emergency response package to provide housing and support for rough sleepers in the Melbourne CBD, and emphasises the importance of the City of Melbourne and Victorian Government continuing to work together with support services and agencies to come up with a long term strategy and service-based solution to homelessness in Victoria. The proposed local law is not consistent with the Victorian Government’s policy in addressing homelessness, and will ultimately jeopardise efforts being made in this area.
26. The LIV submits that evidence based reform is required to reduce homelessness, not a policy that criminalise and stigmatises people who are homeless. There is strong evidence that indicates the best solutions are to invest in health and housing support services, so that there is an adequate

¹³ Justice Connect Homeless Law, submission to Future Melbourne Committee (7 February 2017) citing Lucy Adams, Churchill Fellowship Report: Addressing the Negative Impact of Laws Regulating Public Space on People Experiencing Homelessness (2014).

¹⁴ Justice Connect, Homeless Law, Submission to the Futures Melbourne Committee (7 February 2017).

¹⁵ Australian Bureau of Statistics 2012, *Census of Population and Housing: Estimating Homelessness, 2011*, Australian Government, Canberra <http://chp.org.au/wp-content/uploads/2012/12/10122012_Homelessness-in-Victoria-with-2011-ABS-stats.pdf>

¹⁶ See, eg, Jesuit Social Services, ‘An escalating problem: responding to the increase remand of children in Victoria’, report (October 2015).

safety net for people who are vulnerable.¹⁷ The LIV would be pleased to continue to assist the Committee in providing evidence based policy considerations relating to homelessness.

¹⁷ Lucy Adams, Churchill Fellowship Report: Addressing the Negative Impact of Laws Regulating Public Space on People Experiencing Homelessness (2014).

From: Wufoo <no-reply@wufoo.com>
Sent: Friday, 17 March 2017 12:13 PM
To: CoM Meetings
Subject: Meeting submissions form [#261]

Name *

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Agenda item title *

Submission of the Infringements Working Group - Proposed Activities
(Public Amenity and Security) Local Law 2017

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17.03.17_iwg_submission_proposed_activities_local_law.pdf

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17 March 2017

Manager, Governance and Legal
Melbourne City Council
GPO Box 1603
MELBOURNE VIC 3001

By online submission

Dear Sir/Madam

**Submission of the Infringements Working Group –
Proposed Activities (Public Amenity and Security) Local Law 2017**

The Infringements Working Group (IWG)¹ welcomes the opportunity to provide feedback on the City of Melbourne's proposed amendments to the *Activities Local Law 2009 (Local Law)* in the *Activities (Public Amenity and Security) Local Law 2017 (Amending Law)*.

The IWG is a joint working group of the Federation of Community Legal Centres (Victoria), Victoria Legal Aid and the Financial and Consumer Rights Council. The clients of IWG members experience significant financial hardship and often one or more of mental illness, family violence, homelessness and substance dependence. These clients are disproportionately affected by the Victorian infringements system, and the IWG is committed to supporting reforms that improve the system's operation for individuals, services, governments and courts.

The IWG commends the City of Melbourne's leadership over an extended period regarding collaborative and informed approaches to people experiencing vulnerability. For example, some of our members have worked – or continue to work – with the City of Melbourne in relation to the impressive one-stop-shop for the health needs of people experiencing homelessness at Central City Community Health Service, the Justice Access Advisory Group, the CBD Homelessness Network and the Special Circumstances Infringement Review - Model Operating Policy for Enforcement Agencies.² The IWG also acknowledges the Victorian Government's recent announcement of a new emergency response package to provide housing and support for rough sleepers in the Melbourne CBD.³

In the context of these positive efforts, the IWG raises its significant concerns with the proposed Amending Law, which will broaden the restriction on public camping in the Melbourne CBD and provide expanded powers to move-on rough sleepers, issue them fines or charges and confiscate their personal items. The IWG's submission:

- summarises the proposed changes to the Amending Law;

¹ See Annexure 1 for the 36 member organisations of the Infringements Working Group (IWG).

² City of Melbourne, *Special Circumstances Infringement Review – A Model Operating Policy for Enforcement Agencies* (February 2014).

³ Minister for Housing, Disability and Ageing, *Giving Rough Sleepers a Path Towards Home*, Victoria State Government (January 2017). Also see, for further discussion, Council to Homeless Persons, *Victorian Government Housing Strategy will improve affordability; now the Federal Government needs to step up the plate* (March 2017).

- identifies existing relevant laws which provide adequate powers to respond to the City of Melbourne's concerns regarding public amenity and accessibility;
- raises the IWG's concerns with the Amending Law; and
- asks that the Council avoid taking the Amending Law any further and, instead, continue its effective leadership, collaboration and advocacy.

As a group of 36 legal and financial organisations that work daily with Victorians who have been caught up in a complex, inefficient enforcement system that drains the resources of services, courts and agencies, and has no positive impact on the lives of people experiencing homelessness (eg. by deterring conduct or encouraging engagement), we warn the Council that the Amending Law will not have the intended impact and should not proceed.

1. The Amending Law

As you know, the key aspects of the Amending Law are:

- (1) broadening the ban on camping; and
- (2) providing for the confiscation and disposal of unattended items.

Under the proposed amendments, a person would be failing to comply with the Local Law by 'camping' in or on any public place or leaving items unattended without a permit. These are offences and a person could be given an infringement notice for \$250 (2.5 penalty units under a local law),⁴ or charged and brought before the Magistrates' Court. An authorised officer could also direct a person to leave a public place (ie. move-on a person) and, if the person fails to do this, they can be fined or charged. In this context, there are significant risks that the Amending Law will cause more vulnerable people to be entrenched in the infringements system and also within the broader criminal justice system.

Broadening the ban on camping

Currently, camping is only banned in Melbourne if campers use a 'vehicle, tent, caravan or any type of temporary or provisional form of accommodation'.⁵ The proposed changes would remove this wording, and clause 2.8 will instead provide: 'Unless in accordance with a permit, a person must not camp in or on any public place'. The proposed ban on camping is extremely broad and, although this may not be the intention, it effectively makes it an offence to sleep on the streets (noting that 'camp' is not defined).

Providing for confiscation and disposal of unattended items

The Amending Law also suggests a new clause 2.12, which would provide that a person must not leave any item unattended in a public place. In addition to being able to issue an infringement notice for \$250 for leaving items unattended, authorised officers would be able to confiscate the items and dispose of them if a fee or charge is not paid within 14 days. These provisions regarding unattended items also have the potential to impact harshly on rough sleepers, including because of the inevitability that goods may be temporarily left unattended (eg. while someone is getting food or using the toilet), the high probability of being fined and the requirement to pay a fee to recover personal goods and items.

2. Existing relevant laws

The IWG submits that there are already extensive powers to address behaviour and belongings in Melbourne's CBD.

Offences under current Local Law

Under the current Local Law, 'a person must not camp in or on any public place in a vehicle, tent, caravan or any type of temporary or provisional form of accommodation'.⁶ The following activities in, on or within the hearing or sight of a public place are already prohibited:

⁴ *Sentencing Act 1991* (Vic) s 110.

⁵ *Activities Local Law 2009* (Vic) cl 2.8.

⁶ *Activities Local Law 2009* (Vic) cl 2.8

- causing or committing any nuisance (nuisance is defined as having its 'ordinary common meaning');
- adversely affecting the amenity of that public place;
- interfering with the use or enjoyment of that public place or the personal comfort of another person in or on that public place;
- annoying, molesting or obstructing any other person in or on that public place;
- defecating or urinating except in a toilet or urinal in a public convenience;
- committing an indecent or offensive act; or
- using any threatening, abusive or insulting words.⁷

Existing powers of authorised officers to 'move along' offenders

The Local Law also provides that it is an offence to (among other things):

- fail to comply with the Local Law;
- fail to do anything directed to be done under the Local Law;
- refuse or fail to obey directions of an authorised officer to leave a public place where in the opinion of that authorised officer the person has failed to comply or is failing to comply with the Local Law.⁸

The Local Law further empowers an authorised officer to:

- either orally or in writing direct a person to leave a public place if in the opinion of the authorised officer the person is failing to comply or has failed to comply with the Local Law;⁹
- charge and prosecute a person for the above offences or issue an infringement notice of \$250. If a person is found guilty of an offence in court, they are liable to a penalty of up to \$2000;
- serve a written Notice to Comply (specifying the time and date for compliance) on a person who the authorised officer reasonably suspects to be in breach of the Local Law. This notice can direct the person to: comply with the Local Law; stop conduct which breaches the Local Law; remove or cause to be removed any item, goods, equipment or other thing that constitutes a breach of this Local Law; or leave an area within the time specified in the notice.

Existing powers of authorised officers to confiscate possessions of offenders

Clause 14.17 of the Local Law further provides detailed provisions in relation to the power of authorised officers to confiscate goods and items, including: 'Where a person owning or responsible for items, goods, equipment, vessel, bicycle or other property or thing has ignored a direction from an authorised officer to remove them, the items, goods, equipment, vessel, bicycle or other property or thing may be confiscated and impounded'.

Existing powers under the Summary Offences Act 1966 (Vic)

The *Summary Offences Act 1966 (Vic)* additionally provides a range of powers for Victoria Police to regulate behaviour in public places, including in relation to public drunkenness;¹⁰ using offensive language in public;¹¹ obstructing a footpath;¹² or begging.¹³ Existing move-on powers can also be used when someone is breaching the peace, endangering another person or presenting a risk to public safety.¹⁴

In the experience of IWG members, the above powers should only be relied on as a last resort, after alternative, service-based responses have been considered. The IWG notes that the nature and breadth of existing powers is already extensive and does not need to be supplemented by the Amending Law.

⁷ *Activities Local Law 2009 (Vic)* cl 2.1.

⁸ *Activities Local Law 2009 (Vic)* pt 14.

⁹ *Activities Local Law 2009 (Vic)* s 14.8.

¹⁰ *Summary Offences Act 1966 (Vic)* s 13.

¹¹ *Summary Offences Act 1966 (Vic)* s 17.

¹² *Summary Offences Act 1966 (Vic)* s 5.

¹³ *Summary Offences Act 1966 (Vic)* s 49A.

¹⁴ *Summary Offences Act 1966 (Vic)* s 6.

3. Concerns about the Amending Law

Informed by the work of our members in assisting clients facing financial hardship and complex forms of disadvantage, the IWG raises the below concerns regarding the Amending Law.

Impact on vulnerable people and the infringements system

While we understand that the Council intends to have safeguards or guidelines to minimise the issuing of fines under the new and amended provisions, the Amending Law will inevitably cause more vulnerable Victorians to unnecessarily become entrenched in the infringements system through excessively punitive fines or charges.

The infringements system expressly recognises that a person should not have to pay a fine where, because of their homelessness, they were unable to control the offending conduct.¹⁵ Section 3 of the *Infringements Act 2006* (Vic) (**Infringements Act**) also provides that people can apply to have fines withdrawn if, because of mental illness or substance dependence, they were unable to understand or control the offending conduct. It appears likely that almost every person issued with a fine under the Amending Law would fall within the Infringement Act's definition of 'special circumstances'.

A significant proportion of IWG members' work is helping clients to have their fines waived on the basis of their homelessness, mental illness and/or substance dependence. Through this work, the IWG has consistently seen that once a person enters the infringements system, it is difficult to exit and the subsequent process generates significant stress and hardship for individuals, along with burdening the court system, government agencies and support services. **Annexure 2** provides a picture of the complex and protracted nature of Victoria's current infringements system, which is also well illustrated by Stephanie's case study.

Woman experiencing homelessness and mental health concerns takes 34 months to resolve her fines through the infringements system

Stephanie is a middle-aged woman with a history of homelessness, who suffers from an acquired brain injury and depression. She also experiences financial hardship and is reliant on a Newstart Allowance. Stephanie approached a community legal centre (CLC) after she had been issued with five fines from July 2012 to July 2013 for travelling without a valid ticket on public transport. Stephanie was homeless after having to leave her rental property when her relationship ended. She was paying her ex-partner to be able to sleep on a couch in his office, but could not stay at the office during business hours. The fines were generally issued when Stephanie was travelling to a suburban soup van for dinner (there were no kitchen or bathroom facilities in the office).

Between September 2013 and February 2014, Stephanie's CLC lawyers obtained a variety of support letters from treating doctors, support workers and the operator of the soup van. The letters commented on her homelessness and mental health concerns. In February 2014, an application for revocation, with extensive supporting material, was submitted to the Infringements Court based on Stephanie's special circumstances. In June 2014, the Infringements Court responded to the application, requesting more detailed evidence that more clearly identified the link between Stephanie's special circumstances and the fines.

In October 2014, the Infringements Court revoked the enforcement orders on the basis of special circumstances. The matter was then referred to the Magistrates' Court for hearing. In May 2015, the fines were unconditionally dismissed by the Magistrates' Court. Despite this ultimately positive outcome, 34 months passed between the time Stephanie was issued her first fine in July 2012 and the dismissal of this fine by the Magistrates' Court.

¹⁵ For the definition of 'special circumstances' see, *Infringements Act 2006* (Vic) s 3.

If introduced, the Amending Law would significantly increase the likelihood of vulnerable people like Stephanie being fined and further entrenched in the infringements system. The Amending Law would actively work against ensuring that, where possible, people with special circumstances or exceptional circumstances do not enter the infringements system in the first place. For commentary on the benefits of taking a preventative approach, we refer you to the recent report of the Victorian Ombudsman in relation to Victoria's public transport system and the need to equip authorised officers to exercise discretion that avoids vulnerable people entering the infringements system.¹⁶

The IWG recommends that the City of Melbourne prioritise a preventative approach, which supports authorised officers to select options other than issuing a fine or charge and early identification of people who should not needlessly be drawn into the infringements system. The Amending Law does not encourage or facilitate this process. Rather, it takes an enforcement-based approach to homelessness, which will impose an unmanageable burden on struggling individuals, drain the Council's resources without achieving the desired results, and unnecessarily consume the already limited resources of the infringements system, the Magistrates' Court, and the legal assistance and financial counselling sectors.

Consequences for accessibility and resourcing

The Amending Law raises concerns of further isolating some of the most marginalised Victorians from adequate legal, financial and social support services, particularly by pushing them outside the Melbourne CBD, reducing access points for direct assistance and referrals. The IWG does not support the suggestion that the risk of enforcement will encourage individuals to engage with services. The importance of effective engagement with support services is clearly demonstrated through Hannah's case study.

Homeless young woman escaping family violence has \$9000 in fines revoked after connecting with specialist services

When Hannah was 19, she left home to escape family violence at the hands of her father. She started sleeping on the streets, couch-surfing and staying in boarding houses but had difficulty finding somewhere stable to live. Her only way of getting around was on public transport, but she often didn't have enough money to top up her myki.

Hannah didn't know that she'd been fined, as even though her ID had her parents' address, she wasn't living there and had no contact with her family. She didn't have a new address that she could use on her ID because she was constantly moving around. The fines kept getting sent to her old address, but she never received them. Hannah was in significant hardship without any family or financial supports. She started engaging in sex work to make extra money as she struggled to survive on her youth allowance, which would often be cancelled as she couldn't access her mail from Centrelink.

At 22, Hannah connected with a specialist housing service and was then referred to a CLC to find out if she had any fines. Hannah had over \$9,000 owing for 26 unpaid myki fines from the last 3 years when she was experiencing homelessness. The CLC assisted Hannah to write to the Infringements Court to apply for revocation based on special circumstances. The Infringements Court revoked the enforcement orders, but the Department of Transport decided not to withdraw the fines and prosecuted her in court. Hannah's matter was heard in the Melbourne Magistrates' Court and all the fines were found proven and dismissed.

¹⁶ Victorian Ombudsman, *Investigation into public transport fare evasion enforcement* (May 2016) pp 45 and 62, particularly noting the Ombudsman's recommendation for a new Victorian protocol for people who are homeless in public places. Also see, for further discussion, IWG, *On track to fairer fares and fines* (March 2016).

If Hannah was issued with more fines or further isolated by an enforcement-based approach to homelessness, it is less likely she would have accessed the necessary specialist assistance required to resolve her fines and secure safe housing.

We highlight the following two key points for the Council:

- Effective engagement, particularly with people who have experienced trauma, requires building trust and rapport. Using the threat of enforcement will undermine the ability to build trust and rapport rather than enhance it; and
- Engagement with services requires those services to have capacity to meet the needs of that person. For example, around 100 people every day are turned away from Victorian homelessness services because of overwhelming demand,¹⁷ and in the experience of IWG members, waiting lists for Victorian drug and alcohol and mental health-related services range from around 1 week for an assessment, to 1–6 months for counselling or residential rehabilitation.

In addition to imposing financial and personal strain on individuals, the enforcement framework surrounding the Amending Law will impose a significant resource burden on government agencies, courts and support services (including free legal services and financial counsellors) that are involved – in differing ways – in the compliance framework. Rather than introducing the Amending Law, which facilitates an enforcement-based approach, the IWG supports the implementation of further collaborative, service-focussed responses, including supported pathways to affordable housing.¹⁸

Deteriorating interactions and staff morale

The role of authorised officers is challenging, but increased enforcement powers will not make it easier and will likely exacerbate these difficulties. The Amending Law's implementation would directly result in deteriorated interactions and less constructive engagement between authorised officers and vulnerable people in the Melbourne CBD.¹⁹ Although we understand that there will be discretion about when to enforce the provisions in the Amending Law, the pressure to use an enforcement-based approach would reduce the ability of authorised officers to effectively engage with disadvantaged people.

As an example of a more effective, constructive approach to supporting authorised officers in their roles, we refer you to the ongoing work of Public Transport Victoria, which recently ran 17 sessions for authorised officers on public transport to help them understand and respond effectively to people experiencing homelessness, mental illness or substance dependence, including by exercising discretion to prevent them entering the infringements system. These sessions featured the perspectives of consumers who had experienced one or more of these circumstances and provided a high degree of insight to the authorised officers. Informative sessions of this nature have the potential to improve authorised officers' job satisfaction, as well as enhancing their interactions with highly vulnerable people.

Failing to meet human rights obligations

The IWG submits that the Amending Law may be incompatible with the human rights listed in Part 2 of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (**Charter**). The Amending Law proposes significant limitations on the human right to freedom of movement protected under the Charter.²⁰ The planned amendments may also limit the human rights to freedom of peaceful assembly and freedom of association,²¹ and the human right to freedom of expression.²²

As discussed, the Amending Law would provide authorised officers with further powers to move-on and fine people, including in circumstances where there is no suggestion that they are breaching the

¹⁷ Australian Institute of Health and Welfare, *Specialist homelessness services 2015-16: Victoria* (February 2017).

¹⁸ See, for eg, IWG, *IWG submission regarding the development of the Work and Development Permit Scheme* (March 2017).

¹⁹ See, for eg, Lucy Adams, *Churchill Fellowship Report: Addressing the Negative Impact of Laws Regulating Public Space on People Experiencing Homelessness* (April 2014) pp 38-43.

²⁰ *Victorian Charter of Human Rights and Responsibilities Act 2006* (Vic) s 12.

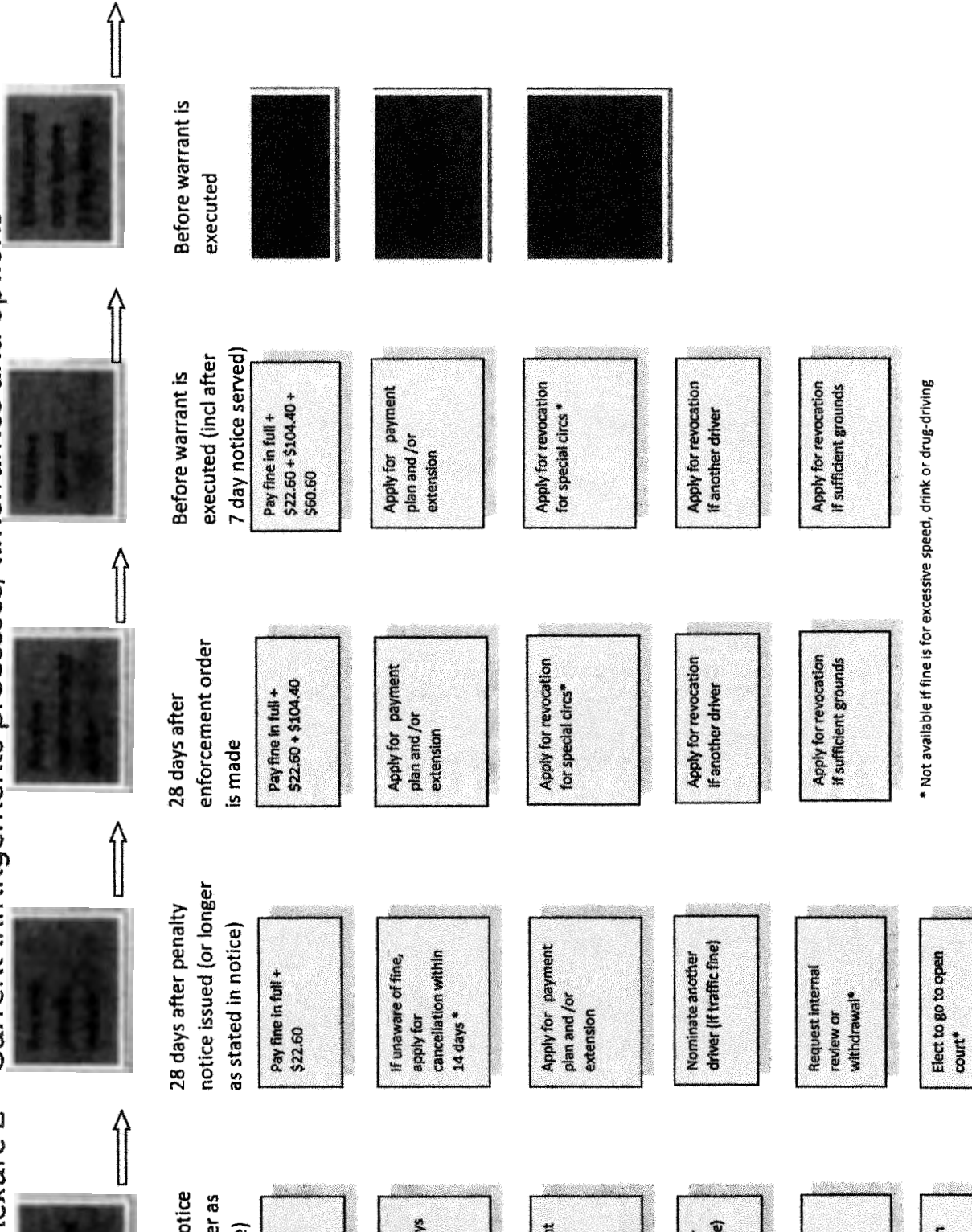
²¹ *Victorian Charter of Human Rights and Responsibilities Act 2006* (Vic) s 16.

²² *Victorian Charter of Human Rights and Responsibilities Act 2006* (Vic) s 15.

Annexure 1 – List of IWG member organisations

Bendigo Community Health Services
Brimbank Melton Community Legal Centre
Carlton City Legal Financial Counselling Service
Casey Cardinia Legal Service
University of Melbourne
Eastern Community Legal Centre
Federation of Community Legal Centres
Financial and Consumer Rights Council
City of Melbourne Legal Service
Melbourne and Kensington Community Legal Centre
Community Mediation and Counselling Centre Financial Counselling Capability Program
Good Shepherd Youth Family Service
Gume Riverina Community Legal Service
Inner Melbourne Community Legal
Justice Connect Homeless Law
Lentara UnitingCare
Loddon Campaspe Community Legal Centre
Mental Health Legal Centre
Monash University
Moonee Valley Legal Service
Rankivell Taylor Lawyers
Odyssey House
Peninsula Community Legal Centre
Port Phillip Community Group
UnitingCare
SouthPort Community Legal Service
Springvale Monash Legal Service
Stilda Legal Service
Upper Murray Family Care
Victoria Legal Aid
Victorian Aboriginal Legal Service
West Heidelberg Community Legal Service at Banyule Community Health
Whittlesea Community Legal Service
Women's Legal Service Victoria
Westjustice Western Community Legal Centre
Youth Law

Annexure 2 – Current infringements processes, timeframes and options



* Not available if fine is for excessive speed, drink or drug-driving

From: Wufoo <no-reply@wufoo.com>
Sent: Friday, 17 March 2017 12:45 PM
To: CoM Meetings
Subject: Meeting submissions form [#257]

Name *

Email address *

**Contact phone
number (optional)**

Agenda item title Proposed Activities (Public Amenity and Security) Local Law 2017

*

Please write your submission in the space provided below

I write to urge Melbourne City Council to not proceed with changes to current Activities Local Law 2009, as proposed, for the following reasons:

Existing laws and powers are sufficient to regulate the issues the proposed changes are deemed necessary to address. The proposed changes will target vulnerable people without addressing the complex structural causes of their situations, resulting in further injustices for people already let down by an inadequate and under-resourced social welfare regime.

Proposed changes will exacerbate the significant social and economic costs of inequality, including deteriorating social cohesion, increased use of officer time to no good end, and the entirely unnecessary clogging of an already overloaded justice system, with flow on costs to the wider community.

Melbourne City Council is acknowledged for its constructive and progressive actions and leadership. Melbourne is an international city. I love living here and am proud to be a resident. However these proposed changes are punitive and reactionary. They are likely to erode precious community goodwill towards Melbourne City Council from many, not only those who are targeted by these proposed changes, but those who care about our fellow residents, whether housed or not.

Victoria's Charter of Human Rights and Responsibilities is an enlightened and powerful tool for public authorities in the face of community pressure to remove the inconvenience of overt homelessness. I call on Council to account for how these proposed changes embody dignity and respect for people doing it tough, in the spirit of the Charter.

Finally I find the proposed changes morally reprehensible. They will not create a better city for people but instead

would perpetrate discrimination, injustice, division, and more seriously, attack our shared dignity.

Thank you for the opportunity to make a submission on this important matter.

Please indicate Yes
whether you
would like to
address the
Submission
(Section 223)
Committee in
support of your
submission *

Privacy I have read and acknowledge how Council will use and disclose my personal information.
acknowledgement:

*

From: Wufoo <no-reply@wufoo.com>
Sent: Friday, 17 March 2017 12:48 PM
To: CoM Meetings
Subject: Meeting submissions form [#263]

Name *

Email address *

**Contact phone
number (optional)**

Agenda item title Proposed Activities (Public Amenity and Security) Local Law 2017

*

Please write your submission in the space provided below

To begin with I want to preface this submission with my absolute shock and disappointment to learn that this proposed amendment has progressed to the public submissions stage without consultation or vetting from the recently established Homelessness Advisory Committee. A person could very reasonably ask what the role of such a committee would be if not to be consulted and inform amendments to law or policy relevant to their area of expertise prior to those being put to public submissions. I hope that this type of error of judgement or process will not occur again, and in striving to counter this, that a large amount of weight be provided to the recommendations given by this committee and the many varied advocacy and service provision groups working within the homelessness area.

As outlined by numerous advocacy groups and service providers, there is little if any evidence to suggest these amendments will do anything to improve even the management of homelessness in Melbourne. I understand these laws are not being introduced to fix the issue of homelessness, or even necessarily help those experiencing it, but it seems beyond heartless to introduce amendments to laws that will only make life worse for those already the worse our city has to offer. We can look to other cities and other countries to understand very clearly the effects of excessive move on laws for homelessness in central locations. These are, once implemented, that the issue of homelessness and those experiencing it are pushed to the geographic margins of society as well as the social – that is that the people most in need of visibility and access to centralised services will end up camping out on the suburban fringe, away from those people and organisations disposed to assist them.

A rather obvious aside to this is the hugely restrictive nature of introducing a situation where by council workers can confiscate the merger belonging of a person experiencing homelessness and return them only after a approx \$350 dollar fine is paid. Perhaps those reading this may not know, but as it is large percentages of the time and resources of free legal services go to help minimise, manage or waive things like public transport fines, outstanding gas or electricity bills from previous living arrangements, and low level public infringements. To add an additional financial

burden to people with little to no money (who evidently cannot afford to live in a house) is not just to completely demoralise and effectively move them further away from safety and services, it is also to further stretch the meagre public legal services we still have.

Finally, the suggestion of introducing a fine or penalty for 'donating' or giving to people experiencing homelessness is a complete affront to the very nature of humanity and the desire to help those in need. I am glad to see this is not mentioned in the current amendments, but should it be reconsidered I hope that anyone sitting down reading these submissions can understand the massive long term psychological damage something like this would inflict both on those experiencing the multiple traumas of homelessness and everybody else within the city of Melbourne, who would be forced into a choice between breaking the law or becoming complicit in the dehumanisation of vulnerable and intrinsically valuable people.

To implement these amendments knowing full well the projected outcomes feels like a deeply cynical exercise in attempting to sweep the issue of homelessness and those living through the experience of it under the rug. I sincerely urge you not to support these amendments, and ask without anger, cynicism or irony that you do not leave consideration of this topic at your workplace, but bring it with you to your home, remember how lucky so many of us are and ask yourself - will this help or hinder?

Please indicate Yes
whether you
would like to
address the
Submission
(Section 223)
Committee in
support of your
submission *

Privacy I have read and acknowledge how Council will use and disclose my personal information.
acknowledgement:

*

From: Wufoo <no-reply@wufoo.com>
Sent: Friday, 17 March 2017 12:57 PM
To: CoM Meetings
Subject: Meeting submissions form [#262]

Name *

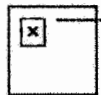
Email address *

**Contact phone number
(optional)**

Agenda item title * Proposed Activities (Public Amenity and Security) Local Law 2017

**Please write your
submission in the space
provided below** For the record, this submission has been made by
on behalf of North West Metro Region, Victoria Police.

**Alternatively you may
attach your written**



**submission by uploading
your file here**

[victoria_police_north_west_metro_region_submission_to_city_of_melbourne_17mar17.pdf](#)
309.12 KB • PDF

**Please indicate whether you
would like to address the
Submission (Section 223)
Committee in support of
your submission *** No

Privacy acknowledgement: * I have read and acknowledge how Council will use and disclose my personal information.

SUBMISSION TO THE CITY OF MELBOURNE

Proposed amendments to the Activities Local Law 2009

Role of Victoria Police

The interest of Victoria Police in contributing to this consultation comes from our role and general functions under the *Victoria Police Act 2013*¹.

Victoria Police works closely with the City of Melbourne on all aspects of public order, crime and community safety in the municipality.

Victoria Police was one of a range of organisations involved in discussions with the City of Melbourne regarding possible changes to Local Laws relevant to rough sleeping.

Homelessness and rough sleeping in the City of Melbourne

For some time Victoria Police has been working closely with the City of Melbourne and other service delivery partners to respond to issues related to people camping or 'rough sleeping' on public land within the municipality.

Victoria Police understands that many, but not all, of the people who have been camping in the City of Melbourne are experiencing homelessness and are not rough sleeping by choice.

Victoria Police recognises that homelessness is strongly associated with major personal challenges such as: domestic violence and other victimisation; addiction; disability; mental illness and other health conditions; chronic unemployment; and legal issues. As such, people experiencing homelessness are some of our most vulnerable community members.

Victoria Police is supportive of efforts to address issues arising from rough sleeping in the City of Melbourne and across the State of Victoria. In the experience of police, rough sleeping, in and of itself, poses unacceptable risks to the health and safety of already vulnerable people. Women and children are at particular risk when living in these circumstances.

Victoria Police notes that anti-social behaviour of some people who have been rough sleeping in the City of Melbourne, has had a negative impact on feelings of safety in residents and other users of CBD spaces. Additionally, Victoria Police has been required to respond to criminal behaviour including assault and drug use, committed by people sleeping rough.

Responses to rough sleeping and homelessness

Victoria Police has been part of a joint agency response to rough sleeping in the CBD along with the City of Melbourne, Salvation Army, Launch Housing and a mental health clinician. Named Operation Minta 2, this response utilises prevention, compliance and enforcement strategies designed to maintain public order, reduce criminal behaviour and offer assistance with health issues.

¹ S.8; s.9(1)

In relation to the issue of rough sleeping, Victoria Police also has a representative on the Rough Sleeping Response Taskforce which was convened by The Hon Martin Foley MP, Minister for Housing, Disability and Ageing, in July 2016.

Victoria Police supports efforts by the City of Melbourne to address the issues and risks arising from camping in public.

Victoria Police acknowledges that rough sleeping is symptomatic of a wider issue of homelessness in Victoria. As such, we support action at all levels of Government to increase access to safe and affordable housing for all Victorians.

Responsibilities of Victoria Police in relation to Local Laws

For the purpose of these Local Laws Victoria Police members are not 'authorised officers' and as such Victoria Police will not be directly responsible for enforcing the relevant Local Laws.

However, Victoria Police members are able to assist authorised officers of the City of Melbourne while the authorised officers are enforcing the Local Laws, for example, by arresting a person who obstructs or hinders an authorised officer while performing his or her duty, which is an offence under the *Local Government Act 1989*.²

Victoria Police will provide advice to the City of Melbourne regarding interactions with police in the operating model for the new Local Laws.

Victoria Police also has a range of ongoing statutory responsibilities and powers to prevent and respond to crime and public order incidents in the City of Melbourne. These responsibilities and powers apply to all people in the City of Melbourne, whether they are sleeping rough or not.

Human Rights considerations

Victoria Police recognises the importance of giving proper consideration to balancing the rights of all people to be in public places while respecting the right of communities to live in a safe and peaceful environment. Victoria Police assumes that, consistent with the *Guidelines for Local Laws Manual (2010)*, the proposed Local Law has been, or will be, subject to review for compatibility with the *Charter of Human Rights and Responsibilities Act 2006* and found to be compatible³.

² See s.224(8)(b) of the *Local Government Act 1989*.

³ p.73

From: Wufoo <no-reply@wufoo.com>
Sent: Friday, 17 March 2017 1:00 PM
To: CoM Meetings
Subject: Meeting submissions form [#264]

Name *

Email address *

Agenda item title * Proposed Activities (Public Amenity and Security) Local Law 2017

Please indicate whether you would like to address the Submission (Section 223) No

Committee in support of your submission *

Privacy acknowledgement: * I have read and acknowledge how Council will use and disclose my personal information.

From: Wufoo <no-reply@wufoo.com>
Sent: Friday, 17 March 2017 1:02 PM
To: CoM Meetings
Subject: Meeting submissions form [#265]

Name *

Email address *

Contact phone number (optional)

Agenda item title *

Proposed Activities (Public Amenity and Security) Local Law 2017

Please write your submission in the space provided below

Moving a problem elsewhere is not a feasible solution by any means – ordering the homeless out of the city is as good as accepting that you are all too stupid to think of a better solution, of which there are many.

Please indicate whether you would like to address the Submission (Section 223)

Yes

Committee in support of your submission *

Privacy acknowledgement: *

I have read and acknowledge how Council will use and disclose my personal information.

From: Wufoo <no-reply@wufoo.com>
Sent: Friday, 17 March 2017 1:04 PM
To: CoM Meetings
Subject: Meeting submissions form [#266]

Name *

Email address *

Contact phone number (optional)

Agenda item title *

Proposed Activities (Public Amenity and Security) Local Law 2017

Please write your submission in the space provided below

They have no home the city is there home it's what they know making them leave will not sort there problems. You need to take action to help these people find homes, this is a band aid to some sort of diluted solution.

These people are what makes this city just like you or myself.

Melbourne is about inclusiveness and removing these people from places they call home who have no home isn't just or right.

Please indicate whether you would like to address the Submission (Section 223)

Yes

Committee in support of your submission *

Privacy acknowledgement: *

I have read and acknowledge how Council will use and disclose my personal information.

From: Wufoo <no-reply@wufoo.com>
Sent: Friday, 17 March 2017 1:08 PM
To: CoM Meetings
Subject: Meeting submissions form [#268]

Name *

Email address *

Agenda item title *

Proposed Activities (Public Amenity and Security) Local Law 2017

**Please indicate whether you would like to
address the Submission (Section 223)**

No

Committee in support of your submission *

Privacy acknowledgement: *

I have read and acknowledge how Council will use and disclose my
personal information.

From: Wufoo <no-reply@wufoo.com>
Sent: Friday, 17 March 2017 1:09 PM
To: CoM Meetings
Subject: Meeting submissions form [#267]

Name *

Email address *

Agenda item title *

Proposed Activities (Public Amenity and Security) Local Law 2017

Please write your submission in the space provided below

Do not want these changes to happen, they are unfair. It's horrible how people have been treated.

Please indicate whether you would like to address the Submission (Section 223)

No

Committee in support of your submission *

Privacy acknowledgement: *

I have read and acknowledge how Council will use and disclose my personal information.

From: Wufoo <no-reply@wufoo.com>
Sent: Friday, 17 March 2017 5:34 PM
To: CoM Meetings
Subject: Meeting submissions form [#287]

Name *

Email address *

Agenda Item title Proposed Activities (Public Amenity and Security) Local Law 2017

*

Please write your submission in the space provided below

To the Manager Governance and Legal, Melbourne City Council

Please accept my submission to the proposed Activities (Public Amenity and Security) Local Law 2017.

This action will not work because it does not address why people are homeless in the first place. It does show empathy or an understanding of the issue at hand. Banning something which you find problematic does not solve the core problem, in fact you are making it worse for some of the most in-need members of society.

This action will not work because it does not address why people are homeless.

I would rather see action into creating some temporary housing, more help into assisting people with mental health issues, drug-related problems, gambling problems, etc.

Perhaps we could look into homelessness prevention, and put more efforts into solving some of the core issues at hand here. Instead we seem to be creating a worse situation for those who need assistance from society.

We have a large issue to work through here, one which will not simply go away with the introduction of unfair and careless laws.

Please indicate ☐ **No**
whether you
would like to
address the
Submission
(Section 223)
Committee in

support of your
submission *

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From: Wufoo <no-reply@wufoo.com>
Sent: Friday, 17 March 2017 2:15 PM
To: CoM Meetings
Subject: Meeting submissions form [#273]

Name *

Email address *

**Contact phone
number (optional)**

Agenda item title Proposed Activities (Public Amenity and Security) Local Law 2017

*

Please write your submission in the space provided below

The problem of rough sleeping in any CBD is the sharp end of the broader homelessness problem. There are at least two reasons for this. The CBD location provides a spotlight for an otherwise largely hidden social problem. Secondly, the large population of CBD users means that there will be a range of opinions about the undeniably disturbing appearance of the homeless.

My view on the proposed Council action is as follows:

- 1) Some observers will want to deal with the issue at the level of 'appearance'. I don't want to disenfranchise those who consider that the first (and possibly only) action required of the Melbourne City Council is to move the homeless away to places where they are less obvious. I would prefer, though, that they had at least as much interest in the resolution of the underlying problem. The role of any arm of government is to take the moral high ground, and apply those values which respect people whatever their circumstances and whatever their appearance. The application of those values in this case requires the Council to treat the problem rather than attempt to sweep it away.
- 2) Part of the process of deciding what public forces the Council should recognise, requires an acknowledgment that certain elements of the conservative press have demonised these homeless individuals. Once that has happened, there can be created a sense that we are not dealing with homeless individuals, we are dealing with addicts, the violent and the undeserving. We would all like a polished and pristine city but not at a cost that this sheen exists as a mere veneer for something unpleasant not far below the surface.
- 3) The positive role that any arm of government has in managing this issue is to actively promote the stories of these homeless individuals. To make it known to the CBD users that these people represent the human reflection of the expression 'there but for the grace of God go I'.

4) If, contrary to above, Council decides to pursue the proposed changes, then the following changes need to be made:

- the amendments need to refer specifically to the homeless as their intended target. That much honesty is necessary.

If there is discomfort in doing this, there is a reason for that discomfort which should be confronted.

- having financial penalties for breaching the proposed provisions is counterproductive, cruel and misguided. Being 'moved on' is punishment enough.

- have a provision which requires the enforcement to be time-specific. It would add a layer of cruelty to have someone moved on at, for instance, dusk when their options for locating another place to stay are limited.

A serious reconciliation of the tensions involved in this issue would only occur if the Council put itself in a position where it was empowered to move someone on only if they could, at the same time, offer that person alternative, safe and suitable accommodation.

Please indicate No
whether you
would like to
address the
Submission
(Section 223)
Committee in
support of your
submission *

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From: Wufoo <no-reply@wufoo.com>
Sent: Friday, 17 March 2017 2:31 PM
To: CoM Meetings
Subject: Meeting submissions form [#274]

Name *

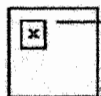
Email address *

Contact phone number (optional)

Agenda item title *

Proposed Activities (Public Amenity and Security) Local Law 2017

Alternatively you may attach your written submission by uploading your file here



submission_to_melbourne_city_council17022017.docx 15.75 KB

• DOCX

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Yes

Committee in support of your submission *

Privacy acknowledgement: *

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Submission to Melbourne City Council

17 March 2017

Submission re: Camping and Related By-Law Amendments

In relation to the several amendments to the City's by-laws regarding camping and abandoned possessions I make the following submission, to be supplemented by a verbal submission:

- Given the recently stated opinion of a U.N. Rapporteur that the proposed Ban raises human rights concerns about Human Rights Breaches, and
- Given recent assertions by several 'inner-ring' and other Councils that the 'ban' is already causing heightened crises in their jurisdictions, and
- Given the Council has yet to meet with Rough-Sleepers and their advocates and
- Given the Council has no urgent or critical need to progress this harsh 'campaign',

I submit the Council should abandon the proposed amendments.

Human Rights

I support the many submissions made to the Council regarding the Human Rights breaches both explicit and inherent in the proposed changes.

The Stakes

The Council has continued to progress this inflammatory, quasi-judicial approach to this public policy failure regardless of the facts and reality. The clamouring for this counter-productive action has been at the behest of media and Victoria Police.

The ban is a toxic and ineffective band-aid. It will drive rough-sleepers further under and more deeply hidden. They ***will abandon service support before they abandon their street home*** and their street families.

The Alternative Solutions

If Council wishes to avoid 'Flinders St' it should work with rough-sleepers and their advocates to ***co-design and manage a safe space*** that will serve to eliminate the type/place/'amenity' of Flinders St type encampments. This 'Space' will also obviate the problem for Council with the mounting quantities of 'abandoned goods' requiring collection.

The Council should ***rescind the publicity campaign against donations and support***. It is unworthy and incredibly insulting to the public and coal-biters.

The Council ***should work directly with rough-sleepers and their advocates*** on every aspect of its programs and protocols for public-place dwelling. This should include effective ***peer-support*** funded by the Council.

From: Wufoo <no-reply@wufoo.com>
Sent: Friday, 17 March 2017 3:20 PM
To: CoM Meetings
Subject: Meeting submissions form [#276]

Name *

Email address *

**Contact phone
number (optional)**

Agenda item title Proposed Activities (Public Amenity and Security) Local Law 2017

*

Please write your submission in the space provided below

Please do not outlaw homelessness. I worked hard all my life and was thrown a severe curve ball by the greedy banksters who created the global financial crisis. I have been homeless for 8 years (and widowed for 30 years) and although I still had a car (which I slept in) I was too afraid to sleep in a city heart. In the last 2 years I have come across 4 properties which I could have bought with a 20% deposit (mortgages are cheaper than rent - I cant live on \$230 per week and find somewhere to rent) but nowhere will lend me the money to finance my own home. There are still some cheaper properties to buy but not to rent. Unfortunately we can't get financing to help us get off benefits and into housing.

Please indicate Yes
**whether you
would like to
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Committee in
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submission ***

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From: Wufoo <no-reply@wufoo.com>
Sent: Friday, 17 March 2017 3:37 PM
To: CoM Meetings
Subject: Meeting submissions form [#277]

Name *

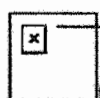
Email address *

Contact phone number (optional)

Agenda item title *

Proposed Activities (Public Amenity and Security) Local Law 2017

Alternatively you may attach your written submission by uploading your file here



[final_submission_2017.03.17.pdf](#) 409.58 KB · PDF

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Committee in support of your submission *

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Manager, Governance and Legal
Melbourne City Council
GPO Box 1603
MELBOURNE VIC 3001

By email: com.meetings@melbourne.vic.gov.au

17 March 2017

Dear Lord Mayor and Councillors

Inner Melbourne Community Legal: Submission on the Activities (Public Amenity and Security) Local Law 2017

We refer to the Report to the Future Melbourne (Finance and Governance) Committee, item 6.2: homelessness and public amenity, including the proposed amendments to the Activities Local Law 2009 (**Local Law**) in the Activities (Public Amenity and Security) Local Law 2017 (**Amending Law**).

Inner Melbourne Community Legal

Inner Melbourne Community Legal (**IMCL**) is a not-for-profit community organisation that provides free legal assistance to individuals experiencing disadvantage and marginalisation in our local community. This encompasses the City of Melbourne area. We have been delivering legal services for almost forty years.

In addition to conducting in-house legal clinics, IMCL targets the most vulnerable community members through our legal outreach services at a number of community locations. One of our key partner organisations is Ozanam Community Centre, a drop in-centre providing supports for people experiencing homelessness or at risk of homelessness, and/or who are socially excluded. IMCL has been providing weekly legal advice outreach services at Ozanam Community Centre for over 15 years.

In 2015-2016, IMCL provided 736 vulnerable community members with direct legal assistance. Of these, 36 per cent indicated that they were experiencing or at risk of or experiencing homelessness. A significant proportion of the work that we do for people experiencing homelessness concerns special circumstances applications in infringement matters, giving us a specialised understanding of the infringements system. In 2015-16, infringements accounted for 16 per cent of the legal problems experienced by our clients, the second highest area of law. From January to December 2016, we saw 126 clients and provided 152 advices in relation to infringements.

We also participate in a number of working groups to collectively address systemic legal issues affecting vulnerable people in our community, including homelessness. This includes the CBD Homeless Network; the City of Melbourne Homelessness Advisory Committee; the Justice Access Advisory Group and the Infringements Working Group. IMCL therefore has a unique understanding of the legal problems common to people experiencing homelessness and the flow-on effects of unresolved legal problems on their health, wellbeing and capacity to exit entrenched disadvantage. We are well placed to comment on what we believe will be the unintended and negative impact of the amending law on the most vulnerable members of our community.

This submission outlines our opposition to the amending law on the basis that:

- Criminalising homelessness will further entrench disadvantage;
- Fining people for offences associated with homelessness is against the intention of the Act;
- These fines will result in processes that are resource intensive for all involved, be the subject of long delays and unlikely to see fines paid;
- Some of the laws contravene the Victorian Charter of Rights and Responsibilities; and
- These laws contradict recent City of Melbourne and state government measures that will significantly contribute to reducing homelessness in the longer-term.

Broadening the ban on camping will criminalise homelessness

As council noted in its Report to the Future Melbourne (Finance and Governance) Committee (2 Feb 2017) it is not illegal to be homeless. However, the amending law will make it an offence for a person to 'camp' in any public place. Given that the term camp is undefined and is open to broad interpretation, this effectively includes – whether intended or not - homeless people sleeping rough. Giving Authorised Officers the power to fine or charge and prosecute people for sleeping rough will effectively criminalise the social problem of homelessness.

Whilst paying an infringement does not result in a finding of guilt noted on a person's criminal record, the risks of criminalisation are particularly acute for people who are either charged and prosecuted or who apply for internal review of infringement notices or applications for revocation to the Infringements Court on the basis of special circumstances. This process is described in detail in **Table 1 at Appendix A**. As detailed in that table, matters are frequently referred to open court following internal review applications and applications for revocation. The infringement then becomes a charge and summons and is dealt with as a summary criminal offence, exposing people to findings of guilt and criminal records. A criminal record provides a significant barrier to employment which can further entrench economic and social disadvantage.

Issuing fines is at odds with the purpose of the *Infringements Act 2016 (Vic)*

IMCL understands that the proposed fines to be issued under the amending law will be dealt with as infringement notices under the *Infringements Act 2006 (Vic)* (**the Act**). It is our position that this scheme will conflict with the intent of the Act because the proposed fines are likely to embed a cycle of disadvantage amongst vulnerable people. In outlining the core objectives of infringements reform, the former Victorian Attorney-General, Rob Hulls in his second reading speech detailed that the system endeavours "...to filter people out of the system who cannot understand or control their offending behaviour..."¹

This intention is reflected in the scheme set up in the Act enabling people to challenge their fines and have them waived on the basis of prescribed categories of hardship, defined as special circumstances. Section 3 of the Act defines special circumstances to include homelessness.

The then Attorney- General noted that:

¹ Victoria, *Parliamentary Debates*, Legislative Assembly, 16 November 2005, p. 2186 (Rob Hulls, Attorney General).

"homelessness was specifically contemplated under the Act to provide for those people who are sleeping on the streets or living in crisis accommodation. Often these people have no choice but to be in public places where they are more likely to be infringed".²

As such, Melbourne City Council's proposed amending law directly conflicts with a primary rationale underpinning the enactment of the Act designed to "better protect the vulnerable who are inappropriately caught up in the system".³ The Minister expressly stated that the legislative framework ought to recognise that "[p]eople with special circumstances are disproportionately, and often irrevocably, caught up in the system. In a just society, the response to people with special circumstances should not be to issue them with an infringement notice".⁴

In light of the Minister's second-reading speech, the Act is clearly intended to discourage enforcement agencies from issuing infringement notices in the first instance to people experiencing homelessness.

Fining people sleeping rough will create an 'infringements roundabout'

In addition to being contrary to the intention of the Act, fining people in connection with sleeping rough will also be counterproductive. The special circumstances process will create a complex and inherently costly 'infringement roundabout'. People experiencing homelessness will inevitably be entrenched within the infringements system at significant community cost. This is because:

- **First**, it places homeless people under further financial and psychological strain, undermining their ability to deal with issues underlying their homelessness.
- **Second**, given the 74 per cent increase in Melbourne's rough sleeping population since 2014 (with 247 people sleeping rough in 2016)⁵ IMCL anticipates that the amending law will lead to a significant increase in the number of infringements issued. The special circumstances process requires intensive City of Melbourne resourcing, and it follows that an increase in infringements issued will place an additional strain on City of Melbourne and on already over-stretched community legal centres, Victoria Legal Aid and courts.
- **Third**, the infringement roundabout means fines will unlikely be paid and costs will not be recouped by enforcement agencies: when fines are dealt in open court following a special circumstances internal review or application for revocation this does **not** result in funds being paid back to the enforcement agency. Further, enforcement agencies typically bear the cost of prosecuting these matters.

The administrative and financial burden on enforcement agencies like the City of Melbourne is worth noting: in the first two stages of the infringement lifecycle, the enforcement agency bears the primary responsibility of dealing with the fine, any internal review procedures and court prosecution. Additionally, the enforcement agency may also be re-engaged during stage three, following applications for revocation based on special circumstances.

Table 1 clearly demonstrates the circularity of the process given the inherent nexus that exists between homelessness and the proposed offences. In most cases a person sleeping rough fined under the

² Ibid pp. 2187-2188.

³ Ibid p. 2186.

⁴ Ibid p. 2187.

⁵ City of Melbourne, *StreetCount highlights number of people sleeping rough* (9 June 2016) <<http://www.melbourne.vic.gov.au/news-and-media/Pages/streetcount-highlights-number-of-people-sleeping-rough.aspx>>.

amending law will be able to successfully establish special circumstances. Furthermore, the likelihood of success of these applications is strengthened by the fact that more than one category of special circumstances will be relied upon given common comorbidities amongst this population.

The infringement roundabout ought to become a disincentive for enforcement agencies like the City of Melbourne to issue the fines to homeless people in the first place, thereby making the scheme redundant.

We therefore submit that the effect of tying-up people sleeping rough into the infringements roundabout will not lead to behaviour change in people experiencing homeless so as to reduce the number of people sleeping rough. We submit that this can only be achieved by resources being directed towards affordable housing options for Victorians. To illustrate this, IMCL discussed the amending law with a current client, Steve.

Client story

Steve was referred to IMCL from his caseworker at Ozanam House. Steve had been in crisis accommodation for a number of weeks. He received a number of parking fines from a City of Melbourne authorised officer during his time accessing the crisis accommodation.

When asked of the impact these fines had when he was homeless and accessing crisis accommodation, Steve replied

"It made me feel worse. I was trying to find a place to live and then you know getting these fines was another thing on my mind, another stress in my life, another thing over my head"

When asked whether he thought that the proposed amending laws would reduce the number of people sleeping rough, he said

"If you're sleeping rough, you have no money, so how are you going to pay the fines? A lot of these people have got a mental illness or substance or alcohol issues; so fines are just going to be on top of having no money and having no home!"

Steve is fortunate to now have secured permanent accommodation with the assistance of a housing support worker at Ozanam. He believes that the focus should be on providing social workers and housing workers for people experiencing homelessness, rather than on 'policing' or issuing fines.

The provisions regarding unattended items interfere with *Charter* rights

The City of Melbourne, as a public authority, is required under the *Charter of Human Rights and Responsibilities 2006* (Vic) (**the Charter**) to act consistently with human rights in the Charter. These rights were introduced because the Victorian Government recognises that human beings have basic rights, and anticipated that the Charter would "help us become a more tolerant society, on which respects diversity and the basic dignity of all."⁶

There are 20 fundamental human rights set out in the Charter, including that a "person must not be deprived of his or her property other than in accordance with law."⁷ The proposal in the amending law to "confiscate and impound" personal property of a person is clearly interfering with the Charter right that a person not to be deprived of his or her property.

⁶ Victoria, *Parliamentary Debates*, Legislative Assembly, 4 May 2006, p. 1290 (Rob Hulls, Attorney-General)

⁷ *Charter of Human Rights and Responsibilities 2006* (Vic) s 20.

While IMCL recognises that Charter rights can be limited in certain circumstances, it must be reasonable and there must be clear reasons for the decision. In this regard, and in light of the factors set out in section 7(2) of the Charter, IMCL submits that the Council's amending law does not reasonably limit Charter rights. The factors are given below.

In the Council's published Notice of Proposal to Make a Local Law, it appears that the purpose of the restriction on this Charter right is to provide for the peace, order and good government of the municipality. This purpose is relevant when considering whether the proposed limitation is reasonable.⁸

IMCL submits that the interference with property in the proposed amendment regarding unattended belongings is an unreasonable interference with the legal interests of a person in their personal belongings is neither necessary nor reasonable, and undermines the basic dignity of a person who, due to a range of circumstances, most of which are out of their control, has nowhere permanent to live or store their personal belongings. There are also, in our submissions, less restrictive ways that City of Melbourne can achieve peace and order without the proposed amendment to the Local Law.

It is also relevant that no other public authority or company carrying out public activities has the power to fine a person for leaving property unclaimed. Indeed legislation in respect of these bodies is drafted to ensure that reasonable attempts are made to locate the person and appropriate safeguards and timeframes are in place to avoid a person's unclaimed or lost property being unnecessarily sold or destroyed.

For example, if goods or lost property are left on a public transport company's property (i.e. V/Line, Yarra Trams or Metro), the company has to make a reasonable attempt to contact the owner of the goods,⁹ and (with the exception of perishable goods) can only sell or dispose of goods or lost property after 60 days from when the lost property was found or the goods were not claimed.¹⁰ Storage charges can only be recovered from the sale of goods after that period has expired¹¹ and the balance of monies upon sale must be dealt with as unclaimed money in accordance with the *Unclaimed Money Act 2008* (Vic).¹²

Similarly, Victoria Police are unable to fine a person for leaving property unclaimed, and there are appropriate safeguards legislated regarding the disposal of unclaimed property that comes in to their possession in the scope of their employment. If property is perishable, it can be disposed of if it is not claimed after reasonable inquiries as to ownership have been made,¹³ if it was left by a person who was imprisoned or detained in a gaol it must be retained for 12 months,¹⁴ and in any other case, the property may be disposed of if it is not claimed within 3 months after coming into the possession of¹⁵ the member of Victoria Police personnel.¹⁶ If property is sold by Victoria Police, proceeds from the sale are paid to the consolidated fund.

In both of these circumstances, appropriate safeguards have been put into place to ensure that the company or organisation takes steps to locate the person who owns the belongings and at least 60 days is provided before any action can be taken in respect of the property. Unlike the proposed Local Law, a

⁸ Ibid s 7(2).

⁹ *Transport (Compliance and Miscellaneous) Act 1983* (Vic) s 251A(2)(b).

¹⁰ Ibid s 251A(3).

¹¹ Ibid s 251A(4).

¹² Ibid s 251A(5).

¹³ *Victoria Police Act 2013* (Vic) s 57(2)(a).

¹⁴ Ibid s 57(2)(b).

¹⁵ Ibid s 57(5).

¹⁶ Ibid s 57(2)(c).

person is not fined for leaving belongings at a train station or with Victoria Police and the person does not have to pay to retrieve their belongings.

The proposed new Local Law regarding unattended items is, in our submission, a punitive law which unnecessarily limits a person's human right to not be deprived of their property, and a law which says the council can destroy personal belongings within 14 days if payment is not made is a limitation of that right to a greater extent than is allowed under the Charter.

Recent Measures Welcome

We welcome the work that the City of Melbourne and, more recently, the Victorian State Government have done to reduce homelessness and curtail the larger problem of housing unaffordability. These measures are necessary to reduce homelessness. Some of the measures are overdue and will take time to show results.

Recently, the City of Melbourne has implemented or agreed on a number of strategies that will all work to reduce homelessness in the medium to long-term. These include:

- The appointment of a Senior Housing Advisor as part of the Urban Strategy section to advise on and promote affordable housing as part of current and emerging new developments, such as Arden-McCauley, Fishman's Bend and Victoria Markets (which will support the implementation of the council's own policy target of 15 per cent social housing for new developments).
- The City's Daily support team providing outreach and the imminent provision of a night safe space and Project Connect Respect delivered in partnership with the Council for Homeless Persons.
- Support for Home Ground to expand their housing stock by bringing private landlords onboard.
- The City of Melbourne Council meeting of 20 December 2016 endorsing recommendations to develop some sites for affordable housing, such as 602 Little Bourke Street and 506 Elizabeth Street.

Recent assistance that the Victorian Government has provided will also increase access to affordable housing for vulnerable people. This includes:

- the Social Housing Growth Fund which will ultimately be worth \$1 billion and estimated to provide around \$70 million per year for new social housing; and
- around \$1 Billion in loan guarantees over six years for social housing providers.

We encourage the Council to allow these initiatives to bear fruit and to refrain from implementing reforms which will undermine these positive steps.

Conclusion

We disagree with the proposed changes to by-laws because:

- Criminalising homelessness will further entrench disadvantage;
- Fining people for offences associated with homelessness is against the intention of the Act;
- These fines will result in processes that are resource intensive for all involved, be the subject of long delays and unlikely to see fines paid;
- Some of the laws contravene the Victorian Charter of Rights and Responsibilities; and
- These laws contradict recent City of Melbourne and state government measures that will significantly contribute to reducing homelessness in the longer-term.

Please do not hesitate to contact IMCL , or at
if you have any questions at all regarding this submission.

Appendix A

Table 1: Options available to people experiencing homelessness under the Infringements system

Stage 1: Internal review by the enforcement agency based on special circumstances

Section 22 of the Act provides that a request for an internal review of the decision to issue an infringement notice by an enforcement agency can be made on the ground that special circumstances apply to the person who was fined.

This application is made in writing directly to the enforcement agency which must consider it.

The application must demonstrate a link between the special circumstance and the offending behaviour and must be accompanied by supporting documentation. IMCL has assisted many clients to make applications for internal review against public order fines issued against people experiencing homelessness by the City of Melbourne. This involves obtaining supporting documentation from a prescribed category of health professionals and support workers.

Outcome of the internal review conducted by the enforcement agency

If an application is made on the basis of special circumstances, the enforcement agency has three options under section 25(2) of the Act to either:

- i. Withdraw the fine* if it accepts that special circumstances apply to a person to whom a fine was issued;
- ii. Withdraw the fine and issue an official warning in its place;*¹⁷
- iii. Decline to withdraw the fine and refer the matter to open court* to be dealt with in open court.¹⁸

In IMCL's submission, the internal review process is a resource intensive exercise for community legal centres, Victoria Legal Aid and allied professionals. It is particularly resource intensive for enforcement agencies such as the City of Melbourne. This first stage can take up to 146 days, approximately five months. The enforcement agency must review the decision to serve an infringement notice within a prescribed period of 90 days (with a further period of up to 35 days if additional information has been requested) and notify the applicant in writing of the decision within 21 days.

Furthermore, the enforcement agency is required to prosecute the charge, at additional cost. These costs are unlikely to be recouped by the issuing agency in circumstances where special circumstances ultimately apply.

Stage 2: If no action is taken following an infringement notice, reminder notice is issued by enforcement agency

If no action is taken by the person issued with an infringement notice within 28, the enforcement

¹⁷ *Infringements Act 2006* (Vic) s 25(2).

¹⁸ *Ibid* s 25(3).

agency is required to issue a penalty reminder notice.

Whilst this adds additional costs to the original penalty, these costs are once again unlikely to be recouped by the issuing agency in circumstances where special circumstances ultimately apply.

Stage 3: Unpaid infringement notice – lodgment with the Infringements Court

If an infringement is not paid and an internal review has not been submitted, enforcement agencies may lodge the infringement penalty with an infringements registrar at the Infringements Court.¹⁹

It is IMCLs experience that the City of Melbourne routinely takes this step.

The infringements registrar may then make an enforcement order that the person pay to the Court the outstanding amount of the infringement and the prescribed costs in respect of a lodgeable infringement offence.²⁰

Application for revocation based on special circumstances

At the Infringements Court stage, a person experiencing homelessness has a further opportunity to make an application based on special circumstances. At this stage, the application is for 'revocation' of the enforcement order.²¹

Outcome of revocation application

- ***Fine referred back to enforcement agency***
If a registrar of the Infringements Court is satisfied that there are sufficient grounds for revocation they must revoke the enforcement order, meaning it ceases to have effect.²² The enforcement order is then referred back to the original enforcement agency for further consideration.²³

Outcome of enforcement agency reconsideration

- ***Fine withdrawn***
The enforcement agency can then request non prosecution (final withdrawal) of the matter.²⁴ In this instance none of the costs of enforcement will be recovered.
- ***Fine not withdrawn – referral to Special Circumstances list***
Unless the enforcement agency requests non prosecution of the matter, the fine is then automatically referred to the Magistrates' Court where the case proceeds as a criminal sentencing hearing in the Special Circumstances list.²⁵

The enforcement agency is required to prosecute the charge, at additional cost.

In the vast bulk of cases special circumstances are made out and non-pecuniary sentences are imposed and the lowest end of the sentencing range. In most instances matters are simply proven and dismissed with no further penalty.

¹⁹ Ibid s 54.

²⁰ Ibid s 59.

²¹ Ibid s 65.

²² Ibid s 66.

²³ Ibid s 67(5).

²⁴ Ibid s 69.

²⁵ Ibid s 71.

Stage 4: Infringement warrant issued

If an infringement warrant is executed, the matter can be brought before the Magistrates' court for determination and a person can at this stage rely on their special circumstances.²⁶ In this instance none of the costs of enforcement will be recovered by enforcement agencies such as city of Melbourne.

²⁶ Ibid s 160.

From: Wufoo <no-reply@wufoo.com>
Sent: Friday, 17 March 2017 3:49 PM
To: CoM Meetings
Subject: Meeting submissions form [#278]

Name *

Email address *

Agenda Item title *

Proposed Activities (Public Amenity and Security) Local Law 2017

**Please indicate whether you would like to
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No

Committee in support of your submission *

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From: Wufoo <no-reply@wufoo.com>
Sent: Friday, 17 March 2017 3:59 PM
To: CoM Meetings
Subject: Meeting submissions form [#279]

Name *

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Agenda item title Proposed Activities (Public Amenity and Security) Local Law 2017

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[justice_access_advisory_group_submission_on_proposed_amendments_to_activities_local_law_17.03.2017](#)

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Proposed Activities (Public Amenity and Security) Local Law 2017

Joint submission of representatives from the Justice Access Advisory Group regarding the proposed changes to Melbourne City Council Activities Local Law 2009 (Local Law)

The Justice Access Advisory Group (JAAG) exists to bring both non-government and government organisations together on issues of access to justice for people experiencing homelessness. In particular to:

- foster collaboration in relation to issues impacting on people experiencing or at risk of homelessness and their access to justice;
- articulate points of advocacy that specifically impact the client group and outline how to proceed with actions in relation to these; and
- build relationships between housing, justice services and the Courts.

The JAAG would like to commend the City of Melbourne for their leadership on issues of homelessness to this point. Several initiatives have been put in place over time to address concerns in relation to homelessness in the City of Melbourne with the Council taking leadership to coordinate services and ensure that the concerns of people experiencing homelessness, constituents and businesses are addressed.

The proposed changes to Local Law

The proposed changes to the Local Law take Council initiatives in a new direction. Whereas previously the Council addressed social concerns with social solutions, these changes propose a legal solution, one that will do nothing to solve the complex issue of homelessness.

The Legal Australia Wide survey found that people without housing have more legal issues than people in public or private accommodation.¹ Further expansion of the Local Law to charge or infringe people experiencing homelessness will only further entangle them in legal processes. These processes will take resources to administrate including local enforcement officers, legal services, civic compliance and courts. The justice system will not address their housing issue; rather, it will punish them for being without a home.

We call upon the City of Melbourne to continue to invest in solutions that address homelessness in constructive and permanent ways instead of implementing the proposed changes to the Local Law that will further entrench disadvantage or simply move people experiencing homelessness out of the City and away from the services they need.

Protocol for Homeless People in Public Places

The JAAG has been working towards reviving the Protocol for Homeless People in Public Places (Protocol) for two years. The City of Melbourne were signatories to the previous protocol and instrumental in its development. The purpose of the Protocol is to ensure that people experiencing homelessness are treated with respect and are not discriminated against on the basis of their homeless status. It provides guidelines to agencies who come in contact with people experiencing

¹ Christine Coumarelos and Julie People, Law and Justice Foundation of NSW, *Home is where the heart of legal need is: A working paper on homelessness* (April 2013).

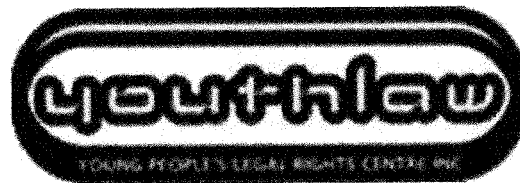
homelessness, including Council officers. The finalised document is attached.² Such a tool could provide a useful alternative to the proposed changes to the Local Law.

This Protocol along with a continual strategic investment in supportive initiatives for people experiencing homelessness and education for City of Melbourne constituents and businesses in concert with recent state government commitments around affordable housing are the most likely means to see a reduction in homelessness on the streets of Melbourne.

The undersigned members of the Justice Access Advisory Group strongly oppose changes to the Local Law.



IT'S TIME TO END
HOMELESSNESS



² Please see Annexure 1 for a full copy of the Protocol.

Annexure 1

Victorian Protocol for Responding to People Experiencing Homelessness in Public Places

The aim of the Victorian Protocol for Responding to People Experiencing Homelessness in Public Places (**Protocol**) is to provide a framework for relations between agencies³ and people who are experiencing homelessness in public places. The Protocol has been developed to ensure that people experiencing homelessness are treated with respect and are not discriminated against on the basis of their homeless status. The Protocol aims to help agencies and their authorised representatives to respond effectively to people experiencing homelessness in public places by assisting people to receive services if they need or request them.

The Protocol is informed and underpinned by the Victorian Charter of Human Rights and Responsibilities Act 2006 (**Charter**), recognising the fundamental dignity and rights of people experiencing homelessness, and the importance of a rights-based approach to homelessness. The Protocol recognises that homelessness is not a crime. Most of the agencies that have contact with people experiencing homelessness are public authorities under the Charter, which means they must act compatibly with human rights and, in making decisions, they must properly consider relevant human rights. This Protocol assists agencies to comply with their human rights obligations.

Individual agencies are accountable for service delivery and implementation of this Protocol

The Protocol

All Victorians have a right to be in a public place, and a person who is, or appears to be, homeless should not be approached unless:

- they request assistance;
- they appear distressed or in need of assistance;
- they are sheltering in circumstances that threaten the health and safety of themselves and/or others (e.g. in derelict buildings);
- they are a child who appears to be under the age of 18;⁴

³ 'Agencies' refers to any organisation, including government departments, local councils, public authorities (as defined by the Charter) and public entities, that have endorsed the Protocol. 'Authorised representatives' include agency staff, contractors and any person authorised to act on behalf of the agency.

⁴ In this situation, Victoria Police and Child Protection should be called.

- their behaviour threatens their immediate safety or the immediate safety and security of people around them;
- their behaviour is likely to result in damage to property or to the environment; or
- their safety is threatened by others.

The Protocol does not override existing laws, statutory requirements or regulations. It does not reduce the powers of agencies or their authority to enforce specific laws and regulations.

The Protocol encourages agencies and their authorised representatives to take the Protocol and the circumstances of the person experiencing homelessness into consideration when enforcing laws and regulations and to use discretion as is appropriate under their own policies and procedures. This discretion should take into account the complex needs of people experiencing homelessness.⁵ As public authorities under the Charter, agencies and their authorised representatives must exercise their discretion in a way that respects the fundamental dignity and rights of people experiencing homelessness.

Underpinning the Protocol is an acknowledgment that homelessness can be more effectively addressed through housing and services, rather than through a law enforcement response.

Who is considered homeless?

People without conventional accommodation, including people sleeping rough, in improvised dwellings such as tents, sleeping in cars, squats, emergency accommodation, refuges, boarding houses and caravan parks are considered homeless. This includes people who are living in overcrowded and unsuitable accommodation and, as a result, are often forced into public places due to the unsafe nature of their accommodation.

Underlying Principles

When approaching a person who is experiencing homelessness, authorised representatives need to consider whether their decisions and actions are compatible with the Protocol and therefore the Charter, as well as the intersection with other relevant laws and regulations.

The Protocol is based on the following principles:

PRINCIPLE 1: Right to be in public places

A person experiencing homelessness has the same right as any member of the community to:

⁵ See also Principle 2 below.

- be in public places, at the same time respecting the right of local communities to live in a safe and peaceful environment;⁶
- participate in public activities or events;⁷ and
- carry with them and store their own belongings, at the same time respecting the right of other community members to safe and accessible public places.⁸

PRINCIPLE 2: Communicating reasons for contact

If an authorised representative of an agency makes contact with a person experiencing homelessness, they should clearly communicate to that person who they are and on what basis they are approaching the person.⁹

PRINCIPLE 3: Consideration of needs and diverse backgrounds

People experiencing homelessness have diverse backgrounds and needs, and these should be considered in all interactions:

- Cultural sensitivity and respect should be applied when communicating and engaging with people experiencing homelessness.
- People experiencing homelessness often face discrimination and may include:
 - Aboriginal and Torres Strait Islander people;
 - People from culturally, linguistically or religiously diverse backgrounds;
 - Young people;
 - Older people;
 - Lesbian, gay, bisexual, transgender or intersex (LGBTI) people;
 - People with a disability;
 - People with a mental illness or cognitive impairment.¹⁰
- People experiencing homelessness have often experienced trauma and can have complex social, mental and/or physical health needs. These issues may result in behaviour that is seen to be antisocial.¹¹

⁶ Relevant Charter rights:

- Section 8: Recognition and equality before the law
- Section 12: Freedom of movement
- Section 13: Privacy and reputation
- Section 21: Liberty and security of person

⁷ Relevant Charter rights: Section 16: Peaceful assembly and freedom of association

⁸ Relevant Charter rights: Section 20: Property rights

⁹ Relevant Charter rights: Section 21: Right to liberty and security of person

¹⁰ Relevant Charter rights:

- Section 8: Recognition and equality before the law
- Section 19: Cultural rights
- Section 14: Freedom of thought, conscience, religion and belief

¹¹ Relevant Charter rights:

- Section 8: Recognition and equality before the law

- People experiencing homelessness may have experienced other issues that impact on their needs, such as family violence, exiting custody or statutory care, or asylum seekers with no contacts in the community.
- Interpreters should be used where necessary.

PRINCIPLE 4: Access to complaint mechanisms

People experiencing homelessness have the same access to complaints mechanisms as all members of the public and should be supported to exercise this right through the provision of information on relevant avenues of complaint.¹²

PRINCIPLE 5: Partnerships, consistency and integrated responses

All endorsing agencies are committed to working in partnership with community organisations, housing providers and other services to provide consistent and integrated responses to people experiencing homelessness.

PRINCIPLE 6: Agencies and authorised representatives have sufficient information and training

A range of agencies and their authorised representatives will come into contact with people experiencing homelessness and have to manage competing expectations within diverse communities. Agencies and authorised representatives should have sufficient information, support and training to respond appropriately to people experiencing homelessness and assist with referrals to appropriate services if needed.

HOMELESSNESS ASSISTANCE IN VICTORIA

If people experiencing homelessness require assistance, there are specialist services to help them.

Where a person has existing support networks in place, they should be assisted to access these if requested.

Note that these referrals are for state-wide services. Each agency is encouraged to develop their own set of local referrals.

The following assistance is available in Victoria:

¹² Relevant Charter rights:

- Section 8: Recognition and equality before the law
- Section 24: Right to a fair hearing

- **Opening Doors** (24-hour referrals for housing assistance)
1800 825 955
- **Safe Steps** (24-hour family violence referral service for women and children)
1800 015 188
- **Child protection**
13 12 78 (after hours service)
North Division Intake number 1300 664 977
South Division Intake number 1300 655 795
East Division Intake number 1300 360 391
West Division Intake - rural and regional only - number 1800 075 599
West Division Intake - metropolitan only - number 1300 664 977
- **Emergency services** (police/ambulance/fire brigade)
000
- **Lifeline** (24 hour telephone crisis support and suicide prevention)
13 11 14
- **Kids Helpline** (24 hour phone counselling for 5-25 year olds)
1800 55 1800
- **MensLine Australia** (24 hour phone counselling for men)
1300 78 99 78
- **Victoria Legal Aid** (state-wide legal advice weekdays 8.45am-5.15pm)
1300 792 387

Where needed, interpreting services should be used.

You can:

- contact services directly on behalf of the person/s (with their consent);
- provide advice or information including location of available services;
- provide a contact point that the person experiencing homelessness can either call or go to for further advice or help.

Where the Protocol applies

The Protocol applies to all public places ordinarily accessible to the public, including parks, outdoor space and footpaths.

Each of the endorsing agencies is responsible for implementing the Protocol within its own organisation and will determine how it should be used by its authorised representatives.

Review of the Protocol

This Protocol will be reviewed every two years from the date of its publication.

From: Wufoo <no-reply@wufoo.com>
Sent: Friday, 17 March 2017 4:27 PM
To: CoM Meetings
Subject: Meeting submissions form [#281]

Name *

Email address *

Agenda item title *

Proposed Activities (Public Amenity and Security) Local Law 2017

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**Please indicate whether you would like to
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Yes

Committee in support of your submission *

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personal information.

Please accept the following document as my submission for the City of Melbourne's (CoM) proposed amendments to the public amenity bylaws. My name is _____ - I'm on the _____ of the CoM Homelessness Strategic Plan, as well as being on the Homelessness Advisory Committee (HAC) - I've had my own lived experience in 2011 after leaving a non-physically violent marriage and was lucky enough to find a backdoor into transitional housing where I was able to recover before moving into permanent housing three years ago. At the same time as moving into permanent housing, I was fortunate enough to be one of the six consumers chosen every two years to participate in the Council to Homeless Persons (CHP) Peer Education and Support Program (PESP) and through this program became a Peer Support Worker at CoHealth Central City in it's women's program. I'm also the consumer who ran support/advocacy/negotiations with the rough sleepers during last year's City Square protest; Melbourne's rough sleepers have since become my life. I have a unique, often considered controversial view of homelessness and the homeless sector - something which will probably shine through as I explain why I think this whole thing is ridiculous.

Not very long ago the Lord Mayor was quoted in the media as telling the public not to give beggars (aka biters) money as it entrenches homelessness, but give it to the Salvos instead - not long later CoM council proposes an alteration to the bylaws to fine people real money for 'camping' - this defies logic - stop their income stream then issue them with a fine they have no way of paying - this adds stress to an already 'complex' person and cost to ratepayers in fine recovery. I also don't understand why the council would punish homeless people for others not doing their jobs.

From external appearances, this shenanigans seems to have mostly come about due to the whole Flinders St encampment, Herald Sun pressure and Police Chief Commissioner thing - I appreciate the Herald Sun did it's job, but VicPol didn't - I spent some time down at Flinders St and there were about half a dozen people whose behaviour the police ignored when they shouldn't have and now the actions of a few, along with the inaction of others look to penalise an entire community. The Chief Commissioner says there's no reason anyone should sleep on the streets because there's enough beds - before you condemn people to those beds through fines and assertive outreach, perhaps he can enlighten council with copies of police reports from the addresses where those beds are.

During my advocacy work I've described the homeless sector as being like Punt Rd in the middle of peak hour, in the middle of a public transport strike - nobody is moving; everything is full - it's crazy! I'm glad I found the motorbike off because I would have no way off these days. Three years ago when I began this work housing affordability was the white elephant in the room - our advocates were mute, just as they were through the prosperous naughties - we now have insane gentrification, rooming houses and caravan parks closing down; phenomenal private rental prices, 16,000 fewer affordable houses nationally than before \$9.6bil was poured into the NAHA; a Treasurer who won't look at either capital gains or negative gearing - if we didn't want the traffic jam on Punt Rd now, people should have projected better in the past instead of punishing those who can least afford it now - CHP, MCM, the Salvos, Justice Connect, VincentCare and Launch all signed a letter saying there

is a six month to fifteen year wait for appropriate housing - again, this lack of work in the past shouldn't be condemning people now or the many more who will potentially come.

Last year when the rough sleepers took over City Square we asked for our own 'Safe Space' - we were told we wanted housing and were given the Salvos nighttime cafe (touchups and toasties) - these were not things we wanted. Melbourne has no place of last resort, even Adelaide does, now with the Gatwick closing Melbourne really has nowhere. I know at the Futures meeting the Lord Mayor spoke of provision of 'Safe Space' but that has to come before imposing any draconian measures on a group of people - I don't see why CoM can't set up a tourist style campsite with permanent sites - we'd know who was there, could work with them easier and make money off tourists.

From spending a ridiculous amount of time out on the streets some of the problems I've observed are a lack of information for rough sleepers and consistency by bylaws - one day you'll see tents in one area, but they'll have been cleared from over the road - some days you can have swags and other days you can't - they'll walk past you in an alley for weeks and then you'll get cleaned out without notice. Nobody has ever written the rule book yet there is an expectation that 'complex' people will what? Just know? Instead of broadening the definition, tighten it and inform the affected community - or better still - develop it with the affected community (NOT the sector).

Last year when I met with the Lord Mayor, he asked why he was pouring so much money into this problem only for it to be getting worse - my response was 'the sector' - seriously \$25mil into the sector in the last 12 months to address the rough sleeping problem and we're discussing a draconian bylaw that penalises those who don't see a cent... There is a problem in this area and it isn't the homeless people - as a new council I ask that you look closely before handing over any more money.

The greatest gap this sector has is a lack of peer support workers - there are very few of us; we are voluntary; we are unrecognised and have been blacklisted because we're filling this gap - we have also spent literally days working with traumatised people to convince them that it was safe to go with workers and have helped housed them; we've assisted fleeing women on Sunday nights; we give out the Helping Out book when workers haven't; we've accompanied people to services, but these are the things you'll never see in your reports because they don't keep the money coming in.

As for this whole property thing - it's been really badly reported - people are saying CoM will confiscate homeless people's stuff instead of unattended items - they can do this now - how much more paperwork are you planning on providing staff?

Just a last point that comes back to safety - this broadening of the definition is really not a good idea from an OH&S perspective. We know this community is 'complex', I've been with Dean when he's done move ons and people can understandably be a little terse - broadening the definition just leaves it too open to discretion and staff too vulnerable. This whole situation has kept me out of the city for the past week because the information has been so poor from CoM to the community that I was threatened. There is a better way for

council to handle this situation and I sincerely hope it looks at all options and not just ones that reduce opportunity and punish the vulnerable.

From: Wufoo <no-reply@wufoo.com>
Sent: Friday, 17 March 2017 4:32 PM
To: CoM Meetings
Subject: Meeting submissions form [#282]

Name *

Email address *

Agenda item title *

Proposed Activities (Public Amenity and Security) Local Law 2017

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[users_of_living_room_submission_to_melbourne_city_council_march_2017.pdf](#)

72.05 KB · PDF

Please indicate whether you would like to address the Submission (Section 223) Committee in support of your submission *

Yes

Privacy acknowledgement: *

I have read and acknowledge how Council will use and disclose my personal information.

Submission to Melbourne City Council – Proposed amendments to Local Laws

We wish to address the Committee in support of our written statement

We are people who have experienced homelessness and are current users of the Living Room.

We are very concerned about the proposed amendments to local by-laws and its impact on people who are already having a very difficult time.

These proposed changes seem to be an attack on homeless people instead of tackling the social problem of homelessness.

Homeless people are too often stereotyped, particularly in the media. Stereotypes are very dangerous – it becomes easy to believe all politicians are corrupt, all policemen abuse their powers and all homeless people are dangerous and problematic, a risk for members of the public, fake scam artists and lazy druggies.

Like all human beings each one of us is unique, our journey into homelessness is unique, our experiences of being homeless are unique and the pathways out of homelessness are unique.

However there are some common features of homelessness that those living without shelter are at high risk for:

- Poverty
- Stress
- Depression
- Isolation
- Hopelessness
- Being the **victim** of crime

The proposed amendments increase our risks in each of these areas.

We have looked at the Council's previous two strategic plans to address homelessness which seem to see people experiencing homelessness within a human rights framework. We cannot see how the proposed amendments to the by-laws are in line with the Council's own policy.

We are concerned that the changes in by-laws will have disastrous effects. These actions will not solve homelessness or address the needs of homeless people.

This 'Not In My Back Yard' approach to social issues has never worked.

Camping

Sleeping, when you are without a home, is filled with challenges and dangers, however, sleeping on the street of the city is far safer than the risks of sleeping in suburbs.

It is already illegal to camp in the city and it is well within your current powers to address and prevent activity such as the Flinders Street Camp.

Removal of belongings

People without homes carry different types of bags, some are only carrying a few belongings that they are making do with and others are carrying only their very prized possessions, small items of extreme personal value, photos of their children they are disconnected from, important irreplaceable documents etc.

It feels like these changes will mean its ok for you to steal our stuff and act like we're the criminals.

Even the idea of 14 days to collect our belongings is very wrong - you have up to 90 days to collect documents you have left behind at a property. Two weeks is not enough time to find the money to pay for the retrieval of our things and so many of us will lose the small things that stop us from reaching despair or snapping under the pressure.

Fines

We will not be able to pay the fines that are proposed - for us \$388 is a huge sum of money. Will we all end up in court or prison?

This policy change from the Council has us wondering what next?

- ? Taskforce to clean up city
- ? Hotline to report homeless people
- ? Bounty on our heads

To enforce the changes will be expensive. Is this the best use of public money?

What are you going to do with the money collected from people experiencing poverty?

For us the Living Room provides a rare place that we can access help and support, a locker, showers, laundry and range of non-judgemental workers. There are very few places that homeless people are made to feel welcome, valued, heard and treated respectfully. The Living Room offer services and

supports we simply cannot get anywhere else and they are inside the free travel zone.

How will homeless people get to the services they need for help once we are chased out of sleeping in the city?

Recommendations

Lockers - To reduce the number of belongings on the street, providing lockers for storage is a cheaper, more effective and more humane way to solve this problem.

Accommodation options – Homelessness cannot be solved without access to secure affordable housing. Attention should be focused on increasing housing options. Some people will need significant support to be ready to accept or successfully maintain housing.

Alcohol/Drug supports – Finding yourself street homeless is very difficult and harsh therefore it is logical that many people would seek to numb themselves from this reality. Increased funding to support people to address their alcohol/drugs issues is needed.

Health Care access – Many people living without a home have poor health and/or ongoing health issues and need to be able to see doctors and nurses. These medical staff should be specialists- they need to know how to work with homeless people with respect and care and have knowledge of the specific health issues homeless people experience.

Whole person planning – Many services seem to only be able to focus on particular 'issues' that they are funded for, rather than seeing us as a person with a range of different support needs (and skills, talents etc.).

Council's own policies – We consider that it would be effective social investment for the council to follow its own strategies related to pathways out of homelessness. This includes consulting and ensuring we have a voice in influencing council policy.

Consumer Advisory Group - The Living Room has a CAG that meets regularly and has processes for us to influence and improve services and provide guidance as experts. We recommend that the Council establish a Consumer Advisory Group as a forum for people with lived experience and expertise to inform policy and practice developments.

Contributors:

Contact via:

From: Wufoo <no-reply@wufoo.com>
Sent: Friday, 17 March 2017 5:01 PM
To: CoM Meetings
Subject: Meeting submissions form [#280]

Name *

Email address *

Agenda item title Proposed Activities (Public Amenity and Security) Local Law 2017

*

Please write your submission in the space provided below

To Whom It May Concern,

I am writing this submission in opposition to the amendments to the Proposed Activities (Public Amenity and Security) Local Law 2017. I currently work for a specialist homelessness service and have worked in the welfare sector for the last 5 years. I therefore have quite a lot of experience dealing with individuals that are experiencing homelessness and the broader structures, systems and policies that feed homelessness.

Principally I am extremely concerned by how the move to apply these proposed changes to the local laws came about. It was not based on any recommendations, the result of valid or reliable research nor was it the result of any broader policy initiatives. Furthermore there has been no consultation with a broad spectrum of the community or those with expertise or who have worked in the field. These proposed changes are a reactionary response to public outcry to the "Flinders Street Rough Sleepers", fuelled by a speculative and increasingly conservative and sensationalist media. A toxic ideology that reinforces stereotypes of people experience homelessness as drug addicts, criminals, illegal beggars and welfare frauds; An ideology that ignores the lived experience of disadvantage and marginalisation at the hands of exclusionary and ineffective structures, systems and policies; Instead choosing to view those experiencing homelessness only as people that should just get a job. The impetus for these proposed changes to the law was played out by Lord Mayor Robert Doyle and Deputy Commissioner of the Police Graham Ashton. On Wednesday the 18th of January we heard a compassionate, realistic and empathetic narrative from Cr. Doyle stating "homelessness is not illegal" and that they weren't going to "bundle up and ship out homeless people". Fast forward to Friday and we hear Graham Ashton calling the "camp", "ugly" and "disgusting" and setting the wheels in motion by suggested that move on laws could be introduced. What changed in these two days? What information were Cr. Doyle and Graham Ashton privy to, and the rest of us weren't, that warranted such a backflip? Were there countless submissions from the public that their path was blocked that they were under threat?

Apart from issues surrounding the questionable reasoning for introducing these laws there are also many concerns for the implications of the proposed amendments:

1) Broadening the definition of what constitutes a "camp" essentially make it easier for people sleeping rough to be

moved on. There are now no limitations of what constitutes a camp. Essentially this could mean that someone with a pillow could be said have set up a "camp." This opens the door for anyone to be moved on for any reason or risk being in breach of the law. Rough sleepers will be pushed to the fringes of the city. They will be away from support services and away from the security that the city brings for many rough sleepers.

2) The \$250 fines for someone leaving belongings unattended are punitive and a barrier to keep those sleeping rough out of the city. People need to leave their belongings whilst they catch a train to an appointment, go into a shop, or go to the toilet. Individuals will not be able to do any of these things else risk a fine. The majority of rough sleepers would be on Newstart Allowance. Newstart for singles is \$520 a fortnight, that's \$260 a week. It is therefore impossible for any rough sleeper to pay the fine to retrieve their items if they are left when they need to drop into the supermarket. This means that they won't pay the fines, and will clog up an already overburdened justice systems. Fines and court dates will continue to accumulate.

3) Whilst there have been no readily available studies into the effectiveness of move-on-laws, reflections from large comparable cities to Melbourne that have instituted move-on-laws have found no actual change on the number of people presenting as sleeping rough. It simply displaces them to new areas. As a policy it is ineffective in meeting their aims (unless of course the aim is to remove them from sight).

4) These proposed changes to the law are inconsistent with the aims presented on the City of Melbourne's website. City of Melbourne claims to want to coordinate service delivery and partner with other organisations. How are organisations and agencies tasked with supporting rough sleepers supposed to engage with them if they have been moved out of the city? Any why wasn't there any consultation with these organisations in creating these proposed amendments? City of Melbourne also claim to want to create long-term housing options for rough sleepers. Instead of moving on rough sleepers wouldn't City of Melbourne's time be better spent advocating for changes to tax concessions for real estate investors, the promotion and development of affordable housing and the increasing of the public housing stock. These have been the only proven, effective ways of addressing homelessness.

5) Finally the City of Melbourne advocate that pathways out of homelessness have been offered to those sleeping rough. However 8 weeks of crisis accommodation with no pathways to long-term, affordable and secure accommodation does not constitute a pathway out of homelessness. Give it a few months and they will be back on the streets. Ask anyone working with those that have been transitioning through the homelessness services system for years!

Ultimately it is clear to see that these laws are not there to protect public amenity or to break cycles of dependence. They are a concession to a portion of the media and society that want people sleeping rough to be moved out of sight and out of mind. That is the only effect that these proposed changes will have. They are in no way going to positively address homelessness and that therefore is against the broader public interest.

Many thanks,

Housing Support Worker

Salvation Army Social Housing and Support Worker

Please indicate whether you would like to address the Submission (Section 223) Committee in support of your submission *

No

Privacy acknowledgement: I have read and acknowledge how Council will use and disclose my personal information.

*

From: Wufoo <no-reply@wufoo.com>
Sent: Friday, 17 March 2017 5:06 PM
To: CoM Meetings
Subject: Meeting submissions form [#283]

Name *

Email address *

Contact phone number (optional)

Agenda item title *

Proposed Activities (Public Amenity and Security) Local Law 2017

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[tuv_submission_to_melbourne_city_council_17.03.17.pdf](#)

352.36 KB · PDF

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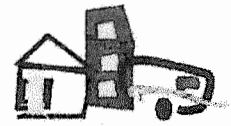
No

Committee in support of your submission *

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I have read and acknowledge how Council will use and disclose my personal information.

17th March 2017



TENANTS UNION
of Victoria Ltd
ACN 081 34227
ABN 36 081 348 227

Manager Governance and Legal
Melbourne City Council
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Phone (03) 9411 1444
Fax (03) 9416 0513
Web www.tuv.org.au

Via email: com.meetings@melbourne.vic.gov.au

Dear

Proposed Activities (Public Amenity and Security) Local Law 2017

The Tenants Union of Victoria (TUV) was established in 1975 as an advocacy organisation and specialist community legal centre, providing information and advice to residential tenants, and rooming house and caravan park residents across the state. Our aim is to promote and protect the rights and interests of private and social residential tenants in Victoria.

During 2015/16, the TUV handled more than 18,160 enquiries. The TUV provided advocacy on behalf of tenants in more than 940 matters, represented tenants in over 240 hearings at VCAT or other Courts, and attended more than 250 outreach visits to rooming house, caravan parks and services. A large proportion of the tenants that we assist are at risk of eviction and homelessness, often presenting with at least two indicators of vulnerability or disadvantage. We increasingly see tenants struggling to maintain their tenancies due to unaffordable rents. 76% of low income renters in the private rental market are in rental stress paying over 30% of their income in rent.¹

The Tenants Union strongly opposes the proposed changes to local council laws that would broaden the ban on camping to capture people sleeping rough in the streets, and allow for the confiscation and disposal of people's personal belongings if left unattended. Both of these measures unfairly penalise homeless people.

Victoria is in the midst of an affordable housing crisis, with almost 34,000 people on the Victorian Housing Register waiting to access social housing.² Punishing people for not having a home will not fix this issue; it will merely push people out of the CBD to areas with fewer services.

A recent statement from the United Nations has indicated that the proposed changes contravene human rights. The UN Special Rapporteur on the right to housing, Leilani Farha said; "The criminalization of homelessness is deeply concerning and violates international human rights law."³

¹ ABS customised Census data (2015)

² December 2016, *Victorian Housing Register transition report* <http://www.housing.vic.gov.au/public-housing-waiting-list>

³ March 13 2017, *United Nations Human Rights Office of the High Commissioner, Proposed "Homeless Ban" in Australia cause for concern – UN Expert* <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21357&LangID=E#sthash.m7bscU75.dpuf>

The Tenants Union of Victoria endorses the submission made by Justice Connect Homeless Law to the City of Melbourne on 7th February.⁴ We urge you to take guidance from the Justice Connect Homeless Law submission and oppose the changes that have been put forward.

Yours sincerely,

Tenants Union of Victoria

⁴ Justice Connect Homeless Law: Homelessness in Melbourne and the Activities (Public Amenity and Security) Local Law 2017
[https://www.justiceconnect.org.au/sites/default/files/Justice%20Connect%20-%20Submission%20to%20Future%20Melbourne%20Committee%207.02.2017%20\(edit\)_1.pdf](https://www.justiceconnect.org.au/sites/default/files/Justice%20Connect%20-%20Submission%20to%20Future%20Melbourne%20Committee%207.02.2017%20(edit)_1.pdf).

From: Wufoo <no-reply@wufoo.com>
Sent: Friday, 17 March 2017 5:27 PM
To: CoM Meetings
Subject: Meeting submissions form [#286]

Name *

Email address *

Agenda item title Proposed Activities (Public Amenity and Security) Local Law 2017

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Please write your submission in the space provided below

Dear Robert Doyle,

As a proud Melbournian, I whole heartedly oppose the proposed amendments to the Activities Local Law 2009.

I am a 27yo student living in Thornbury. I sit down to write this submission having come direct from my real estate agent where I just paid rent. Let's stop pretending that Melbourne is the "most liveable city" in the world, when my real estate agent boasts the sale of a two-bedroom house in Thornbury for \$1,375,000. Living in this city on or below the minimum the minimum wage is a challenge to say the very least. Sure, I have a part-time job, but I can barely afford to cover my living expenses and rent every month. The reason I get by every month is with the support of my family and friends. The homeless are likely to have had a breakdown of their support networks over time and they now find support in their own community. The community that you are trying so hard to further disenfranchise and quite frankly, you and your fellow council members should be ashamed.

These by-laws are utterly authoritarian in nature and have already been condemned by the United Nations. I ask the council members, how can you vote for these laws and sleep at night? Why are criminalising people and building more prisons when we could instead build affordable public housing?

There will never be a justification for using violent means to physically remove vulnerable people from the street, while offering no safe alternative. We want safe, affordable, public housing for all. I wonder if you and your fellow council members had to take the role of police in this situation, and you had to be the one to physically remove people, if you would reconsider these laws. How many times do you fall asleep with the possibility of being woken up by a stranger, let alone a stranger who is taking your possessions, manhandling you and treating you like a criminal, when you haven't broken any laws.

At the end of the day you propose these by-laws while you're on the clock, doing a job you get paid to do. What you

should be aware of is the fact that anyone who has attended any or all of the protests, all submissions, anyone who has shared this event on facebook or otherwise, has done so in their own time, for no money, because we care and the homeless community will not be silenced.

We are a part of a community that values something other than money. It is our responsibility as members of this community to take care of each other, especially those who are at their most vulnerable, even if you and your cohorts refuse your moral and legal obligation to do so.

In closing, for the sake of transparency, next time you speak publicly about the homeless being a burden on The City of Melbourne, perhaps you could also publicly declare your annual salary, so we can get a better understanding of the wealth disparity between our council members and the homeless. What a joke.

Yours in scepticism,
Concerned Citizen

Please indicate No
whether you
would like to
address the
Submission
(Section 223)
Committee in
support of your
submission *

Privacy I have read and acknowledge how Council will use and disclose my personal information.
acknowledgement:
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