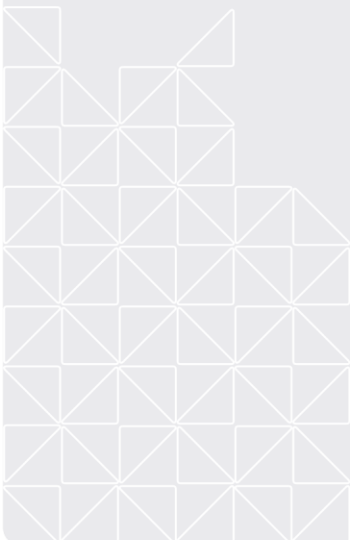


Melbourne, don't criminalise homelessness

Submission on the proposed *Activities (Public Amenity and Security) Local Law 2017*

March 2017



About Justice Connect Homeless Law

Justice Connect Homeless Law (**Homeless Law**) is a specialist legal service for people experiencing or at risk of homelessness.

Homeless Law staff work closely with pro bono lawyers to provide legal advice and representation to over 400 people experiencing or at risk of homelessness each year. Our services are outreach based and client centred, and our two staff social workers allow us to respond to clients' legal and non-legal needs.

In 2015–16, Homeless Law:

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

As the City of Melbourne knows and is a partner in, Homeless Law also runs a specialist women's program, the Women's Homelessness Prevention Project (**WHPP**). In its first two years of operation, the WHPP has provided 102 women with 157 children in their care with a combination of legal representation and social work support. Of these 102 women at risk of homelessness, 90% had experienced family violence. Of the finalised matters, 83% resulted in women maintaining safe and secure housing or resolving a tenancy legal issue (e.g. a housing debt) that was a barrier to accessing housing.

In addition to our integrated model of service delivery, which focuses on early intervention and preventing legal issues escalating to crisis point, Homeless Law uses the evidence from our direct casework to inform systemic change aimed at preventing homelessness and reducing the negative impact of the law on people experiencing homelessness.

Acknowledgements

Homeless Law thanks our partner law firms and pro bono lawyers whose casework continues to generate positive outcomes for our clients and to directly inform our recommendations for reform. We also acknowledge our colleagues in the homelessness, social service and community legal sectors for consulting in relation to this submission and our clients for their resilience and insights.

We have also included direct insights from six people who participated in our project, *In the Public Eye: Personal Stories of Homelessness and Fines*, and we are grateful to Anthony, Emma, Darren, Richard, Julia and Hamish, whose candid stories continue to remind us of the limitations and impact of enforcement-based approaches to homelessness.

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1. Executive summary and two recommendations

Being homeless and living on the streets ... People look at you totally different. Most of the time you don't get looked at as a human being. The impact that had on myself was then I would actually believe it and believe that I wasn't actually worthy of just general help or at times I actually didn't even think I was worthy of having a roof over my head – Anthony.

You don't have a spare \$200 just to give to a fine and if you are homeless as well it is even more stressful because it's already incredibly stressful not to have a place of your own – Julia.

It's a bit upsetting when you are on a tram or train and you find that whenever there is a ticket officer they immediately bee-line their way to you. It does something to your self-esteem. The first few times it happens you think nothing of it, but then by the end you are looking for these people. I'm like a dog who has been hit. Once you've had the crap beaten out of you a few times it just becomes "yes sir", it's kind of sad in a way – Hamish.

These quotes are from three of the six people who Homeless Law worked with to produce, 'In the Public Eye: Personal Stories of Homelessness and Fines',¹ in 2013. Their stories provide an insight into the experience of being fined or moved-on when you are homeless and living your life in the public eye. We encourage the Melbourne City Council (**Council**) Lord Mayor, Deputy Lord Mayor and Councillors to watch, listen to and read these perspectives in making your decisions about the Council's approach to homelessness in the City of Melbourne.

Homeless Law welcomes the opportunity to comment on the Council's proposed amendments to the *Activities Local Law 2009 (Local Law)* in the *Activities (Public Amenity and Security) Local Law 2017 (Amending Law)*.

Homeless Law has been proud to work with the City of Melbourne on a number of the City's innovative, collaborative, effective responses to homelessness, including Project Connect Respect, Homeless Service Coordination, the Women's Homelessness Prevention Project and the updated Protocol for Responding to People Experiencing Homelessness in Public Places.

Through this work, we know that the challenges the Council is facing are significant. The figures are increasingly well-known: in Victoria on any given night 22,000 people are homeless; and there are 33,000 people on Victoria's waiting list for public housing.² There has been a 74% increase in the City of Melbourne's rough sleeping population since 2014, with 247 people sleeping rough in 2016.³ The Council has experienced increased contacts in relation to homelessness and public amenity and accessibility, and there has been heavy negative media coverage regarding levels of rough sleeping in the City of Melbourne.⁴

Faced with these challenges, it will take strength for the Council to pause, reflect on what it knows works (both through its own work and a significant local and international evidence base), and resume its role as a major city that leads effective responses to homelessness.

To do otherwise – to proceed with broadening the ban on camping that, in effect, makes it an offence to sleep rough, and to introduce a new ban on leaving items unattended – will change the fabric of the City Melbourne. It is not possible to maintain that Melbourne is 'a city for all people' if Council passes the Amending Law.⁵ It sends a message and creates an environment in which the City is for some people and not others.

As US Federal Government body, the United States Interagency Council on Homelessness, said in 2012:

... 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

¹ Justice Connect Homeless Law, *In the Public Eye – personal stories of homelessness and fines* (August 2013) (available at <https://www.justiceconnect.org.au/our-programs/homeless-law/law-and-policy-reform/infringements-and-public-space-offences/public-eye-personal-stories-homelessness-and-fines>) (**In the Public Eye**).

² See Australian Bureau of Statistics, *Census of Population and Housing: Estimating Homelessness* (November 2012) 19 (available at: <http://www.abs.gov.au/ausstats/abs@.nsf/mf/2049.0>); and Victorian State Government, *Public housing waiting and transfer list* (September 2016) (available at: <http://www.dhs.vic.gov.au/about-the-department/documents-and-resources/research,-data-and-statistics/public-housing-waiting-and-transfer-list>).

³ See also City of Melbourne, *StreetCount highlights number of people sleeping rough* (9 June 2016) (available at: <http://www.melbourne.vic.gov.au/news-and-media/Pages/streetcount-highlights-number-of-people-sleeping-rough.aspx>).

⁴ See, eg, Andrew Jefferson and John Masanauskas, 'Woman lashes out at news crew at homeless camp near Australian Open,' *Herald Sun* (18 January 2017) (available at: <http://www.heraldsun.com.au/news/victoria/homeless-camp-engulfs-australian-opens-main-melbourne-gateway/news-story/67b9210712c3b496cbf0a7f7584d8680>).

⁵ See City of Melbourne, *Melbourne for all people strategy 2014-17* (August 2014) (available at: <http://www.melbourne.vic.gov.au/SiteCollectionDocuments/melbourne-for-all-people.pdf>) (**Melbourne for all strategy 2014-17**).

*better served by solutions that do not marginalize people experiencing homelessness, but rather strike at the core factors contributing to homelessness.*⁶

To support the Council to lead effective, evidence-based responses to homelessness, Homeless Law has joined with six other leading homelessness organisations to prepare the 'Proposed Framework for Responding Effectively to Homelessness in the City of Melbourne' (**Framework**) (**Annexure 1**).

The Framework:

- Is informed and endorsed by seven leading housing and homelessness organisations.
- Builds on much of the positive, collaborative, evidence-based work the City of Melbourne is already leading and recognises the significant commitments recently made by the Victorian State Government.
- Proposes practical measures to address the competing obligations and challenges of the City of Melbourne.
- Provides constructive viable alternatives to the Amending Law.
- Addresses the City of Melbourne's challenges without going down a costly, punitive path that will be ineffective.
- Affirms the Council as a leader in effective, evidence-based responses to homelessness.

There are 14 components to the Framework. Council will see that a number of these initiatives are already on foot – including investments in outreach, service co-ordination, housing and support – but many are either in their very early stages of implementation or still being commissioned by the Council or the Victorian Government. These investments and innovations – and the leadership that underpins them – have not had time to take effect, but when they do, they will have a significant impact on the ability to appropriately house people sleeping rough.

The Amending Law is not needed. Not only will it fail to add to the Council's response, it will undermine it, by:

- Increasing isolation, creating barriers to accessing services and reducing safety for people experiencing homelessness.
- Targeting, fining and entrenching people experiencing homelessness in the justice system.
- Putting pressure on interactions, morale and resourcing for authorised officers.
- Unjustifiably and unreasonably limiting human rights.
- Being ineffective and costly to enforce.
- Sending the wrong message within Melbourne and beyond.

We call on the City of Melbourne to avoid taking a step backward, and instead to continue forward with your effective, collaborative, evidence-based leadership and with advocacy to address the gaps in housing, prevention and support. This would be an effective framework for preventing and addressing homelessness that we could commend.

TWO RECOMMENDATIONS FOR MELBOURNE CITY COUNCIL

Informed by evidence from 15 years providing legal representation to Victorians who are homeless or at risk of homelessness, insights from our clients, international research and our collaboration with multiple other agencies and organisations working in the homelessness and justice sectors, Homeless Law recommends:

1. The Council should not pass the Amending Law.
2. The Council should affirm and strengthen its response to homelessness in the City of Melbourne by adopting, continuing, or advocating for, the suite of solutions presented in the 'Proposed Framework for Responding Effectively to Homelessness in the City of Melbourne' (**Annexure 1**).

⁶ United States Interagency Council on Homelessness, *Searching Out Solutions: Constructive Alternatives to the Criminalization of Homelessness* (2012) 2 (available at: https://www.usich.gov/resources/uploads/asset_library/RPT_SoS_March2012.pdf).

2. Homelessness, public space and the law

2.1 Homeless Law: our experience with homelessness and the law

Since Homeless Law was established in 2001, addressing fines and infringements for 'public space offences' has been one of the two most common legal issues homeless Victorians have sought our assistance with.

Each year Homeless Law provides legal assistance to approximately 100 people who have received fines or charges for 'public space offences', including having an open container of liquor in public, begging, being drunk in a public place, littering, and conduct on public transport (for example, not paying to travel, smoking on the platform or having your feet on the seat).

Homelessness makes it:

- More likely that you will receive fines or charges for public space offences because you are carrying out your private life in a public place; and
- Extremely difficult to deal with fines or charges either through payment or navigating the unwieldy legal process. (For an indication of the complex and protracted nature of an infringements matter, as well as the escalating costs if payment isn't made on time see the diagram at **Annexure 2**).

Homeless Law knows through our work that laws, policies and practices that seek to regulate public space in Victoria do not effectively address the underlying causes of a person's offending. Instead, as Grant's story shows, financial penalties or charges are issued to struggling people, increasing the strain they're already under.

Fines not the answer for chronically homeless man with mental health concerns and substance dependence issues

Grant, a disability support pensioner, had around 50 fines for 'public space offences' that he had accrued during decades of chronic homelessness, including significant periods of time rough sleeping and seeking refuge in a variety of squats.

When he first came to Homeless Law, Grant's crippling fines debt was over \$18,000. Grant has various mental health concerns, including depression and 'chronic suicidality', and a long history of substance dependence issues. He had no realistic prospects of being able to repay the \$18,000 fines debt.

After gathering the necessary supporting evidence, Homeless Law assisted Grant to apply to the Infringements Court for his fines to be revoked on the basis of his special circumstances. Eventually, after protracted legal proceedings, the fines were revoked and Grant could prioritise his wellbeing, recovery and transition into secure housing with supports.

Grant's matter highlights the way in which people experiencing homelessness can be issued with overwhelming numbers of fines during periods of homelessness, deteriorating mental health and/or escalating substance use. In addition to doing nothing to aid recovery or engagement with services, the fines system places a burden on legal and community services that assist clients to deal with their fines and charges and causes congestion in the courts.⁷

In addition to undertaking direct legal casework for approximately 7000 Victorians who are homeless or at risk of homelessness since 2001, Homeless Law has used the insights from our work, including data and direct consumer perspectives, to inform and lead conversations about effective, best-practice responses to homelessness and the regulation of public space.

For example, Homeless Law:

⁷ See, eg, Justice Connect Homeless Law, *What's the Cost? Infringements System Review* (November 2013) (available at: <http://www.justiceconnect.org.au/our-programs/homeless-law/law-and-policy-reform/infringements-and-public-space-offences/infringements-public-space-and-homelessness>) (*What's the Cost?*); Justice Connect Homeless Law, *Fair's Fare: Improving access to public transport for Victorians experiencing homelessness* (March 2016) (available at: <https://www.justiceconnect.org.au/our-programs/homeless-law/law-and-policy-reform/infringements-and-public-space-offences/fair%E2%80%99s-fare-public-transport-and-homelessness>) (*Fair's Fare*).

- Informed and influenced legislative reform to recognise homelessness as a ‘special circumstance’ in the *Infringements Act 2006* (Vic);
- Convened the Infringements Working Group, a group of 36 legal and financial counselling organisations committed to evidence-based reforms of the infringements system that benefit our clients, government agencies and the courts;
- Convened the Justice Access Advisory Group, a group of experts in homelessness and justice, which is currently working to revive and strengthen the Protocol for Responding to People Experiencing Homelessness in Public Places;
- Launched ‘In the Public Eye: Personal Stories of Homelessness and Fines’ in 2013 to make sure consumer voices were heard in policy conversations regarding the impact of the fines and infringements and the need for reform;
- Informed and influenced the further reform of the fines and infringements system via the *Fines Reform Act 2014* (Vic) and the *Fines Reform and Infringements Acts Amendment Act 2016* (Vic);
- Informed the review of public transport ticketing,⁸ with reports being published by both the Victorian Government and the Victorian Ombudsman in May 2016,⁹ highlighting the punitive impact of public transport ticketing on vulnerable Victorians and the need for a preventative approach to achieve “a system that balances financial return with fairness, enforcement with equity”;¹⁰
- Joined with other leading agencies to launch ‘Asking for Change: Calling for a More Effective Response to Begging in Victoria’. As part of this project, Homeless Law consulted with 30 people begging in Melbourne, and of these people, 77% identified as homeless, 87% identified as having a mental illness and over one-third had experienced childhood trauma and abuse;¹¹
- Contributed to improving infringements system outcomes for Victorian prisoners through the Debt and Tenancy Legal Help for Prisoners Project, including by advocating for the retention and expansion of an existing ‘calling-in’ mechanism that allows prisoners to convert their fines to run concurrently with their term of imprisonment;¹² and
- Shares the insights from the Churchill Fellowship Report, ‘In the Public Eye: Addressing the negative impact of laws regulating public space on people experiencing homelessness’,¹³ (**Churchill Report**) (**Annexure 3**) which is informed by visits to nine international cities and consultations with over 60 experts about the challenges of regulating public space and responding effectively to homelessness. By way of example, the Churchill Report helped to inform the City of Melbourne’s Project Connect Respect, which brings together homelessness services, business and people with a direct experience of homelessness to help local businesses and their staff understand homelessness and respond appropriately to people experiencing homelessness.

It is this evidence and experience that informs our recommendations to Council.

2.2 Existing laws regulating public space

Through assisting thousands of homeless Victorians to deal with fines or charges for ‘public space offences’, Homeless Law knows that there are already extensive powers to address behaviour and possessions in Melbourne’s public places. Although in Homeless Law’s experience (and as Grant’s matter above highlights) these powers should only be relied on as a last resort in relation to people experiencing homelessness and mental illness, when necessary, the Council and Victoria Police have a range of existing powers that can be relied on to regulate the use of public space.

It is not accurate to suggest that Victoria Police or authorised officers lack powers to respond to conduct or possessions in public places that are affecting public amenity.

⁸ See, eg, Homeless Law, *Fair’s Fare*, above n 7.

⁹ See State Government of Victoria, *Report of the Review into Public Transport, Ticketing Compliance and Enforcement* (May 2016) (available at: http://economicdevelopment.vic.gov.au/_data/assets/pdf_file/0020/1307036/Report-of-the-review-into-public-transport-ticketing-compliance-and-enforcement.pdf) and Victorian Ombudsman, *Investigation into public transport fare evasion enforcement* (Report) (May 2016) (available at: <https://www.ombudsman.vic.gov.au/getattachment/b3ef3775-ecd3-42e5-8acd-40f43769f521//publications/parliamentary-reports/investigation-into-public-transport-fare-evasion-e.aspx>) (**Victorian Ombudsman Report**)

¹⁰ Victorian Ombudsman Report, above n 9, 3.

¹¹ Justice Connect Homeless Law, *Asking for Change: Calling for a More Effective Response to Begging in Victoria* (2016) (available at: <https://www.justiceconnect.org.au/askingforchange>).

¹² Justice Connect Homeless Law, *Debt and Tenancy Legal Help for Prisoners Project: 12 Month Report* (2016) (available at: www.justiceconnect.org.au/our-programs/homeless-law/law-and-policy-reform/closing-revolving-door). The Project’s two year report will be published shortly. See particularly, s 161A of the *Infringements Act 2006* (Vic) and s 52 of the *Fines Reform and Infringements Acts Amendment Act 2016* (Vic).

¹³ Lucy Adams, *In the public eye: Addressing the negative impact of laws regulating public space on people experiencing homelessness* (The Winston Churchill Memorial Trust of Australia) (April 2014) 42 (**The Churchill Report**) (available at: <https://www.justiceconnect.org.au/sites/default/files/In%20the%20Public%20Eye%20-%20Churchill%20Report.pdf>).

Offences under current Local Law and powers to move-on, fine, charge and confiscate items

As the City of Melbourne's website notes:

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

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

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

If items and rubbish accumulate, or block pedestrian access, our officers may ask people who are sleeping rough to tidy up or leave a site. If this happens we will work closely with services to make sure that people have the opportunity to access shelter, clothing, medical and other basic needs.¹⁴

Under the current Local Law, 'a person must not camp in or on any public place in a vehicle, tent, caravan or any type of temporary or provisional form of accommodation'.¹⁵ The following activities in, on or within the hearing or sight of a public place, are also already prohibited:

- causing or committing any nuisance (nuisance is defined as having its 'ordinary common meaning');
- adversely affecting the amenity of that public place;
- interfering with the use or enjoyment of that public place or the personal comfort of another person in or on that public place;
- annoying, molesting or obstructing any other person in or on that public place;
- defecating or urinating except in a toilet or urinal in a public convenience;
- committing an indecent or offensive act; or
- using any threatening, abusive or insulting words.¹⁶

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

- fail to comply with the Local Law;
- fail to do anything directed to be done under the Local Law;
- refuse or fail to obey directions of an authorised officer to leave a public place where in the opinion of that authorised officer the person has failed to comply or is failing to comply with the Local Law.¹⁷

The Local Law empowers an authorised officer to:

- either orally or in writing direct a person to leave a public place if in the opinion of the authorised officer the person is failing to comply or has failed to comply with the Local Law;¹⁸
- charge and prosecute a person for the above offences or issue an infringement notice of \$250 (2.5 penalty units).¹⁹ If a person is found guilty of an offence in court, they are liable to a penalty of up to \$2000;
- serve a written Notice to Comply (specifying the time and date for compliance) on a person who the authorised officer reasonably suspects to be in breach of the Local Law. This notice can direct the person to: comply with the Local Law; stop conduct which breaches the Local Law; remove or cause to be removed any item, goods, equipment or other thing that constitutes a breach of this Local Law; or leave an area within the time specified in the notice.

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

¹⁴ See City of Melbourne, *Homelessness and local laws* (available at: <http://www.melbourne.vic.gov.au/community/health-support-services/social-support/Pages/homelessness-and-local-laws.aspx>).

¹⁵ *Activities Local Law 2009* (Vic) cl 2.8.

¹⁶ *Activities Local Law 2009* (Vic) cl 2.1.

¹⁷ *Activities Local Law 2009* (Vic) pt 14.

¹⁸ *Activities Local Law 2009* (Vic) cl 14.8.

¹⁹ *Sentencing Act 1991* (Vic) s 110.

Existing powers under the Summary Offences Act 1966 (Vic)

In addition, the *Summary Offences Act 1966* (Vic) provides a range of powers for Victoria Police to regulate behaviour in public places, including in relation to public drunkenness;²⁰ using offensive language in public;²¹ obstructing a footpath;²² or begging.²³

Existing move-on powers can also be used when someone is breaching the peace, endangering another person or presenting a risk to public safety.²⁴

Based on the above, it is not accurate that Victoria Police or authorised officers lack powers to respond to conduct or possessions in public places that are affecting public amenity. The range of powers is extensive and, if necessary, these powers can be relied on.

There is no justifiable reason why broader, vaguer bans on 'camping' or leaving items unattended would be needed, and it is not clear what issues they would seek to address that cannot be adequately responded to under existing laws.

²⁰ *Summary Offences Act 1966* (Vic) s 13.

²¹ *Summary Offences Act 1966* (Vic) s 17.

²² *Summary Offences Act 1966* (Vic) s 5.

²³ *Summary Offences Act 1966* (Vic) s 49A.

²⁴ *Summary Offences Act 1966* (Vic) s 6.

3. What the Amending Law proposes

The two major changes proposed by the Amending Law are:

1. Expanding the existing offence of camping in a public place without a permit (which would operate with existing enforcement provisions in the Local Law); and
2. Creating a new offence of leaving any item unattended in a public place, along with powers to confiscate and dispose of unattended items, and issue an infringement of \$250 for leaving items unattended.

3.1 Broadening the offence of camping

Currently, camping is only banned in Melbourne if campers use a 'vehicle, tent, caravan or any type of temporary or provisional form of accommodation'.²⁵ The proposed changes would remove this wording, and clause 2.8 will instead provide: 'Unless in accordance with a permit, a person must not camp in or on any public place'.

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

3.2 A new offence of leaving items unattended

The Amending Law also suggests a new clause 2.12, which would provide that a person must not leave any item unattended in a public place. In addition to being able to issue an infringement notice for \$250 for leaving items unattended, authorised officers would be able to confiscate the items and dispose of them if a fee or charge is not paid within 14 days.

These provisions regarding unattended items also have the potential to impact harshly on rough sleepers, including because of the inevitability that goods may be temporarily left (eg. while someone is getting food or using the toilet), the high probability of being fined and the requirement to pay a fee to recover personal goods and items.

3.3 Banning or 'criminalising' homelessness

There has been some suggestion that the Amending Law does not ban or criminalise homelessness.²⁶ However, under the proposed amendments, a person would be failing to comply with the Local Law by 'camping' in or on any public place or leaving items unattended, without a permit. These are offences and a person could be given an infringement notice for \$250 (2.5 penalty units),²⁷ or charged and brought before the Magistrates' Court. An authorised officer could also direct a person to leave a public place (i.e. 'move on' a person) and, if the person fails to do this, they can be fined or charged.

These are traditional law enforcement-based mechanisms: offences punishable by a direction to move-on, an infringement or a charge. Essentially, the Amending Law proposes using tougher laws to respond to people experiencing homelessness and their possessions. The reality of using law enforcement mechanisms to respond to homelessness and related conduct is that it involves interaction with the justice system, including through fines or charges.

It is important that Council is open about this when considering the benefits or risks of the proposed approach.

²⁵ *Activities Local Law 2009* (Vic) cl 2.8.

²⁶ See, eg. City of Melbourne, 'Council endorses proposed change to its Local Laws' (8 February 2017) (available at: <http://www.melbourne.vic.gov.au/news-and-media/Pages/statement-council-endorses-change-to-its-local-laws-.Aspx>).

²⁷ *Sentencing Act 1991* (Vic) s 110.

4. Why the Amending Law should be avoided

The challenges Melbourne is facing – growing numbers of people experiencing homelessness and pressure from media and other community members – are not unique. Major cities around the world are grappling with these challenges, and have been for many years.

As recently summarised by three academic experts:

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. 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.²⁸

Melbourne itself has previously faced pressure to introduce tougher laws to tackle homelessness, including over 10 years ago when Melbourne hosted the Commonwealth Games. At that time, instead of reacting to this pressure, the Council worked with other key agencies, including Victoria Police, to develop and implement the Protocol for Homeless People in Public Places.

The Council showed a leadership role in 2006 and we urge it to do the same now. To do otherwise and to proceed with the Amending Law presents the following risks, costs and concerns:

- Increased isolation, barriers to accessing services and reduced safety for people experiencing homelessness.
- Homeless people being targeted, fined and entrenched in the justice system.
- Increased pressure on interactions, morale and resourcing for authorised officers.
- Human rights unjustifiably and unreasonably limited.
- Ineffectiveness and significant costs of enforcing the Amending Law.
- Sending the wrong message within Melbourne and beyond.

This section addresses each of these risks in more detail. The impacts of enforcement based approaches to homelessness are also discussed in significant detail in part 4 of the Churchill Report (**Annexure 3**).

4.1 Increased isolation, barriers to accessing services and reduced safety

Homeless Law rejects the suggestion that the risk of enforcement will encourage people experiencing homelessness to engage with services.²⁹ This is not consistent with international evidence and research, including two examples set out below.

The risk of excluding people from central, safe areas – Denver

In May 2012, Denver, Colorado passed an 'Unauthorized Camping Ordinance', which made it an offence for a person to camp on any public or private property, without appropriate permission.³⁰ Violations of the urban camping ban resulted in fines up to \$999 or one year imprisonment.³¹

²⁸ Professor Luke McNamara, Faculty of Law, UNSW; Associate Professor Julia Quilter, School of Law, University of Wollongong; Associate Professor Tamara Walsh, TC Beirne School of Law, University of Queensland, *Submission Re City of Melbourne's Proposed Activities (Public Amenity and Security) Local Law 2017* (15 March 2017).

²⁹ See, eg. City of Melbourne, above n 26.

³⁰ Denver Homeless Out Loud, *The Denver Camping Ban: A Report from the Street* (3 April 2013) (available at <http://issuu.com/denverhomelessoutloud/docs/surveyreport>) 7 (**The Denver Camping Ban**). Under Denver's Unauthorized Camping Ordinance, it was illegal for homeless people to sleep, sit for extended periods, or store their personal belongings anywhere in Denver, if they used any form of protection other than their clothing (for example, a blanket or a piece of cardboard to sit upon). Violations of the urban camping ban could result in fines up to \$999 or one year imprisonment.

³¹ *Ibid.*

Local council representatives suggested that the ordinance is ‘the first step in providing services to those who truly need them, while simultaneously creating a healthy environment for residents of Denver’s urban core’ and indicated that police were using their discretion in enforcing the ban so that people are linked with services rather than arrested.³²

These are familiar messages and Denver was grappling with similar challenges – rising numbers of people sleeping rough and competing needs and pressures within the local community.

The University of Colorado partnered with local homelessness organisation, Denver Homeless Out Loud, to survey 512 members of the homeless community to determine the impact of the ban. The survey assessed:

- frequency and nature of police contacts with homeless individuals;
- result of those police contacts;
- patterns of shelter use or non-use;
- nature of services being offered to homeless individuals;
- whether homeless survey respondents have changed their behaviour following the ban, such as by changing sleeping arrangements, daily routines, service-access, or areas of town frequented;
- whether homeless people feel more or less safe since the ban, and why; and
- personal stories regarding experiences on the street that might shed light on the implementation of this new law.³³

The survey results showed that the ban was not working as intended. For example:

- 83% of people approached by the police about violations of the camping ban were asked to move on and were not offered alternative services;
- 52% of respondents who used to sleep in the CBD said they did so because the area was safe and well-lit and 66% said since the ban they usually slept in more hidden and unsafe locations;³⁴
- respondents indicated that they found it increasingly difficult to access overcrowded shelters, avoided well-lit and safe downtown areas for hidden locations and felt less safe.³⁵

The dangerous consequences of broken relationships with police – Vancouver

In September 2010, Canada’s Missing Women Commission of Inquiry was established to examine police investigations into the murders and disappearances of numerous women from Vancouver’s Downtown Eastside between 1997 and 2002. A number of the victims had been homeless, including living in Canada’s equivalent of our rooming houses.

What were later identified as serial killings had happened without identification for many years. The final report of the Commission, *Forsaken*,³⁶ was released by Commissioner Wally Oppal QC in November 2012. It is 1,448 pages, contains 63 recommendations and concludes that ‘the police investigations into the missing and murdered women were blatant failures’.³⁷

Amongst many other things, the report talks about the way in which tickets and warrants for poverty-related offences affected women’s relationships with the police and notes that, because women had outstanding warrants and were reluctant to engage with the police, their vulnerability was amplified.

Addressing the relationship between Vancouver’s poorest neighbourhood and the Vancouver Police Department, Oppal recommended

‘that the City of Vancouver and the Vancouver Police Department take proactive measures to reduce the number of court warrants issued for minor offences by:

³² See, eg. Albus Brooks, ‘Denver’s camping ordinance helps us address needs of homeless’ *The Denver Post* (19 July 2013).

³³ See Denver Homeless Out Loud, *Denver Camping Ban Survey* (2012) (available at: <https://denverhomelessoutloud.org/homeless-survey/>).

³⁴ *The Denver Camping Ban*, above n 30, 8-9.

³⁵ *Ibid.*

³⁶ The Honourable Wally T Oppal QC, Commissioner, *Forsaken: The Report of the Missing Women Commission of Inquiry* (19 November 2012) (available at <http://www2.gov.bc.ca/gov/content/justice/about-bcs-justice-system/recent-inquiries>).

³⁷ *Ibid* 160.

- *reducing the number of tickets issued and charges laid for minor offences;*
- *developing guidelines to facilitate greater and more consistent use of police discretion not to lay charges; and*
- *increasing the ways in which failures to appear can be quashed early in the judicial process’.*³⁸

It is clear that persistent contact with authorities in relation to day-to-day conduct in public places can diminish the trust of people experiencing homelessness. This can have flow-on effects in terms of further isolating already vulnerable people. The recommendations from the Canadian former Court of Appeal judge and Attorney General, the Honourable Wally Oppal QC, are particularly insightful and compelling: reducing the number of tickets issued and charges laid for minor offences, and developing guidelines to facilitate greater and more consistent use of discretion not to lay charges, will foster a stronger, safer relationship between homeless members of the community and local authorities.

Informed by Homeless Law’s work and by evidence about risks of enforcement based approaches, we highlight that effective engagement, particularly with people who have experienced trauma, requires building trust and rapport. Using the threat of enforcement will undermine the ability to build trust and rapport rather than enhance it. In doing so, it will increase vulnerability, isolation and risk for homeless Melburnians.

4.2 Homeless people targeted, fined and entrenched in the justice system

For over 15 years, Homeless Law has assisted vulnerable Victorians to address fines, infringements and charges that stem directly from their experiences of homelessness. Based on this work, we point out to Council that the Amending Law would:

- Unreasonably target people who are homeless in public spaces, providing broad discretion and powers to move-on, fine and charge;
- Entrench people experiencing homelessness in the justice system; and
- Fail to deter people who are homeless from conducting their lives in public spaces.

Unreasonably target and impose fines on people experiencing homelessness in public spaces

The Amending Law’s broad drafting empowers authorised officers with unreasonable discretion and powers to move-on, fine and charge, which will directly target and further penalise people who are homeless in Melbourne’s CBD. We particularly note that the Amending Law requires a permit for camping in any public place, but ‘camping’ is not defined. Although this may not be the intention, this effectively criminalises rough sleeping.

The Amending Law also legalises the confiscation of items from public places and attaches a monetary release fee and time limit. This has significant potential to disproportionately impact on rough sleepers, including due to the inevitability that items may be temporarily left unattended (for example, when someone goes to get food or use the bathroom) and the requirement to pay a recovery fee within a strict period of time to retrieve the belongings.

The circumstances of Victorians experiencing homelessness – which may also include mental illness, substance dependence and family violence – mean they are:

- More likely to get fines and infringements for their conduct in public places; and
- Less likely to be able to address those fines through payment.

While we understand that the Council intends to have safeguards or guidelines to minimise the issuing of fines under the new and amended provisions, the Amending Law will inevitably cause more people experiencing homelessness – who are often forced to carry out most of their lives in public places – to receive overwhelming fines and charges.

Entrench homeless people in the justice system

The Amending Law’s enforcement-focused approach would directly lead to more homeless Victorians becoming needlessly caught up in the infringements system and the wider justice system through fines or charges connected to their lived experiences in public space.

³⁸ Ibid 131.

The infringements system expressly recognises that a person should not have to pay a fine where, because of their homelessness, they were unable to control the offending conduct.³⁹ Section 3 of the *Infringements Act 2006* (Vic) (**Infringements Act**) also provides that people can apply to have fines withdrawn if, because of mental illness or substance dependence, they were unable to understand or control the offending conduct.

It appears likely that almost every person issued with a fine under the Amending Law would fall within the Infringements Act's definition of 'special circumstances'.

Homeless Law helps around 100 new clients each year to have their fines waived on the basis of their homelessness, which is often interconnected with mental illness and substance dependence. Through this work, we have consistently seen that once a person enters the infringements system, it is difficult to exit and the subsequent process generates significant stress and hardship for individuals, along with burdening the court system, government agencies and support services.

Annexure 2 provides a picture of the complex and protracted nature of Victoria's current infringements system. Jade's case below further illustrates how easily people experiencing homelessness can become caught up in the fines enforcement process.

Young, rough sleeping family violence victim resolves \$5000 in public space offence fines with support to navigate the infringements system

Jade connected with Homeless Law in 2013, having just moved into a rooming house after previously sleeping rough. She was trying to sort out the \$5000 in fines she had racked up while living her life in public - travelling on public transport without a valid ticket, being drunk in public, smoking and swearing on train platforms. She also had two court ordered fines for begging totalling almost \$500. Her Newstart income wouldn't come close to covering them.

Just contacting Homeless Law and coming to an appointment with lawyers was an achievement for Jade. Her depression and severe anxiety made accessing services confronting and her dependence on drugs and alcohol made long term engagement difficult. Jade had experienced violence from her on-off boyfriend but struggled to end the relationship and often reported assaults by him. Sometimes she self-harmed, or fell and injured herself while intoxicated. Her caseworker collaborated closely with Homeless Law to support Jade to address her health and housing issues and to establish a safe distance from her boyfriend.

Obtaining records of Jade's fines was another challenge. Centrelink listed 24 previous addresses for her and compiling documents to support a special circumstances application was a lengthy process. In the meantime, Jade continued to live in unstable housing and obtain more fines. Eventually, Homeless Law was able to submit two applications for revocation. Homeless Law then found out that there were more fines - Jade's name had been misspelled - so a further application was submitted. Five months later, Jade's hearing was scheduled. The matter was adjourned for 6 months on an undertaking with conditions, including that Jade attend drug and alcohol counselling and not get any more fines. Jade complied with the conditions and her fines were dismissed, while a manageable payment plan was established for her remaining begging fines.

Following Homeless Law's assistance, Jade said she was 'doing well', having moved into public housing, connected with a psychologist and drug and alcohol counsellor and recently become engaged.

If introduced, the Amending Law would increase the likelihood of Jade and other rough sleepers being fined and entrenched in the infringements system as a direct consequence of their homelessness.

The Amending Law's additional fines and charges would also push people who are homeless through the Magistrates' Court, contradicting Recommendation 62 of the Royal Commission into Family Violence Report,⁴⁰ which provided that the government should consider:

"transferring some of the jurisdiction of the Magistrates' Court of Victoria to another forum—for example, fines and traffic infringements; [and] expanding the range of matters that can be determined on the papers—that is, without an in-person hearing".

³⁹ For the definition of 'special circumstances' see, *Infringements Act 2006* (Vic) s 3.

⁴⁰ State of Victoria, *Royal Commission into Family Violence: Summary and Recommendations*, Parl Paper No 132 (2014–16), Vol III, 162.

Fail to deter homeless people from conducting their lives in public spaces

Fining people experiencing homelessness or severe hardship rarely has a preventative effect.⁴¹ The circumstances of people experiencing homelessness mean that, during periods of homelessness, they can accrue thousands of dollars in fines and infringements. In Homeless Law's experience, any potential deterrent effect of additional fines does not apply to those most vulnerable, including rough sleepers, whose conduct is dictated by a range of complex needs and on-going hardships, rather than clear 'choices' about using public spaces.

For most of Homeless Law's clients, being issued with fines during periods of homelessness does not act as a deterrent or play a role in preventing further offending. In addition to being financially overwhelmed and caught up in the justice system, Darren's explanation highlights how psychologically overwhelming and destructive a fines-based approach to homelessness can be.

Chronically homeless man overwhelmed by fines for public drunkenness

Darren has been homeless on and off for almost 15 years and has struggled with alcohol addiction since his teens. A combination of these two factors has resulted in him getting about \$15,000 in fines. He said:

The impact of the fines in my case just got harder because I kept getting more of them. Before I was able to address or pay for the existing one I already had I would cop another one and another one and it just got overwhelming. I was unable to pay due to the fact that I was only on Newstart at that time and living in boarding houses, which the rent there was pretty much a third of my payment so I couldn't live.⁴²

The enforcement-focused Amending Law would be an inappropriate and ineffective response to Darren's homelessness and related vulnerabilities, making it harder rather than easier for him to transition to affordable housing with supports.

4.3 Pressure on interactions, morale and resourcing for authorised officers

Creating a more difficult role for authorised officers

The role of authorised officers is challenging, but increased enforcement powers will not make it easier and will likely exacerbate these difficulties. The Amending Law's implementation would result in deteriorated interactions and less constructive engagement between authorised officers and vulnerable people in the Melbourne CBD.⁴³

Although we understand that there will be discretion about when to enforce the provisions in the Amending Law, the pressure to use an enforcement-based approach would reduce the ability of authorised officers to effectively engage with rough sleepers and would change the tone of these interactions.

An example of a more effective, constructive approach to supporting authorised officers is the ongoing work of Public Transport Victoria, which recently ran 17 sessions for authorised officers on public transport, helping them to better understand and respond effectively to people experiencing homelessness, mental illness or substance dependence. These sessions featured the perspectives of consumers who had faced one or more of these circumstances and provided direct insights to the authorised officers.

These types of informative sessions have the potential to improve authorised officers' job satisfaction and improve their dealings with highly vulnerable people.

Resourcing burden and potential for conflict

The proposed Amending Law will also require a heavy investment of resources from Council's authorised officers.

For example, South Carolina proposed a plan to ban homeless people from the local downtown area of Columbia.⁴⁴ The proposal involved extending the operation hours of the 240-bed homeless shelter on the outskirts of the city and having vans shuttle homeless clients to daily appointments for jobs, medical services or mental health treatment. To implement this, police were required to ask the 1500 people experiencing homelessness to leave the city centre of Columbia and existing ordinances, including prohibitions on loitering, public urination and other nuisance violations, were going to be strictly enforced against homeless people in the city. Homelessness advocates expressed significant concern about the proposal, but the plan was passed by the Council.

⁴¹ See, eg, *The Churchill Report*, above n 13, 48.

⁴² *In the Public Eye*, above n 1 (Darren).

⁴³ See, eg, *The Churchill Report*, above n 13, 38-43.

⁴⁴ Clif Le Blanc, 'Being homeless in Columbia could get you arrested' *The State* (10 August 2013).

The Columbia police chief opposed the plan, identifying that this wasn't what he wanted to spend limited police resources on. He expressed that the plan would strain police resources. Assistant Chief Diane Groomes of the District of Columbia Metropolitan Police Department summarised this well: 'A lot of what we deal with now is not crime ... a lot of investment should go into services instead of using police to solve these problems: we're not psychologists ... At the moment it's so easy to find police, but people need services'.⁴⁵

Although both the above examples relate to police, the same burden is being created for Council's authorised officers: the Amending Law will rely on them to play an enforcement role that they are not equipped or resourced to play. This will be an unsatisfying and demanding role that could lead to exacerbated stress and greater potential for conflict.

4.4 Human rights unjustifiably and unreasonably limited

International human rights law concerns

The United Nations (UN) has questioned the Amending Law's compatibility with international human rights law. The UN Special Rapporteur on the right to housing, Leilani Farha, has raised these concerns with the Australian government. Ms Farha has also publicly stated that while homeless people are not specifically referenced in the Amending Law, they are the target:

*"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...I encourage the city to focus on its human rights obligations."*⁴⁶

Homeless Law submits that the Amending Law may contravene Australia's human rights obligations under the *International Covenant on Civil and Political Rights (ICCPR)* and the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*. As a signatory to ICESCR, Australia has an obligation to recognise the right of everyone to adequate housing.⁴⁷ The criminalisation of people experiencing homelessness may also constitute cruel, inhuman or degrading treatment pursuant to Article 7 of the ICCPR.

By targeting people experiencing homelessness, rather than assisting them to realise their fundamental right to housing, the implementation of the Amending Law would likely be in breach of Australia's obligations under international law.

Incompatibility with human rights protected by the Charter

The Amending Law further appears to be incompatible with the human rights listed in Part 2 of the *Charter of Human Rights and Responsibilities Act 2006* (Victoria) (**Charter**). The proposed laws actively restrict the human right to freedom of movement protected under the Charter.⁴⁸ The Amending Law may also limit the human rights to freedom of peaceful assembly and freedom of association,⁴⁹ and the human right to freedom of expression.⁵⁰

The Amending Law's more expansive enforcement powers, broad discretion and limited safeguards have significant potential to disproportionately affect rough sleepers and other homeless Victorians. As discussed, the Amending Law would provide authorised officers with further powers to 'move on' and fine people, including in circumstances where there is no suggestion that they are breaching the peace, endangering another person or presenting a risk to public safety,⁵¹ and would also allow for the confiscation and disposal of their personal items. These wide-reaching powers are a disproportionate response to the concerns about public order and amenity the Council seeks to address.

While human rights can be permissibly limited, the potential limitations caused by the Amending Law may not be reasonable or demonstrably justified. Rather, the Council should pursue a proportionate and balanced approach, which encourages authorised officers and other officials to respond appropriately to homeless people who are in public places and acting lawfully. Where health or safety is genuinely at risk or a breach of the peace or unlawful behaviour has occurred, the Council should support its officials to respond constructively, taking into account an individual's complex needs and vulnerabilities.⁵² This would help the Council comply

⁴⁵ Ibid.

⁴⁶ Leilani Farha, Proposed "Homeless Ban" in Australia cause for concern – UN Expert (13 March 2017) (Media Release) (available at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21357&LangID=E>).

⁴⁷ United Nations Human Rights Office of the High Commissioner, *International Covenant on Economic, Social and Cultural Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976, in accordance with article 27, article 11(1)*.

⁴⁸ *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 12.

⁴⁹ *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 16.

⁵⁰ *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 15.

⁵¹ This activity is dealt with under *Summary Offences Act 1966* (Vic) s 6.

⁵² See, eg. NSW Government Family and Community Services, *Keeping Homeless People Safe in Public Places*, Protocol Guidelines for Implementation, Protocol Facilitator Guide, Protocol Participant Guide (available at: <http://www.housing.nsw.gov.au/help-with-housing/specialist-homelessness-services/what-we-do/homelessness-initiatives/keeping-homeless-people-safe-public-places>), which is discussed further in part 5 of this submission.

with its obligations as a public authority under the Charter, ensuring that human rights are given proper consideration when making decisions.⁵³

4.5 Ineffectiveness and significant costs of enforcing the Amending Law

Ineffective

Before taking this significant step, Council must contemplate the likelihood of these tougher laws working to effectively address homelessness. We refer you to successful Australian and international examples of reducing homelessness:

- Street to Home in Melbourne (after two years, 70% of people in the Street to Home program were in independent secure accommodation);⁵⁴
- Brisbane's 500 Lives, 500 Homes (since 2014, Housing First principles have been applied to assist 410 households (142 families and 268 individuals) to end their homelessness);⁵⁵
- Housing First in Utah (reduced the number of chronically homeless people by 91% from nearly 2,000 people in 2005, to fewer than 200 in 2016);⁵⁶
- Finland (since 2008, long-term homelessness has decreased by 35% (1,345 persons));⁵⁷ and
- At Home/Chez Soi in Canada (in a randomised control trial where 1000 people participated in Housing First, and 1000 received 'treatment as usual', over 80% of those who received Housing First remained housed after the first year).⁵⁸

These successful programs did not rely on law enforcement. Effective engagement and outreach, coupled with access to permanent supportive housing, were the crucial ingredients of these models. Conversely, cities such as Los Angeles that sought to address homelessness through a tough law enforcement approach failed to reduce visible rough sleeping:

Utah announced recently that, in the last 10 years, it has successfully housed 91% of its chronically homeless population: 1,764 out of 1,932 people. There are now fewer than 200 chronically homeless people in the entire state. By contrast, Los Angeles County's chronically homeless population rose from 7,475 in 2013 to 12,356 this year, according to the latest estimate ... The city of Los Angeles has increased the number of anti-homeless laws on the books by 59% since 1990. There are now 23 restrictions and 19 laws that criminalize homelessness in some way. Each year, the city spends \$80 million enforcing these rules — containing, moving and jailing people who have no choice but to sleep, stand and eat in public.⁵⁹

As noted by the United States Interagency Council on Homelessness, leading world cities are moving away from enforcement-based approaches to homelessness.⁶⁰

Melbourne needs to persist with effective responses informed by evidence of what works. There is no shortage of this evidence and it would be inadequate, reactive public policy to fly in the face of it with the Amending Law.

Financially costly and inefficient

In addition to being ineffective, the implementation of the proposed Amending Law to tackle the homelessness crisis in Melbourne has budgetary implications for the Council and the Victorian Government, including in terms of authorised officers, police and the courts.

This section identifies 2 studies that analyse the costs of enforcement-based approaches to homelessness.

⁵³ Charter of Human Rights and Responsibilities Act 2006 (Vic) s 38.

⁵⁴ See, eg. Guy Johnson and Chris Chamberlain, *Evaluation of the Melbourne Street to Home Program: Final Report*, HomeGround Services (2015).

⁵⁵ Micah Projects, *Housing First: A roadmap to ending homelessness in Brisbane* (2016) 11 (available at: http://micahprojects.org.au/assets/docs/Publications/20161129_Housing-First-Roadmap-WEB.pdf).

⁵⁶ See Utah Department of Workforce Services, *Comprehensive Report on Homelessness: State of Utah 2015* (October 2015) (available at: <https://jobs.utah.gov/housing/scso/documents/homelessness2015.pdf>).

⁵⁷ The Centre for Social Justice, *Housing First: Housing-led solutions to rough sleeping and homelessness* (March 2017) (available at: http://www.housingnet.co.uk/pdf/CSJJ5157_Homelessness_report_070317_WEB.pdf).

⁵⁸ Mental Health Commission of Canada, *National Final Report: Cross-Site At Home/Chez Soi Project* (available at: http://homelesshub.ca/sites/default/files/mhcc_at_home_report_national_cross-site_eng_2.pdf).

⁵⁹ See Mollie Lowery, 'Housing first: What L.A. can learn from Utah on homelessness' in *Los Angeles Times* (3 June 2015) (available at: <http://www.latimes.com/nation/la-oe-0603-lowery-homeless-utah-la-20150603-story.html>).

⁶⁰ United States Interagency Council on Homelessness, *Searching Out Solutions: Constructive Alternatives to the Criminalization of Homelessness* (2012) 2 (available at: https://www.usich.gov/resources/uploads/asset_library/RPT_SoS_March2012.pdf).

'Chronic offenders' – North Carolina

In North Carolina, the Sheriff's Department reviewed data on 81 'chronic offenders' (i.e. arrested at least 5 times in the prior year) and found:

- 33 (41%) were experiencing homelessness;
- the average number of arrests for the 33 homeless chronic offenders was 11.1 per year;
- the average length of stay in jail over the course of a year was 86.6 days; and
- this translated into an annual cost to the County of \$9,266.20 per offender or a total of nearly \$306,000 annually.

The report also noted that:

- '[p]etty larceny, trespassing, drug and alcohol and public disturbance charges were the most common for this group. Most are not hard-core criminals'; and
- 'housing' a person in the county jail costs approximately \$107 per night. In contrast, the cost of housing a person in a shelter for an entire year in Charlotte ranged from \$16.50 to \$38 per night, which is 15–35% the cost of detaining an individual in jail.⁶¹

Ticketing homeless young people – Toronto

Researchers Bill O'Grady, Stephen Gaetz and Kristy Buccieri analysed the financial costs of issuing tickets to homeless young people.⁶² Their report considered tickets issued under *Ontario's Safe Streets Act* (for aggressive panhandling and 'squeegeeing') over an 11 year period (2000 – 2010). The authors obtained the relevant data through two freedom of information requests from the Toronto Police Service, and the Ontario Ministry of the Attorney General.

A total of 67,388 tickets were issued throughout 2000 – 2010, with a total value of \$4,043,280.⁶³ The research also identified that over an 11 year period, it:

- cost \$936,019 to issue tickets under the Safe Streets Act (based on 15 minutes of time (\$13.89) for a Toronto Police Services First Class Constable); and
- used 16,847 hours of police time (calculated based on the number of tickets and an estimate that each ticket takes approximately 15 minutes to issue).⁶⁴

These figures do not include the cost of processing the tickets, follow-up, court and warrants, and therefore only capture a fraction of the overall expenditure of time and money. The report also notes that only \$8,086.56 of the fines has been paid over the 11 year period and questions: 'Is this a reasonable use of resources, and may there be other crimes deserving of more attention?'⁶⁵

These studies show that, in addition to having a heavy impact on vulnerable people, enforcement-based approaches to homelessness impose a costly resource burden on police, services and courts.

Learning from these studies, the City of Melbourne should carefully consider the cost of:

- increasing the number of authorised officers;
- the time of authorised officers used issuing infringements and charges and confiscating belongings;

⁶¹ National Law Center on Homelessness and Poverty, *Criminalizing Crisis: The Criminalization of Homelessness in US Cities* (Washington DC, November 2011) 40 citing Charlotte-Mecklenburg County, *More Than Shelter! Charlotte-Mecklenburg's Ten-Year Implementation Plan to End and Prevent Homelessness – One Person /One Family at a Time* (October 2006) 5 (available at: <http://charmeck.org/city/charlotte/nbs/housing/documents/10yearplantoendandprevenhomelessness.pdf>)

⁶² Bill O'Grady, Stephen Gaetz and Kristy Buccieri, *Can I See Your ID? The Policing of Youth Homelessness in Toronto* (The Homeless Hub Report Series, No 5, 2011) (O'Grady, Gaetz and Buccieri, *Can I See your ID?*).

⁶³ Ibid 10.

⁶⁴ Ibid.

⁶⁵ Ibid.

- increased court time;
- administration costs, including issuing fines, reminders, warrants and processing waiver applications; and
- entrenching people experiencing homelessness in Victoria’s justice system, which is already overstretched and under resourced.⁶⁶

These considerations should also be balanced against the alternative mechanisms for effectively responding to Melbourne’s homelessness crisis, which are discussed in part 5 of this submission.

4.6 Sending the wrong message within Melbourne and beyond

It is an important part of the Council’s messaging to remind the community that ‘homelessness is not a crime’. The Amending Law would make it difficult to stand by this messaging, perpetuating negative stereotypes about homelessness. It would also send the public an incorrect message that homelessness can be effectively addressed through tougher laws.

The Amending Law contradicts the effective leadership regarding hardship and poverty that the City of Melbourne can otherwise pride itself on, including through the *Melbourne for all people strategy 2014-17*.⁶⁷ If implemented, the Amending Law would actively undermine these efforts, exacerbating the current difficulties faced by rough sleepers and other homeless Melburnians and further over-burdening the justice system. The Amending Law may also lead other local councils towards a more punitive, enforcement-based approach to the regulation of public space, increasing the already immense challenges faced by those experiencing homelessness in Victoria.

The City of Melbourne should pride itself on its effective, best practice leadership, and should avoid setting a backward and damaging precedent for other cities grappling with rough sleeping and other forms of homelessness.

⁶⁶ See, eg, *The Churchill Report*, above n 13, 57; *Fair’s Fare*, above n 7.

⁶⁷ *Melbourne for all strategy 2014-17*, above n 5.

5. A Framework for responding effectively to homelessness in Melbourne

5.1 A framework supported by 7 leading homelessness agencies – an alternative to the Amending Law

Recognising the challenges the Council is facing, seven leading homelessness and housing organisations have joined together to develop a 'Proposed Framework for Responding Effectively to Homelessness in the City of Melbourne' (**Framework**) (**Annexure 3**).

Like Council, the seven organisations have a long history of working with, and for, people experiencing homelessness in the City of Melbourne. As agencies at the frontline that work closely with the City of Melbourne, we have drawn on our collective expertise to jointly develop the Framework, which:

- Is informed and endorsed by leading housing and homelessness organisations.
- Builds on much of the positive, collaborative, evidence-based work the City of Melbourne is already leading and recognises the significant commitments recently made by the Victorian State Government.
- Proposes practical measures to address the competing obligations and challenges of the City of Melbourne.
- Provides constructive viable alternatives to the proposed amendments to the Amending Law.
- Addresses the Council's challenges without going down a costly, punitive path that will be ineffective.
- Affirms the Melbourne City Council as a leader in effective, evidence-based responses to homelessness.

We refer you to the Framework in Annexure 3, which is informed and endorsed by:

- cohealth
- Council to Homeless Persons
- Justice Connect Homeless Law
- Launch Housing
- Melbourne City Mission
- VincentCare
- The Salvation Army.

In light of the risks and costs associated with the Amending Law discussed in part 4 of this submission, Homeless Law urges the Council to avoid taking a step backward, and instead to continue forward with your effective, collaborative, evidence-based leadership and with advocacy to address the gaps in housing, prevention and support.

This would be an effective framework for preventing and addressing homelessness that we could all commend.

5.2 Protocol for Homeless People in Public Places

As a signatory to the original 2006 Homeless People in Public Places Protocol, Council knows the value of the Protocol as a tool for helping authorised officers (and other Council staff and contractors) understand and respond appropriately to homelessness.

We refer Council to the joint submission on the Amending Law from eight members of the Justice Access Advisory Group (**JAAG**):⁶⁸ cohealth; Council to Homeless Persons; Inner Melbourne Community Legal; Justice Connect Homeless Law; Launch Housing; The Salvation Army; Youth Projects; and Youth Law (**JAAG Submission**).

⁶⁸ The Justice Access Advisory Group comprises specialist homelessness and justice agencies, including representatives from: Victoria Legal Aid; Magistrates' Court of Victoria; City of Melbourne; Department of Justice and Regulation; Department of Health and Human Services; Victoria Police; Council

The JAAG Submission identifies:

The JAAG has been working towards reviving the Protocol for Homeless People in Public Places (Protocol) for two years. The City of Melbourne were signatories to the previous protocol and instrumental in its development. The purpose of the Protocol is to ensure that people experiencing homelessness are treated with respect and are not discriminated against on the basis of their homeless status. It provides guidelines to agencies who come in contact with people experiencing homelessness, including Council officers ... Such a tool could provide a useful alternative to the proposed changes to the Local Law.

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

Reviving the Protocol, in partnership with other frontline agencies, will facilitate a consistent, constructive approach to homelessness.

The education that accompanies the Protocol is crucial.⁶⁹ The training and support with implementation that underpins NSW's Protocol for Homeless People in Public Places is highlighted in the case study below.

As Council knows, this kind of practical, clear guidance provides Council staff and contractors with support and resources to engage appropriately and effectively with people experiencing homelessness. The Protocol is a high level policy document that allows for discretion and agency-specific implementation, thereby providing a framework and guidance for officers making difficult decisions in complex situations.

These documents – and the negotiation, education and leadership that accompany their development and implementation – have the potential to play a significant role in improving the understanding of frontline officers and providing them with direction and guidance about when and how to interact with people experiencing homelessness.

It is also a tool that supports authorised officers to exercise their discretion in a way that prevents homeless people entering the infringements system when their needs could be more appropriately dealt with by health, housing and support services.

Importantly, it is not just a tool within agencies, but can be used to shape conversations and messaging to the public.

It can also help Council comply with its obligations as a public authority under the *Charter of Human Rights and Responsibilities Act 2006* (Vic) to make sure human rights are given proper consideration when making decisions.⁷⁰

to Homeless Persons; cohealth; Launch Housing; RDNS Homeless Persons' Program; The Salvation Army; Youth Projects; Inner Melbourne Community Legal; Youth Law; Justice Connect Homeless Law.

⁶⁹ See, eg, NSW Government Family and Community Services, *Keeping Homeless People Safe in Public Places*, Protocol Guidelines for Implementation, Protocol Facilitator Guide, Protocol Participant Guide (available at: <http://www.housing.nsw.gov.au/help-with-housing/specialist-homelessness-services/what-we-do/homelessness-initiatives/keeping-homeless-people-safe-public-places>).

⁷⁰ *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 38.

Responding effectively to homelessness: NSW Government Protocol for Homeless People in Public Places

Aims and signatories

The NSW Protocol aims to 'help ensure that homeless people are treated respectfully and appropriately and are not discriminated against on the basis of their homeless status' and to 'provide a framework for interactions between officials and homeless people in public places'.

Signatories to the NSW Protocol are: Housing NSW, NSW Police Force, Community Services, Department of Premier and Cabinet, Office of Environment and Heritage, NSW Health, RailCorp, State Transit Authority of NSW, Sydney Harbour Foreshore Authority, Sydney Olympic Park Authority, Aboriginal Affairs and Ambulance Service of NSW. The City of Sydney recognises the NSW protocol and notes that it 'acknowledges the equal rights of all members of the community to access public places'.

Guidance on appropriate responses

The NSW Protocol acknowledges that 'like all other members of the public, homeless people have a right to be in public places ... at the same time respecting the right of local communities to live in a safe and peaceful environment'.

The NSW Protocol provides that a homeless person is not to be approached unless:

- they request assistance;
- they appear to be distressed or in need of assistance;
- an official seeks to engage with the person for the purpose of information exchange or provision of a service;
- their behaviour threatens their safety or the safety and security of people around them;
- their behaviour is likely to result in damage to property or have a negative impact on natural and cultural conservation of environment, including cultural heritage, water pollution and fire risks;
- they are sheltering in circumstances that place their or others' health and safety at risk (for example, staying in derelict buildings, high risk areas);
- they are a child who appears to be under the age of 16;
- they are a young person who appears to be 16 to 17 years old who may be at risk of significant harm; and
- they are a child or young person who is in the care of the Director-General of the Department of Family and Community Services or the parental responsibility of the Minister for Family and Community Services.

The Protocol is an agreement by government organisations to respond appropriately to homeless people who are in public places and acting lawfully. It doesn't prevent agencies from acting where health or safety is at risk or a breach of the peace or unlawful behaviour has occurred. It encourages officials to consider the individual's circumstances when enforcing laws and to use discretion which takes account of 'the complex needs of homeless people, including mental health issues, drug and alcohol misuse and cognitive impairment'.

Implementation and evaluation

'Guidelines for Implementation' have been published and it is recommended that the NSW Protocol is addressed in induction training for all new staff and in development training for existing staff. Housing NSW developed a 'Protocol Training Package' to support organisations to adopt and implement the protocol.

Signatories are also advised to conduct internal monitoring and review of the NSW Protocol and its implementation and impact. The Protocol will be reviewed every two years.

5.3 A strategy for making future decisions

Homeless Law recommends that the Council adopts guidelines or a framework for balancing competing interests and pressures, assessing evidence and making decisions about homelessness and regulation of public space. This would help to avoid reactive decisions that risk undermining the City of Melbourne's otherwise successful work leading, supporting and advocating for effective responses to homelessness.

This sample checklist for designing, implementing and evaluating new models for regulating public space is provided by way of practical guidance about the research that should be undertaken and the evidence that should be evaluated as part of this process.

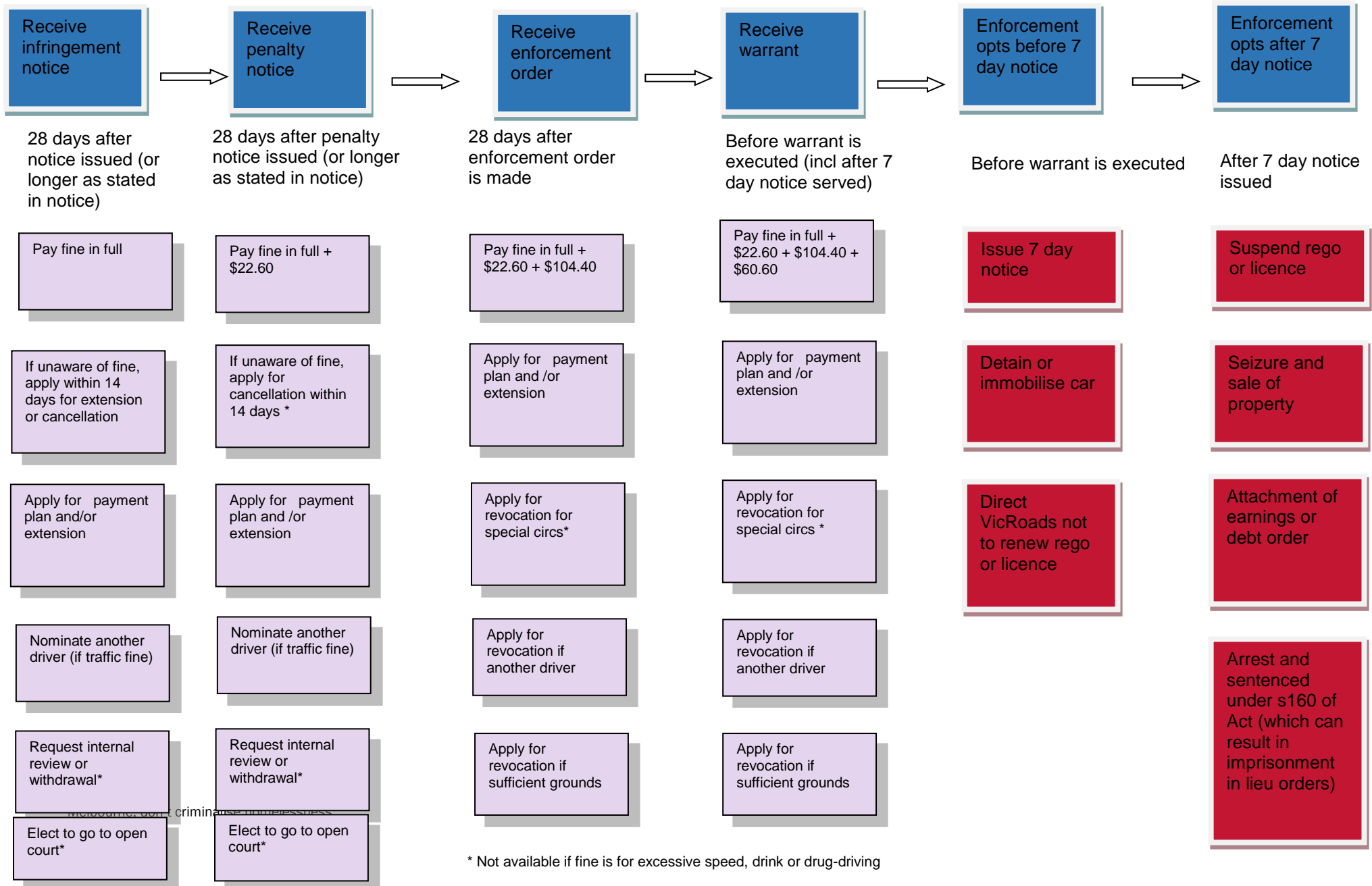
Eight step checklist for designing, implementing and evaluating approaches to dealing with homelessness and regulation of public space

1. What are we trying to do? For example, to clean up the streets, reduce homelessness, link people with services, stop people begging or reduce public drunkenness.
2. Why are we trying to do it? For example, in response to public concern about disorder or safety, pressure from businesses regarding commercial impacts, to improve the wellbeing of people experiencing homelessness or as part of a strategy to reduce homelessness.
3. Balancing the competing needs and interests – if we are trying to clean up the streets or respond to public pressure about disorder, for example, these concerns need to be balanced against other needs and interests, including those of individuals experiencing homelessness, service providers, the police and the courts.
4. Assess the proposed methods and what their impacts might be – consider the potential impact of the proposed method, for example, a 'crackdown' or 'blitz' on people begging will require significant police resources, court intervention and service involvement. It will impact on people who are begging, including potentially through breaking links with services, prompting other more dangerous activities and damaging relationships with police.
5. Are there alternative ways of dealing with this problem? Consider interventions by services other than law enforcement, including housing, health, drug and alcohol or mental health services. Comparative research is important in this respect. It is a local problem, but it is not unique and we can look further afield for ideas about what is working. Consult with services and people with a direct experience of homelessness in considering alternatives.
6. What will this cost and how much would alternatives cost? Consider the costs of police and court resources, involvement of legal services, any jail time or administration costs and assess these costs against the cost of alternatives, including provision of housing with support or targeted health-based support.
7. Is this working? During the implementation of an enforcement-based approach to homelessness, assess the impacts on individuals, community, crime rates, courts, police and services.
8. What were the impacts and outcomes? Publicly discuss the impacts and re-evaluate the program.

Annexure 1 – Proposed Framework for Responding Effectively to Homelessness in the City of Melbourne

See attached.

Annexure 2 – Current infringements processes, timeframes and options



Annexure 3 – Churchill Fellowship Report: Addressing the negative impact of laws regulating public space on people experiencing homelessness

See attached.