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A Community Legal Centre

14 March 2017

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

Dear Lord Mayor and Councillors

Homelessness in the City of Melbourne and proposed amendments to the Activities (Public Amenity and Security) Local Law 2009

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

Introduction

The terms of the proposed changes make abundantly clear that it is not the increasing number of Victorian experiencing homelessness that concerns local government, but rather the visibility of the homelessness Victorians are experiencing. A clear alternative approach exists, being to place pressure on the State Government, who specifically legislated against move on powers as a result of unintended impacts of displacing homeless people from areas of relative safety, to allocate funds towards longer term secure housing options, including supported housing options.

It is unquestionable that homeless Victorians face greater risk of violence, sexual assault, rape, and theft. For many if not most living on the street, family support to assist in dealing with mental health, material needs, and general social support are not available. Further, for many the journey into homelessness has been long, arduous and painful.

Despite some attempts by the State government to create viable and secure transitional housing options, these sites are often extremely expensive, at capacity, and do not present a secure safe housing option, particularly for women and children. Many of those living in the Central Business District are under the wardship of the State, or have escaped severe family violence.

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The traditional role of policing in the Central Business District has been in many cases somewhat protective of the rights of the poorest, most marginalized and unwell Victorians.

The proposed changes will inevitably divert significant State resources towards enforcement sweeps as opposed long term solution focused approaches to homelessness. This diversion of resources is a decision Victorians simply cannot afford.

The inevitable focus on substance dependence, whether it be alcohol or other drugs, is a misdirected inquiry. For any person living on the street, each day presents challenges and experiences where sobriety and the battle to survive and maintain hope are in stark contrast to the experiences of those who are housed. The co-existence of severe post-traumatic stress disorder and various mental health disorders for which community members may be under community treatment orders are a consistent feature,

An appropriate approach is to acknowledge as a community our collective duties of care, and the need to work together to create affordable safe options to homelessness so as to allow those affected to live lives of contribution and dignity within our community. Interim measures may involve free use of lockers. In the ordinary course, removal of property known to belong to another is a criminal offence, being theft. The damage caused to an individual's sense of personal sanctity, which is often so minimal for the homeless, should be given serious and grave consideration.

We note that approximately one quarter of the homeless community in Victoria are of Aboriginal descent. Whilst the State Government speaks of treaty as an active discourse and commitment in Victoria, this is a shocking indictment on the actual commitment of the Government to make meaningful amends for the loss of family, cultural connection and land.

Specific duties in enforcement are elucidated further below – in particular, the duty upon the State to take positive steps to protect the right to life, recognition as a person under the law, discrimination on the basis of a protected attribute (whether direct or indirect), cruel inhuman or degrading treatment, unlawful deprivation of property.

Finally, we note that the physical security of persons from physical and sexual violence, in particular though not exclusively, women and children, has placed a central role in their decision to reside whilst without secure housing in the central business district. The removal of protections and security, and the direct consequences attendant, are matters for which decision makers in this process must bear personal accountability.

Summary of submission:

- Outlines the explicit link between homelessness and family violence;
- Outlines other causes of homelessness;
- Identifies safety issues for people sleeping rough;
- Summarises the Amending law;
- Summarises FLS's concerns with the Amending law, including:
 - The impact on people experiencing homelessness;
 - The relationship between the Amending Law and the right to life;
 - The effectiveness and utility of the Amending Law.
- Identifies the existing mechanisms available to government in response to homelessness 'problems';
- Shows that the imposition of fines constitutes poor allocation of resources;
- Provides recommendations.

FLS would also welcome the opportunity to make oral submissions on these matters.

Fitzroy Legal Service

The Fitzroy Legal Service (FLS) is one of the oldest community legal centres in Australia. FLS has been operating to assist the community through free or low cost/ legally aided legal services for over forty years. FLS has extensive longitudinal experience providing legal services to the urban poor involving thousands of persons affected by the following circumstances:

- Homelessness
- Mental health
- Alcohol or drug dependence
- Family violence
- Trauma related to childhood violence
- Insecure and/or unsafe tenancy

These circumstances are frequently if not universally interconnected for our clients.

Relevant, and to some degree, overlapping areas in which legal services are focused, and from which we draw experience, include casework and advice relating to:

- Tenancy;
- Infringements where 'special circumstances' of homelessness, mental health diagnosis, and/or alcohol or other drug dependence may be used as a ground to review and revoke infringements issued;
- The Drug Outreach lawyer program (funded by the Department of Health Human Services) to assist those dependent on alcohol and other drugs to navigate the legal system on an equitable basis with other community members through provision of outreach services;
- Family law matters where family violence is a central feature of family breakdown and risk of homelessness may present;
- Criminal law matters including prosecutions, and infringements that have progressed to prosecution stage, under the *Summary Offences Act 1956* (Vic) ('the Summary Offences Act');
- Provision of duty lawyer services at the Neighbourhood Justice Centre (NJC) where a multi disciplinary approach including housing support workers, psychologists, family violence counselors and support workers is used to address the causes of offending.

The explicit link between homelessness and family violence

Fitzroy Legal Service has provided support to the Homeless Person's Union of Victoria (HPUV) to make a submission for the Royal Commission into Family Violence by recording interviews with people currently homeless and/or with lived experience of homelessness.¹ All persons interviewed connected the experience of family violence to homelessness.

...a lot more women on the street particularly, that have had to flee their situations and they are left with no options. Refugees particularly, if they've got drug and alcohol problems aren't keen to take them in...²

According to Homelessness Australia statistics published in 2014, 33 percent of homeless persons in Victoria are homeless because of domestic violence and relationship issues.³

¹ Homeless Persons Union of Victoria, Submission No 0702 to the Royal Commission into Family Violence, 1 June 2015 <<http://www.rcfv.com.au/getattachment/656419C4-0424-42C9-A499-182A77274FC3/Fitzroy-Legal-Service-and-Homeless-Persons'-Union>>.

² Homeless Persons Union of Victoria, Submission No 0702 to the Royal Commission into Family Violence, 1 June 2015, p 20.

³ Homelessness Australia, *Homelessness in Victoria* (January 2014) accessed 15 February 2017. <http://www.homelessnessaustralia.org.au/images/publications/Infographics/Victoria_-_updated_Jan_2014.pdf>.

This data is consistent with the Royal Commission into Family Violence (RCFV), which reports that survivors of violence typically leave the family home and enter refuge or crisis accommodation, sometimes leading to homelessness⁴ According to the Commission, in 2014-2015, 31 percent of all people seeking assistance from homelessness services did so due to family violence—of that 31 percent, 86 percent were women.⁵ Furthermore, 90 percent of young persons experiencing homelessness had previously witnessed violence in the home.

According to the RCFV, 5,688 people approached homelessness services in Victoria requiring short-term or emergency accommodation in 2014–15 because of family violence. Of this number, 1,104 people (19.4 per cent) were unable to secure housing.⁶ During the RCFV's research, service providers consistently told the Commission that the demand for crisis accommodation exceeds the number of available places. Some of these people who are unable to find housing, the majority of which are women and children, have no other choice than to sleep rough. The Commission urgently recommends expanded crisis accommodation which can accommodate its ever-increasing demand.⁷

Difficulties in securing housing are exacerbated by the growing long-term housing crisis in Victoria. Melbourne's rental market has seen the average weekly rent for all properties increase by 46 percent, twice the rate of inflation, over the last 10 years.⁸ During that period the percentage of affordable housing stock in Melbourne fell from 27 per cent to just 8 per cent. This has particularly impacted single women forced out of the home due to family violence. It was also squeezed women out of the private rental market due to socio-economic issues of over-representation in part-time and casual employment and the propensity for women to be the primary carers of children.⁹ These issues, along with long waiting times for public housing has left many women trapped in transitional accommodation or on the streets for excessively long periods of time.¹⁰ This is of particular concern given the dangers faced by women on the streets, and the reality that transitional housing is frequently unsuited to their needs¹¹ and often compromises their safety.

FLS sees many clients whose homelessness has been caused by family violence. The following case examples from FLS clients demonstrate the strong link between family violence and homelessness. X became homeless because she was fleeing her rural home due to a physically violent partner. She lived on the streets for two and a half years. Similarly, Y was forced to “make (her)self homeless” in order to get away from a violent alcoholic housemate who triggered her post-traumatic stress disorder. Both women engaged with numerous services during their time on the streets, experiencing many barriers to obtaining secure housing. These included availability, suitability and issues with personal safety. In both case studies, violence forced these women out of their home and the lack of adequate services forced them onto the street. These cases illustrate that for many women, homelessness flows from their initial experience of family violence.

Other causes of homelessness

Homelessness Australia further reports that 29 percent of persons experiencing homelessness are in the position due to the housing crisis and inadequate dwellings; a further 22 percent are homeless due to

⁴ Victoria, *Royal Commission into Family Violence, Report and Recommendations (2016) vol 2.9, 37.*

⁵ Victoria, *Royal Commission into Family Violence, Report and Recommendations (2016) vol 2:9, 38, 29.*

⁶ Victoria, *Royal Commission into Family Violence, Report and Recommendations (2016) vol 2. 9, 47..*

⁷ Victoria, *Royal Commission into Family Violence, Report and Recommendations (2016) vol 2. 9, 80..*

⁸ Russell Skelton, *Massive decline in affordable housing adding to number of homeless in Melbourne* (19 October 2016) ABC News (Online)

<<http://www.abc.net.au/news/2016-10-19/affordable-housing-decline-adds-melbournes-homeless/7946800>>.

⁹ Women's Housing Ltd, Submission No 0237 to Royal Commission into Family Violence, May 2015.

¹⁰ Victoria, *Royal Commission into Family Violence, Report and Recommendations (2016) vol 2.9, 64.*

¹¹ Victoria, *Royal Commission into Family Violence, Report and Recommendations (2016) vol 2.9, 50*

financial difficulties and unemployment.¹² A significant percentage of homeless persons also recall experiencing trauma as a child.¹³

Just 3 percent of the 22,773 homeless people in Victoria (according to the 2014 statistics) were homeless due to health reasons such as substance abuse problems and mental health issues.¹⁴

Thus the increase in numbers of persons sleeping rough is symptomatic not of a moral failure of those affected, but of other complex issues including the following:

- Lack of safety amenity and security in transitional housing
- Lack of long term affordable housing
- Severe long term psychological damage caused by family violence
- Barriers to housing for those with psychiatric illness
- Waiting lists for rehabilitation services
- Access to employment

Safety issues for people sleeping rough

Individuals without secure housing are exposed to violence, threats and intimidation. This is relevant to all homeless people, but is particularly significant for women and children fleeing domestic violence.

In the previously mentioned case study, X spent time on the streets as a result of escaping family violence. During her time on the streets, she was subjected to further abuse and violence. She described frightening encounters with men, being generally kicked, spat at, laughed at, and being woken in the middle of the night by screaming. She describes experiencing “horror and fear” as a result of this, and at a later time X threw herself in front of a train. This case highlights the relentless cycle of exposure to violence, threats and intimidation experienced by homeless persons, which is often frequently in addition the existing trauma from family violence.

...you can end up on the street, and then you got that violence out on the street as well, and we've got to put up with that. Either you can go home and put up with it, or you can come out here and put up with it....¹⁵

The Central Business District with operational CCTV, well-lit and visible thoroughfares provide higher levels of safety for people sleeping rough. For women and children these small protections are particularly significant.

The Amending Law

The key aspects of the Amending Law are:

- Broadening the ban on camping. In removing the reference to ‘a vehicle, tent, caravan or any type of temporary or provisional form of accommodation’, clause 2.8 will provide: ‘unless in accordance with a permit, a person must not camp in or on any private place’.

¹² Homelessness Australia, *Homelessness in Victoria* (January 2014) accessed 15 February 2017. < http://www.homelessnessaustralia.org.au/images/publications/Infographics/Victoria_-_updated_Jan_2014.pdf>.

¹³ Rosanna Scutella et al, *Journey's Home Research Report No. 1* (July 2012) Melbourne Institute, 25 < https://melbourneinstitute.com/journeys_home/assets/pubs/2012/Scutella%20et%20al%20Journeys%20Home%20Research%20Report%20W1.pdf>.

¹⁴ Homelessness Australia, *Homelessness in Victoria* (January 2014) accessed 15 February 2017. < http://www.homelessnessaustralia.org.au/images/publications/Infographics/Victoria_-_updated_Jan_2014.pdf>.

¹⁵ Homeless Persons Union of Victoria, Submission No 0702 to the Royal Commission Into Family Violence, 1 June 2015, 3.

- Providing for confiscation and disposal of unattended items. The Amending Law suggests a new clause 2.12 which would provide that a person must not leave any item unattended in a public place. If an item is left unattended, an authorized officer may confiscate and impound the item and can sell, destroy or give away the item if a fee is not paid within 14 days.

FLS concerns with the Amending Law

Impact on people experiencing homelessness

As discussed, the most significant causes of homelessness are family violence, unavailable or inadequate housing or financial hardship. Homelessness is not a lifestyle choice but results from complex social inequalities. It is both disingenuous and disrespectful to victims of family violence and financial hardship to criminalise the outcome of this experience and refer to it as ‘camping’. Camping is a recreational activity. Homelessness is not.

According to the unconfirmed minutes, the purpose of the broadened definition of ‘camping’ at clause 2.11 at the draft Activities Local Law 2017 is to ‘better respond to items left unattended in a public place.’ People experiencing homelessness are not leaving items ‘unattended in a public place’: they are leaving items in their improvised homes. The removal of belongings from persons experiencing homelessness risks further traumatising vulnerable individuals and reinforces a message that the lives of those experiencing homelessness are not worthy of preservation and dignity.

Exposing vulnerable and traumatized individuals to additional unwanted attention from authorities as well as the stress of navigating the legal system through the imposition of a fine is both pointless and futile, serving only to exacerbate challenges already faced by people experiencing homelessness. Additionally, it risks pushing homeless people to outer suburbs, isolating them from services and fostering further distrust of authorities.

Right to life

Section 9 of the *Charter of Human Rights and Responsibilities 2006* (Vic) protects the ‘right to life’. European jurisprudence imposes a positive obligation to protect life, or take steps to do so. It remains an open question as to how the right to life operates in Victoria. However, it is relevant to consider whether a positive obligation to protect should inform public authorities in decision making and allocation of resources. This is certainly the case for the population generally but FLS submits that people fleeing domestic violence, people experiencing financial hardship and the drug using population should not be excluded from that commitment.

The Judicial College Charter of Human Rights Bench Book states:

If the positive obligation exists, it is likely based on the requirement in s 38 that public authorities must give proper consideration to a Charter right when making a decision. This may require public authorities, such as Victoria Police, to have regard to the right to life in their actions and decision-making. This, in turn, may imply a positive obligation to safeguard the lives of people within Victoria.

The unconfirmed minutes for Meeting no. 5, Future Melbourne Committee state at ‘6.2: Homelessness and Public Amenity’:

- 1.2. [the Council] notes that an assessment will be made in respect to the Amending Local Law and its compatibility with the human rights set out in part 2 of the Charter of Human Rights and Responsibilities Act 2006

This specific inclusion of the Charter implies that the Charter is a relevant consideration to the Amending Law. FLS submits that every time the Amending Law is enforced authorities would need to be cognizant of the duty to preserve life by the state.

Effectiveness and utility

The proposed draft law ignores the fact that homelessness, in the absence of more readily available social housing, will continue to increase. Banning ‘camping’ and confiscating blankets is not a helpful or realistic resolution to the financial and cultural conditions which cause homelessness.

There is significant international research that demonstrates that criminalisation approaches are ineffective and that other approaches can provide constructive alternatives, supporting the needs of people experiencing homelessness and balancing the concerns of other community stakeholders such as residents, businesses and governments.¹⁶

Existing mechanisms

There are many existing mechanisms available to government that are used in response to ‘problems’ arising from homelessness in urban areas.

Criminal laws in the *Summary Offences Act 1956* (Vic) are already relied upon to prosecute the offence of begging,¹⁷ public drunkenness¹⁸ and offensive language in public.¹⁹ It is a criminal offence to be in possession of drugs or to use drugs.²⁰

There is no evidence-base to our knowledge that indicates that risk to the public in terms of violence is concentrated in the homeless community.

Existing by-laws are already relied upon to remove and confiscate ‘structures’ that provide shelter for homeless people from rain and the elements.²¹ Councillors will recall on the coldest day of winter in 2016 such makeshift shelters were removed from Enterprise Park where rough sleepers had congregated.

Considering the above it is difficult to argue that authorities currently have inadequate powers.

More fines, poor allocation of resources

It is proposed that individuals will be fined for non-compliance of the Amending Law. This is a very poor allocation of resources with no discernable benefit and significant potential harm. Under the current infringements systems where fines are imposed on homeless people, an exemption may be sought on the following grounds: homelessness, mental health and drug dependence. Thus the result in many circumstances where fines are imposed under the Amending Law may be an exemption under these ‘special circumstances’. Potential resources expended through the enforcement of the offence by authorised officers, prosecuting agencies, legal services and courts are substantial. Such resources could instead be employed to evidence based alternatives that are proven to support the needs of people experiencing homelessness, and balancing the concerns of other community stakeholders such as residents, businesses and governments.²²

¹⁶ United States Interagency Council on Homelessness, *Searching Out Solutions: Constructive Alternatives to the Criminalization of Homelessness* (June 2012), 2 <
https://www.usich.gov/resources/uploads/asset_library/Searching_Out_Solutions_2012.pdf>.

¹⁷ *Summary Offences Act 1966* (Vic)

¹⁸ *Summary Offences Act 1966* (Vic) s 13.

¹⁹ *Summary Offences Act 1966* (Vic) s 17.

²⁰ *Drugs, Poisons and Controlled Substances Act 1981* (Vic) ss 73, 75.

²¹ *Activities Local Law 2009* (Vic) clause 14.17.

²² See eg, United States Interagency Council, above n 12; Mollie Lowery, ‘Housing first’: What L.A. can learn from Utah on homelessness’, *Los Angeles Times* (online), 3 June 2015 <<http://www.latimes.com/nation/la-oe-0603-lowery-homeless-utah-la-20150603-story.html>>; Lucy Adams, *In The Public Eye: Addressing the Negative Impact of Laws Regulating Public Space on People Experiencing Homelessness* (2 June 2014) Justice Connect <

The Amending Law may reduce the visibility of the homeless, but it will not reduce the number of homeless persons. Enacting the proposed amendments constitutes a serious misallocation of resources, diverting money away from much needed housing into policing Melbourne's most vulnerable.

Recommendation

We strongly recommend that the change proposed at Meeting no. 5, Melbourne Future Committee, 6.2: Homelessness and Public Amenity, 1.1, are not enacted. In the alternative, we strongly recommend that Councillor Leppert's suggested amendment to paragraph 1.1 is instead adopted.

Please feel free to contact me with any further enquiries on 9411 1302

Yours faithfully

Fitzroy Legal Service



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