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**From:** i behalf of Castan Centre <castan.centre@monash.edu>  
**Sent:** Tuesday, 14 March 2017 3:56 PM  
**To:** CoM Meetings  
**Subject:** Proposed Activities (Public Amenity and Security) Local Law 2017  
**Attachments:** Castan Centre - Submission to City of Melbourne re Homelessness - Mar 2017.pdf; City of Melbourne Activities (Public Amenity and Security) Local Law Sub e-letter.docx

To the Manager Governance and Legal

Please find attached our submission and letter regarding the Proposed Activities (Public Amenity and Security) Local Law 2017.

Kind regards

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Castan Centre for Human Rights Law  
Monash University 3800 Vic Australia

Email: [castan.centre@monash.edu](mailto:castan.centre@monash.edu).  
Web: [www.law.monash.edu.au/castancentre](http://www.law.monash.edu.au/castancentre)

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**MONASH University**  
Castan Centre for Human Rights Law

## **Activities (Public Amenity and Security) Local Law 2017**

**Submission to City of Melbourne Consultation**

**March 2017**

**Prepared by**

## Introduction

The Castan Centre for Human Rights Law ('Castan Centre') thanks the City of Melbourne for the opportunity to comment on its proposal to amend the *Activities Local Law 2009* by means of the *Activities (Public Amenity and Security) Local Law 2017*.

This proposed Local Law amendment would expand the definition of 'camping' and provide a basis for confiscation of homeless people's property. We are concerned about its implications for human rights; in particular the right to an adequate standard of living, the right to property and related rights at international and common law. Indirectly, the proposed amendments may also threaten homeless people's health, for example if their bedding and/or shelter were confiscated in the colder months, or if items confiscated included food, medicine or mobility aids, or if the property confiscation forced them to relocate to a less safe area.

Pursuant to international human rights law and the *Charter of Human Rights and Responsibilities Act 2006* ('Charter'), public authorities such as the City of Melbourne may only act in a way which limits rights if the limitations are reasonable, and 'can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom'.<sup>1</sup>

The additional objective which the proposed amendments would insert into cl 1.2 of the *Activities Local Law 2009* is an improvement in amenity for pedestrians (particularly footpath users with a disability). The title *Activities (Public Amenity and Security) Local Law 2017* also refers to a security-related objective. Although it is not entirely clear, this may be reflected in the new 'unattended items' powers proposed to be added to Part 2.

## 'Camping'

The proposed amendments relating to camping in the city involve the removal of words from the prohibition on 'camping in a public place' to broaden its coverage:

Unless in accordance with a *permit*, a *person* must not camp in or on any *public place* (the following words have been removed) in a *vehicle*, tent, caravan or any type of temporary or provisional form of accommodation.

This amendment appears to place homeless people in the same category as, for example, backpackers parking their campervans within the city limits or pitching a tent in a city park. Despite attempts to blur the distinction,<sup>2</sup> there is an important difference between those who choose to save money by skimping on accommodation and those who sleep outside by necessity. This difference is effectively recognised by the present law, but the proposed amendments would signal that it is no longer considered important.

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<sup>1</sup> See Charter, ss 7(2) and 38.

<sup>2</sup> See Martinkus, 'How the Herald-Sun declared war on Melbourne's homeless,' *Crikey*, 25 January 2017: <https://www.crikey.com.au/2017/01/25/how-the-herald-sun-declared-war-on-melbournes-homeless>.

Article 11 of the *International Covenant on Economic, Social and Cultural Rights*, to which Australia is party, provides in part:

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.

A former UN Special Rapporteur on housing called homelessness 'perhaps the most visible and most severe symptom of the lack of respect for the right to adequate housing.'<sup>3</sup> The present Special Rapporteur has reinforced this point, and specifically criticised the City of Melbourne's proposed changes as discriminatory.<sup>4</sup>

Homelessness has also been linked to a large number of other human rights violations, both in its causes and its effects.<sup>5</sup> The Office of the High Commissioner for Human Rights has observed:

Besides the violation of their right to adequate housing, homeless persons may be deprived of a whole range of other human rights. Laws that criminalize homelessness, vagrancy or sleeping rough, along with street cleaning operations to remove homeless people from the streets, have a direct impact on their physical and psychological integrity. Merely by not having a secure place to live, nor any privacy, homeless persons are much more vulnerable to violence, threats and harassment.<sup>6</sup>

The present submission does not intend to give a comprehensive treatment of the links between homelessness and human rights – there is a wealth of literature, including Australian literature, on this subject.<sup>7</sup> Instead, we wish to emphasise that these links are overlooked by the current proposal to amend the Local Law. Conflating homelessness with 'camping', as the proposed amendments appear to do, is wrong because it implicitly diminishes the serious implications of homelessness for rights including rights to health, education, liberty, privacy, social security, political participation and freedom from discrimination.

In addition, the fine in Schedule 1 associated with camping in contravention of the Local Law (2.5 Penalty Units or \$388.65 at current rates), should not apply to homeless people. Although this change would not directly criminalise homelessness, fines and fees levied on the homeless, in addition to those already imposed for begging and similar practices, risk further enmeshing many in

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<sup>3</sup> See *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living*, Miloon Kothari (UN Doc E/CN.4/2005/48), 3 March 2008, Summary.

<sup>4</sup> See *Proposed 'Homeless Ban' in Australia cause for concern – UN Expert*, OHCHR, 13 March 2017: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21357&LangID=E>.

<sup>5</sup> See eg PILCH, *Homelessness and Human Rights in Victoria: Submission to the Human Rights Consultation Committee*, August 2005: <http://www.homeground.org.au/assets/submission-on-homelessness-and-human-rights.pdf>, 19.

<sup>6</sup> See OHCHR and UN Habitat, *The Right to Adequate Housing – Human Rights Fact Sheet 21*, 2014: [http://www.ohchr.org/Documents/Publications/FS21\\_rev\\_1\\_Housing\\_en.pdf](http://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf), 22.

<sup>7</sup> See eg AHRC, *Homelessness is a Human Rights Issue*, 2008: <https://www.humanrights.gov.au/our-work/rights-and-freedoms/publications/homelessness-human-rights-issue>.

the criminal justice system for failure to pay.<sup>8</sup> In the long term, this is likely to have a significant negative social and economic impact.<sup>9</sup>

We recommend that the proposed amendments, which fail to acknowledge the fundamentally different character of sleeping rough due to homelessness and camping, not be made.

## Property Confiscation

Confiscation of property, and refusal to return unless a fee is paid, is a particularly harsh measure in the circumstances. There is no indication that the fee would be linked to the applicants' means to pay, and there is also a fixed penalty associated with an infringement of proposed cl 2.12 of another 2.5 Penalty Units,<sup>10</sup> which raises serious questions as to whether this really is a safety-oriented measure.

Section 20 of the Charter provides that '[a] person must not be deprived of his or her property other than in accordance with law.' Clearly, if the present proposal is adopted, the confiscation of homeless people's property will be 'in accordance' with a law. However, there are other laws which must be considered in this context:

### 1) Human Rights Law

As with all rights in the Charter, the right to property derives from international law. Article 17(2) of the 1948 *Universal Declaration of Human Rights* provides that '[n]o one shall be arbitrarily deprived of his property.' Notions of arbitrariness at international law have been said to include elements of 'inappropriateness, injustice and lack of predictability' in addition to illegality and unreasonableness.<sup>11</sup> Although the relevant jurisprudence relates to arbitrary detention, it is clear that the concept of 'arbitrariness' in human rights law is broader than that of illegality.<sup>12</sup>

The Explanatory Memorandum to the Charter specifies that '[t]his right does not provide a right to compensation', but is silent as to the terms on which expropriation may be permitted. In discussing the concept of permissible deprivation of property, the Victorian courts and tribunals have referred to arbitrariness in interpreting s 20 in light of s 32, which requires all Victorian laws to be read 'in a way that is compatible with human rights.'<sup>13</sup> For example, confiscation of certain breeds of dog has been found not to be arbitrary due to the 'significant public safety issues at stake' and

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<sup>8</sup> See Adams, *In the Public Eye: Addressing the negative impact of laws regulating public space on people experiencing homelessness*, Justice Connect, April 2014: [https://www.churchilltrust.com.au/media/fellows/Negative\\_impact\\_of\\_laws\\_regulating\\_public\\_space\\_on\\_homeless\\_people\\_Adams\\_Lucy\\_2013.pdf](https://www.churchilltrust.com.au/media/fellows/Negative_impact_of_laws_regulating_public_space_on_homeless_people_Adams_Lucy_2013.pdf).

<sup>9</sup> See eg Baldry et al, *Lifecourse institutional costs of homelessness for vulnerable groups*, UNSW School of Social Sciences 2012: <http://www.pwd.org.au/documents/pubs/adic/Lifecourse-Institutional-Costs-of-Homelessness.pdf>.

<sup>10</sup> See proposed amendment to Schedule 1.

<sup>11</sup> See Human Rights Committee, *Hugo van Alphen v the Netherlands*, Communication 305/1988 (UN Doc CCPR/C/39/D/305/1998), Views of 23 July 1990, [5.8].

<sup>12</sup> See eg Human Rights Committee, *General Comment 16: Article 17 (Right to Privacy)*, Adopted at the Thirty-second Session of the Human Rights Committee on 8 April 1988, [4].

<sup>13</sup> See eg *Thurston v Ballarat CC* [2012] VCAT 274; *Glen Eira C60 (PSA)* [2010] PPV 79.

'safeguards...to allow an owner to seek return of the seized dog...and to seek review to VCAT...' <sup>14</sup>  
The courts have also noted that property forfeiture under criminal law must be interpreted in light of s 20 of the Charter. <sup>15</sup>

The proposed Local Law amendments leave it to the discretion of the 'authorised officer' to confiscate items, introducing a significant element of unpredictability. This discretion is not required to be exercised reasonably, nor is the basis for its exercise made clear. There is no indication, for example, that demonstrable safety or security concerns must be present before confiscation powers are used. We have read reports that the amendments will require outreach officers to accompany officers enforcing this provision, but this does not appear to be reflected in the consultation draft. <sup>16</sup>

The proposed amendment provides for confiscation and impoundment of any item of property left unattended in a public place. The only safeguard for the property's owner is a provision for return of the property on payment of 'any fee or charge prescribed by the Council for its release.' <sup>17</sup> There is no requirement that such a fee be reasonable in light of the limited means of those targeted by this law, no apparent right of appeal for property confiscated in error (for example property which is not actually unattended), no provision for return of the property without fee payment in exceptional circumstances of need, nor any other safeguard which might help establish that this proposed provision does not provide for 'arbitrary deprivation' of property.

In addition, no evidence appears to have been provided for the purposes of the present consultation of the nature or relative magnitude of risks to safety, security or amenity posed by homeless people's property. The Council's media release of 8 February 2017 <sup>18</sup> explains that '[i]n the past two years there has been a 74 per cent increase in the number of homeless people sleeping rough in the municipality' and that 2750kg of waste was collected in January 2017, but without context these figures suggest that the objectives of the amendments might be related to cost and convenience, rather than public safety and accessibility.

In our view, the proposed amendments to the Local Law have not been adequately justified, especially in light of their significant potential impact on homeless people's rights. The amendments therefore risk breaching ss 20 and 38 of the Charter. In addition, Local Laws such as this are made under the relevant delegation in the *Local Government Act 1989*, which specifies that they 'must not be inconsistent with any Act or regulation,' and are 'inoperative' to the extent of any such inconsistency. <sup>19</sup> As such, the proposed amendments may effectively be invalid due to inconsistency with the Charter.

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<sup>14</sup> See *Thurston v Ballarat* above, [46-47].

<sup>15</sup> See *DPP v Nguyen & Anor; DPP v Duncan & Anor* [2008] VSC 292, [36-38].

<sup>16</sup> See Hancock, 'Melbourne homelessness: Council votes to ban camping in the city', *ABC News*, 7 February 2017: <http://www.abc.net.au/news/2017-02-07/homelessness-in-melbourne-city-council-bans-camping/8248506>.

<sup>17</sup> Activities Local Law 2009, as proposed to be amended, cl 2.12.3.

<sup>18</sup> Council endorses proposed change to its Local Laws, CoM Media Release, 8 February 2017: <http://www.melbourne.vic.gov.au/news-and-media/Pages/statement---council-endorses-change-to-its-local-laws.aspx>.

<sup>19</sup> See *Local Government Act 1989* (Vic), ss 111(2) and (3).

## 2) Common Law

The common law has 'long regarded a person's property rights as fundamental.'<sup>20</sup> As in international law and under the Charter, property rights since the Magna Carta have been able to be overridden by 'the law of the land,' but 'only when it was not done arbitrarily, and where reasonable compensation was given.'<sup>21</sup> The term 'arbitrary' has been equated with 'necessary and in the public interest.'<sup>22</sup> With this in mind, similar arguments as outlined above apply in relation to the justifiability of these measures at common law. Given the societal and economic costs of a punitive, short-term approach to addressing homelessness,<sup>23</sup> the public interest would not appear to be served by these amendments.

It has also been noted that the principle of legality, whereby legislation is not lightly to be interpreted as interfering with common law rights, is particularly strong in relation to property rights.<sup>24</sup> This may mean that the proposed regulations relating to 'Unattended Items' will be subject to narrow interpretation when challenged in the courts, in an effort to protect homeless people's rights. Given that the principle of legality has developed primarily to address insufficient attention to rights protection in the legislative drafting process, it would be desirable to address this issue early – well before the legislation is introduced and subject to challenge in court.

We recommend that proposed cl 2.12 be omitted, or at least redrafted to reflect the reality that homeless people do not have the means to pay fines for leaving their property in public places, or to have it restored after confiscation. If cl 2.12 is to be retained, safeguards such as a reasonableness requirement for the confiscating officer to consider, a prohibition on confiscation of necessities such as medicine and sleeping bags, and a right of appeal (without cost) should be included.

## Recommendations

- 1. We recommend that the proposed Local Law camping-related amendments, which fail to acknowledge the fundamentally different character of sleeping rough due to homelessness and camping, not be made.**
- 2. We recommend that proposed cl 2.12 be omitted, or at least redrafted to reflect the reality that homeless people do not have the means to pay fines for leaving their property in public places, or to have it restored after confiscation.**
- 3. If cl 2.12 is to be retained, safeguards such as a reasonableness requirement for the confiscating officer to consider, a prohibition on confiscation of necessities such as medicine and sleeping bags, and a right of appeal (without cost) should be included.**

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<sup>20</sup> See ALRC, *Traditional Rights and Freedoms – Encroachments by Commonwealth Laws (Interim Report 127)*, [7.1].

<sup>21</sup> See ALRC, *Traditional Rights and Freedoms – Encroachments by Commonwealth Laws (Report 129)*, [18.9].

<sup>22</sup> *Ibid*, [18.122].

<sup>23</sup> See Baldry et al, above n 9; also Adams, above n 8.

<sup>24</sup> See eg *American Dairy Queen (Qld) Pty Ltd v Blue Rio Pty Ltd* (1981) 147 CLR 677, 683 (Mason J). See also *Marshall v Director-General, Department of Transport* (2001) 205 CLR 603, [37] (Gaudron J), as cited in *Traditional Rights and Freedoms – Encroachments by Commonwealth Laws (Report 129)*, [18.106].

14 March 2017

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

To the Manager Governance and Legal,

Please accept the attached submission from the Castan Centre for Human Rights Law regarding the Activities (Public Amenity and Security) Local Law 2017.

This submission was prepared on behalf of the Centre by

We are glad, of course, to answer any questions you may have regarding the submission and for it to be made publicly available. Should you require, we would be happy to provide oral evidence for the public consultation.

Yours sincerely

Castan Centre for Human Rights Law  
Law Faculty  
Monash University



From:  
Sent: Wednesday, 15 March 2017 11:29 AM  
To: CoM Meetings  
Subject: Proposed Activities (Public Amenity and Security) Local Law 2017  
Attachments: 15032017112508-0001.pdf  
  
Importance: High

Dear Manager,

Please find attached my submission regarding the proposed local law.

Regards,

Victoria University  
295 Queen St  
Melbourne

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Victoria University  
295 Queen Street  
MELBOURNE  
VICTORIA 8001

Manager, Governance and Legal  
Melbourne City Council

By email: [com.meetings@melbourne.vic.gov.au](mailto:com.meetings@melbourne.vic.gov.au)

15 March 2017

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

Dear Manager,

I make this submission in relation to the proposed Activities (Public Amenity and Security) Local Law 2017 ('proposed local law'). I also request to be heard at the public meeting on this issue on 30 March 2017.

I am a legal academic with particular expertise in human rights law and housing issues. I have ten years' experience as a lawyer working in community legal centres, particularly assisting people experiencing housing crisis and homelessness. I have a Masters degree in human rights law and I previously worked as a tenancy lawyer. I have had articles published in academic journals in the areas of human rights and housing issues.

**Submission**

I have read the proposed local law, and the report to the Future Melbourne (Finance and Governance) Committee dated 7 February 2017 by Mr. Martin Cutter, Acting CEO, titled 'Homelessness and public amenity'. I understand that Mr. Cutter's report forms the background to the proposed local law, as it seems to set out the reasons why it is said to be necessary.

Importantly, Mr. Cutter's report notes (at para 4) that 'It is not illegal to be homeless.' This point is worth emphasizing and clarifying. The fact that homelessness is not currently illegal is not merely an oversight by parliament. It is an important principle, and is based on principles of fairness and good policy. Lawmakers have generally accepted that it is unfair, and inconsistent with basic principles of criminal law, to punish people for circumstances which are beyond their control. It is well known that people end up living on the streets for many complex reasons, including family violence, mental illness, poverty and lack of other options.<sup>1</sup> In my work as a tenancy lawyer, I assisted many people who were

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<sup>1</sup> See the comments of Belinda Wilson, President of the Law Institute of Victoria, in the recent Law Institute Journal: 'On the frontline' (2017) 91(03) *Law Institute Journal* 6 and 'LIV rejects homelessness ban' (2017) 91(03) *Law Institute Journal* 12.

either homeless or at risk of homelessness. This included people who were eligible for public housing but who had been waiting for up to ten years to be offered a suitable home. This included people who were living in unsafe rooming houses and were unable to access the private rental market due to lack of a rental history. This also included women and children who were fleeing domestic violence. I have never met a homeless person who is in that situation by choice.

Besides being unfair to punish the poor, it is also bad policy and bad economics. The new offences contained in the proposed law will needlessly involve people in the criminal justice system, and will simply add to the difficulties of people sleeping rough. A criminal conviction could prevent them from getting work, from getting a loan or from entering the private rental market. Criminalising homelessness is bad policy because it does not reduce homelessness. It simply further disadvantages some of the most vulnerable and marginalized members of society. It only adds further costs and delay to an already over-stretched legal system. Council would be aware that Ms. Leilani Farha, the UN Special Rapporteur on adequate housing has stated publicly that "The criminalization of homelessness is deeply concerning and violates international human rights law".<sup>2</sup> This statement was made specifically regarding these proposed local laws.

The proposed local law would effectively make it illegal for a person to be homeless. This is done indirectly, however, through amending the definition of 'camping' in the current local law. The amendment would make it illegal for a person to sleep on a piece of cardboard in the city area, and it seems that the proposed local law is intended to capture this type of situation (which is commonly known as 'rough sleeping'). This approach has two implications which Council should consider.

First, it is possible that the law may not be effective, because a court may determine that 'camping' has a more legal meaning. According to the Oxford English Dictionary, 'camping' involves not merely temporary accommodation or sleeping, but also the notion of a holiday or being away from home.<sup>3</sup> As Council would know, the sleeping arrangements which are sought to be captured by the expanded definition of 'camping' are in fact home for many people living on Melbourne's streets. They are not a 'home away from home' – as implied by any ordinary meaning of 'camping' – but they are the person's only home. It is possible that a court could conclude that a person's home is not covered by the expanded definition of 'camping', by reference to the Victorian *Charter of Human Rights and Responsibilities Act 2006* ('Charter'). The Charter specifically provides that a person's home cannot be unlawfully or arbitrarily interfered with,<sup>4</sup> and it requires a court to interpret other legislation compatibly with this right.<sup>5</sup>

Second, Council should consider what message it is sending by using this particular method to criminalise homelessness and rough sleeping. By defining rough sleeping as 'camping', Council appears to be saying that homeless people are living on the street *by choice*. As Council would know, people become homeless for many complex reasons, many of which are not within their individual control. Council should consider the deep offence that may be caused by the suggestion that homeless people are having a holiday by sleeping on a piece of cardboard in the city, or that they are sleeping rough by choice. Council should consider whether this is the message it wants to send to (or in relation to) some

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<sup>2</sup> 'Proposed "Homeless Ban" in Australia cause for concern – UN expert', United Nations High Commissioner for Human Rights, 13 March 2017. See [www.ohchr.org/EN/News](http://www.ohchr.org/EN/News)

<sup>3</sup> Oxford English Dictionary.

<sup>4</sup> Section 13(a).

<sup>5</sup> Section 32(1).

of the most disadvantaged and vulnerable members of the community. The UN Special Rapporteur also commented that the proposed law "would legitimize discriminatory stereotypes of an already marginalized population".<sup>6</sup>

The proposed local law is said to support Council's Disability Access Plan.<sup>7</sup> It is said in Mr. Cutter's report that 'Disability groups and individuals have...raised concerns about restricted accessibility of [city] footpaths'. It is notable, however, that neither the names of these groups, nor the number of such complaints or concerns are provided. Council would be aware that many people sleeping rough on Melbourne's footpaths are themselves suffering from a disability. I recommend that Council consult widely and thoroughly with disabled person and relevant organisations, to determine the likely impact of the proposed local law on disabled people in the Melbourne CBD. Council could also consider, for example, issues of disability access caused by restaurant dining tables located on city footpaths.

The proposed local law creates a new offence of 'leaving any item unattended in a public place'.<sup>8</sup> This new offence is extremely broad and uncertain in its scope. It would seem to capture many common and otherwise lawful situations, such as parking a motorcycle on a city footpath. Due to the extreme breadth of this offence, and the absurd results it could lead to, this offence would require Council officers to exercise a high degree of individual discretion in enforcing it. The danger of wide discretionary powers is that they can be exercised arbitrarily, rather than being applied fairly to all members of society.<sup>9</sup> Arbitrary powers are inconsistent with basic principles of equal treatment.<sup>10</sup> For these reasons, the offence should either be scrapped or should be expressed so that its purpose and scope is clear to those enforcing it and those subject to it.

The word 'security' in the title of the proposed local law is puzzling, but seems to be linked to the issue of leaving items unattended in a public place. One can understand a security concern arising from unattended items left at certain locations, such as an airport, train station or shopping centre. However, it is much harder to see a 'security' concern arising from a piece of cardboard, or a mattress, left on a city street. Again, Council should consider the effect of this language, and whether it wants to be seen as demonizing homeless people by suggesting a (clearly implausible) connection between homeless people and terrorism.

Mr. Cutter's report also recommends for Council to 'develop...a communication campaign...to inform and educate the public about the impact of donating [goods] to people sleeping rough'. It is worth noting that support services for people sleeping rough are already over-stretched, by a combination of decreasing government funding and soaring demand. (As the report notes, Melbourne's homeless population has increased by 74% in the last two years). It is extremely unfortunate that Council does not appear to regard people sleeping rough in the city as human beings worthy of charity. Rather, Council seems to regard homeless people as merely a burden on Council and its resources. If homeless people were seen as fully human, then the issue of donating essential items such as bedding to those in desperate need would be seen in a very different light. Personally, I was raised to believe that charity is

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<sup>6</sup> See above n 2.

<sup>7</sup> See s 1.2(d) of the proposed local law.

<sup>8</sup> See s 2.12.1 of the proposed local law.

<sup>9</sup> David Clark, *Introduction to Australian Public Law* 5<sup>th</sup> ed, LexisNexis Butterworths.

<sup>10</sup> The UN Special Rapporteur for adequate housing also criticised this offence as discriminating against homeless people: see above n 2.

a good thing. However, it seems that Council wants to 'inform and educate' the public otherwise.<sup>11</sup> This campaign itself seems ill-informed, contrary to basic human values, and a waste of public resources.

I urge Council to abandon these proposed local laws and campaigns, for the reasons outlined above. Council should instead focus on supporting and assisting homeless people to find suitable, stable, secure and appropriate places to live. This is a long-term approach, rather than a quick fix, but this is the only real solution to Melbourne's homelessness problems.

I thank you for this opportunity to provide a submission on these important topics.

Yours sincerely,

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<sup>11</sup> The UN Special Rapporteur for adequate housing also criticised this campaign as "unacceptable": see above n 2.

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**From:**  
**Sent:** Wednesday, 15 March 2017 7:50 PM  
**To:** CoM Meetings  
**Subject:** SUBMISSION RE CITY OF MELBOURNE'S PROPOSED ACTIVITIES (PUBLIC AMENITY AND SECURITY)  
LOCAL LAW 2017  
**Attachments:** Submission from .pdf

Dear Madam/Sir

Please find attached a joint submission from

Regards

*UNSW Law*

UNSW AUSTRALIA  
UNSW SYDNEY NSW 2052 AUSTRALIA

W: [www.law.unsw.edu.au/profile/luke-mcnamara](http://www.law.unsw.edu.au/profile/luke-mcnamara)

15 March 2017

To: Manager  
Governance and Legal  
Melbourne City Council

**SUBMISSION RE CITY OF MELBOURNE'S PROPOSED ACTIVITIES (PUBLIC AMENITY AND SECURITY) LOCAL LAW 2017**

We are legal academics with expertise in the impact of approaches to public space management that involve criminalisation or other punitive approaches to 'undesirable' or controversial presence, activity and behaviour in public places.

This submission addresses the two major changes contained in the proposed *Activities (Public Amenity and Security) Local Law 2017*:

- i) the expansion of the existing offence of camping in a public place without a permit (cl 2.8).
- ii) the creation of a new offence of leaving any item unattended in a public place, along with powers to confiscate and destroy personal property found unattended, and charge a fee for return (proposed cl 2.12).

In doing so, we also address the proposed expansion of the objectives of the *Activities Local Law 2009* to include a focus on the protection of 'amenity' in proposed cl 1.2(c).

It is our submission that the proposed changes should not be adopted. They have the potential to do more harm than good.

***Criminal law responses to homelessness: Overview***

It is well-established that punitive public order laws and police powers have a disproportionate impact on marginalised populations, including Aboriginal and Torres Strait Islander persons, socio-economically disadvantaged young people, people dealing with mental illness, and people experiencing homelessness.

Laws that criminalise life-sustaining behaviours that disadvantaged people have no choice but to perform in public have long been criticised by courts around the world for being outdated,<sup>2</sup> contrary to the rule of law,<sup>3</sup> and unconstitutional.<sup>4</sup>

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<sup>1</sup> For example, T Walsh, 'Ten years of public nuisance in Queensland' (2016) 40 *Criminal Law Journal* 59-73; T Walsh, *Homelessness and the Law*, The Federation Press (2011); T Walsh, *No Vagrancy: An Examination of the Impact of the Criminal Justice System on People Living in Poverty in Queensland*, UQ (2007); L McNamara & J Quilter, 'Public Intoxication in NSW: The Contours of Criminalisation' (2015) 37(1) *Sydney Law Review* 1-35; J Quilter & L McNamara, 'Time to Define "the Cornerstone of Public Order Legislation": The Elements of Offensive Conduct and Language under the *Summary Offences Act 1988* (NSW)' (2013) 36(2) *UNSWLJ* 534-566; J Quilter & L McNamara, "'Long may the buskers carry on busking": Street Music and the Law in Melbourne and Sydney' (2015) 39(2) *Melbourne University Law Review* 529-591.

<sup>2</sup> *Zanetti v Hill* (1962) 108 CLR 433 at 437, 439.

<sup>3</sup> *Ledwith v Roberts* [1936] 3 All ER 570 at 598.

Although there are notable state/territory/city-specific differences, the long-term national trend since the 1970s has been to move *away* from reliance on blunt punitive criminal or regulatory offences to deal with complex social problems. Governments in Australia and around the world are instead shifting their focus towards developing collaborative community justice initiatives and justice reinvestment programs.<sup>5</sup> The historical record is full of evidence that criminalisation is an inappropriate, ineffective and unfair means of achieving the goal of maintaining public amenity and safety. Homeless people are already over-represented in public order policing and law enforcement. In this context, the proposed *Activities (Public Amenity and Security) Local Law 2017* is a retrograde step that will only serve to exacerbate the situation.

### ***Ban on 'Camping'***

The proposed amendment to cl 2.8 of the City of Melbourne's *Activities Local Law* appears to substantially broaden the scope of the prohibition on camping without a permit.

#### 1. No definition of 'camp'

We note that, if amended as proposed, the *Activities Local Law* will contain no definition of 'camp'. This could produce adverse consequences. Uncertainty about the scope of the ban will create significant challenges for Compliance Officers responsible for monitoring and enforcing the prohibition together with producing uncertainty for public space users including the homeless.

#### 2. Removal of the words 'in a vehicle, tent, caravan or any type of temporary or provisional form of accommodation'

Although the proposal is ambiguous on its face, the intended effect of this amendment appears to be the banning of 'rough sleeping'. This means that people without any form of 'accommodation' or shelter – such as those who bed down for the night on the street, whether on a mattress, on cardboard or other materials, in a sleeping bag, or with no bedding at all – could be found guilty of an offence (cl 14.1), and subject to fines of up to 20 penalty units (cl 14.6(a) (currently \$3109.20, indexed annually) or on-the-spot infringements of 2.5 penalty units (cl 14.3 and Sch 1) (currently \$388.65). This could occur on every occasion that they are detected 'camping' in a public place.

A law of this nature would criminalise the very act of sleeping. For people who are homeless, all behaviours must necessarily be conducted in public, including life-sustaining behaviours such as sleeping. It is, therefore, disingenuous of the City of Melbourne to assert that it 'is not banning homelessness' or that the proposed change would not make it 'illegal to be

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<sup>4</sup> *Pottinger v City of Miami* 810 F Supp 1551 (1992) at 1578-9; *Papachristou v City of Jacksonville* 405 US 156 (1972) at 162.

<sup>5</sup> See particularly Senate Legal and Constitutional Affairs Committee, *Value of a Justice Reinvestment Approach to Criminal Justice in Australia*, 2013; L Roth, *Justice Reinvestment*, NSW Parliamentary Research Service E-Brief, December 2016.



homeless'.<sup>6</sup> People who are homeless are not practically capable of complying with such laws, and as such, laws of this nature may be considered 'cruel and unusual'. It is on this basis that similar laws have been invalidated in the United States.<sup>7</sup> Further, it is well-known that such laws do not solve the problem of homelessness. Instead, they cause unnecessary hardship to people who are already extremely disadvantaged and marginalised.<sup>8</sup>

### ***Proposed new ban on leaving items unattended***

The proposed ban in cl 2.12 on leaving items unattended in a public place (and the associated powers to confiscate, charge a fee for return, and destroy) is a disturbing attack on the dignity of one of the most vulnerable groups in Australia: people experiencing homelessness, and living and sleeping rough on the streets. It is inconsistent with the spirit of the right to property recognised by s 20 of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) and morally repugnant.

Further, the United States experience suggests that such laws may expose public authorities to potential negligence claims, as the enforcement of such laws can place vulnerable individuals' lives at risk: in one case, a woman's asthma medication was confiscated as part of a 'homelessness sweep', and this resulted in a medical emergency.<sup>9</sup>

### ***Enforcement***

It might be contended that the potential harshness of the change proposed by the *Activities (Public Amenity and Security) Local Law 2017* will be ameliorated by a benign approach to enforcement. In response to such a contention, we make two observations.

First, an expectation of benign enforcement is potentially at odds with the proposed incorporation of a new objective of protecting the 'amenity' of public places (see proposed cl 1.2(c)). Amenity not only means a desirable or useful feature or facility of a place (which could suggest that a public place may have many uses including sleeping) but it also pertains to the pleasantness or attractiveness of such a place. Much of the debate by proponents of the amendments relate to the need to 'clean up' the city of Melbourne removing the alleged 'blights' of homelessness. It therefore seems to us that the inclusion of this new objective of the *Activities Local Law* (together with the expanded ban on camping and the new ban on unattended items) is inconsistent with the Council taking a benign approach to enforcement against homeless and marginalised people.

Secondly, the record of public order policing in Australia – including the over-policing and over-criminalisation of people experiencing homelessness – suggests that such reassurances will provide little comfort to people sleeping rough in Melbourne. Indeed, any punitive law

<sup>6</sup> City of Melbourne, 'Council endorses proposed change to its Local Laws', 8 February 2017 <http://www.melbourne.vic.gov.au/news-and-media/Pages/statement---council-endorses-change-to-its-local-laws-.aspx>

<sup>7</sup> *Jones v City of Los Angeles* 444 F3d 1118 (9<sup>th</sup> Cir 2006).

<sup>8</sup> See further S Gerry, 'A moral response to one city's attempt to criminalise, rather than confront, its homelessness crisis' (2007) 42 *Harvard Civil Rights-Civil Liberties Law Review* 239.

<sup>9</sup> *Kincaid v Fresno* 244 FRD 597 (Ed Cal 2007).

that is seen to require a 'don't worry, we won't enforce it' promise by proponents must be regarded as both unnecessary, and suspect.<sup>10</sup>

It should also be noted that the costs of enforcing such laws are significant, both in financial and social terms. Channelling people through the court system for behaviour they are unable to control, and enforcing the payment of infringements that people are unable to pay, would place a significant financial burden on the council, the courts, corrections, as well as legal and community services. The injustice that such action perpetrates on the most vulnerable members of society could also result in a loss of goodwill for, and perceived legitimacy of, the Council and its enforcement officers.

### ***Recommendations***

1. We recommend that the proposed change to cl 2.8 of the City of Melbourne's *Activities Local Law* be rejected.
2. In the alternative, we recommend that a definition of 'camping' be added to the *Activities Local Law* to make it clear that 'camping' does not include rough sleeping by people experiencing homelessness.
3. We recommend that the proposed addition of cl 2.12 to the City of Melbourne's *Activities Local Law* be rejected.
4. We recommend that the proposed change to cl 1.2(c) of the City of Melbourne's *Activities Local Law* be rejected.

Should you have any questions regarding this submission or require any further information, the authors are happy to be contacted by email on the addresses below.

Sincerely

for:

UNSW.

University of Wollongong.

University of Queensland.

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<sup>10</sup> The 'consorting' offence added to s 93X of the *Crimes Act 1900* (NSW) in 2012 is a case in point. Despite government reassurance that it would only be used to disrupt organised crime gangs, research undertaken by the NSW Ombudsman revealed that it was used against Indigenous persons, young people and people experiencing homelessness (NSW Ombudsman. *The consorting law: Report on the operation of Part 3A, Division 7 of the Crimes Act 1900* (2016).

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**From:**  
**Sent:** Thursday, 16 March 2017 11:08 AM  
**To:** CoM Meetings  
**Subject:** Local law  
**Attachments:** reply.doc

Dear Sir/Madam

Please find attached my submission.



Virus-free. [www.avast.com](http://www.avast.com)

## Proposed Activities (Public Amenity and Security) Local Law 2017

Attention: Manager, Governance and Legal, Melbourne City Council

Dear Councillors

I note with a great deal of relief that you are attempting to improve the management of the streets of Melbourne by amending the local law.

Whilst this has been brought about by the explosion of people "camping" on the streets it is none the less warranted. Melbourne is an attractive city, one that I have previously been proud to live in and to show off to visitors from interstate and abroad. However the inordinate influx of people "taking over" the city streets, destroying the ambience of the city, accosting passers by and generally making the city an unpleasant and frightening place to visit has ruined this. The scenes that we have been exposed to are unacceptable on a number of levels for the safe, quiet amenity of the public

I was staggered that whilst we are taught that, due to the fears of terrorism, unattended packages pose a potential threat, these "poor" people were allowed to leave a plethora of belongings on the streets.

There is no doubt that this sudden influx had nothing to do with being "homeless" but was simply due to the huge numbers of visitors attracted by the Australian Open creating an opportunity for them to beg for money from a reasonably affluent influx. Whilst I sympathise with the plight of people who are alone, lost and unable to cope in society I was also appalled by the emotive rhetoric promoted by various people - and then further promoted by the media - in labelling these people poor and homeless without any attempt to verify that fact. Indeed, even the police have stated that many were from out of town, interstate and that they also included the usual activists attracted to a "cause". And I now see that the UN has been alerted and has come out with statements like "discriminatory - stopping people from engaging in life sustaining activities" and "criminalising homelessness". These statements are again emotive rhetoric and made without any apparent first hand understanding of the problem nor any acknowledgement that the majority of other citizens were being significantly impacted nor any acknowledgement that the City of Melbourne is putting in place measures to help these people. The inordinate numbers that suddenly appeared and as suddenly disappeared can only indicate that the greater majority did not fit this homeless label but were simply opportunists.

My wife works in the city and, during this period of greater "camping" activity, both she and many of her colleagues were extremely intimidated and even frightened with the plethora of people outside Flinders Street Station who confronted them, spat at them and generally intimidated them. Frightened to the point where they jaywalked so as not to be confronted by them.

The amendments that you are proposing appear to only:

1. Redefine the term "camping" and to
2. Prohibit the abandonment of possessions

However it is clear that the law should also include powers to authorise officers to move on offenders who proffer a threat to public safety and amenity.

There is no doubt that the community has a responsibility to care for genuine homeless people and I approve of any initiatives that are made to improving their lot in life. However the welfare of ordinary citizens must be considered.

Several points

1. I object most strongly to the emotive rhetoric used when calling these people “homeless” without any audit of what their background is and where they were living previously.
2. I request that the council introduces laws that have meaning and give the officers sufficient powers to ensure that this sort of behaviour does not occur again.
3. The laws should include powers to move on people who illegally “camp” or otherwise interfere with, harass or intimidate innocent members of the public
4. We have to reclaim the streets of Melbourne for those who wish to enjoy them and feel safe while doing so.

I strongly endorse the proposed amendment to the local laws and am in favour of any amendment that improves officers ability to ensure the streets are safe and provide a quiet amenity to all.

Victoria 3127

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**From:**  
**Sent:** Thursday, 16 March 2017 11:13 AM  
**To:** CoM Meetings  
**Subject:** Victorian Chamber of Commerce and Industry Submission on the Melbourne City Council's proposed Activities (Public Amenity and Security) Local Law 2017  
**Attachments:** 2017.03.17 Cover letter to - Victorian Chamber Subm....pdf

Hello,

Please see attached the Victorian Chamber of Commerce and Industry Submission on the Melbourne City Council's proposed Activities (Public Amenity and Security) Local Law 2017.

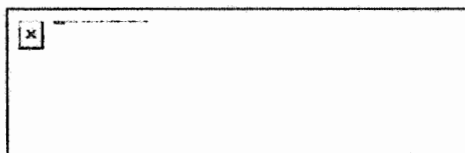
I would be grateful if you could acknowledge receipt of this submission.

Thank you.

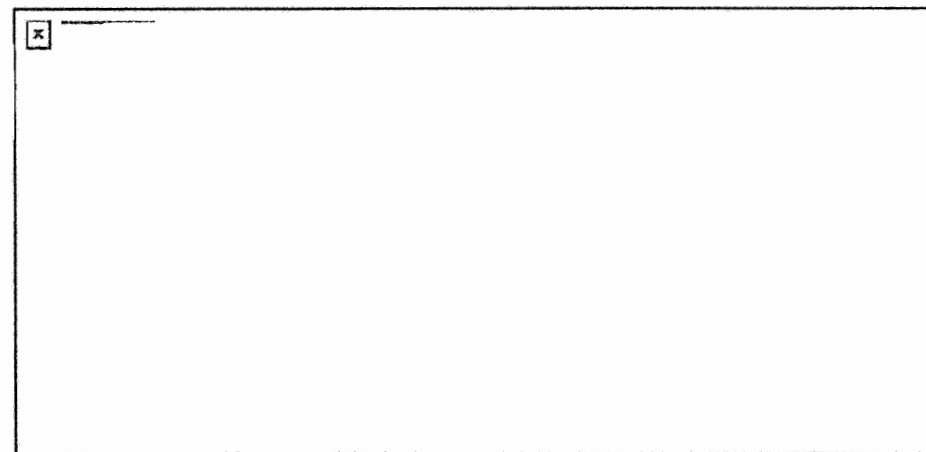
Kind regards,

Level 3, 150 Collins Street  
Melbourne Victoria 3000 Australia

[www.victorianschamber.com.au](http://www.victorianschamber.com.au)

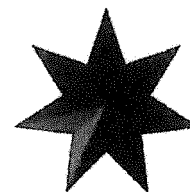


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17 March 2017

Manager Governance and Legal  
Melbourne City Council  
GPO Box 1603  
Melbourne VIC 3001  
[com.meetings@melbourne.vic.gov.au](mailto:com.meetings@melbourne.vic.gov.au)



**Victorian  
Chamber of Commerce  
and Industry**

ABN 37 650 959 904  
150 Collins Street  
Melbourne  
Victoria 3000 Australia  
T: +61 (03) 8662 5333  
F: +61 (03) 8662 5462  
[info@victorianchamber.com.au](mailto:info@victorianchamber.com.au)  
[victorianchamber.com.au](http://victorianchamber.com.au)

Dear

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

The Victorian Chamber of Commerce and Industry welcomes the opportunity to make a submission on the Melbourne City Council's proposed Activities (Public Amenity and Security) Local Law 2017.

The large street camps, aggressive begging and public drug use recently experienced in Melbourne risks tarnishing Melbourne's reputation as the world's most liveable city. As the state's leading business organisation, the Victorian Chamber represents many Melbourne businesses that are adversely impacted by these activities.

The Victorian Chamber fully acknowledges the difficulty and complexity of tackling homelessness and the multifaceted policy and service responses that are required.

The Victorian Chamber supports the proposed amendments as they will provide Victoria Police and Melbourne City Council with an additional tool to address the public amenity issues associated with large public camps.

However, it is essential that Police and Council take a sensible approach to enforcing the law and that discretion is applied when dealing with disadvantaged and vulnerable people experiencing homelessness.

It is also important to ensure that those experiencing homelessness have access to the support and services they need.

For further information regarding this submission, please contact  
Victorian Chamber of Commerce and Industry on

Yours sincerely

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From:  
Sent: Thursday, 16 March 2017 2:15 PM  
To: CoM Meetings  
Subject: Submission regarding new local law pursuant to part 5 of the Local Government Act 1989 to be known as the Activities (Public Amenity and Security) Local Law 2017 ('the proposed Local Law').

## **Submission to Council**

### **New local law pursuant to part 5 of the Local Government Act 1989 to be known as the Activities (Public Amenity and Security) Local Law 2017 ('the proposed Local Law').**

#### **Homelessness and public amenity Agenda item 6.2**

As a Chaplain for Outreach Ministries Australia, a resident of Melbourne Victoria I come into contact with a large number of individuals that have recently been the subject of much negative Media Publicity. I am aware that Homelessness is at a crisis level in Victoria and is not confined to the Melbourne CBD. It is obvious that there are members of what may be loosely described as the 'Homeless Community' that have at times behaved in inappropriate and anti-social behaviours. Such behaviours are not confined to the Homeless Community but given the visibility of individuals, their behaviours are more easily seen and are easily viewed out of context. Many of those with whom I have spoken personally choose to live in the CBD simply because it offers a degree of safety and the ability to find shelter and extant services.

The proposed legislation does not address the many causes of homelessness and the varied circumstances that cause this crisis. The lifestyle cannot be seen as a person's first option in terms of finding safe spaces. Squatting in abandoned buildings is at best a short term solution for those dealing with multiple problems, a history of abuse and adverse interactions with established service providers. (See Royal Commission into abuse of Children in care). Thus certain service providers are viewed with suspicion and although these providers do offer genuine support, the options offered are short term only. The fact that there are those that have for many reasons opted out of what are seen as acceptable life styles and become 'rough sleepers' must not dictate an approach that demonizes and creates the image of the less worthy. This approach will only make the most vulnerable in these Communities more vulnerable to physical and emotional abuse.

I understand that the Rate Payers and Business owners have an interest in ensuring that their city is seen as a safe space for visitors and those seeking to enjoy the amenities of Melbourne have a desire to have Melbourne seen in the best possible light. We all want to be proud of Melbourne; a City that could easily be a leading light in addressing the genuine needs of the homeless. With some insightful research and street work a model could be created that could be world's best practice. It is a reality of homeless life that the individual is compelled to carry all their personal belongings with them, the uglier reality is that leaving anything valuable exposed and un-attended leaves that person vulnerable to theft. The proposed confiscation of un-attended items is at best a short term approach, at the other end of the spectrum of social justice it would compel those with few funds to pay penalties and fines which would in due course turn otherwise law abiding people into criminals.

The Lord Mayor bravely stated that homelessness is not a crime. I would ask the Lord Mayor to make those words his mission. The recent media created hype has done little to enhance the global image of the homeless plight. We should not allow any group to hijack the agenda and crisis for their own ends. Members of the homeless community have their own voice, their own stories and there are none that can claim with any legitimacy that they represent the many individual stories and narratives involved with this crisis. A heavy handed approach will simply shift people into other outlying suburbs that have no established links to service providers and lack the great number of service providers (secular and faith based) already operating in the Melbourne CBD. One must also consider that the very existence of such projects as 614 is a supportive environment for people facing extremes. The need for basics, blankets and shower facilities are slowly being addressed, mostly through the efforts of volunteer groups. Melbourne weather can be unforgiving and I am unable to find statistics that indicate the rate of admissions and the use



of Medical Systems that meet the needs of those that are rough sleepers or other homeless. There should be thought given into the provision of lockable and secure spaces for the storage of personal belongings. The sad reality is that there is simply not enough in terms of affordable housing. Public Housing is stretched in meeting the demands of our Society.

On the other hand, the fact that many non-Government and Volunteer groups formed to address the needs of people experiencing homelessness can be viewed in the light of serious Community Building. This is breaking down stereotypes and perceptions even between volunteer groups from varied multi-cultural backgrounds. This unplanned outcome highlights the beauty of Melbourne as a diverse and caring community and this should be encouraged.

Police powers as currently in place are adequate to deal with those crimes that are reported or detected. To place a greater burden on Police in dealing with what is a social problem seems inappropriate to me. It might be better to give Police access to appropriate links and support services. Approaching this issue as a community welfare matter will enable police to communicate with rough sleepers in their duties to ensure public safety and address other security concerns. It is not difficult to assume that it is the very people on the street that will quickly notice something that may be suspect or present a security concern (if security is an issue). The claim that up to 150kg of material is being removed weekly (see Age 2nd February) seems a canard to me. It would not be impossible to collect such a quantity of what is deemed waste from any other Community, be it the urban street or the bins that deal with waste in the CBD. Homeless and Housing may go hand in hand and the Council could easily appoint support officers that deal with those in Crisis in a caring and supportive way. The current approach of created conflict and perceptions of the less worthy will simply drive people into even less safe spaces and possibly expose them to criminal behaviours that exploit their vulnerable status at this time.

Melbourne as a City will always attract those that see the bright lights as a beacon of hope i.e. employment and social interaction. From my own experiences I found that within some homeless communities there are supports for individuals that are lacking elsewhere; a sense of community and belonging that has declined in many areas. Social Isolation, fleeing from domestic violence or simply opting out of the perceived acceptable social forms of living should not allow Melbourne to become a place that is less caring and concerned for the welfare of those experiencing difficult times often through sets of circumstances that are well beyond them and would probably present problems to any of us where we to find ourselves lacking a roof.

I cannot speak for the Homeless; I cannot speak for the rough sleepers. I can though convey my own personal observations. I am aware of many of the personal stories shared with me. Melbourne City Council, led by our Mayor, could easily become a city that is a global example. If the suggested figures of around 250 people are homeless in the CBD are accurate, this is not a great number given the overall population. If the 'Homeless' are forced to move on they will be denied access to the already established support services. To me it would be better to establish more safe spaces, reduce the impact of criminal behaviour on the Homeless (they too fall victim but often fail to report incidents for fear of repercussions). It should also be considered that whatever decision Council makes, that change or proposed legislation must comply with the Victorian Charter of Human Rights.

The recent events as reported by the media could be viewed as a golden opportunity to acknowledge a crisis and find positive and life enhancing ways to deal with individuals. Making individuals dependent will not work, but empowering and allowing them to be involved in the decision making process will change the dynamics that have been created.

### **Melbourne – the loveable City – a Vision**

The national homelessness crisis cannot be solved by Council alone. The crisis that is faced today by the Lord Mayor and the Council cannot be attributed solely to the failings of Councils across the Nation. It would be naïve to suggest that any Council has the resources to address what is a National Crisis. On the other hand this is an opportunity for Council, especially Melbourne City Council to take human steps within

the scope of local government, bearing in mind that good governance starts from the ground up. The very perception and interaction of Governance for many is based solely on the steps taken at the local level. Thus the role of local government in maintaining a stable community has historically been undermined and, sadly, allowed to diminish. Local Government is for many of us the face of Government that we see. The decisions regarding development and community growth arise from the community and groups within the community.

The reality is that housing, for many, will not be available for years to come. Increasing investment and development has driven the prices of the Australian Dream into the realm of the unaffordable financial nightmare. This is a national crisis and, although our Lord Mayor indicated that he had made contact with the federal government, this was to no avail. The National Homelessness Funding agreement is a non-binding agreement. The actual funding level is apparently around the \$230,000,000 mark and there at least 800 organisations that have been supported nationally. This leaves very little in terms of real cash that can be applied to long term housing projects. Although the State Government has released a plan, this will take time to implement. For those facing homelessness in the Melbourne CBD and the suburbs, the luxury of time does not exist. Each day is a struggle to circumnavigate the many service providers, volunteer groups and other well intentioned organisations with few funds to pay for the required travel, nowhere to safely deposit personal belongings and few places that can be reliably called upon to provide a safe roof at night.

Of course there are those that choose to sleep rough. This is not a crime. There are many reasons why an individual may choose to sleep rough, not only as a response to a lack of affordable and secure housing. If we go down the path of further marginalising and disenfranchising these individuals, we do so at the risk of our own social wellbeing. One could well argue that such isolation and denial of basic services will lead to hot beds of untreated illness and disease. There is a risk to the community of people innocently transmitting diseases such as Golden Staph simply in the normal course of daily activities. Access to basic essential services which provide credible options is essential. I have worked and lived among the homeless since 2009. Prior to that I was a member of the Victoria Police from 1977 to 1989 and an Honorary Justice for 25 years and a member of the Royal Victorian Association of Honorary Justices. I was involved with the Office of the Public Advocate as a Community Visitor tasked with people living in institutional settings. Having studied Criminology, Psychology and Social Work, I had my own practice for a time providing Counseling and giving expert evidence at Magistrates Courts and the County Court Level. Having been heavily involved with community policing, I later moved into Criminal Intelligence both as an Analyst and Field Officer. I was attached and accountable to the chief commissioner's office for a number of operations. During the end of my time with the Victoria Police I was assigned to the old Melbourne Children's Court and given a specified task. After receiving a recommendation from the Victorian Legal Aid Office for my work with both young offenders and children in care, the Old Melbourne Children's Court in Batman Avenue was finally closed for good reasons. During the late 1970's and early 1980's I was a founding member of the St. Kilda Wellington Street Drug Rehabilitation Centre (operated by qualified medical practitioners and psychiatrists). I completed a thorough review of the criminal laws applying to Illicit drugs, the failed model of policing in dealing with the drug crisis. During my time in general duties policing I became a member of the Nunawading Youth Adult Bureau (Management Committee) and continued there in my own time working with others to establish credible Outreach Programs for young adults. I have also served in other capacities, tasked to review and investigate various matters on the ground, national implications and others. These duties are not open for discussion. Since 2012 I became involved with a community kitchen, a group of like-minded and caring individuals that set up at the corner of Swanston Street and Collins Street freely supplying food, companionship and humanitarian outreach to members of the homeless community and others. My personal observations and conviction to a humanitarian effort in resolving and challenging perceptions of homelessness led me to be involved for a short period with the Homeless Persons Union of Victoria. Here, I performed the function of elected first President for a short period of time. The result of my personal involvement has made it possible for me to build up a working relationship with many agencies and, most importantly, gain the trust of many of the homeless community.

I am also an Ordained Minister for Outreach Ministries Australia, Victoria Tasmania Region and serve the members of the homeless community of the Melbourne CBD to the best of my ability. I am unfortunately restricted by physical injuries sustained in the line of previous duty, but I remain steadfast in my conviction

to fulfil the mission statement of Outreach Ministries: "Reaching out to all those in need". My personal faith in our Lord Jesus Christ, seeking guidance from God and the Holy Spirit, I perform unpaid service for the benefit of the Community, inclusive of all those that are part of the community. This involves coordinated outreach work on the streets of the Melbourne CBD, networking with many other secular and faith based organisations. I have been tasked by my Bishop to assist and support in the building and supporting of Community in all ways. I have a good working relationship with members of our Muslim community and many others, where we treat one another with mutual respect. My role involves street work, which is as varied as personal counselling, and advocacy at VCAT and the Magistrates Court as well as assisting a secular and much respected group at Rebecca Walk by handing out food and assisting at whatever level or activity is required.

To highlight that personal face-to-face interaction and trust building is so very essential I would like to relate one anecdote which I shared with Dr. Wilson, the CEO of Urban Seed.

During a very hot spell in Melbourne, a young woman known to me had collapsed in Elizabeth Street near the Flinders Street Station end. Members of the Public were milling around, taking photos and making hurtful remarks about another 'Junkie'. Those comments included and attached to Facebook and other such sites were not only callous, but speak to the very nature of the extant disconnect between human beings. Well-dressed happy snappers were remarking that this was just another "Junkie" dying and so forth. I observed her distress and offered basic assistance, and soon after the ambulance was called. This young woman was a methamphetamine addict. She suffered from Golden Staph and I had observed her decline for some period of time prior to that day. There was nothing outstanding about anything that I did, nor was it demanding. As she lay there trying to make contact with friends via her cell phone, she recognized me and my 'working dog'. She smiled and said to whoever was on the line, "It's going to be alright now; the Priest with the Black Dog is here!" You can take that to mean many things; to me it highlights the importance of having a presence on the streets with which all people are comfortable. I cannot provide medical aid, cure her golden staph or stop her from using drugs. I can stand there, as a visible presence, and provide a degree of personal comfort as I call on those that can offer more. My presence also brought the undignified and humiliating photo shoot and comments to an end. With a little mindfulness and education, acts of kindness can be shared and learned. To me that is a far better outcome than having a society where a person possibly dying of heat stress and other causes becomes a source of brief entertainment.

As a result of a long life, I have accumulated numerous certificates and awards for service, both state and federal. I have seen the changes first hand, have witnessed the impact of one broken promise after another. If we, as a community, cannot make the effort or find the will to be of quality assistance to those in need, the crisis that we are facing now does not portend well for the future.

**The needs that have been indicated to me are simple but important.**

1) The provision of Lockers that is adequate for the housing of personal and other belongings so that they are not stolen or lost. These possessions often include essential paperwork required by service providers and personal mementos of significance. To carry such items and others around is very physically difficult indeed. Leaving such items unattended makes them likely to be the subject of opportunistic theft or vandalism.

2) Safe Spaces (Buildings) that are available on a 24/7 basis and provide a safe haven for those in crisis. Statistics show that women experiencing homelessness often become victims of rape or other forms of assault. In my own experience I have met women, especially those most vulnerable with complex personal crisis histories that have found themselves exploited time and time again by those that superficially offer some form of friendship or support within the homeless community. Much of this applies to single mothers and children experiencing homelessness. There is a fear regarding dealing with the Department of Human Services, and the complexities of the legal system are often beyond the skill of that not well versed in these very expert fields. A Safe Space building would provide a venue where individuals can meet specialized service providers (Centre Link, Legal Aid Services) on neutral ground. This would also address the needs of the most vulnerable that are going through drug and alcohol addiction. Currently the suppliers of drugs and

other illicit substances simply follow the Community around to both market their products and create a demand. The implications of this for the long term are obvious.

Such Safe Spaces could operate to provide options and appropriate help and services on a 24 hour basis. Current organisations operating in Melbourne could be encouraged to work together and share relevant information without concern for loss of funding streams. The Lord Mayors Office could feasibly provide an 'umbrella group' that facilitates the networking and distribution of workloads and provisions required for such a humanitarian project. This may not have the same 'buzz' factor as dealing with an overseas crisis and sending aid, but given the reality of the situation here, some thought should be given into addressing the local crisis first.

The outer suburbs do not offer the level of substantive support currently offered in the Melbourne CBD. I would expect that a humanitarian, caring response would encourage many of the hidden homeless to possibly increase demand for services in the Melbourne CBD. Of course this may at first appear to be a costly exercise, but it will make it possible for governments at all levels to learn about the actual numbers and realities involved. The figure of 1 in 200 Australians being homeless every night is a terrible figure to contemplate when looking at the total population figure, the varied demographics and age groups.

3) Outdoor Safe Spaces for rough Sleepers. There are plenty of areas around the Melbourne CBD which are chosen by rough sleepers. Most are chosen because they are regarded as areas of safety because sleeping in dark areas with no CCTV is seen as a least desired choice. As the Lord Mayor has indicated, this is not a crime. Obviously there are areas that the public must be free to access and use, the use of public amenities for all and the enjoyment of public spaces. Behaviours which are seen as confronting, such as drunkenness, illicit or licit drug use and abuse occur at all levels of our society. When they occur in a public space they become visible, much like domestic arguments and violence which in 'normal' homes remain hidden. Australia has a terrible record regarding domestic violence, the deaths of partners (mostly women) being the result. I remember the death of Wayne Mouse Perry and the impact it had on the homeless community. Research indicates that the homeless tend to be victims rather than perpetrators of violence. Studies from the United States and other Countries support this and are readily available on the Internet. It does not look good when people have a domestic argument in any public space; it challenges perceptions and conventions about relationships.

Most rough sleepers (I have spoken to a number recently) are concerned for their safety and privacy whilst sleeping, knowing that wherever they sleep and rest, that they will be safe. There are some that sleep in alleys, Victoria Market and other places and I have been told that personal safety concerns are a primary factor. There are also many other overlapping concerns, be they mental health or substance abuse. Making rough sleeping a 'crime' (By-Laws Infringement) is not the answer. It will simply drive those most in need further underground and into places of greater risk. Empty buildings and those considered for demolition simply provide what appears to be a temporary respite. These are not safe havens. By being driven into outer suburbs without service providers or into unsafe buildings, these individuals are driven into a twilight zone of uncertainty. In principle, and according to the Victorian Human Rights Charter and the Australian agreement to the United Nations Human Rights Charter, laws that impact adversely on the free movement of any individual would find themselves quickly challenged in Court and found wanting.

"The criminalisation of homelessness is deeply concerning and violates international human rights law," Ms Farha said via a statement from the Office of the United Nations High Commissioner for Human Rights in Geneva. Ms Farha has contacted the Australian federal government's Attorney-General's Department about her concerns. The statement follows a chorus of criticism from local law and homelessness experts, which has so far failed to deter City of Melbourne officials from pressing ahead with the changes. The City of Melbourne has insisted its reforms do not "ban" homelessness. MS Adam said it was "quite concerning and embarrassing" for Melbourne that the actions of the council had attracted international attention.... Former Commissioner for Children and Young People Bernie Geary has been appointed by the council to oversee weekly meetings with homelessness services and authorities. Mr Geary said the advice of the United Nations Special Rapporteur should be taken seriously. "I think we should be listening to people like her, because we don't want to be criminalising homelessness. We don't want to be moving down that track

and I don't think the City of Melbourne is either," he said. "Violation of human rights': UN condemns Melbourne's homeless camping ban' "From what I can gather it seems to me they are desperately trying to seek solutions. But Homeless Law manager and principal lawyer Lucy Adams said the changes could effectively ban rough sleeping by preventing homeless people from sleeping on the streets with swags or blankets. "We should be doing better than this," she said. "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. "The Age MARCH 14 2017 - 6:10PM Aisha Dow (quoted in part)

Do we need to rely on overseas experts and opinions to bring about a sea change that has been painfully obvious to many here for some time? Does the tyranny of global distance impose blinkers on common sense?

Free movement and even non movement i.e. sleeping or resting is not a crime, and enforcement of such By-Laws (as broad as the proposed changes stand) would be subject to the discretion of By-Laws Officers. Do we need to create friction between council officers, police and those sleeping rough? To my mind, the Melbourne CBD is big enough and has plenty of places that could be readily offered to rough sleepers. It has to be a win-win for both sides. The respect for individual liberty and dignity coming hand in hand with respect and dignity for all members of the community.

There is also the reality that those living on the streets see that which occurs on the streets. We are reminded daily that terror is a real threat to this Nation and our Communities. By forcibly removing those that see the subtle changes, observe the placement of unusual objects and the movement of others, we are denying ourselves eyes on the street. I do not suggest that the homeless community be encouraged in any way to become an arm of law enforcement, as this would be both dangerous to the individuals concerned and a hindrance to those services fighting terror. But being a member of a community makes them feel included, just like in the suburban homes. It is those members that feel they have a stake in the community that will easily avail themselves of the emergency numbers that may need to be called. By offering a safe and welcoming environment and possibly dedicated areas that 'rough sleepers' may use as an option, they become stake holders and contributors rather than being perceived as a liability and a cost.

I suggest the creation of 'sanctuary' like environments where people could discuss their needs without fear of adverse outcomes i.e. interactions with DHS. I am aware of several single parent families and two parent families that are doing the best they can given changed economic circumstances (i.e. sending children to schools, providing 'homes' from cars and tent structures). These parties are loath to approach any agency fearing that extant families will be broken up and children placed in care via DHS and the Children's Court System. There is a great amount of misinformation and bad feeling about. Building and restoring trust is a matter of grave concern.

A combination of the above ideas could possibly provide safe spaces where people of all genders know themselves safe! Where venues exist that prevent predation and victimization of those most in need and most vulnerable. Venues where women know themselves safe after fleeing domestic violence. Venues that cater for men dealing with the crisis of homelessness.

### **Financial Cost vs Outcomes**

Melbourne CBD currently provides the space for many volunteer groups to assist and provide real on the ground assistance for those in need. It is farcical to close support services over holiday periods, long weekends and even Christmas. This may be cynically viewed as creating walking marketing boards for



agencies collecting monies by charities that operate at a corporate level. Is this what we want as a Society? Is this the message that the City of Melbourne chooses as a global neon sign?

I think not. The Lord Mayor indicated a willingness to take advice and to consider options. I respectfully suggest that those claiming to have the most experience and resources start communicating with one another and deal with this crisis as a crisis. The Narrative has to change.

Melbourne is a desirable place to build; a possible greater Melbourne will build more. It may be time to consider looking at planning laws that encourage developers and investors to make a suitable contribution to the quality of life in the City of Melbourne. This could also apply to the real estate holdings currently extant in the name of faith based groups.

Safe Spaces buildings and quality emergency housing could be factored into the planning permission process, possibly as a percentage. Other costs could be offset by the Lord Mayors Office being able to rent suitable properties at peppercorn rates. Melbourne City Council has been prepared to make property available to promote tourism at such favourable rates and arrangements.

The creation of a sustainable model will require time. I would respectfully ask Council to delay passing any punitive laws. I have faith that there are both secular and faith based organisations in the City of Melbourne that are simply waiting to see the Lord Mayor take a lead. A humane and sustainable model for what will continue to be a long term crisis, if taken seriously and led by those who have shown merit and transparency, could easily become a model that could be applied globally. The City of Melbourne and other stake holders could well market their crisis handling skills at ethical and affordable rates to those cities that see a sea change in dealing with homelessness as essential!

In summary I would humbly suggest that those claiming to speak for the homeless make an effort to actually talk with the many and varied people impacted by this national crisis. Melbourne City Council, The Victoria Police – Melbourne Command and other stake holders could reconsider the ways that they are adversely perceived by many of the homeless community. All it takes is to make an effort to speak with those impacted and to create a working relationship!

There will be conflicting opinions, demands and requests. That is the very nature of being human and living in a Society such as ours.

The first tentative steps could begin with lockers, the other steps are not impossible.

I dedicate this submission to the memory of those members of what is loosely referred to as the Homeless Community that helped me survive my own time as a homeless person (2009 to early 2012), the old man without teeth at Victoria Market who used many names but taught me how to sleep on cardboard, the guys that taught me how to dumpster dive and scavenge. There was a time when I was too ashamed to admit that I was 'homeless' because I quickly learned how the man I had been was now perceived, that no Honorifics, former social status or little else breaks down those barriers of perception. That terrible image of the failed human being, failed because of circumstances beyond the control of even a relatively well educated human being, no fault attached. I made that man a promise, that if my circumstances ever changed; I would not forget the kindness of strangers. Kindness that demanded no coin!

I can clearly state to the Lord Mayor and Counsellors that my own personal experience, as unpleasant as it was, pales into insignificance when compared to the experiences of others. The fear and uncertainties that go through your mind as you live day by day and all that which was taken for granted no longer exists. That the pyramid of the large service providers of all hues appear to be more concerned with branding and marketing their product and version of Charity than making time for what becomes painfully obvious in hindsight. The models of the deserving and underserving poor, the expectation of displayed humility and knowing one's place when dealing with decision makers. Had I the time, I could easily present a paper on the topic. There are plenty of those already and service providers that produce both academic papers and figures required satisfying the minds of some. I can also assure the Lord Mayor and Councillors that there

are some living on the streets right now for whom there is no time left to waste. These are not failed human beings to be left to sexual predators, predatory landlords and purveyors of misery. Any one of us can fall from 'Grace', through the cracks and onto the very cold concrete of the modern city. Failed relationships, trusts broken, domestic violence, survivors of the very institutions set up to keep children safe (see recent Royal Commissions into the much respected and vaunted models of social assistance offered to those deemed the most vulnerable – now mature Adults – the Forgotten Australians). There are over half a million Australians whose lives were impacted by the deeds of a few! I digress, and I apologize to the Lord Mayor and the members of the Council. Much of this is beyond the scope and even well beyond the capacity of any Local Government Body.

But then, if no one will act to prevent the obvious, starting from the ground up then what hope, if any is left for those whose futures are in our hands?

Making Melbourne an inclusive and loveable city, a beacon of light in what has become a hard world where it need not be, given the acquired knowledge and resources of the 21<sup>st</sup> Century; The City of Melbourne, led by the Lord Mayor and a forward thinking Council could set the ball rolling in a positive direction!

Respectfully submitted for the consideration by the Lord Mayor and Melbourne City Council.

Outreach Ministries Victoria Tasmania [www.outreachministriesvictas.com](http://www.outreachministriesvictas.com)

**From:**

**Sent:** Thursday, 16 March 2017 3:24:59 PM (UTC+10:00) Canberra, Melbourne, Sydney

**To:** CoM Meetings

**Subject:** Submission: proposed Activities (Public Amenity and Security) Local Law 2017

Dear MCC

Please find attached Moreland City Council's submission.

Regards



Moreland City Council 90 Bell Street, Coburg VIC 3058



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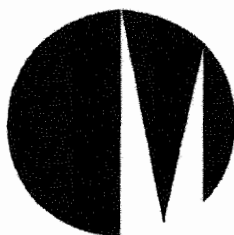
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Moreland City Council

Municipal Offices  
90 Bell Street  
Coburg  
Victoria 3058

Postal address  
Locked Bag 10  
Moreland  
Victoria 3058

Telephone: 03 9240 1111  
Facsimile: 03 9240 1212

Xref: GB3/17  
Doc. No. D17/88035

Manager Governance and Legal  
City of Melbourne  
*via email*

Dear

#### **PROPOSED ACTIVITIES (PUBLIC AMENITY AND SECURITY) LOCAL LAW 2017**

Thank you for the opportunity to provide comment on your proposed local law amendment. This submission from Moreland City Council derives from a General Business Motion adopted at Councils' 8 February 2017 meeting which read:

##### **Homelessness in the City Of Melbourne**

On 7 February, the City of Melbourne voted to have a month of public discussion on local law changes to ban rough sleeping in the City of Melbourne. This measure ignores the fact that the massive increase in homelessness is a result of the massive increase in housing costs, the closure of rooming houses, rising unemployment, more draconian Centrelink policies. Many rough sleepers don't feel safe in emergency accommodation and some don't feel safe in religious-based services because of prior experiences of sexual abuse in religious-based homes. If introduced, the City of Melbourne will not only move people on but also confiscate people's blankets and possessions left unattended, and make homeless people pay a fine in order to get their blankets back. The state government has offered 40 accommodation units when the number of rough sleepers according to the last count was more than 200.

Council resolves to write to the City of Melbourne calling for them to abandon punitive measures to ban rough sleeping by homeless people because such measures criminalise homeless people, displace homeless people to other areas which are potentially more unsafe and do not deal with the causes of the increase in homelessness.

This motion was passed unanimously.

Council is available to be heard by the Submissions Committee if requested.

##### **Moreland Language Link**

廣東話	9280 1910	हिन्दी	9280 1918
Italiano	9280 1911	普通话	9280 0750
Ελληνικά	9280 1912	ਪੰਜਾਬੀ	9280 0751
عربي	9280 1913		
Türkçe	9280 1914	All other languages	
Tiếng Việt	9280 1915	9280 1919	

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Please contact

on or  
if you require any further information.

Yours sincerely

16/3/ 2017

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**From:**  
**Sent:** Thursday, 16 March 2017 5:47 PM  
**To:** CoM Meetings  
**Cc:**  
**Subject:** Proposed Activities (Public Amenity and Security) Local Law 2017 - Submission  
**Attachments:** cohealth submission City of Melbourne March 2017.pdf

Dear Manager Governance and Legal,

Please find attached a submission from cohealth in relation to the City of Melbourne's proposed *Activities (Public Amenity and Security) Local Law 2017*.

Please do not hesitate to be in contact should cohealth be able to provide any further assistance to the Council's deliberations.

Regards,

365 Hoddle Street, Collingwood, VIC 3066

[cohealth.org.au](http://cohealth.org.au)



cohealth acknowledge the ancestors and traditional custodians of the land on which our offices stand and pay respect to Elders past and present.

16<sup>th</sup> March 2017

Manager Governance and Legal  
Melbourne City Council  
GPO Box 1603  
Melbourne Vic 3001

cohealth  
365 Hoddle Street  
Collingwood, Vic. 3066

[com.meetings@melbourne.vic.gov.au](mailto:com.meetings@melbourne.vic.gov.au)

Dear Lord Mayor and Councillors,

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

cohealth has had a lengthy, collaborative relationship with the City of Melbourne to support people experiencing homelessness, and we acknowledge your leadership and positive work to date in this area. We were therefore surprised and disappointed with the proposal to amend the *Activities (Public Amenity and Security) Local Law 2017*. cohealth is deeply concerned about the impact these measures will have on people 'sleeping rough' within the City of Melbourne, some of the most vulnerable members of the community.

cohealth provides a range of health and other supports to people experiencing homeless in inner and western Melbourne, both from our Central City Community Health Service and via outreach. As a frontline service working directly with people experiencing homelessness, we have heard from them about the significant impact this by-law will have if adopted.

The amendments propose to:

- Broaden the definition of camping in the City of Melbourne
- Allow council officers to remove unclaimed items, impose a fee for their retrieval and dispose of them after 14 days if unclaimed

We are seriously concerned about the impact of this on people experiencing homelessness:

- They will be pushed out of the areas where they feel safer, and are close to services, supports and other connections.
- The 'problem' of rough sleeping will simply be moved to other areas, and the shortage of affordable, secure housing that is the major contributor to homelessness will not be addressed.
- People experiencing homelessness will not only lose belongings, but have fines imposed that they are unlikely to be able to pay, risking involvement in the justice system.
- Council officers and police already have powers to respond to the issues intended to be addressed by this by-law. Adding another layer of regulation and fines further demonises an already marginalised and vulnerable group of people.



People experiencing homelessness already face violations of a wide range of human rights<sup>1</sup>, and these amendments will only compound this. Indeed, the United Nations Special Rapporteur on the Right to Housing has identified that the proposed amendments are a "serious international human rights concern"<sup>2</sup>.

cohealth is aware of the recent dramatic increase in the numbers of people experiencing homelessness, has participated in the 2016 Street Count and has seen a doubling of people experiencing homelessness accessing our Central City Community Health Service. We have and will continue to work closely with City of Melbourne staff to create effective responses to the issues of homelessness.

cohealth strongly urges the City of Melbourne not to adopt these proposed amendments, rather to work with people experiencing homelessness and support services to identify sustainable solutions to community concerns.

## A. Broadening the definition of camping

Broadening the definition of camping effectively makes it an offence to sleep on the streets. In our experience, people do not chose to become homeless, rather this occurs due to a combination of life circumstances. Widely acknowledged shortages of affordable, secure and safe housing mean that 'sleeping rough' is, unfortunately, the only option for increasing numbers of people. The proposed amendment does nothing to address the underlying causes of homelessness, and will simply act to push people experiencing homelessness out of City of Melbourne into other areas – areas that are further away from support services, and may not be as safe.

As one consumer asked:

*"we've got to get sleep somewhere – what can I do [if the amendment is enacted]?"*

Others spoke of the negative message conveyed by the proposal, and the psychological impact this has on them:

*"we have aspirations, too, but this will mean we'll be pushed from the margins further to the edge".*

The penalty imposed for camping in a public place is high - \$388.65 (2.5 penalty units). For people on such low incomes, there is a very real risk that they will get caught up in the justice system due to inability to pay.

**Recommendation 1:** Reject the by-law amendment that broadens the definition of camping

**Recommendation 2:** Work in partnership with the Victorian and Federal governments to develop increased supply of affordable, supported and crisis

<sup>1</sup> <https://www.humanrights.gov.au/publications/homelessness-human-rights-issue#1> Accessed 16/3/17

<sup>2</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21357&LangID=E> Accessed 15/3/2017



housing, including models that provide flexible support to those with complex needs to remain housed.

## **B. Provisions regarding the removal of unattended items**

People experiencing homelessness currently have little alternative to leaving their possessions unattended at times. When they need to obtain food, go to the toilet and undertake other activities, even if only for a short time, they need to pack up all their belongings or leave them on the street. The proposed changes will create additional hardship for people experiencing homelessness who have nowhere to store their belongings.

cohealth acknowledges that belongings will be stored and that there is capacity for people to collect belongings following the payment of a fee. However, as people who are experiencing homelessness also experience significant financial disadvantage, the payment of a fee may be prohibitive in being able to retrieve their personal belongings, which could include important documents and medication. It is likely that this will result in their limited possessions being lost. Alternatively, support services may incur additional expense in paying fees from brokerage funds, supplying new bedding such as swags and paying fees for the replacement of important documentation such as birth certificates.

Fines imposed for leaving possessions unattended will contribute further to financial hardship, and risk involvement in the justice systems if a person is unable to pay. As the JAAG (Justice Access Advisory Group) submission states "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 and rather punish them for being without a home."

The people cohealth works with who experience homelessness identify that the provision of secure lockers with 24 hours access would provide them with security, while also assisting in improving the amenity of city streets. We are aware that City of Melbourne staff have been working for some time to identify an appropriate location for lockers, but to date without success.

**Recommendation 3:** Reject the by-law amendments relating to unattended possessions

**Recommendation 4:** Prioritise the installation of lockers at accessible location/s for people experiencing homelessness

Council officers and police already have powers to respond to activities in public spaces that impact on amenity, cause a hazard, etc, and issue infringement notices for such offences. The proposed amendments add an additional unnecessary layer of fines, and increased risk of involvement in the justice system for people experiencing homelessness. Increased interaction with council officers, and community expectation that these officers will take a more assertive approach with people experiencing homelessness, is likely to result in greater conflict with council officers.



The Lord Mayor has stated 'it is not against the law to be homeless'. However, the implementation of these amendments would send a contrary, unhelpful message, that homelessness can be addressed by stronger laws. Not only does this further stigmatise people experiencing homelessness, it does nothing to address the causes. Common themes from our conversations with people experiencing homelessness are the need for understanding, respect and empathy; and to speak, and work, with them rather than impose punitive responses. As a consumer suggested:

*"If it's you or your family [who becomes homeless], what sorts of laws would you like to have in place?"*

In addition, research has demonstrated that enforcement provisions such as these by-laws are not a helpful part of responding to homelessness. Leading cities, in contrast, are moving away from these sorts of provisions<sup>3</sup>.

Finally, there is the potential for significant cost impositions if these measures are introduced. People experiencing homelessness face potential fines and the expense of replacing possessions. Support services may need to devote brokerage funding to assist with replacing lost items and staffing to assist people respond to infringement notices and fines. Council resources will be directed to enforcement of the by-laws and administration and storage of impounded possessions. These resources would all be more usefully directed towards positive responses to meeting the needs of homeless people in the City of Melbourne and to reducing homelessness.

While cohealth recognises the challenges faced by the City of Melbourne in managing community amenity, we believe that the proposed amendments will discriminate against already disadvantaged members of our community. They do nothing to address the underlying causes of homelessness and are likely to only result in moving people experiencing homeless to other areas. We urge the City of Melbourne to continue the leadership shown to date and to work with people experiencing homelessness and support services to develop lasting responses that work for all members of the community.

Yours sincerely

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<sup>3</sup> Justice Connect Homeless 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) Accessed 15/3/17



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From:  
Sent: Thursday, 16 March 2017 6:06 PM  
To: CoM Meetings  
Subject: Proposed Activities Public Amenity & Security  
Attachments: 201703161651.pdf

To the Manager, Governance and Legal, Melbourne City Council

Please find attached a formal submission from Melbourne City Mission, providing feedback on the proposed Activities (Public Amenity and Security) Local Law 2017.

Should Councillors or Council officers seek further information about the issues raised in this submission, Melbourne City Mission would be pleased to assist.  
can be contacted via email or mobile

Thank you for considering our feedback.

Regards,

Melbourne City Mission

Web: [www.melbournecitymission.org.au](http://www.melbournecitymission.org.au)

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#### ACKNOWLEDGEMENT

Melbourne City Mission acknowledges the Traditional Owners of the lands on which our services are located. We honour the strength and resilience of Aboriginal and Torres Strait Islander peoples and pay our respects to all Elders, past and present.

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16<sup>TH</sup> March, 2017

Manager, Governance and Legal  
Melbourne City Council  
Via email: [com.meetings@melbourne.vic.gov.au](mailto:com.meetings@melbourne.vic.gov.au)

To the Manager, Governance and Legal

***Re proposed Activities (Public Amenity and Security) Local Law 2017***

I write to you as the [redacted] of Melbourne City Mission – an organisation that has worked for, and alongside, people experiencing homelessness in Melbourne for more than 160 years. For the past 30 years, this work has included the provision of early intervention services and crisis support in the CBD for young people aged 12 – 25 who are homeless or at risk of homelessness, via Frontyard Integrated Youth Services in King Street. The purpose of this work is to disrupt trajectories into long-term homelessness.

Melbourne City Mission's work in this space has always been characterised by strong partnerships with the City of Melbourne, of which Frontyard is just one example.

We commend Council for the role it proactively takes to alleviate street-based homelessness – one of the community's most complex social issues. We recognise that Council is working to resolve issues that are the result of service system failures in other jurisdictions that sit outside local government. We also understand that the levers that Council has at its disposal are very different to those available to State and Commonwealth governments, and that one of these levers is the use of local laws to manage public spaces.

Melbourne City Mission understands **why** Council has sought to introduce this new local law. We share Council's concerns about the prevalence of rough sleeping in Melbourne and understand the difficulties for Council associated with the increase in unattended items on major pedestrian thoroughfares and other public places. Like Council, Melbourne City Mission:

- is concerned that the number of people rough sleeping in the CBD has increased
- does not believe Melbourne's streets are a safe or appropriate housing option for our citizens
- understands that city residents, workers and visitors have concerns about public amenity
- agrees that people with disabilities have the right to move around the city unimpeded.

**However, Melbourne City Mission does not support the introduction of the proposed Activities (Public Amenity and Security) Local Law 2017 to address these concerns.**

Council has long had a reputation for responses to homelessness that are **nuanced, evidence-based and progressive**. We do not believe that the proposed new local law is consistent with this approach.

**The evidence from other policy jurisdictions is that a law and order approach to homelessness-related issues is neither impactful nor cost-effective.**

For example, we know that in the public transport space, issuing fines to homeless public transport users travelling without a Myki has not only failed to effect behaviour change, but has created costly unintended consequences in other parts of the service system (particularly courts). A law and order approach has also compounded trauma, increased people's mistrust and alienation of the 'system' (making it difficult for services to effectively engage), and entrenching – rather than disrupting – homelessness.

south melbourne

164-180 kings way, south melbourne, vic 3205 PO box 13210, law courts PO, melbourne, vic, 8010  
t 03 8625 4444 f 03 8625 4410 w [melbournecitymission.org.au](http://melbournecitymission.org.au)  
ABN 56 161 846 149

We agree with our partner Homeless Law that *"tougher enforcement will not deliver the solutions the City of Melbourne or the community is seeking"*<sup>1</sup>. We also share Homeless Law's concerns that the proposed Activities (Public Amenity and Security) Local Law risks pushing people off the Hoddle Grid, to the edges of the city, isolated from services and supports.

Melbourne City Mission believes that Council initiatives – such as The Rough Sleepers Service Coordination Project – together with new State Government investment (for example, Targeted Care Packages with significant brokerage funds and the capacity to work in a very flexible, individualised way with people experiencing homelessness) provides a strong foundation from which to stem the increase in rough sleeping, and provide effective responses to the current rough sleeping population.

We urge Council **not** to proceed with the introduction of this new local law – which effectively criminalises homelessness, even though we know that this is not Council's intent.

Instead, we urge Council to adopt the 'Proposed Framework for Responding to Homelessness in the City of Melbourne', which Justice Connect will be submitting to Council on behalf of an alliance of the City's leading legal, health, homelessness, housing, mental health, and family violence organisations – including Melbourne City Mission.

This Framework – which Melbourne City Mission assisted to develop – details more than a dozen areas for action, including:

- Non-punitive, low-cost, high-impact actions to reduce the volume of unattended items in the city
- Initiatives that make the city feel safe for everyone – people experiencing homelessness, other city residents, business owners and city workers, and visitors
- Scale up of proven programs and services (such as Street to Home) that enable rough sleepers to safely transition from the streets. The Framework proposes that these intensive housing and support models be extended to, and adapted for, young people who are only intermittently rough sleeping options but are on a trajectory to long-term homelessness without a significant 'disruptor'.
- Further investment in mechanisms that support service coordination.

Should Councillors or Council officers seek further information about this Proposed Framework – or any other aspects of our submission objecting to the introduction of this new local law – Melbourne City Mission would be pleased to assist.   
email \_\_\_\_\_, can be contacted via  
or mobile \_\_\_\_\_

<sup>1</sup> Source: <https://www.justiceconnect.org.au/our-programs/homeless-law/law-and-policy-reform/infringements-and-public-space-offences/melbourne-dont-criminalise-homelessness>

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From:  
Sent: Friday, 17 March 2017 11:40 AM  
To: CoM Meetings  
Subject: Submission

The Hon. Mr Robert Doyle,

Melbourne City Council

120 Swanston Street,

Melbourne VIC 3000

Friday, 17 March 2017

Dear Mayor Doyle,

I just wanted to send you a personal message to let you know how I am feeling about your proposal to ban homeless people from sleeping rough in the city. I think it absolutely sucks.

First of all Mr Doyle, let me remind you that anyone can become homeless. Even you. All it takes is one thing to happen and your world can come crashing down. Maybe you lose your job, maybe you're trying to escape domestic violence, maybe you have a mental breakdown or maybe this or maybe that. My point is there are a multitude of reasons why a person can become homeless.

My understanding of the situation is this: we have 247 people sleeping rough in the city of Melbourne at the moment and you have only offered housing to 40 of those people. I'm not very good at math by any stretch but I'm pretty sure that means 207 people miss out. Why? And how do you choose who gets a place and who doesn't?

That brings me to the statement that "they're not all homeless, we have offered them rooms in rooming houses but they decline...." when was the last time you set foot in a rooming house? I was in one on Sunday. I do not blame these people for declining to live in these pits of pure hell. I am a volunteer social support worker for a lady with mental illness in a rooming house in

. This "house" is absolutely deplorable to say the least. You open the door and are immediately assaulted by the smell of rotten food and urine in the halls and common areas. Her

room is kept very clean but is now infested with mice because it's opposite the common room where people have left food, refuse and even dirty laundry that has been there for about a month now. On top of this, for about 6 months she couldn't lock her sliding door properly and it leads out to a courtyard easily accessible to the street. She had made phone calls and sent numerous letters to her "manager" with little to no response. We sent a maintenance compliance form about a month ago and they finally got around to it last week. The new problem is they fixed the lock but now she can only open the door a little bit but not enough for her to be able to go out and use the space she pays for. Talking about rent - hers is around \$230 a week which is almost half her weekly income and it rises at the drop of a hat. I gave her some plants out of my own garden and she almost didn't accept them because she fears that her "manager" will think she bought them and increase the rent again. I could go on but I won't. Rooming house regulations are not enforced and therefore they are unsafe and it is unacceptable to offer this as an alternative to living on the street.

I guess what I'm really trying to say is this Mr Doyle: if you want to eradicate homelessness in our city, you are going the wrong way about it. Instead of criminalizing homelessness and punishing the most vulnerable of our citizens even more than they are already being punished, you should be thinking about how you can minimize the risk of homelessness more by funding programs that are trying to help marginalized and disadvantaged people from becoming homeless in the first place. Offer every single one of those 247 people a proper house. And make rooms in rooming houses a more attractive option by enforcing regulations, cleaning them up and making them safer! Get rid of the slum lords or hold them accountable for their actions.

Yours truly,

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**From:**  
**Sent:** Friday, 17 March 2017 12:30 PM  
**To:** CoM Meetings  
**Subject:** Proposed Activities (Public Amenity and Security) Local Law 2017  
**Attachments:** The Catalyst Network - City of Melbourne - Camping law change submission.pdf

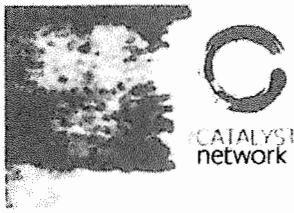
Dear Sir/Madam,

Please find attached a submission by The Catalyst Network to the proposed local law change above.

Regards,

**The Catalyst Network**

[www.thecatalystnetwork.co](http://www.thecatalystnetwork.co)



# Submission to City of Melbourne proposed camping law change

The Catalyst Network  
17 March, 2017

**The City of Melbourne is burdened with a problem that is ultimately due to the impacts of social and economic change and policy failure by multiple layers of government.**

That said, punishing the homeless by banning them is not the Melbourne way.

We believe there are more effective methods to address immediate concerns without compromising the work of countless agencies, charities and individuals over many years to address the systemic causes of homelessness.

In making this submission, we don't downplay the complexity of this issue and the concerns citizens have expressed about unsightliness, safety and personal security in relation to people sleeping on the street.

We believe that the local law change as proposed won't fix the problem. In fact, the unintended consequences are likely to be costly and damaging for Melbourne's reputation for tourism, foreign investment and collaboration.

**This is a huge opportunity for Melbourne to be a global thought leader on this issue rather than an enforcer.**

Melburnians are known for their civic pride and generosity of spirit. And on the whole, our leaders embody the values we share.

During a prolonged hot spell in 2014, Melbourne's Lord Mayor Robert Doyle proposed an extreme weather policy that would make public spaces 'oases' for the homeless, the elderly and the very young on hot or cold days.

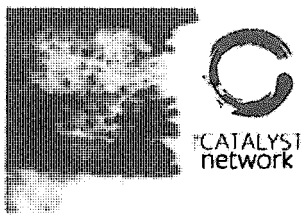
The City of Melbourne had been giving free pool passes to the homeless and allowing the public to shelter in its libraries.

**Rather than blaming our institutions, let's make homelessness every Melburnian's responsibility.**

Melbourne has championed diversity over generations, allowing individual groups to coalesce into their own communities (Greeks on Lonsdale Street, Italians in Carlton, Vietnamese in Abbotsford) and enriching the city's DNA.

We believe people without homes are another community, but a community that's been severely marginalised and without a strong voice.

Rather than blaming our institutions, let's make homelessness every Melburnian's responsibility.



Submission by The Catalyst Network  
17 March, 2017

We think this is a huge opportunity for Melbourne to be a global thought leader on this issue rather than an enforcer.

The Catalyst Network, as an independent advisory group, would like to co-develop with the City of Melbourne a radically different process to address short-term homelessness that could be a template for other complex community issues.

Our empowered collaboration model involves a systemic, co-creation approach to building the shared commitment required to seed and implement imaginative initiatives.

We want to hear directly from those sleeping rough and understand why they find themselves in this position.

What we're seeing is just the tip of the iceberg. The impact of technology and economic disruption will cause exponential pain and dislocation to increasingly large numbers of people.

Now is the time to view homelessness and such complex issues with fresh eyes.

Melbourne has a global reputation for liveability, inclusion and progressiveness. Instead of undermining these values, let's work together to consolidate this reputation.

The Catalyst Network has been working on a strategy to help the City of Melbourne mobilise the many people who seek to play a part in creating a genuinely human-centred model for a 21<sup>st</sup> century city.

[www.thecatalystnetwork.co](http://www.thecatalystnetwork.co)

**“Systems thinking, when integrated with a strong community organising approach that fosters multi-sector collaboration, can enable stakeholders to take the critical step of moving from an understanding of best practices to a shared commitment to implementing them.”**

David Peter Stroh and Michael Goodman, *A systemic approach to ending homelessness*

An example of fresh thinking is a symbol, or brand, to denote the people and businesses who want to contribute to supporting those who find themselves on the street. This could be linked to a database and payment system that channels information, goods and services to people without homes, where and when required.

Simple ideas, seeded within a system and a community that cares.

We would welcome the opportunity to discuss our alternative approach with the City of Melbourne at your convenience.

#### **The Catalyst Network**

The Catalyst Network is an independent, non-partisan community of individuals from diverse fields who draw upon the collective capabilities of the group to develop new and compelling ways to address complex issues.

#### **Your contact for this submission:**

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**From:**  
**Sent:** Friday, 17 March 2017 1:32 PM  
**To:** CoM Meetings  
**Cc:**  
**Subject:** Submission regarding proposed amendments to the Activities (Public Amenity and Security) Local Law 2009  
**Attachments:** \_Proposed Amendments to the Activities Local Law 2009\_coverltr.pdf; \_Proposed Amendments to the Activities Local Law 2009.pdf

Dear Councillors,

Please find attached my submission relating to the proposed amendments to the Activities (Public Amenity and Security) Local Law 2009.

I am pleased to present this submission to the Melbourne City Council for consideration. The submission contains my detailed response to the proposed amendments and specific recommendations.

I appreciate the opportunity to present this submission and welcome the opportunity to discuss my recommendations with you further.

If you have any queries regarding this submission please feel free to contact me using the details provided below.

Yours sincerely,

**Westpac Bicentennial Foundation Research Fellow**  
Department of Paediatrics (Royal Children's Hospital)  
Faculty of Medicine, Dentistry and Health Sciences  
University of Melbourne, Victoria 3010

**Honorary Research Fellow**  
Population Health Studies of Adolescents  
Murdoch Childrens Research Institute

Please consider the environment before printing this email



17 March 2017

Manager  
Governance and Legal  
Melbourne City Council  
[com.meetings@melbourne.vic.gov.au](mailto:com.meetings@melbourne.vic.gov.au)



**RE: Proposed Amendments to the Activities (Public Amenity and Security) Local Law 2009.**

Dear Councillors,

I wish to submit the aforementioned submission on the proposed amendments to the *Activities (Public Amenity and Security) Local Law 2009* to the Melbourne City Council.

I, \_\_\_\_\_ of The University of Melbourne make this submission on the basis of my extensive knowledge of homelessness research and practice, spanning over 10 years.

I oppose the Melbourne City Council's proposed amendments to the *Activities (Public Amenity and Security) Local Law 2009* and hold substantial concerns regarding the impact of the proposed amendments on persons experiencing homelessness.

I am pleased present this submission to the Melbourne City Council for consideration. The submission contains my detailed response to the proposed amendments and three specific recommendations.

I appreciate the opportunity to present this submission and welcome the opportunity to discuss my recommendations with you in further detail. If you have any queries regarding this submission, please feel free to contact me using the details provided below.

Yours sincerely,

Westpac Bicentennial Foundation Research Fellow  
Department of Pediatrics  
Faculty of Medicine, Dentistry and Health Sciences  
The University of Melbourne  
Honorary Research Fellow  
Murdoch Childrens Research Institute



# **Submission to the Melbourne City Council on the Proposed Amendments to the Activities (Public Amenity and Security) Local Law 2009**

Prepared by:

Westpac Bicentennial Foundation Research Fellow,  
Department of Paediatrics, Faculty of Medicine, Dentistry and Health  
Sciences, The University of Melbourne

March 2017

Submission to the Melbourne City Council on the Proposed Amendments to the Activities (Public Amenity and Security) Local Law 2009  
2017.

**Submission to the Melbourne City Council on the Proposed Amendments to the Activities (Public Amenity and Security) Local Law 2009**

I, \_\_\_\_\_ of The University of Melbourne make this submission to the Melbourne City Council in relation to proposed amendments to the Activities (Public Amenity and Security) Local Law 2009. This submission is made on the basis of my extensive knowledge of homelessness research and practice, spanning over 10 years.

I am a Westpac Bicentennial Foundation Research Fellow at The University of Melbourne. For the over 10 years I have conducted research focusing on the influence of modifiable factors on the health and behaviour of Australian youth, with a specialised focus on homeless youth. My research seeks to inform prevention and early intervention programs leading to improving the lives of young Australians and their families. I have published over 50 refereed journal articles, book chapters and reports, predominately in the area of youth health and behaviour (including homelessness). Attached to this submission is a brief copy of my curriculum vitae, including my publication record (marked "A1"). I have an active research collaboration with SalvoCare Eastern which continues to ensure the dissemination of my research findings at the grassroots level. In December 2016 I was awarded a prestigious three-year Westpac Bicentennial Foundation Research Fellowship, to continue my research examining predictors, health and social problems of youth homelessness. This unique fellowship supports outstanding early career researchers whose ground-breaking work has the potential to make a difference nationally and internationally.

I oppose the Melbourne City Council's proposed amendments to the Activities (Public Amenity and Security) Local Law 2009. Specifically, I oppose:

1. The broadening of the existing ban on camping;
2. Directives by *Council* and/or an *authorized officer* to move people on, issue a fine of \$388 or charge persons if they are perceived to be camping; and
3. All clauses pertaining to unattended items in a public place including:
  - a. The prohibition of persons leaving any item(s) unattended in a public place, unless in accordance with a permit, and the apportion of a \$388 fine,
  - b. *Council* and/or an *authorized officer* confiscating, impounding or disposing of an unattended item(s) and requiring payment of a fee or charge (currently of an undisclosed monetary amount) to return the item(s) to its owner, and
  - c. *Council* and/or an *authorized officer* selling, disposing or giving away the item(s) that has been impounded unless the specified fee or charge is paid by the owner within 14 days.

I hold substantial concerns regarding the impact of the proposed amendments on persons experiencing homelessness; persons who are perhaps one of the most vulnerable groups in society. Experiencing homelessness does not afford persons the opportunity to adhere to laws and regulations that prohibit behaviours such as those targeted in the aforementioned proposed amendments, including rough sleeping and momentarily leaving personal items unattended in public places. These behaviours are a common part of daily experiences for persons experiencing homelessness, of which the proposed amendments fail to address. The proposed amendments do not attend to the need to identify and address the factors that contribute to, exacerbate or reduce homeless and associated health and social problems among homeless persons. The proposed amendments will adversely affect those homeless persons who are, and who may enter into, rough sleeping, and increase vulnerability to adverse physical, psychological, health, social and behavioural outcomes already experienced by this vulnerable group. In what follows I present three important standpoints and recommendations relative to the proposed amendments and mechanisms to reduce homelessness and its adverse health and social impacts. Attached to this submission is a list of key references which have informed the content of this submission (marked "A2").

## 1. How can homelessness be addressed?

Homelessness is a multifaceted and significant social problem in Melbourne and Australia more broadly. It is estimated almost 23,000 Victorian persons were homeless in 2011 (ABS, 2012), including over 6,000 youth who were without parental or adult care. Homeless persons are perhaps one of the most vulnerable groups in society, with many having experienced trauma and maltreatment in their family of origin and/or familial environment, physical and sexual violence and victimisation while homeless, and inadequate access to health and allied support services. Experiencing homelessness exposes persons to increased vulnerability to adverse physical, psychological, health, social and behavioural outcomes. Finding effective ways to reduce homelessness and related health and social problems is an important social and economic priority, in both the City of Melbourne and Victoria, and more broadly at a national level. Better models of health care and allied support services that improve outcomes, reduce disparities for disadvantaged and vulnerable groups, increase efficiency and provide greater value for a given expenditure are required to reduce the social and economic costs of homelessness and inform prevention strategies.

Homelessness is not a choice or a situation persons wish upon themselves and is not a criminal offence. The proposed amendments to the Activities (Public Amenity and Security) Local Law 2009, in particular the broadening of the existing ban on camping, will effectively make it illegal for people to be homeless, including rough sleeping, in the City of Melbourne. Of utmost concern is the lack of detail in the proposed amendments on what constitutes 'camping'. While the proposed Activities (Public Amenity and Security) Local Law 2017 contains definitions for operationalising over 70 terms, including 'liquor', 'permit', 'public place', 'smoke' and 'street art', the term 'camping' is *not* defined or operationalised. The broadening of the definition of camping, and the associated lack of detail on what constitutes this behaviour, makes it easier for homeless persons to be moved on and further disempowers homeless persons right to make choices and decisions, and to be treated with dignity and respect. The provision of adequate alternative accommodation, in a safe environment, for homeless persons should be a priority for the Melbourne City Council (and City of Melbourne more generally). The proposed amendment to 'camping' bylaw does not protect homeless persons in the City of Melbourne. Rather, broadening the ease of the Council in their capacity to move on homeless persons and issue fines for failure to comply with Local Law (refer Section 2) further emphasises the lack of support and/or appropriate referral homeless persons have commonly experienced and exacerbates the vulnerability of homeless persons. Also likely to be exacerbated are both the short- and long-term adverse outcomes associated with experiencing homelessness.

Provision of housing is part of the solution to homelessness, but it is not an absolute solution. One needs to consider not only the factors that contribute to an individuals' entry into homelessness, but also those factors which embed an individual in a cycle of homelessness and poverty, and those factors which contribute to adverse health and social outcomes among individuals experiencing homelessness. One approach to addressing the vulnerability of those at-risk of homelessness, homeless persons and the short- and long-term outcomes associated with experiencing homelessness, is to understand the influence of risk and protective factors on pathways into homelessness and related problems. Risk and protective factors are commonly arranged by the social context of the person including the peer group, family, community, and characteristics of the individual themselves (Catalano & Hawkins, 1996). Associations between risk and protective factors and homeless persons behaviour are understudied (e.g. Heerde & Hemphill, 2014, 2015a, 2015b; Heerde, Hemphill, & Scott, 2016). Whether these risk factors (those factors that increase the probability of experiencing social and health problems) and protective factors (those factors that decrease, mediate or moderate the effect of risk factors; Catalano & Hawkins, 1996; Pollard, Hawkins, & Arthur, 1999) are modifiable determinants that may reduce homelessness and/or homeless persons exposure to adverse outcomes, requires investigation. Where much of the existing homelessness research examining risk factors has done so in relation to identifying independent risk factors associated with entry into homelessness (Hamilton et al., 2011), the author of this submission contends that the influence of risk factors may accrue (e.g. homelessness itself as form of cumulative trauma; Heerde & Hemphill,

Submission to the Melbourne City Council on the Proposed Amendments to the Activities (Public Amenity and Security) Local Law 2009  
2017.

2016). Research targeted towards identifying and increasing understanding of the association between these factors and exposure to adverse outcomes is crucial to identifying effective ways to reduce the course of homelessness, related behaviours (e.g. violence, trauma resulting from victimisation) and social and health problems, and for reducing short- and long-term social and economic costs associated with homelessness.

**Recommendation 1: Advocate and provide leadership for increased investment in industry-research based partnerships and prevention and early intervention approaches targeting risk and protective factors.**

It is recommended that the Melbourne City Council abolish the proposed amendment to *camping* in the Activities (Public Amenity and Security) Local Law 2009 and use the present submission to undertake advocacy and provide leadership in conjunction with higher education (the University of Melbourne) and not-for-profit stakeholders (through research-industry partnerships such as that between myself and SalvoCare Eastern) to increase investment in risk and protective factor prevention and early intervention approaches. Such approaches are likely to promote social and economic benefits including reducing homelessness and associated health and social problems among homeless persons. To ensure that prevention and early intervention approaches are suitable locally, it is imperative the influence of risk and protective factors on the course of homelessness and related behaviours are studied in the Victorian context.

**2. Issuing infringements notices and fines to homeless persons.**

One of the largest single issues among persons experiencing or at risk of homelessness and seeking legal information, advice and representation, relates to infringements for public space offences (Justice Connect, 2016). Experiencing homelessness does not afford persons the opportunity to adhere to laws and regulations that prohibit offenses such as begging, public liquor consumption, littering, parking offences among those sleeping in their car, and physical or property violence offences (e.g. Farrow et al., 1992). Engagement in such behaviour is a common part of daily experiences for homeless persons (e.g. Busen & Engebretson, 2008). Given the complexities of homelessness and associated financial insecurities, homeless persons are less likely to be able to make payment on these infringement notices and fines and experience immense difficulty in navigating the complexities of the legal system (Justice Connect, 2016). The proposed amendments to the Activities (Public Amenity and Security) Local Law 2009, including the broadening of the existing ban on camping, clauses pertaining to unattended items in a public place, and apportion of associated infringement notices and fines, negatively add to the existing public laws and regulations to which homeless persons are unable to adhere.

There is a need for a comprehensive understanding of the influence of homelessness on the experience of adverse health and social problems (including being issued with infringement notices and fines) in order to better contextualise prevention and early intervention strategies. The importance of contextual factors, that is, those associated with being homelessness (e.g. sleeping rough, leaving personal items momentarily unattended), is especially warranted (e.g. Baron, 2004). The issuing, and non-payment, of infringement notices and fines are likely to result in homeless persons accruing minor misdemeanours that will prevent reintegration into mainstream society. For instance, Homeless Law estimates assistance is provided to over 100 homeless persons annually in relation to infringement notices, fines and misdemeanours (charges). Council enforcement of punitive measures, such as the proposed amendments to the Activities (Public Amenity and Security) Local Law 2009 is likely to add to this number.

Homeless persons are a vulnerable group who frequently report a lack of connection with and assistance from trusted supports, disengagement from education or employment, barriers to accessing safe and affordable housing, and poor health, social and behavioural outcomes (e.g. Ensign & Panke, 2002; Farrow, Deisher, Brown, Kulig, & Kipke, 1992). The proposed amendments to the Activities (Public Amenity and Security) Local Law 2009

make little advancement to addressing these vulnerabilities, and the implementation of the amendments poses significant risk for increasing the strain and marginalisation already experienced by homeless persons.

**Recommendation 2: Provide leadership for addressing the factors contributing to homeless person's health and behaviour that do not increase vulnerability and marginalisation.**

It is recommended that the Melbourne City Council abolish the proposed amendments relating to *issuing fines for items left unattended in a public place, charging a fee for the return of confiscated or impounded unattended items, and the selling, disposing or giving away of an impounded item unless payment of a fee or charge is received* outlined for the Activities (Public Amenity and Security) Local Law 2017. On the basis of this submission it is recommended the Melbourne City Council develop University partnerships (e.g. The University of Melbourne) to invest in research targeted towards identifying and increasing understanding of individual experiences of homelessness (and influential risk and protective factors) in relation to (non)adherence to laws and regulations. The information gained through the conduct of such research is critical to identifying those factors which are amenable to change, and for designing effective prevention and early intervention strategies. Benefits to homeless persons arising from this approach are likely to include decreased receipt and non-payment of infringement notices and fines, improved access to and engagement with support agencies, and improved health and social outcomes. Economic benefits are also likely to result from the building of socially inclusive practices in the form of improved engagement with health and support services and the development of effective prevention and early intervention approaches (e.g. those related to acquiring safe and affordable housing).

**3. The health and safety of homeless persons.**

A key element of my ( ) research is the identification and investigation of a range of modifiable influences (risk and protective factors) on homeless youths' exposure to physical and sexual violence (as victims and perpetrators). To ensure the dissemination of these findings at the grassroots level a predominate focus of the research-industry partnership I have with SalvoCare Eastern is the examination of exposure to physical violence among homeless young people in Central Melbourne. Preliminary findings from this research showed rates of physically violent behaviour were high, with two thirds of participants reporting having taken part in a physical fight, and one in three participants reporting having been physically assaulted, or having used a weapon to harm, another person. Findings also suggested engagement in physically violent behaviour may be associated with situational antecedents associated with being homeless, such as threats to physical safety arising from sleeping on the streets, or perceived threats from specific situations encountered while homeless. For instance, *"I wasn't like I'm going to beat this person until they can't breathe, I was like I'm going to beat this person until they can't beat me anymore"* (Participant 3) and *"...if somebody's going to pull something on me I'm not going to be the one that's getting chopped up."* (Participant 1). Rates of physical victimisation were also high, with findings showing almost 40% of youth had been physically assaulted and required medical attention for injuries sustained, and two thirds had been threatened with serious physical violence, since they became homeless (Heerde, Hemphill & Scott, 2016).

For homeless persons, exposure to, involvement in, and the threat of daily violence and victimisation are regular occurrences, and the contribution of these incidences to physical and psychological health morbidities warrants investigation, attention and addressing through social policy and practice. International research has shown homelessness is purportedly linked to engagement in unsafe or risky behaviours (e.g. the use of weapons, street fighting) and victimisation (e.g. physical and sexual assault) (e.g. Baron, 2004; Schreck, Wright, & Miller, 2002). International research has also purported that associations between homelessness and perpetration of violence exist, with homeless persons perceiving the use of violence as needed in situations such as seeking, obtaining and maintaining shelter, responding to peers and other social network members, and in response to a paucity of money and food (e.g. Baron, 2003). Research examining these occurrences in the Victorian, and Australian context, are particularly lacking.

Submission to the Melbourne City Council on the Proposed Amendments to the Activities (Public Amenity and Security) Local Law 2009  
2017.

Consequently, much concern should surround the short- and long-term physical and psychological health impacts of these behaviours and experiences. Homeless persons, and in particular youth, commonly display a higher prevalence of morbidities relating to transient living and lack of appropriate shelter (e.g. Busen & Engebretson, 2008) than non-homeless persons. Homeless persons commonly report experiencing health issues relating to pregnancy, depression, and other mental health problems, substance abuse, injury relating to violence and suicidal behaviour, and poor overall physical and mental health (e.g. Busen & Engebretson, 2008). Furthermore, the decisions of homeless persons to seek health care and assistance, or not, are often compounded by a low perceived problem severity and barriers to engagement with health services (Fisher, Florsheim, & Sheetz, 2005). Given the lack of Australian research on these matters, the City of Melbourne (and Melbourne City Council) is in a prime position to provide leadership in this area.

**Recommendation 3: Invest in approaches which examine the influence of risk and protective factors on exposure to violent behaviours and coordinated service integration.**

It is recommended that the Melbourne City Council *invest in approaches which examine the influence of risk and protective factors (as per Recommendations 1 and 2) on exposure to violent behaviours and coordinated service integration*. Collectively, the extant research outlined in this submission and research findings emerging from my research-industry partnership with SalvoCare Eastern, shows that there is strong evidence that homeless persons are exposed to multiple forms of violent behaviour, which is likely to negatively impact their health and social behaviour and welfare. Investment in approaches which examine the influence of risk and protective factors on exposure to violent behaviours among homeless persons and in coordinated service integration is likely to be to address these issues. Investment in service integration should include an examination of models of health care for servicing homeless persons, strategies for reaching and engaging homeless persons, and mechanisms for continued health care (e.g. Ensign & Panke, 2001). Importantly, the examination of risk and protective factors and service integration should be examined as part of a Melbourne City Council-University partnership (e.g. The University of Melbourne; refer Recommendations 1 and 2).

#### **4. Concluding remarks**

I, \_\_\_\_\_, oppose the Melbourne City Council's proposed amendments to the Activities (Public Amenity and Security) Local Law 2009. Based on the above synthesis of extant and current homelessness research and practice, my three specific recommendations were developed for coordinating research and strategies to increase knowledge of the: factors that influence homelessness, health and social behaviour of homeless persons, and the design of effective prevention and early intervention approaches. In sum these recommendations are for the Melbourne City Council to:

1. Advocate and provide leadership for increased investment in industry-research based partnerships and prevention and early intervention approaches targeting risk and protective factors;
2. Provide leadership for addressing the factors contributing to homeless person's health and behaviour that do not increase vulnerability and marginalisation; and
3. Invest in approaches which examine the influence of risk and protective factors on exposure to violent behaviours and coordinated service integration.

The amendments to the Activities Local Law 2009 should address the needs of all persons accessing public space in the City of Melbourne, including homeless persons. Homelessness is not a problem that can be solved by one person, team or Government alone. Addressing homelessness, and the associated health, social and behavioural outcomes, requires a coordinated approach and long-term strategy. Homeless persons are marginalised and vulnerable, without appropriate safe and suitable housing or shelter. The Melbourne City Council (and City of Melbourne more generally) has a responsibility to provide adequate alternative accommodation, in a safe environment, for homeless persons. As a first step, this should involve Council

Submission to the Melbourne City Council on the Proposed Amendments to the Activities (Public Amenity and Security) Local Law 2009  
2017.

investment in the development of University partnerships and coordinated service integration. Homeless persons should not be vilified for the situation they currently face. Homelessness is not a choice, nor is it a crime. Broadening camping local laws, permitting those who are homeless and sleeping rough to be more easily moved on, and imposing infringement notices and fines for camping and unattended items, intensifies the crisis, marginalisation and vulnerability these persons are already facing. Such approaches further disempower homeless persons, remove their ability to make choices and decisions which ensure their safety and wellbeing, and pose risk for homeless persons being moved away from city-based support services. All people have a right to feel safe within the City of Melbourne, including those who are at-risk of and experiencing homelessness. The proposed amendments, although designed to protect public amenity and access within the City of Melbourne, exclude a considerable proportion of City of Melbourne patrons – those who are experiencing homelessness.

I appreciate the opportunity to present this submission and welcome the opportunity to discuss my research and recommendations with you in further detail. If you have any queries regarding this submission, please feel free to contact me using the details provided below.

Yours sincerely,

Westpac Bicentennial Foundation Research Fellow  
Department of Pediatrics, Faculty of Medicine, Dentistry and Health Sciences  
The University of Melbourne  
Honorary Research Fellow  
Murdoch Childrens Research Institute



## **A2: Key References**

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**From:**  
**Sent:** Friday, 17 March 2017 9:47 PM  
**To:** CoM Meetings  
**Subject:** White Paper on No Camping Laws  
**Attachments:** 01-homeless-white-paper.pdf

Please find attached my submission concerning the proposed move along by laws.

Thank you for your attention.

Regards,

BA (Hons), MFA, PhD

# If the Homeless Were Kittens

2017 February 27

*"Besides love and sympathy, animals exhibit other qualities connected with the social instincts which in us would be called moral."* — Charles Darwin



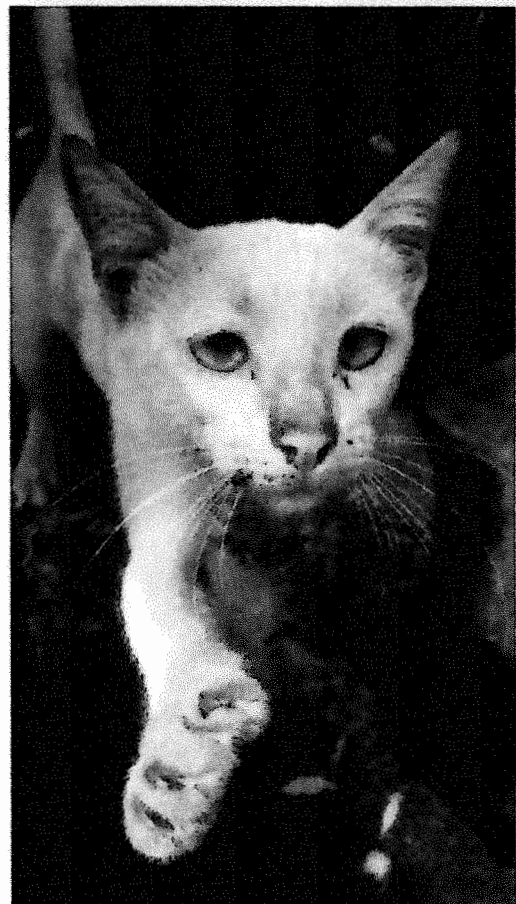
We are all creatures of this world. We share so much with the rest of life, and it is no insult to say that we are also animals.

Humans are a domesticated species. We like being around each other. We have mirror neurons in our brains that create empathy with other humans. The brain rewards socialisation with the hormone dopamine. To withstand a high density of humans we have to be particularly tolerant of one another.



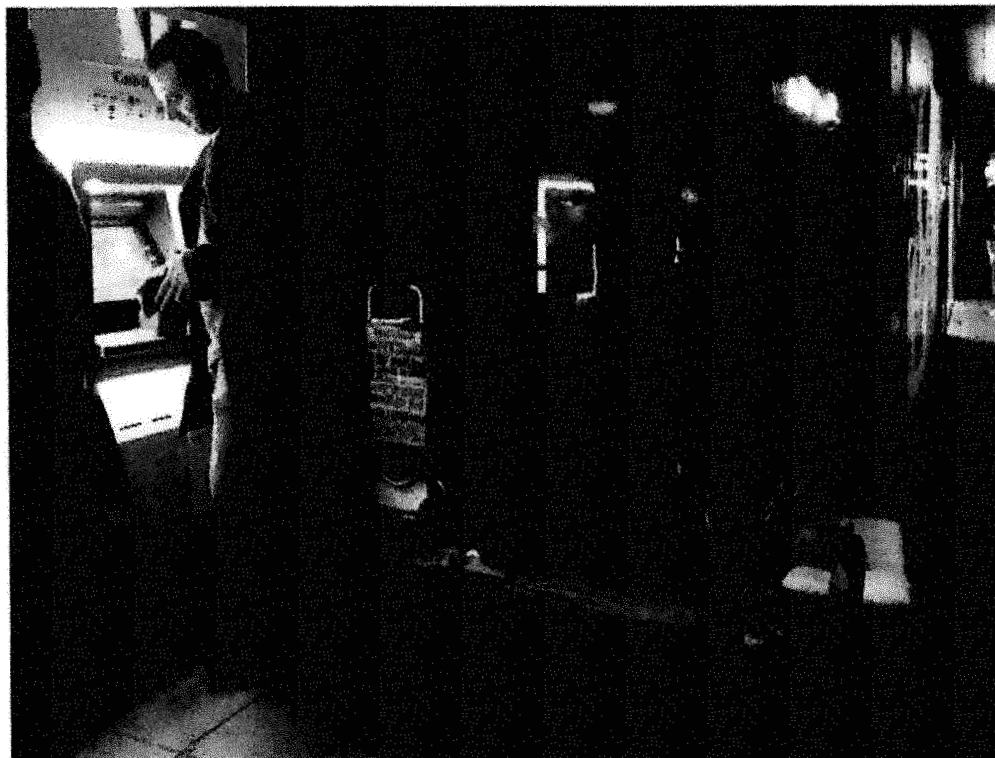
Like other domestic animals when we are abandoned and mistreated, we tend to become feral.

We do not always begrudge a cat or a dog for becoming feral. We understand that life can be tough. We assume that a carer has been remiss in their duties and this poor animal must suffer for the carer's irresponsibility. We rarely blame the animal for its misfortune.





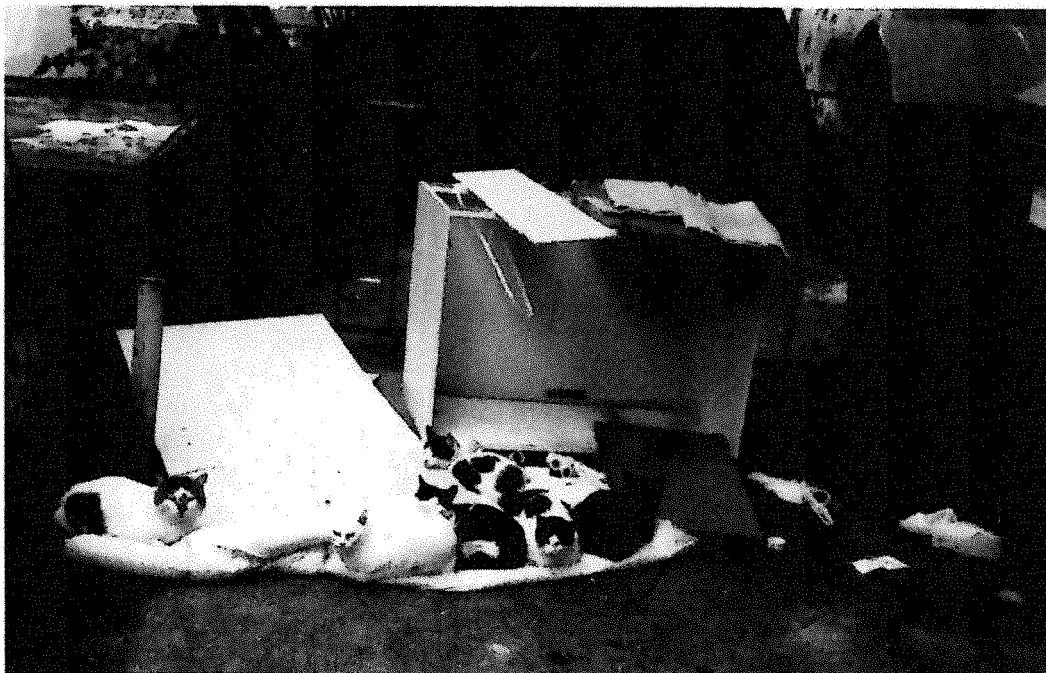
We rarely blame a child for their misfortune, especially if they live in another country. However, children who have slipped between the cracks and never received any help become adults. When they have never known kindness deep enough to live a fully human life, we fear that the kitten has become a tiger and now feel justified in mistreating the adult for the threat they now seem to pose.



Feral animals like wild animals can be tamed. If they are respected, treated well, given the time to learn how to trust, we are guaranteed more safety in their presence. Treating them badly will simply create a meaner animal.



Civilisation is a system of processes where we train ourselves to be tame.



Antoine de Saint-Exupery in his literary classic *The Little Prince* says, "People have forgotten this truth...but you mustn't forget it. You become responsible forever for what you have tamed."



Australia was one of eight nations to draft the *Universal Declaration of Human Rights*. We signed this declaration and later signed the *International Covenant on Economic, Social and Cultural Rights* which is a binding treaty.





This is the promise Australia made:

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.

We are expected at every level of our country to uphold this principle, because it is a matter of universal human decency. Surely as Australians we keep our promises? Integrity engenders trust. Trust is a critical foundation for all relationships and therefore a critical foundation to society.



You may be thinking, how could we possibly afford to uphold this agreement? Offering such security may seem like a pipe dream, but studies have shown *giving people homes saves municipalities money.*

This is from an article published by the Canadian Broadcast Corporation:

A groundbreaking study suggests giving homeless Canadians homes first saves money

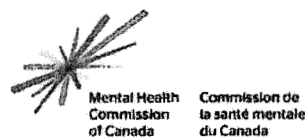
It's a report that could change the way that homeless people are treated in Canada. Funded by the federal government, "At Home/Chez Soi" is the largest study of its kind, with five years of research conducted in five major cities. It's estimated that more than 150,000 people are homeless across the country, costing Canadians \$1.4 billion each year.

The report suggests putting homeless people in housing, even before they have dealt with other problems such as mental illness and addiction, works to improve their lives. And it saves money.

"We have actually landed on something that shows clear evidence of an approach that keeps people in houses and off the streets," Louise Bradley, President and CEO of the Mental Health Commission of Canada, told Carol.

"Not only is it effective for them and the right thing to do," she continued, "we were also able to show that there is actually quite a cost-benefit for doing it as well."

<http://www.cbc.ca/radio/asithappens/wednesday-msf-united-nations-south-sudan-blue-whale-deaths-poe-statue-and-more-1.2903897/a-groundbreaking-study-suggests-giving-homeless-canadians-homes-first-saves-money-1.2903898>



You may say, "Oh, but that is theoretical. How do we know it would really work?" You know because it has already been done successfully by the Canadian city of Medicine Hat. This is from another Canadian Broadcast Corporation article.

Medicine Hat, a city in southern Alberta, pledged in 2009 to put an end to homelessness. Now they say they've fulfilled their promise.

No one in the city spends more than 10 days in an emergency shelter or on the streets. If you've got no place to go, they'll simply provide you with housing...

Clugston admits that when the project began in 2009, when he was an alderman, he was an active opponent of the plan.

"I even said some dumb things like, 'Why should they have granite countertops when I don't,'" he says. "However, I've come around to realize that this makes financial sense."

Clugston says that it costs about \$20,000 a year to house someone. If they're on the street, it can cost up to \$100,000 a year.

<http://www.cbc.ca/radio/asithappens/as-it-happens-thursday-edition-1.3074402/medicine-hat-becomes-the-first-city-in-canada-to-eliminate-homelessness-1.3074742>



You eradicate homelessness by giving people homes. Not inadequate temporary shelters. Not by shoving them off your streets making them someone else's problem. You end homelessness by giving people homes. Not by privatising accommodation and handing it off to poorly regulated slum lords. You tame people by seeing to their needs and treating them well. These are the things that will make Melbourne a humane and genuinely liveable city.



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**From:**  
**Sent:** Friday, 17 March 2017 10:25 PM  
**To:** CoM Meetings  
**Cc:**  
**Subject:** Proposed Activities (Public Amenity and Security) Local Law 2017  
**Attachments:** Combined Attachments 20170317 102406.pdf

Dear Sirs,

Please find **attached** submission to the Melbourne City Council into the proposed Activities (Public Amenity and Security) Local Law 2017, made on behalf of Victorian Women Lawyers.

Kind Regards,

; Victorian Women Lawyers



Address: Level 10, 114 William Street, Melbourne VIC 3000, Australia  
Phone: +61 (0)3 9241 1111  
Email: [info@cornwalls.com.au](mailto:info@cornwalls.com.au)  
Web: [www.cornwalls.com.au](http://www.cornwalls.com.au)

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**Submission to the Melbourne City Council into the proposed  
Activities (Public Amenity and Security) Local Law 2017**

Submitted by:	Victorian Women Lawyers Association Inc ( <b>VWL</b> )
Submitted electronically to:	Melbourne City Council Manager Governance and Legal GPO Box 1603 Melbourne VIC 3001
Contact:	, ,



## About us

Victorian Women Lawyers (VWL) is a voluntary association that promotes and protects the interests of women in the legal profession. Formed in 1996, VWL now has over 800 members. VWL provides a network for information exchange, social interaction and continuing education and reform within the legal profession and broader community. VWL has undertaken research into work practices affecting women in the legal profession, and provided protocols and training to effect change.

Details of our publications and submissions are available at [www.vwl.asn.au](http://www.vwl.asn.au) under the 'Publications' tab.

Since 1996 VWL has advocated for the equal representation of women and promoted the understanding and support of women's legal and human rights by identifying, highlighting and eradicating discrimination against women in the law and in the legal system, and achieving justice and equality for all women.

## Terms of Reference

On 7 February 2017, a report on homelessness and public amenity was presented to the Future Melbourne (Finance and Governance) Committee (**Committee**) for inquiry and report.<sup>1</sup> The purpose of this report was to provide an update on strategies to address homelessness in the City of Melbourne and seek to broaden the current ban on public camping and better respond to items left unattended in a public place.<sup>2</sup> Specifically, this involved a proposal to amend the Activities Local Law 2009 (**Local Law**), which regulates inter alia the use of public space in the City of Melbourne.

The Committee has endorsed the proposed amendments to the Local Law. As a result, the City of Melbourne is engaging in public consultation to understand the community's views on the proposed amendments.

## The Amending Law – overview

Melbourne City Council has stated that the purpose and general purport of the amendments is to:

- a. amend the objectives of the Principal Local Law including inserting a new objective to support the Council's disability action plan prepared under section 38 of the *Disability Act 2006*
- b. broaden the definition of camping in the Principal Local Law
- c. provide that a person must not without a permit leave items unattended in a public place, an infringement penalty for contravention and a process by which such unattended items can be confiscated and impounded
- d. update the penalties fixed for infringements in the Principal Local Law as a consequence of the proposed Local Law
- e. provide for the peace, order and good government of the municipality.

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<sup>1</sup> Ben Rimmer, Agenda item 6.2 to Future Melbourne (Finance and Governance) Committee, *Homelessness and public amenity*, 7 February 2017.

<sup>2</sup> Ibid 1.



Key aspects of the proposed changes are set out in the Activities (Public Amenity and Security) Local Law 2017 (**Amending Law**) and include the following:

1. Broadening the ban on camping in public places by removing the reference to 'a vehicle, tent, caravan or any type of temporary or provisional form of accommodation,' in part 2, clause 2.8 and will instead provide: 'unless in accordance with a permit, a person must not camp in or on any public place'<sup>3</sup>; and
2. Providing for confiscation and disposal of unattended items set out in a new clause 2.12 that provides, unless in accordance with a permit, a person must not leave any item unattended in a public place.<sup>4</sup> If an item is left unattended, an authorised officer may issue an infringement for \$388.65 (2.5 penalty units) or a person may be charged and brought before the Magistrates' Court. If a person is found guilty of an offence in court, they are liable to a penalty of up to \$3109.20.

In addition to giving someone an infringement notice for leaving items unattended, authorised officers can confiscate and impound the item, and can sell, destroy, or give away the item if a fee is not paid within 14 days.<sup>5</sup> An authorised officer can also direct a person to leave a public place (i.e. can move someone on) and, if the person fails to do this, they can be fined or charged.

Under part 14 of the Local Law<sup>6</sup>, which is entitled 'Enforcement', 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 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.

### **Our key concerns**

VWL expresses three key concerns with respect to the proposed changes to the Local Law as set out in the Amending Law.

1. Almost half of all Victorians experiencing homelessness are women, and the most common cause of homelessness in Victoria is family violence.<sup>7</sup> Accordingly, women and children who are subject to family violence are particularly vulnerable to homelessness. When women and children make the decision to leave a situation of family violence, this usually requires that they flee their homes. Ongoing issues with insecure and inappropriate housing often follows, with disruption to employment and support networks, increasing the likelihood of homelessness. Traditionally, the focus of a social policy response has been to support women to leave situations of family violence through the funding of network emergency and transitional accommodation.<sup>8</sup> As such, VWL believes that any law

<sup>3</sup> Activities (Public Amenity and Security) Local Law 2017, cl 2.8.

<sup>4</sup> Ibid cl 2.12.1.

<sup>5</sup> Ibid cl 2.12.2-2.12.5.

<sup>6</sup> Activities Local Law 2009, pt 14.

<sup>7</sup> Justice Connect, 'Keeping Women and Children Housed – Women's Homelessness Prevention Program' 22 December 2016

<sup>8</sup> Jenni Southwell, 'Family Violence and Homelessness – removing the perpetrator from the home' (Discussion Paper) No.3, Domestic Violence and Incest Resource Centre, Melbourne, 2002, 4-7.





reform in relation to homelessness of women and children, should seek to enhance their safety and wellbeing and reduce the risk of family violence.

VWL is particularly concerned about the negative impact of the proposed reforms increasing the risk of exposing women and children to dangerous situations, by pushing them further outside of Melbourne's city centre. Fear of such social disadvantage may have a disproportionate effect on women and may further discourage women from leaving violent relationships.

2. The proposed enforcement-based approaches to homelessness will be ineffective and administratively burdensome for authorised officers and the Council.

3. VWL considers that the Amending Law attempts to ban homelessness in the City of Melbourne. VWL submits that this is a breach of human rights law. As a result, the proposed changes are a backward step for the City of Melbourne's leadership and progress in respect of the message that, 'it is not illegal to be homeless'. The proposed laws undermine this important message and the beneficial work of the City of Melbourne, in collaboration with the Victorian government to address the underlying causes of homelessness, rather than focussing on measures that will have the effect of moving homeless people to another location.

### **Homelessness in Melbourne**

Currently in Australia, 6,813 homeless people stay in improvised dwellings, tents or sleeping out.<sup>9</sup> The City of Melbourne Homelessness Street Count recorded that in 2016 there were approximately 247 rough sleepers in Melbourne's central business district. This revealed an increase in Melbourne's homeless population from 142 since 2014, a 74% increase.<sup>10</sup> In Victoria, there are 22,000 people experiencing homelessness and 33,000 on the waiting list for public housing.<sup>11</sup>

In response, the Victorian government announced a \$616m homelessness package, which included better responses for women and children fleeing family violence and additionally \$185m towards 1,100 public housing properties last year.<sup>12</sup>

### **Comments on the issues for consideration:**

#### **1. Impact on people experiencing homelessness**

Council's 2016-17 budget provided an intention to increase support for those experiencing homelessness in Melbourne's business district by investing an additional \$2m to deliver a full

<sup>9</sup> Above n 8.

<sup>10</sup> See 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>>.

<sup>11</sup> See Australian Bureau of Statistics, *Census of Population and Housing: Estimating Homelessness* (November 2012) <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/2049.0>>; Victorian State Government, *Public housing waiting and transfer list* (September 2016) <<http://www.dhs.vic.gov.au/about-the-department/documents-and-resources/research,-data-and-statistics/public-housing-waiting-and-transfer-list>>.

<sup>12</sup> Melissa Davey, 'Homelessness won't be banned in City of Melbourne says council', *The Guardian* (online), 3 February 2017 <<https://www.theguardian.com/australia-news/2017/feb/03/homelessness-wont-be-banned-in-city-of-melbourne-says-council>>.



spectrum of activities including, but not limited to, safe night-time spaces and funding for housing programs.<sup>13</sup> Yet, these amendments appear inconsistent with the Council's goals to assist the vulnerability of those sleeping rough.

The proposal to amend the definition of prohibited forms of camping in clause 2.8 of the Amending Law is extremely broad and effectively makes homelessness illegal in Melbourne. Further, these changes will enable authorised officers to require people sleeping rough to move on, which risks pushing homeless people outside of the city and isolating them from further services and supports. Council to Homeless Persons acting chief executive, Kate Colvin, stated that 'this could expose them to greater risk of assault' as rough sleepers pick visible parts of the city because it's usually safer due to CCTV cameras and lighting.<sup>14</sup>

The proposed provisions in clause 2.12 regarding unattended items, may also impact rough sleepers. Founder of Blessing Bags, Laura Toole, is concerned that the reforms will further marginalise the homeless and will cause difficulty for organisations that provide essential items such as toothpaste, mouth wash, razors, soup, food items, shampoo and conditioner and sanitary items.<sup>15</sup> The organisation has distributed approximately 3,000 bags of essentials to the homeless in 1.5 years.<sup>16</sup>

There is also a significant risk that vulnerable members of the community will get caught up in the justice system through fines or charges, because of the inevitability that items may be left temporarily such as when obtaining food or using amenities. Justice Connect Homeless Law has reported assisting approximately 100 clients every year with fines and charges for 'public space offences' and as such, VWL expects this number to increase if these changes are implemented.<sup>17</sup>

## 2. Ineffectiveness of the Amending Law

The Principal Lawyer of Justice Connect Homeless Law, Lucy Adams, has commented that after speaking with over 60 experts regarding the challenges of regulating public space and responding effectively to homelessness, leading cities have not identified laws of this nature to be an effective response to homelessness.<sup>18</sup> Justice Connect Homeless Laws commented as follows:

*'To go down this path would be a damaging step in the wrong direction for Melbourne. At a time when we could be leading best-practice responses to homelessness, instead we are at risk of taking a path that has been recognised as punitive, expensive and ineffective.'*<sup>19</sup>

<sup>13</sup> Annual Plan and Budget 2016-2017 <<http://www.melbourne.vic.gov.au/about-council/vision-goals/Pages/annual-plan-budget.aspx>>.

<sup>14</sup> Cassie Zervos and John Masanauskas, 'Melbourne rough sleepers exposed to risk if proposed changes go ahead, support services fear', *The Herald Sun* (online) 7 February 2017 <<http://www.heraldsun.com.au/news/victoria/melbourne-rough-sleepers-exposed-to-risk-if-proposed-changes-go-ahead-support-services-fear/news-story/9484751b0beca2cd582948f9b639ac69>>.

<sup>15</sup> Comment to Victorian Women Lawyers (13 March 2017).

<sup>16</sup> Blessing Bags Melbourne, *About us* <<https://www.blessingbagsmelbourne.com/>>.

<sup>17</sup> Justice Connect, *Melbourne, don't criminalise homelessness* (February 2017)

<<https://www.justiceconnect.org.au/our-programs/homeless-law/law-and-policy-reform/infringements-and-public-space-offences/melbourne-dont-criminalise-homelessness>>.

<sup>18</sup> Justice Connect Homeless Law submission to the Future Melbourne Committee on the Activities (Public Amenity and Security) Local Law 2017, 7 February 2017, 4.

<sup>19</sup> Above n 15.



Other cities, such as Los Angeles in the United States, have enacted similar laws empowering police to move people on for sitting or sleeping on the street. Despite these laws, at least 5,000 people still sleep in the 50-block central city area.<sup>20</sup> The US Federal Government's 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 marginalise people experiencing homelessness, but rather strike at the core factors contributing to homelessness.'*<sup>21</sup>

### **3. Burden for authorised officers and the Council**

The Amending Law increases enforcement powers for authorised officers and the Council. This places the burden on the Council to effectively implement the laws, placing responsibility on the Council to address our homelessness crisis. In reality, continued collaboration of the City of Melbourne and the government, alongside other organisations should be utilised to develop long-term solutions to address homelessness in Melbourne.

### **4. Potential human rights issues**

VWL is concerned that the criminalisation of homelessness violates ss 10(b) and 13(a) of the *Victorian Charter of Human Rights and Responsibilities Act 2006 (Vic)*<sup>22</sup> (**Charter**) and international treaties.<sup>23</sup>

As a signatory to multiple international human rights treaties, Australia (and the City of Melbourne) has a duty to implement solutions to homelessness that ensures the promotion and protection of the rights contained within those international laws. Leilani Farha, UN Special Rapporteur on adequate housing said in relation to the Amending Law:

*"The criminalisation of homelessness is deeply concerning and violates international human rights law. It's bad enough that homeless people are being swept off the streets by city officials. The proposed law goes further and is discriminatory – stopping people from engaging in life sustaining activities, and penalizing them because they are poor and have no place to live."*<sup>24</sup>

### **Concluding remarks**

VWL does not endorse the Amending Law. In particular, VWL does not support the following:

1. proposal to broaden the definition of prohibited forms of camping; and

<sup>20</sup> Above n 16.

<sup>21</sup> Ibid.

<sup>22</sup> *Victorian Charter of Human Rights and Responsibilities Act 2006 (Vic)* s 10(b): A person must not be treated or punished in a cruel, inhuman or degrading way. Charter s 13(a). A person has the right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with.

<sup>23</sup> Including but not limited to, the right to freedom from torture and cruel, inhuman and degrading treatment or punishment (article 7 International Covenant on Civil and Political Rights 9 (ICCPR)); the right to liberty and security of person (article 9 ICCPR); the right to privacy (article 17 ICCPR); the right to adequate housing (article 11 International Covenant on Economic Social and Cultural Rights).

<sup>24</sup> UN Human Rights, Office of the High Commissioner, 'Proposed "Homeless Ban" in Australia cause for concern – UN Expert', Geneva, 13 March 2017. This article is annexure A to our submissions.



2. proposal to insert a new clause providing for confiscation and disposal of unattended items, as well as a fine of \$388.65 for leaving items unattended.

The Council claims that such changes will broaden restriction around camping to 'better balance' the needs of all people in sharing public space.<sup>25</sup> While VWL acknowledges that public spaces should be regulated to promote community health and safety, this should not be achieved by penalising some of the most vulnerable members of our community. This would further disadvantage rough sleepers including women and children fleeing family violence situations.

Instead, VWL supports solutions that focus on providing housing and support the homeless in Melbourne's central business district and welcomes the Victorian government's recent announcement to invest in a new homelessness package. VWL further supports the continued collaboration of the City of Melbourne and the government, alongside organisations in developing long-term solutions to addressing homelessness in Melbourne.

#### **Annexure A**

UN Human Rights, Office of the High Commissioner, 'Proposed "Homeless Ban" in Australia cause for concern – UN Expert', Geneva, 13 March 2017

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<sup>25</sup> Above n 10.

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## Proposed "Homeless Ban" in Australia cause for concern – UN Expert

GENEVA (13 March 2017) - Amendments to a local law in Melbourne, Australia, targeting homeless people living on the streets have triggered serious international human rights concern.

The proposed measures include a ban on camping in Melbourne and the potential for penalties to be imposed on anyone who leaves items unattended in public. The city council is due to vote on the proposed changes on 17 March. If passed, the law would legitimize discriminatory stereotypes of an already marginalized population.

The UN Special Rapporteur on the right to housing, Leilani Farha, said that: "While homeless people are not specifically referenced, it is clear they are the target; the amendment was put forward following the forcible removal of a homeless camp in the city centre last month."

"The criminalization of homelessness is deeply concerning and violates international human rights law. It's bad enough that homeless people are being swept off the streets by city officials. The proposed law goes further and is discriminatory – stopping people from engaging in life sustaining activities, and penalizing them because they are poor and have no place to live," Ms. Farha said.

The Special Rapporteur released a report on homelessness as a global human rights crisis, last year. Ms. Farha has also been in contact with the government of Australia to discuss the issues in question.

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.

"While it is commendable that the local government is consulting the public on the proposed changes to the law, the discriminatory nature of the amendments and the accompanying public campaign discouraging donations to homeless people is unacceptable," Ms. Farha stressed.

There has been a 74% increase in the homeless population in Melbourne over a two-year period prompting concern from residents and local advocates. In 2016 it was estimated that 250 people were sleeping rough in the city.

"The local council now has an opportunity to reverse its course at the next vote and reconsider the proposed changes. I encourage the city to focus on its human rights obligations, which leave no room for discrimination," Ms. Farha said. She added she was looking forward to the response from the Australian government and would be watching the situation closely.

ENDS

*Ms. Leilani Farha (Canada) is the UN Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context. She took up her mandate in June 2014. Ms. Farha is the Executive Director of the NGO Canada without Poverty, based in Ottawa, Canada. A lawyer by training, for the past 20 years Ms. Farha has worked both internationally and domestically on the implementation of the right to adequate housing for the most marginalized groups and on the situation of people living in poverty.*

For further information and media enquiries, please contact: Juana Sotomayor (+41 22 917 9445/ or +41 78 77 60 371 / [jsotomayor@ohchr.org](mailto:jsotomayor@ohchr.org)) or write to [srhousing@ohchr.org](mailto:srhousing@ohchr.org)

For media inquiries related to other UN independent experts:  
Bryan Wilson, OHCHR Media Unit (+ 41 22 917 9826 / [mediaconsultant1@ohchr.org](mailto:mediaconsultant1@ohchr.org))

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**From:**  
**Sent:** Friday, 17 March 2017 11:55 PM  
**To:** CoM Meetings  
**Subject:** Proposed Activities (Public Amenity and Security) Local Law 2017  
**Attachments:** . Proposed Activities (Public Amenity and Security) Local Law 2017.docx

To Whom It May Concern:

Please find attached my submission regarding Proposed Activities (Public Amenity and Security) Local Law 2017.

I would also request to make an oral submission to the Council on the matter at the appropriate time, and- or to meet with Councillors Reece, Sullivan, and Lord Mayor Doyle to discuss the matter, along with several of my colleagues who share my expertise in this matter.

Sincerely,

School of Humanities and Social Sciences Deakin University

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School of Humanities and Social Sciences  
Faculty of Arts and Education  
Deakin University

March 17, 2017

Manager Governance and Legal,  
Melbourne City Council

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

Dear Councillors and Members of the Future of Melbourne Committee:

I write to you as an academic who has spent the last decade studying the impact of laws like the Council's proposed changes to Activities Local Law 2009. I am opposed to it in the strongest terms, on the basis of an extensive body of academic literature, and my own anthropological work on homelessness, public space, and urban redevelopment. I would welcome a meeting with interested Councillors who would like to review the empirical research to which I refer here.

In this letter, I will first recap criticisms of the bylaws that no doubt recur throughout the submissions, but bear repeating: 1) that they *criminalise homelessness* itself (and therefore represents a human rights violation); 2) that they *intensify already heavy burdens* upon homeless people; and 3) that *they do not work*, and are *prohibitively expensive* for the public purse.

Second, I want to offer some background and analysis for the issue about which may help to reframe the Councillors' approach to the problems of homelessness, and which, I hope will put these bylaws into a new light. In the process, I want to suggest alternatives that have been tried by other cities in the United States, where my research is largely concentrated.

### **I. Recapping common criticisms**

As the council has no doubt heard from advocates, experts in the homeless service sector, and homeless persons themselves, the research consistently shows these laws to be inadvisable for at least three reasons:

*Reason 1. That these laws constitute a criminalisation of homelessness:* Anthropologists, geographers, sociologists, and legal studies scholars have all identified them as part of a trend which, in the United States, has been referred to as the "*criminalisation of homelessness*".

The Lord Mayor has rejected these accusations, insisting that nowhere in the law does the City make homelessness itself illegal. Further, the Lord Mayor has insisted that the fines will not be the city's first choice, and only be a last recourse. This assumes that homeless people require both carrots and sticks to be coerced into accepting the city's "pathways out of homelessness". This demonstrates an *ill-informed understanding of homelessness*.

(Incidentally, this misunderstanding is a very, very old one. In the 1800s, for example, the English workhouses were by design essentially prisons, and almost unbearable places, under the assumption that



punishments were necessary to dissuade people from becoming vagrants. Needless to say, the workhouses did not accomplish this, and were invariably full.)

For many individuals, *rough sleeping remains the best or only available choice*. (Consider the case of one developmentally disabled man I interviewed, who was raped in crisis accommodation, and whose panic attacks won't permit him to return. Consider the case of another disabled veteran I interviewed, who slept rough because, he told me, "Shelters are a good place to get stabbed, to get your stuff stolen, or to get tuberculosis". He neglected to mention the bed bugs, or the Christian evangelism, but I digress. For these people, the public street is indeed the best or only available option.)

In these situations, to fine people for rough sleeping is in effect to criminalise homelessness. (I invite the Councillors to consider the work of legal studies scholar Jeremy Waldron, who has demonstrated this at length.) As such, they represent a serious infringement of human rights, and representatives of the United Nations have publicly singled out the Melbourne City Council for criticism on this account.

*Reason 2. That these laws are disproportionate in their application and burden upon already marginalised people:* The Lord Mayor has insisted that this law will not unduly burden homeless people because it will not be applied immediately or to every rough sleeper. This is partially supported by the research, but not for the reasons the Lord Mayor imagines: research shows that the *police and courts disproportionately apply these penalties to individuals already experiencing other forms of societal disadvantage and discrimination*, such as racism, sexism, homophobia, and so on. (I invite the Councillors to consult, for example, the wide range of reports on this matter published by the Homeless Rights Advocacy Project, a collective of scholars and researchers from Seattle University.) This is, of course, the result of both individual prejudices and systemic institutional biases which are well documented in a range of public nuisance laws. (Consider the work by Katherine Beckett and Steven Herbert on Seattle's exclusion laws, or Naomi Murakawa's work on the history of public "quality of life" laws.)

As such, these laws represent an amplification of existing burdens, both material and cultural. In addition to the unreasonable expense of the fines (levied against individuals precisely because they do not have enough money in the first place), they put people into contact with the legal system (since unpaid fines very often turn into arrest warrants), which is well documented to have negative effects on their future success. They also impede mobility and the ability to store and maintain necessary possessions (since homeless people must limit their possessions to things they can carry with them). And, of course, all of these consequences amplify the stress and stigma experienced by homeless people.

As such these bylaws are most likely to be destructive of the lives of homeless people, and to amplify other kinds of societal disadvantages, including racism, sexism, homophobia, disability, and so on.

Council members such as Aaron Wood have insisted that the amended bylaws represent efforts to connect homeless individuals with services. He and other councillors are repeating a line here given by cities such as Seattle, San Francisco, and New York City, who introduced similar forms of criminalisation in the 1990s. In all of these cases, city officials insisted that to balance out the effects of the new penalties, more outreach and more services would be offered. In hindsight it is painfully obvious that *there has never been adequate political will to offer enough funding to meet the needs of rough sleepers*. A visit to any of these American cities will show this clearly. In this case, whether deliberate or not, the "outreach" offered amounts to a political excuse for the punishments, which only further marginalise the poor.

Indeed, as I have described above, the 'carrots and sticks' approach would not be necessary if the incentives were adequate. By all means, provide increased outreach, but there is no empirical justification for penalizing people as well.

(Incidentally, a common myth suggests the growth of homelessness in these cities occurs because homeless people migrate there in search of services—implying that, cities mustn't offer too many services, lest they attract more poor people. This has, indeed, been shown to be a myth. More homeless people in the city of Seattle are native-born, for example, than the overall population.)

*Reason 3. That the criminalization of homelessness is an unnecessary cost for the city:* As many American cities have found, the wide range of services used by homeless people—and in particular the cost of emergency services and law enforcement—constitute an extremely expensive burden on the public purse. This has been so, in spite of a range of public nuisance laws intended to mitigate the problem. Research in the United States and Australia has suggested that *it is by far cheaper to simply pay for housing for these people.*

What this suggests should not be surprising: homelessness is a structural economic problem, and cannot be dealt with by penalising the survival strategies of homeless people themselves (whether that is the intention of the bylaws or now). Indeed, if these bylaws are enacted, they promise to be an enormous drain upon the financial and human resources of the police and the courts.

Councillors may consider the experience of the City of San Francisco, which made over a thousand arrests of people for sharing food in public parks and streets between 1988 and 1992. Despite the city's prohibition of public feeding the food insecurity persisted, and informal meal providers continued to respond to it, creating an expensive and embarrassing media spectacle for the city, and a needlessly oppressive experience for hungry San Franciscans and the people who sought to feed them.

There is no reason to expect that Melbourne's revised bylaws would not produce a similarly embarrassing, expensive, and oppressive spectacle.

## **II. Reframing the issue and offering solutions**

A wide range of scholars have observed that prevailing strategies for managing the joint issues of homelessness and poverty tend to misguidedly focus on altering the conduct of individuals. Both punitive and charitable approaches have often taken this approach, assuming that it is the individual homeless or poor person who needs to be counselled, re-educated, punished, etcetera. When the ultimate causes of homelessness are structural rather than individual, this simply has the effect of *managing* the poor without helping them out of poverty. (There is a very broad academic literature on this, all the way from Frances Fox Piven and Richard Cloward's seminal *Regulating the Poor* to Craig Willse's *The Value of Homelessness*.)

In contrast to these individual approaches, which *unintentionally pathologise homelessness* and poverty, a wide range of scholars have responded to homelessness not by imagining what poor people should and should not do, but by *identifying the systematic processes which produce homelessness and vulnerability*. This literature is too broad to do justice to here, but some of the most relevant, influential work to cite include Saskia Sassen's *The Global City* and Peter Marcuse's *In Defence of Housing*, both of which, in different ways, suggest that there is *a direct relationships between transformations in the global economy and transformations in urban housing and real estate markets*. As real estate speculation becomes more important to the global economy (in spite of the lessons of the GFC) and a "world class" image becomes more and more important to the survival of cities around the world, several trends become clear:

- These cities become economically polarized, putting increasing numbers of people at risk of homelessness;

- Their housing systems and real estate systems increasingly cater to the needs of developers and the top echelons of the labour market, and in particular, they are the site of extreme high income gentrification, which has the effect of putting housing out of reach of the newly vulnerable;
- They disinvest in public housing, often finding it more profitable to put those properties on the market.

Laws such as Melbourne's proposed camping ban are an all-too common result of these conflicts over the purpose and occupancy of urban spaces. These trends are not limited to specific cities, but rather *represent a global pattern*—a growing iceberg of which Melbourne's 247 rough sleepers are but the tip.

(Indeed, it must be said that by some measures there are *one billion people homeless around the world*. That's not a typo, or an exaggeration. Literally one out of seven human beings is homeless. Obviously, the reasons are enormously complicated, but the changing relationship between cities and the global economy is one powerful, systematic factor.)

Perhaps many members of the City Council will recognise these trends from their own experience in Melbourne. With this in mind, it might be suggested that our solutions to homelessness should be aimed at these structural causes, rather than individuals who have been affected by them.

Cities in the United States have, in some ways, been at the epicentre of these changes. We may look to their example for solutions:

- The most important site of transformation will need to be *taming the housing market*, and some cities in the US have taken steps in this direction. San Francisco and New York have rent control. Seattle is considering it, and in the meantime it has taken steps to limit the skyrocketing move-in costs (often two months' rent and a prohibitive bond).
- The second site, of course, will be *emergency and low-income housing options*. Melbourne has already set a target of 15% low-income accommodation in its projects, and this is to be commended. However, what counts as "low income" here is inadequate to meet the needs of Melbourne's poor. The cost must be lowered. In addition, Melbourne's rooming house system is frequently precarious, unsafe, and exploitatively expensive for the people who must rely on it. Instead of simply closing these "blighted" housing options, as many American cities did for their "Single Room Occupancy" hotels in the 1980s and 1990s, these systems need to be reformed in order to meet the needs of the vulnerable people who rely on them.
- And finally, the city must *take a harm-reduction approach to those for whom the housing system will inevitably fail*. Indeed, the term "housing crisis" has been used consistently for over a century. In a for-profit housing market, crisis is the norm for poor people. American cities have tried a range of experiments to this end, including sanctioned encampments in Seattle, safe-parking programs for car campers, and tiny houses in Seattle and Portland. We should look to these examples to mitigate the harm that comes to people for whom the best of only available option remains to sleep in inadequate accommodation.

I would welcome further conversations on these matters, and in addition would invite the Councillors to meet with me, other academics with similar expertise, and also with members of Melbourne's homeless community who have aided me in my research.

Sincerely,

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**From:** FOPHV <  
**Sent:** Friday, 17 March 2017 11:56 PM  
**To:** CoM Meetings  
**Subject:** 'proposed Activities (Public Amenity and Security) Local Law 2017'  
**Attachments:** VPTA Proposes Live-In Treatment Centres.pdf

'proposed Activities (Public Amenity and Security) Local Law 2017'

Formal Submission to City of Melbourne

Spokesperson

Friends of Public Housing Victoria

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We oppose the proposed changes and amendments to this legislation, because the proposed changes are an attack on the basic human rights of homeless people.

#### **The Causes - Why has homelessness risen in the inner-city?**

Since 2009, Australian states have been granted billions of dollars in funding to address the housing crisis for ordinary Australians on low incomes and to address homeless. ( National Affordable Housing Agreement -NAHA ) The scandalous result is that there has been no appreciable increase in housing, and it is unsure where all this money has gone...it has certainly not gone into creating additional housing for those who need it most. At the same time there has been a decrease in the number of Public Housing properties available, and an accompanying escalation of homelessness.

Another housing agreement funded with taxpayers money- the National Rental Affordability Scheme (NRAS ) - was found to have been rorted. Half of NRAS allocations went to universities, and was used to build studio apartments with the aim of attracting overseas students, largely from wealthy families, to enroll in their universities. Although this is a valid undertaking for tertiary institutions to embark on- the purpose of NRAS was to house people on low to moderate incomes, not to bankroll the agenda of universities.

Considering such housing scandals such as these, down-played by much of the 'mainstream media' - locked as they are in partisan politics- it should come as no surprise that we now have homeless people camping on the streets. The rise in homelessness is the direct result of bad housing policies and their implementation by both major political parties.

The point that many people find hard to believe - unless they've had direct experience of the system -is that there is simply nowhere for people to go... Euphemisms such as 'pathways out of homelessness' presupposes that there are properties available where homeless people can go and live. The 'pathways' can be better described as revolving doors. The only 'choice' available for homeless people is overcrowded boarding houses where they often report having to live in intolerable conditions. Its either that, or the street.

The stealthy privatisation of public housing in Australia, and the handing over of governmental responsibilities to both private and quasi-private Community Housing will guarantee that the problem of homelessness will only get worse.

The 'solution' is not to take away the Human Rights of people made homeless by housing policy failures, and thereby make it even harder for them to survive. Neither is it acceptable to discourage, ( and later prohibit? ) members of the public, via an expensive propaganda campaign, from giving food, money and goods to homeless people.

The whole by-law amendment is really just an attempt to collectively avoid responsibility for the problem of escalating homelessness, and to make the problem go away by conveniently victimising homeless people and trying to sweep them out-of-sight and out-of-mind.

It is both hypocritical and very disturbing.

### **People lose their rights by degrees ...**

Pushing problems out of sight and thereby trying to make them disappear, solves nothing and is a dangerous tactic. Eroding people's rights is a dangerous tactic. Other Councils may well follow suit and homeless people will end up as pariahs and outcasts- pushed from pillar to post.

Lawyers opposing the change in the by-laws by City of Melbourne have argued that it could lead to homeless people being forced into the criminal justice system. Indeed this is a global trend.

The US, which chose to privatise public housing rather than to expand it, now has gaols which have become 'catch-alls' for people with a whole range of social problems -including homelessness. Private companies in the US have built and taken over the government's responsibility for running these gaols on the condition that a quota of the beds remain full- the usual contract between corporations and US Governments being around 90%. This means that there is pressure to incarcerate people for committing less serious offences -in order to reach the agreed upon quota.

Since the problems of homelessness, lack of public housing and the privatisation of this public asset are interrelated, let me draw your attention to a policy put forward by the peak body for public tenants- the Victorian Public Tenants Association- VPTA. As a public tenant, I do not feel that the VPTA speaks for me- and I know many public tenants who share this view.

In 2013 the VPTA proposed its first series of Policy Position Statements. One of these policies stated that high security 'facilities' ( basically prisons? ) should be built in rural Victoria so that people with long-term issues ( eg failed tenancies /homelessness cycles ) can be kept **involuntarily if need be**. These 'Live-In Treatment Centres' should be built for the purpose of detaining and educating the 'residents' until they are deemed fit to 'live successfully in mainstream society'. The VPTA recommended this course of action as a 'cost effective solution towards breaking the failed tenancy cycle'. !!??

Of course this begs the question, 'What is their crime?' -which brings us back to the creeping criminalisation of homelessness and the erosion of the rights of people who are 'in the way' and politically powerless - such as homeless people.

Already the Andrews Labor government has decided to build a high security prison where young offenders- not yet adults -will be incarcerated. This is very, very dubious.

Removing people's rights, by degrees, and thinking that pushing a difficult social problem out of sight actually solves anything, can lead us down a very slippery slope ... which is why the City of Melbourne Councillors' decision regarding this change to the by-laws is so very important.

It seems that a great many people in public positions submit to pressures either from very powerful interest groups, or from within their own party. Sometimes against their better judgement, they take the path of least resistance. The problem of homelessness is very unlikely to affect politicians personally. Homelessness is, of course, a class issue.

Changing the definition of 'camping' as a way of discriminating against homeless people, has been implemented in other parts of the world - with disastrous consequences. So has the privatisation by stealth of public housing... This change to the by-law is nothing new or original. We are simply taking our cue from other countries. Instead Australia should exercise some independence and do things differently.

According to Human Rights lawyers, the amendments are unlawful under the Charter. We wonder how this by-law will be passed by the City of Melbourne as complying with the Human Rights Charter. ( Council Proposal Note 11.2 ) No doubt the spin doctors will find a way... a lot of fluffy talk such as 'used with discretion' and 'with the co-ordination of the service providers'. Though how the service providers are expected to 'magic up' actual housing is anyone's guess.

**Homeless people are citizens and they have rights.**

If the visual impact of homeless people on our streets is disturbing and upsetting - as it should be - then we need to recognise the very real failures of past and present housing policies, and acknowledge that in putting profits and business interests above the needs of ordinary citizens - governments themselves have created this dire situation.

We need to find ways to house people so that they will no longer be forced to live on the streets.

It is an unusual situation that such an important decision, which has very serious ramifications, can rest with a very small number of Councillors.

We sincerely hope that Council will make what we believe to be the only right decision- and vote to scrap these proposed amendments of the city's by-laws.

Spokesperson, Friends of Public Housing Victoria.

## **Sources**

VPTA - 'More Suitable Accommodation and Live-In Treatment Centres Needed.' VPTA News June 2013, p.5

[http://www.huffingtonpost.com.au/entry/private-prison-quotas\\_n\\_3953483](http://www.huffingtonpost.com.au/entry/private-prison-quotas_n_3953483)

" the United States relies more on jails and prisons for people who otherwise would have been diverted to non-institutionalized care (i.e., people with mental health or substance abuse issues, the homeless, the youth)"

[https://www.washingtonpost.com/news/fact-checker/wp/2015/07/07/yes-u-s-locks-people-up-at-a-higher-rate-than-any-other-country/?utm\\_term=.a4578b162b41](https://www.washingtonpost.com/news/fact-checker/wp/2015/07/07/yes-u-s-locks-people-up-at-a-higher-rate-than-any-other-country/?utm_term=.a4578b162b41)

The Australian Feb 10- 9Bn Home Affordability scheme to be dumped.

'The Dangers of Detention: the impact of Incarcerating Youth in Detention and other secure Facilities' by Barry Holman and Jason Ziedenberg

<https://theconversation.com/america-is-moving-to-end-its-use-of-private-prisons-should-australia-follow-suit-64310>

## **Strike 2**

In the second instance offenders would be required to sign an agreement to undertake intensive counselling, and to demonstrate they understand why their behaviour is unacceptable and a genuine desire to change. Other immediate affected family members should be engaged to ensure their understanding of the gravity of the situation, that they provide the required support and change their behaviours where this is a contributing factor.

## **Strike 3**

On the third instance an interview should be conducted to inform the tenant of the action proposed and to see if there are any factors that should be considered that should prevent an eviction from occurring. Is this the best course of action for all concerned? The case would be reviewed by a Senior Officer and if the decision was to evict – notices sent with appeal rights attached.

In serious situations involving criminal acts or where the protection of persons or prevention of widespread property damage is paramount, offending tenants should be evicted immediately without a 3 strikes policy being applied. The unintended consequences of such an eviction including the impact on family members and broader community must be considered as part of the process.

## **Investigating Complaints**

In all cases where a complaint is investigated the Department should assure the person making the complaint that the matter will be investigated and at the conclusion of the investigation that the matter has been finalised and provide a general indication of the outcome subject to the constraints of the Privacy Act.

## **Other Considerations**

The decision to evict should not be seen as providing a long term or cost effective solution for those with a history of behaviour in breach. It is at best a stop gap measure that may solve an immediate problem for some but may well transfer the problem elsewhere to other providers. It is highly likely that an evicted person and their family will require ongoing counselling and support and will require

the services of numerous welfare agencies including perhaps encounters with the police and the justice system. More sustainable long term solutions need to be found.

## **More Suitable Accommodation and Live in Treatment Centres Needed**

The VPTA believes that more appropriate specialist facilities should be built to house those with long term tenancy problems so that their issues may be addressed in a safe and protected environment, where appropriate treatment, education and skills development can take place. Some of these may be facilities separated from the mainstream community. The aim of these facilities would be to get residents to the stage when they could live successfully in mainstream society including public housing.

Some people will require higher levels of security and supervision and may be placed voluntarily or by Court order.

These facilities would provide cost effective solutions toward breaking the failed tenancy cycle.

It may be desirable to look at the availability of support services in order to determine the optimal location for such facilities, if sited in the Metropolitan area. Rural and Regional locations may be more suitable for facilities requiring higher levels of security.

The VPTA would support further investigation and broader Community Consultation being conducted on the viability of temporary supportive accommodation being built for those with particular long term issues such as drug addiction or anti-social behaviour resulting in numerous failed tenancies.

## **Tenant Contracts and Induction Kits**

Tenants should be provided with full details about the responsibilities they have when living in public housing, including information about breaches and this should form part of the tenancy agreement.

