

7 February 2017

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

Dear Lord Mayor and Councillors

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

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

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

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

This brief submission:

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

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

Justice Connect Homeless Law

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

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

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

In 2015–16, Homeless Law:

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

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

The Amending Law

Key aspects of the Amending Law are:

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

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

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

Existing relevant laws

As the City of Melbourne's website notes:

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

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

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

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

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

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

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

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

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

An authorised officer may:

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

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

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

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

Concerns about the Amending Law

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

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

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

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

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

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

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

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

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

Addressing challenges

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

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

⁸ United States Interagency Council on Homelessness, *Searching Out Solutions: Constructive Alternatives to the Criminalization of Homelessness* (2012) 2 (available at: https://www.usich.gov/resources/uploads/asset_library/RPT_SoS_March2012.pdf).

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

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

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

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

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

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

Yours sincerely



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

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