

Submission to the United Nations on the decriminalisation of homelessness

November 2021

Contents

| | |
|---|-----------|
| Executive summary | 3 |
| 1. Key current laws and regulations | 6 |
| 1.1 State-based laws and regulations | 6 |
| 1.2 Relevant human rights instruments..... | 7 |
| 2. Police powers and people experiencing homelessness | 10 |
| 2.1 Move on powers | 10 |
| 2.2 Search powers | 11 |
| 2.3 Potential violations of international human rights law and principles | 13 |
| 3. Criminalisation of begging in Victoria | 16 |
| 3.1 Overview of current laws relating to begging in Victoria | 16 |
| 3.2 The need to decriminalise begging | 17 |
| 3.3 Potential violations of international human rights law and principles | 18 |
| 4. Fines and homelessness | 21 |
| 4.1 Imprisonment for unpaid fines..... | 21 |
| 3.3 The need to decriminalise public space offences | 21 |
| Annexure 1 - Proposed Victorian Protocol for Responding to People Experiencing Homelessness in Public Places | 23 |



Executive summary

Justice Connect welcomes the opportunity to provide evidence in response to the United Nations call for input in relation to the decriminalisation of homelessness and extreme poverty.¹

Through Justice Connect Homeless Law's (**Justice Connect**) work as the specialist homelessness legal service in the state of Victoria in Australia, we clearly see how laws, policies and practices disproportionately impact people facing homelessness. Despite being a signatory to key international human rights instruments, as well as having a Charter of Human Rights,² Victoria's current reliance on the justice system to respond to homelessness effectively criminalises social and health issues for the most vulnerable in our community.³

Drawing on 20 years of frontline service delivery and direct client insights, we highlight the ongoing risks of criminalisation of homelessness and the policing of public space in Victoria, Australia. This submission focuses on laws and regulations in Victoria, however, similar laws and regulations exist across every state and territory in Australia. Notably, a recent Federal Inquiry into Homelessness in Australia recommended that the Australian Government work with state and territory governments to review public order offences and other offences that disproportionately affect people experiencing homelessness, particularly rough sleepers, with a view to minimising enforcement-based responses to homelessness.⁴ This is a welcome recognition that Australia's current laws regulating public space have a disproportionate and discriminatory impact on people experiencing homelessness.

Police powers and homelessness

Police and enforcement officers have broad discretion in the exercise of their powers in Victoria, including in relation to search and move-on powers. Due to their public visibility, people experiencing homelessness are more likely to come into contact with police and enforcement officers and be moved-on or searched.

Our evidence demonstrates that a lack of appropriate accountability of policing practices exacerbates the risks of negative interactions and increases contact with the justice system for people experiencing homelessness. Key opportunities to address this include:

- Creating and implementing a Victorian Protocol for People Experiencing Homelessness in Public Places as a framework for police and enforcement officers to improve their practices in relation to people experiencing homelessness;
- Reviewing and publicly reporting on the use of police powers, particularly related to searches and move-on directions, and resourcing an effective and independent police oversight body.

The need to decriminalise public space offences

People experiencing homelessness are at greater risk of being fined or charged for low-level offending related to homelessness and poverty.⁵ Justice Connect has helped thousands of Victorians facing homelessness to resolve overwhelming fines and charges for what we call 'public space offences', including begging, public drunkenness and conduct on public transport.

¹ United Nations Human Rights Office of the High Commissioner, *Call for Input: Decriminalization of homelessness and extreme poverty* (30 August 2021) The Office of the High Commissioner for Human Rights <<https://www.ohchr.org/EN/Issues/joint-activity/Pages/Decriminalization-homelessness>>. Throughout this submission, Justice Connect has provided input related to: (1) Laws or regulations that prohibit begging, eating, sleeping, or performing personal hygienic activities in all or certain public places, including their texts and whether they are still in force and enforced; (2) laws or regulations that allow for petty offences the detention or imprisonment of individuals who are unable to pay the respective fine; (3) comments whether any of these laws and regulations may violate international human rights law; (4) information about attempts made or planned to decriminalize begging, eating, sleeping, or performing personal hygienic activities in public places; and (5) measures and services available at municipal, regional or national level to support people living in poverty from having to resort to beg, sleep, wash, defecate or perform other hygienic activities in public places, because they lack access to employment, social assistance, adequate housing, public showers, and toilets.

² Victorian *Charter of Human Rights and Responsibilities 2006* (Vic) (**Charter**),

³ Law Council of Australia, *The Justice Project Final Report - Part 1: People who are Homeless* (Final Report, August 2018) 4 (**Justice Project Final Report**) <<https://www.lawcouncil.asn.au/files/webpdf/Justice%20Project/Final%20Report/People%20who%20are%20Homeless%20%28Part%201%29.pdf>>.

⁴ House of Representatives Standing Committee on Social Policy and Legal Affairs, *Inquiry into homelessness in Australia* (Final Report, July 2021) 3.301.

⁵ Justice Project Final Report (n 3) 24.



Key opportunities to decriminalise homelessness and poverty include:

- Building on the Victorian Government's leadership in abolishing the offence of public drunkenness as an opportunity to engage in a wholesale review of the *Summary Offences Act 1966* (Vic) and decriminalise other public space offences, particularly begging;
- Implementing fairer approaches to fines and homelessness in Victoria, including by ensuring that a person cannot be imprisoned due to unpaid fines.

The risks around homelessness being criminalised, and the need for further reforms, can be seen through the Justice Connect case study below.

Preventing the criminalisation of homelessness in Melbourne (2017)

In early 2017, the City of Melbourne in Victoria, Australia, proposed tough new laws that would have effectively criminalised homelessness and breached Australia's international human rights obligations. Justice Connect led a successful collective campaign that prevented the criminalisation of homelessness.

Local council areas with high levels of rough sleeping often face competing pressures from the community around how to respond. Justice Connect saw this clearly in 2017, when the City of Melbourne came under significant pressure in the face of increasing numbers of people sleeping rough, and intensely negative media coverage, to address street homelessness. The City of Melbourne proposed various changes to local laws that would have led the city down an enforcement-based approach to homelessness.

Informed by the evidence from Justice Connect's work and the insights of our clients, we collaborated with our partners across the legal, housing, homelessness and faith-based sectors to prevent Melbourne going down a path that would further marginalise and isolate people who are experiencing homelessness, and to map an alternative framework for the City of Melbourne.

Justice Connect was involved in engaging with the UN Special Rapporteur on the right to housing at that time, Leilani Farha, who publicly raised concerns about the proposed local laws compatibility with international human rights law:

"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."

By targeting people experiencing homelessness, rather than assisting them to realise their fundamental right to housing, the implementation of the proposed laws were likely in breach of Australia's obligations under international law, including the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*.

After extensive coordinated advocacy, the City of Melbourne changed direction, and decided not to criminalise homelessness. Instead, a formal Operating Protocol was agreed to between the City of Melbourne and Victoria Police. The City of Melbourne's decision was a welcome one. It showed that, through collaboration and a reflection on the evidence, governments can avoid going down the well-worn and notoriously costly and ineffective path of using the law to tackle homelessness. However, more changes are needed to ensure that homelessness is not criminalised in Victoria, Australia.



About Justice Connect

Justice Connect is a social justice organisation in Australia that designs and delivers high-impact interventions that increase access to legal support in the face of rising unmet legal need.

We believe in a fair and just world where people and communities are supported to engage with and fully participate in our legal and social system and avoid the negative impacts on their wellbeing or organisational health that flow from unresolved legal problems.

Justice Connect Homeless Law

Justice Connect Homeless Law (**Justice Connect**) is the specialist free legal service for people experiencing or at risk of homelessness in the state of Victoria in Australia. Justice Connect staff work closely with pro bono lawyers to provide intensive legal representation (including ongoing casework, negotiations, court and tribunal appearances and advice) to Victorians who are facing homelessness. Since 2001, Justice Connect has been outreach-based and client-centred, and from 2010, we have added depth to our practice by integrating staff social workers, allowing us to holistically address clients' legal and non-legal needs under one roof.

In 2020–2021, Justice Connect:

- Provided an integrated combination of specialised legal representation and social work supports to Victorians who are experiencing or at risk of homelessness through 661 new client files;
- Scaled our eviction prevention work by helping 30,428 unique users through our digital product, 'Dear Landlord: Self-help tools and resources for Victorian renters';
- Strategically prioritised our impactful and innovative services for three key cohorts facing housing insecurity: women and their children, particularly in the context of family violence, people in or exiting prison, and people sleeping rough;
- Deepened our community and health justice partnerships, particularly through integrated co-locations and digital initiatives with frontline homelessness and health organisations, including Launch Housing, cohealth and Sacred Heart Mission – Journey to Social Inclusion and GreenLight; and
- Collaboratively advocated in the context of COVID-19 for the best-practice implementation of Victoria's rental reforms and a fairer, more effective and accessible fines system, along with using casework and client evidence to raise national awareness about the need for more social housing and the risks of criminalising homelessness.

In the last 12 months, Justice Connect has also had a 90% success rate in preventing clients and their families from being evicted into homelessness. Based on findings by the Australian Housing and Urban Research Institute (**AHURI**), this equates to over \$5.3 million worth of savings to the Victorian Government and wider-community, through avoiding increased health, justice and welfare services costs.⁶

In addition to our integrated model of service delivery, which focuses on early intervention and preventing legal issues escalating to crisis point, Justice Connect uses the evidence from our direct casework to inform systemic change aimed at stopping homelessness before it starts and preventing the criminalisation of homelessness.

⁶ The estimated annual cost to government services of an individual experiencing homelessness is \$29,450 higher than for the rest of the Australian population. See Kaylene Zaretsky and Paul Flatau, *The cost of homelessness and the net benefit of homelessness programs: a national study* (Final Report No 218, Australian Housing and Urban Research Institute, December 2013) 14 <https://www.ahuri.edu.au/__data/assets/pdf_file/0007/2032/AHURI_Final_Report_No218_The-cost-of-homelessness-and-the-net-benefit-of-homelessness-programs-a-national-study.pdf>.



Acknowledgements

Justice Connect thanks all our government and philanthropic supporters, along with our partner law firms and pro bono lawyers, whose significant contributions continue to generate positive outcomes for Victorians who are experiencing or at risk of homelessness, and shapes our recommendations for reform.

Justice Connect particularly recognises our partner law firm **Clayton Utz** for their generous and extensive legal support with this submission. We also acknowledge our colleagues in the legal assistance, homelessness and community-service sectors for consultations in relation to this work.

We have shared de-identified Justice Connect client stories and direct insights in this submission, which have informed and given light to our calls for change, and we thank them for their valuable contributions.

Justice Connect Homeless Law

PO Box 16013
Melbourne VIC 8007
DX 128 Melbourne
T +61 3 8636 4408
E homelesslaw@justiceconnect.org.au
justiceconnect.org.au

Cameron Lavery

Manager and Principal Lawyer
T +61 3 8636 4412
E cameron.lavery@justiceconnect.org.au

Samantha Sowerwine

Manager, Advocacy and Projects
T +61 3 8636 4470
E samantha.sowerwine@justiceconnect.org.au



1. Key current laws and regulations

1.1 State-based laws and regulations

In the state of Victoria in Australia, there are extensive laws which regulate public space. The *Summary Offences Act 1966 (Vic)* (**Summary Offences Act**) is the primary piece of legislation.

Further, local government areas across Victoria have local laws which contain offences that also contribute to the regulation of public space. The City of Melbourne Council, which is the Council for the Central Business District (**CBD**) of the city, has enacted the *Activities Local Law 2009 (Vic)* (**Activities Local Law**) under the *Local Government Act 1989 (Vic)* which also contains several offences punishable by the Council, which effectively criminalise homelessness.

The following is a brief overview of the various laws and regulations that contribute to the criminalisation of homelessness in Victoria.

Police powers

In Victoria, the police and protective service officers have broad powers to move-on and search people in public spaces. For example, police officers and protective service officers in Victoria have powers to give directions to people in a public place to leave that public place if they have reasonable grounds to suspect that:

- the person or persons are breaching, or likely to breach the peace;
- the person is or persons are endangering, or likely to endanger, the safety of any other person; or
- the behaviour of the person or persons is likely to cause injury to a person or damage to property or is otherwise a risk to public safety.⁷

Police search powers allow a very broad scope for police to search people in public spaces based on 'reasonable suspicion' of someone being in possession of a drug of dependence⁸ or a weapon.⁹

Begging

The Summary Offences Act provides that a person must not 'beg or gather alms', or cause, procure or encourage a child to do the same.¹⁰ The maximum penalty for this offence is 12 months imprisonment.

The Victorian Government and the City of Melbourne have also introduced fines for:

- soliciting money or goods while on public transport, or on public transport premises;¹¹ and
- soliciting money in a public place without a permit.¹²

Prohibited activities and behaviour-based offences

The following activities in, on or within the hearing or sight of a public place, are prohibited under the Activities Local Law:

- causing or committing any nuisance (nuisance is defined as having its 'ordinary common meaning');
- adversely affecting the amenity of that public place;

⁷ *Summary Offences Act 1966 (Vic)* s 6.

⁸ *Drugs, Poisons and Controlled Substances Act 1981 (Vic)* s 82.

⁹ *Control of Weapons Act 1990 (Vic)* s 10.

¹⁰ *Summary Offences Act 1966 (Vic)* s 49A.

¹¹ *Transport (Compliance and Miscellaneous) (Conduct on Public Transport) Regulations 2015 (Vic)* reg 30.

¹² *Activities Local Law 2019 (Vic)* cl 5.1.



- 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.¹³

In addition, people must not, in a public place:

- destroy, damage, alter, mark, deface or remove any property or thing;
- walk on or over any plant bed, plant box or garden plot except with the consent of the proprietor;
- cause risk of personal injury or damage to property by climbing or walking on or over, sitting on or sliding down any structure, building, fixture, free standing object, appliance or equipment (other than play equipment or recreation and fitness equipment) except with the consent of the proprietor.¹⁴

Authorised officers in the City of Melbourne have broad powers to enforce the law, including by charging a person, issuing an infringement notice or directing a person to leave a public place if the person is failing to comply.¹⁵

The Summary Offences Act also regulates certain behaviours in public places. For example, 'obscene behaviour' is an offence in the Summary Offences Act which prohibits any person who is in a public place from using profane, indecent or insulting language or threatening, abusive or insulting words, or singing an obscene ballad.¹⁶ The maximum penalty for this offence is a large fine or two months imprisonment, however if the person reoffends with this offence they can be imprisoned for up to six months.¹⁷ Similarly, being a public nuisance is also an offence, and carries a maximum term of five-years imprisonment.¹⁸

Erecting provisional accommodation

Under the Activities Local Law, it is an offence to camp in or on any public place in a vehicle, tent, caravan or any type of temporary or provisional form of accommodation'¹⁹ The Activities Local Law also gives authorised officers the power to confiscate and impound goods and items (including vessels, equipment, bikes and other property) where that person has ignored a direction to remove them from a public place.²⁰

In addition, the Summary Offences Act criminalises obstructing a footpath or road by placing goods on the footpath, or having an awning over a footpath.²¹

Public drunkenness and smoking

Under the Local Activities Law, it is an offence to consume liquor in a public place in the City of Melbourne.²² Finally, in the City of Melbourne, a person must not smoke in a smoke free area, and a person may be issued with an infringement notice or charged for non-compliance.²³

The Summary Offences Act also criminalises being drunk in a public place, and allows protective services officers to arrest anyone who is drunk or drunk and disorderly and in a public place²⁴, noting that the Victorian government

¹³ *Activities Local Law 2019* (Vic) cl 2.1.

¹⁴ *Activities Local Law 2019* (Vic) cl 2.2.

¹⁵ *Activities Local Law 2019* (Vic) cl 14.8, cl 14.2-3, cls 14.9-14.11.

¹⁶ *Summary Offences Act 1966* (Vic) ss 17, 17A.

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

¹⁸ The sentence is provided for in the *Crimes Act 1958* (Vic) but the offence itself is a common law offence.

¹⁹ *Activities Local Law 2009* (Vic) cl 2.8.

²⁰ *Activities Local Law 2009* (Vic) cl 14.17.

²¹ *Summary Offences Act 1966* (Vic) sub-ss 4(e)-(f).

²² *Activities Local Law 2009* (Vic) cl 3.1.

²³ *Activities Local Law 2009* cl 3A.1.

²⁴ *Summary Offences Act 1966* (Vic) ss 14-15.



has now committed to decriminalising public drunkenness.²⁵ A further offence related to public drunkenness includes the offence of 'riotous or disorderly' behaviour of a person while drunk in a public place.²⁶

1.2 Relevant human rights instruments

Australia is a party to seven key international human rights instruments, including:

- the *International Convention on Civil and Political Rights (ICCPR)*;²⁷
- the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*;²⁸
- the *Convention on the Rights of the Child*;
- the *Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment*;
- the *International Convention on the Elimination of all forms of Racial Discrimination*;
- the *Convention on the Elimination of all forms of Discrimination against Women*;
- the *Convention on the Rights of Persons with Disabilities*.

Australia also played an important role in the development of the *Universal Declaration of Human Rights (UDHR)*.²⁹

Some of the rights and principles contained within these instruments are also contained in Victoria's *Charter of Human Rights and Responsibilities 2006 (Vic) (Victorian Charter)*, which sets out twenty fundamental human rights. The Victorian Charter requires public authorities to act consistently with the human rights in the Victorian Charter, and ensures that human rights are considered when Parliament makes new laws and that courts and tribunals interpret and apply all laws compatibly with human rights.

²⁵ The Hon Jill Hennessy MP, Attorney-General (Vic), 'New Health-Based Response to Public Drunkenness' (Media Release, 22 August 2019) <<https://www.premier.vic.gov.au/new-health-based-response-to-public-drunkenness/>>.

²⁶ *Summary Offences Act 1966 (Vic)* s 16.

²⁷ International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS (entered into force 23 March 1976).

²⁸ International Covenant on Economic, Social and Cultural Rights, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976).

²⁹ Universal Declaration of Human Rights, GA Res 217A (III), UN GAOR, UN Doc A/810 (10 December 1948).

While not a treaty, the UDHR is broadly recognised as customary international law. See Hilary Charlesworth, 'The Universal Declaration of Human Rights', in Wolfrum (ed), *Max Planck, Encyclopedia of Public International Law* (Oxford University Press, 2008) [16].



2. Police powers and people experiencing homelessness

Building on the legal and regulatory framework discussed in Part 1 of this submission, we share below our direct casework evidence and client insights in relation to how people experiencing homelessness are impacted by the current laws and practices. We also highlight how the current framework and its application may criminalise homelessness.

2.1 Move-on powers

As outlined in Part 1, move-on powers give police or protective services officers (**PSOs**) broad powers to direct people to move on under section 6 of the Summary Offences Act. It is an offence to contravene a move-on direction without a reasonable excuse.³⁰ Penalties include fines of up to 5 penalty units (currently AUD\$908.70).³¹

People experiencing homelessness are more likely to be directed to move-on, simply because they are more visible to police than people who have access to housing. In 2021, national research on the criminalisation of homelessness in Australia revealed that people experiencing homelessness, and particularly visible homelessness, are the subject of targeted policing that produces over-criminalisation. One participant noted:³²

'People sleeping rough are exposed to high levels of policing because they live their lives outdoors, and they engage in behaviours that most people have the 'luxury' of carrying out in the privacy of their own homes: the park's their living room. That's the reality, you know, and I just think there's not enough public awareness of that being the case.'

In addition, people with mental health issues and acquired brain injuries are over-represented in the homeless population. As noted by the Victorian Council to Homeless Persons in 2016, these individuals 'may exhibit public behaviours that others find challenging, and which bring them to the attention of police' more frequently.³³ This view is corroborated by an interviewee in McNamara et al's 2021 study:³⁴

'I think public nuisance can be used to penalise really benign behaviour ... and particularly people who have a visible mental health concern, disability, yes, are often punished for public nuisance, just for existing in a public space.'

This means that people sleeping rough are more vulnerable to being moved-on, even though they have nowhere to go. People who are homeless are also at a greater risk of contravening the move-on order because, unlike other members of the public, they do not have private places to return to avoid contravention.

³⁰ *Summary Offences Act 1966* (Vic) s 6(4).

³¹ The current penalty unit rates are specified in Victoria, Gazette, No S 233, 20 May 2021. The value of a penalty unit is set annually by the Victorian Treasurer, and is updated on 1 July each year.

³² McNamara et al 'Homelessness and contact with the criminal justice system: Insights from specialist lawyers and allied professionals in Australia' (2021) 10(1) *International Journal for Crime, Justice and Social Democracy*, 114.

³³ Council to Homeless Persons, Submission No 40 to Department of Justice and Regulation, *Access to Justice Review* (2016).

³⁴ McNamara et al (n 32), 114.



Finally, people experiencing homelessness often spend time in public places that are proximate to the services they need to access, including housing services, counsellors, mental health services or pharmacies.³⁵ When homeless or vulnerable people are moved-on from these areas, they are at risk of being prevented from accessing these vital services, or being forced into more isolated and dangerous areas.³⁶ For people experiencing homelessness who may have various support needs, including physical and mental health services, excluding them from a public place in an area where there is a high concentration of services could have serious consequences and place them at risk of harm. A recent report by the Public Interest Advocacy Centre and Homelessness New South Wales highlighted the impact of move-on powers for people experiencing homelessness, including Ryan:³⁷

‘Ryan told us that move on orders disrupt the survival measures that a person has to take when they are sleeping rough. He explained that one of the most important tasks in his day is finding a good spot to sleep.

‘You want to find a good spot to sleep, somewhere with a bit of shelter, somewhere the ground is soft, so you get there halfway through the day and you sort of like, mark your territory, “This is where I’m sleeping tonight. When you get asked to move on, the next guy is cheering – he just got the best spot”.’

At this stage, it is often too late in the day to find somewhere else appropriate to sleep, and Ryan ends up sleeping in spaces that are unsafe, or that have no protection from the rain, wind, or other people.’

2.2 Search powers

Police search powers in Victoria allow a very broad scope for police to search people in public spaces based on ‘reasonable suspicion’ of that person being in possession of a prohibited item. Equivalent powers do not exist on private property. In those circumstances, police need to obtain a search warrant.³⁸

In Justice Connect’s experience, the threshold for that reasonable suspicion is very low and there is little scope for people to protect their rights. Factors such as a person’s appearance and/or presence in a known drug area are insufficient to justify a legal search, but may nevertheless be relied upon by police interacting with people experiencing homelessness. As a result of this, people sleeping rough are subjected to increased police interactions and are at higher risk of searches. In 2021, Greg was interviewed about his experiences with police:³⁹

‘Greg felt he was targeted by police based on his appearance. ‘I have been targeted for the way I look plenty of times. I am pretty aware of that. I have been hassled by them, targeted for no good reason’. A number of times police approached him and advised, ‘we are detaining you for the purpose of a search’.

Greg was not sure if he was actually being arrested or unlawfully detained in these interactions, as the police did not explain the basis for their suspicion, and did not engage in any conversation with Greg prior to informing him of their intention to conduct a search.

Greg felt that police often used the ‘excuse’ that, based on the area that he is in and his appearance, they had a reasonable suspicion that Greg was either possessing or intending to purchase drugs.

‘It’s usually around drugs, that’s the excuse they use. They said, ‘We have reasonable suspicion to think you’ve got drugs on you’. Then they grabbed me, threw me up against the wall, pin me down and handcuff me’’

³⁵ See City of Melbourne, ‘Finding a Way Out: New Study into Homelessness’ (Media Release, 29 January 2014), 26.

³⁶ Justice Project Final Report (n 3), 4.

³⁷ See Public Interest Advocacy Centre and Homelessness NSW, *Policing Public Space: the experiences of people sleeping rough* (2021) 18.

³⁸ See, e.g., *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 81.

³⁹ Public Interest Advocacy Centre and Homelessness NSW, *Policing Public Space* (n 37), 11.



Police search powers can result in people who are sleeping rough facing charges and being remanded for relatively minor drug possession charges, including for personal possession and use of cannabis. In 2017-18, cannabis offences accounted for about half of all drug arrests across Australia, more than any other drug.⁴⁰ A participant in McNamara et al's 2021 study commented:⁴¹

'If you've got someone who is drug dependent or using drugs, and if they're homeless, chances are they're carrying those drugs with them. Like, they don't have a house where they're going to be storing all their stuff; they're carrying them all on the person.'

The broad search powers available to police can also result in people being charged with a range of unrelated offences. For Justice Connect's clients, a common charge for people sleeping rough is the indictable offence of dealing with property that is reasonably suspected of being the proceeds of crime under s 195 of the *Crimes Act 1958 (Vic) (Crimes Act)*. For this charge, there is no requirement for the Court to find that items are indeed stolen. As a result, people experiencing homelessness are often searched under the premises that they reasonably suspected of having a drug of dependence, and then charged under the Crimes Act in relation to any items of value for which they can't produce receipts. This regularly includes electrical items and items of sentimental value, such as family jewellery. Given police do not even need to prove that items are stolen, people sleeping rough are at a significant forensic disadvantage when charged with this offence. Former Justice Connect client Gary had spent around five years sleeping rough when he was searched by police.⁴²

Man sleeping rough who was searched by police has charges withdrawn and phone returned to him after two years of legal advocacy

One day while Gary was sleeping rough, police approached and searched him under the *Drugs, Poisons and Controlled Substances Act 1981 (Vic)*. The police said they had formed a suspicion that Gary was in possession of drugs because one of the officers saw a zip lock bag. When they searched Gary, the police officers did not find any drugs, but found a kitchen knife, along with a mobile phone that was still in its packaging. Gary had recently received the phone to assist him in contacting his community-based support workers.

Police charged Gary with possession of a controlled weapon and, because he could not produce a receipt or evidence of the transaction where he bought the phone, he was charged with dealing with property which is reasonably suspected of being the proceeds of crime.

With ongoing, specialised legal advocacy from Justice Connect's senior criminal lawyer, both charges were withdrawn, and almost two years later, Gary was able to get the phone back.

Is it also important to note that negative interactions with police, particularly those resulting in a search, can have detrimental impacts on people sleeping rough. Many people experiencing homelessness have prior experiences of trauma, abuse and neglect, and many have long-standing feelings of unworthiness. Negative and invasive interactions with police can cause re-traumatisation, thereby undermining an individual's recovery process. In 2021, a man experiencing homelessness named Tony made the following comments about negative interactions with police:⁴³

'If things are going good and you have an interaction with police which isn't a good interaction, I suppose it brings back a bit of old things that may have happened in the past and it sort of cuts you down a few pegs. You can't feel like you can move and go back to thinking you can't make it and you end up being that person that they might continually tell you that you are, which is no good. When you get told that you are no good or you're hopeless, that's where you end up going back to.'

⁴⁰ Australian Criminal Intelligence Commission, *Illicit Drug Data Report 2017-18* (Report, 2019) 14.

⁴¹ McNamara et al (n 32), 114.

⁴² Please note that all Justice Connect client names and stories in this submission have been de-identified.

⁴³ See Public Interest Advocacy Centre and Homelessness NSW, *Policing Public Space* (n 37), 11.



To ensure greater accountability in relation to policing and reduce justice system interactions for people experiencing homelessness, Justice Connect has advocated for several government initiatives, including:

- Reviewing of the use of police powers, particularly related to search and move-on powers, including through consultation with people who have lived experience and with specialised support professionals, to improve police engagement with people sleeping rough and prioritise service-based responses to homelessness;
- Ensuring that police data on searches and move-on directions is recorded, analysed and publicly reported;
- Implementing a Protocol for People Experiencing Homelessness in Public Places to provide a framework and guidelines for police and enforcement officers in how they engage with people experiencing homelessness and exercise their powers in compliance with the law and the Victorian Charter.⁴⁴ A copy of the Proposed Victorian Protocol can be found at **Annexure 1**.

2.3 Potential violations of international human rights law and principles

The breath and application of the current police powers in Victoria potentially breach a number of international human rights laws and instruments.

Right to an adequate standard of living

Article 25 of the UDHR provides for a minimum standard of housing, stating that everyone has the right to a 'standard of living adequate for the health and wellbeing of him and his family, including food, clothing, housing and medical care and necessary social services'. Similar rights are protected by the ICESCR, including article 11 which provides for the right to an adequate standard of living (including adequate food, clothing and housing, and to the continuous improvement of living conditions) and article 12, which provides for the right to the enjoyment of the highest attainable standard of physical and mental health.

Move-on powers may breach these rights when they operate to preclude rough sleepers from accessing vital social and medical services, as well as moving them away from shelter and safety.

Right to freedom from cruel, degrading and inhuman treatment

Article 7 of the ICCPR protects against 'cruel, inhuman or degrading treatment or punishment'.⁴⁵ This right is also explicitly protected via article 5 of the UDHR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.⁴⁶

Our clients' report that searches and move-on directions are extremely degrading and cruel, especially when exercised in public spaces and in view of other people, or when they are trying to find a place to sleep.

Right to privacy and security & the right to freedom from arbitrary interference

There are a suite of international human rights focused on the privacy and security of individuals. For example, article 9 of the ICCPR guarantees, amongst other things, that 'everyone has the right to liberty and security of person' and that 'no one shall be subjected to arbitrary arrest or detention'. Similarly, article 17 prohibits 'arbitrary or unlawful interference with...privacy, family, home or correspondence' as well as to 'unlawful attacks on...honour and reputation'. These are replicated in articles 3 and 12 of the UDHR.

Justice Connect considers that police search powers and the way they are enforced by officers in Victoria may constitute an arbitrary interference with a person's privacy. Similarly, move-on powers may interfere with a person's liberty and home (especially if that person's home is in a public space). This position was recently

⁴⁴ See also McNamara et al (n 32), 117

⁴⁵ This right is also protected by the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85, art 16.

⁴⁶ *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85, art 16.



outlined in the Guidelines for the Implementation of the Right to Adequate Housing (A/HRC/43/43), which specify that '...the forced eviction of homeless persons from public spaces and the destruction of their personal belongings must be prohibited. Homeless persons should be equally protected from interference with privacy and the home, wherever they are living.'⁴⁷

Right to freedom of movement

Move-along powers also impact on an individual's freedom of movement. Article 12 of the ICCPR protects the 'right to liberty of movement and the freedom to choose [one's] residence'. This right is also found in article 3 of the UDHR.

As outlined above, the current move-along powers allow police officers to exclude individuals from public places even where they are not engaging in conduct that harms others. We consider that these wide-reaching powers are a disproportionate response to the concerns about public order that they seek to address, and unreasonably infringe on one's right to freedom of movement and choice of residence.

Right to freedom from discrimination

Finally, article 26 of ICCPR and article 2 of the UDHR protect against discrimination based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. Murphy argues that the broad nature of the term 'or other status' may protect people experiencing homelessness from discrimination on account of their status as homeless.⁴⁸

The International Convention on the Elimination of Racial Discrimination⁴⁹ explicitly prohibits racial discrimination in the context of housing and freedom of movement, among other things. Any targeted use of police powers against minority groups, including Indigenous Australians, is a form of discrimination and a breach of international human rights law.

Further, the UN Declaration on the Rights of Indigenous Peoples protects the connection of Indigenous people to their traditional land.⁵⁰ This protection could potentially implicate any domestic laws that criminalise the use of public space if that space is considered traditional Indigenous land.⁵¹

⁴⁷ Human Rights Council, *Guidelines for the Implementation of the Right to Adequate Housing*, UN Doc A/HRC/43/43 (26 December 2019)

⁴⁸ Julian R Murphy, 'Homelessness and Public Space Offences in Australia - A Human Rights Case for Narrow Interpretation' (2019) 82(1) Griffith Journal of Law and Human Dignity, 112-3. citing Phillip Lynch & Jacqueline Cole, 'Homelessness and Human Rights: Regarding and Responding to Homelessness as Human Rights Violation' (2003) 4 Melbourne Journal of International Law 139, 149; Maria Foscarinis et al., 'The Human Right to Housing: Making the Case in the US' (2004) Clearinghouse Review Journal of Poverty Law and Policy 97, 108.

⁴⁹ *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969).

⁵⁰ United Nations Declaration on the Rights of Indigenous Peoples, GA Res 61/295, UN Doc. A/RES/61/295. (2 October 2007, adopted September 2007). Australia initially voted against this declaration in 2007, but later endorsed it in 2009.

⁵¹ Julian R Murphy, *Homelessness and Public Space Offences* (n 48), 114.



3. Criminalisation of begging in Victoria

3.1 Overview of current laws relating to begging in Victoria

Begging and gathering alms remains a criminal offence in Victoria under s 49A of the Summary Offences Act (s 49A), and attracts a maximum penalty of 12 months imprisonment.⁵²

Begging is a strict liability offence. There are very limited defences available to people charged with begging. Defences to the charge of begging are limited to proving that a person has been falsely identified or was not 'begging' in contrary to law (for example, they had an authorised permit).

The Victorian Government and some local governments have also introduced fines under local laws which can capture people who are begging, including:

- soliciting money or goods while on public transport, or on public transport premises under the *Transport (Compliance and Miscellaneous) (Conduct on Public Transport) Regulations 2015* (Vic),⁵³ and
- soliciting money in a public place without a permit under the *Activities Local Law*.⁵⁴

Under Victoria's fines and infringement system, unpaid fines may also lead to terms of imprisonment (as discussed in Part 4 below).

3.2 The need to decriminalise begging

We see first-hand the disproportionate impact of charges relating to begging on people experiencing homelessness. Former Justice Connect client, Hayley, found herself homeless after fleeing from an ex-partner due to family violence and having nowhere safe to go. During this time, Hayley received several fines and charges, including for begging, which she said made her feel:

'Ashamed for getting them in the first place, because I'm one that doesn't break the law.'

Evidence and research have consistently shown that people who beg experience high levels of hardship, including homelessness, mental illness, substance dependence, trauma, family violence and poverty. Studies continue to show how begging, homelessness, mental health issues and substance dependence issues regularly intersect.⁵⁵ The strong conclusion is that begging is about social and financial poverty, not about crime.

In this context, the criminalisation of begging punishes vulnerable people experiencing extreme hardship and minimises their visibility, as Chris' story demonstrates.

⁵² *Summary Offences Act 1966* (Vic) s 49A. Section 49A provides that: (1) A person must not beg or gather alms; (2) A person must not cause, procure or encourage a child to beg or gather alms. This offence is punishable by a maximum penalty of 12 months imprisonment.

⁵³ *Transport (Compliance and Miscellaneous) (Conduct on Public Transport) Regulations 2015* (Vic) reg 30.

⁵⁴ Melbourne City Council, *Activities Local Law 2019* (Vic) reg 5.1

⁵⁵ See, e.g., Michael Horn and Michelle Cooke, *A Question of Begging: A study of the extent and nature of begging in the City of Melbourne* (Report, Hanover Welfare Services, June 2001); Philip Lynch, 'Begging for Change: Homelessness and the Law' (2002) 26(3) *Melbourne University Law Review* 609; Philip Lynch, 'Understanding and Responding to Begging' (2005) 29(2) *Melbourne University Law Review* 518; Justice Connect (then PILCH Homeless Persons' Legal Clinic), *We Want Change: Public Policy Responses to Begging in Melbourne* (Report, June 2005); Justice Connect (then PILCH Homeless Persons' Legal Clinic), *We Want Change! Calling for the abolition of the criminal offence of begging* (Report, November 2010); City of Melbourne, *Begging Engagement Pathways and Support Program Evaluation Report* (Report, June 2015).



Woman experiencing homelessness charged with begging after fleeing violent relationship

Chris was in a violent relationship. After suffering an assault, she fled her home with only the clothes on her back and some essentials. Chris made her way into the Melbourne CBD, believing that was the safest place to be and the most likely place she would be able to secure a night's accommodation at short notice.

Chris made a sign that read *"Homeless due to domestic abuse. I'm Chris. I'm 40 & am asking for your help to get a safe warm bed. Any donations of food, coffee or spare change are much appreciated. Thank you."* Police approached Chris who was sitting on the footpath with the sign beside her, and asked what she was doing. The police statement confirmed that Chris said that she was *"trying to get enough money so that I can get a room, go to somewhere safe, instead of going into a laneway getting raped and bashed"*.

Chris was then charged with begging. Unfortunately, Chris was unable to get any accommodation and was forced to return to her former home with her partner. After suffering further violence a couple of months later, a full intervention order was made to protect Chris. With appropriate supports, Chris was then able to enter transitional housing.

Justice Connect's senior criminal lawyer provided tailored legal advice about Chris' rights, including the option of representation to contest the charge. At Court, police prosecutors chose not to exercise prosecutorial discretion and withdraw the charge on the basis that Chris did not call police on the night she fled and did not report the incident. Chris ended up pleading guilty because she just wanted the matter dealt with, so she could safely move on with her life.

Victoria continues to rely on the police and Courts to tackle what is ultimately an issue of homelessness and poverty. Between December 2015 and June 2021, 946 charges were laid against people for begging.⁵⁶

In 2016, Justice Connect joined with leading homelessness and community organisations to launch *'Asking for Change: Calling for a More Effective Response to Begging in Victoria' (Asking For Change)*.⁵⁷ In two years of Asking for Change, Justice Connect consulted with 30 individuals who beg or have begged in Melbourne's CBD.

Of these 30 participants:

- 87% reported having mental health issues;
- 77% identified as experiencing homelessness (including 63% sleeping rough);
- 63% had previously been in custody;
- 60% reported suffering family or relationship breakdown;
- 33% identified as victim-survivors of family violence.

⁵⁶ Crime Statistics Agency, *Data Tables Recorded Offences Visualisation Year ending June 2021*, September 2021, <<https://www.crimestatistics.vic.gov.au/crime-statistics/latest-victorian-crime-data/download-data>>.

⁵⁷ 'Asking for Change: Calling for a More Effective Response to Begging in Victoria', *Justice Connect* (Web Page, 2016) <<https://www.justiceconnect.org.au/askingforchange>>. See also Justice Connect, *Asking for Change: Calling for a More Effective Response to Begging in Victoria* (Public Briefing Note, 2016) <<https://justiceconnect.org.au/wp-content/uploads/2018/08/Asking-for-change-a-better-response-to-begging.pdf>>.



When asked how begging made them feel, the participants shared:



For people experiencing homelessness, a transient lifestyle and unstable accommodation makes engagement with court processes more difficult. This in turn can in turn lead to increased penalties, uncontested charges and a lack of legal representation. Particularly, this affects people experiencing homelessness who fail to attend court, which can result in a warrant to arrest, an additional charge of failing to answer bail or sentencing in a person's absence.⁵⁸

From over 20 years of frontline service delivery, Justice Connect knows that when certain outdated poverty offences such as begging are still on the books, there will always be pressure to use them on vulnerable people. Building on the welcome commitment to decriminalise public drunkenness in Victoria, the Victorian government should commit to broader summary offences reform through the decriminalisation of begging and a review of the *Summary Offences Act*.

3.3 Potential violations of international human rights law and principles

The current laws in relation to begging and other public space offences in Victoria potentially breach several international human rights laws and instruments.

Right to respect for privacy, family home or correspondence & the right to freedom from discrimination

Article 12 of the UDHR provides for the right to respect for privacy, family home and correspondence, while article 2 provides for the right to freedom from discrimination.⁵⁹ These articles are couched in similar terms to article 8 and article 14 of the European Convention on Human Rights (ECHR), which were considered in *Lacatus v. Switzerland* (application no. 14065/15).⁶⁰ We consider the rights under the UDHR warrant the same consideration. These rights are also replicated domestically under s 8(2) (discrimination) and s 13 (privacy and reputation) of the Victorian Charter.

Section 49A of the Summary Offences Act operates as a blanket ban for begging in Victoria, and as a result, unreasonably interferes in the private lives of Victoria's most vulnerable by precluding them from begging in an attempt to meet their basic needs. Pecuniary penalties and terms of imprisonment and arrest are severe

⁵⁸ *Criminal Procedure Act 2009* (Vic) s 80.

⁵⁹ The right to freedom from discrimination is also protected under article 26 of ICCPR.

⁶⁰ *Lacatus v Switzerland* (European Court of Human Rights), Application No 14065/15, 19 January 2021.



sanctions, which we consider disproportionate to the aims that s 49A tries to achieve. As considered in *Lacatus v. Switzerland*, the policy aims of s 49A of the Summary Offences Act should be met with less restrictive measures operating as a service-based response.

Right to freedom of speech

Article 19 of the UDHR provides for the right to freedom of speech.⁶¹ Begging is a means to communicate financial destitution as the result of a failed social safety net.⁶² International case law from Canada has recognised that begging, or solicitation is a "tool used by those in poverty to engage in dialogue with the rest of society about their plight",⁶³ and have considered that a blanket prohibition on begging may constitute a breach to the right to freedom of expression.⁶⁴

Our experience in Victoria is that begging is a last resort and a means of survival where government policy has failed. Section 49A prohibits begging under all circumstances and in all places.⁶⁵ As distinct from laws in other jurisdictions, Victoria's prohibition on begging is a blanket one.⁶⁶ A complete ban on the ability for people to communicate their social needs is disproportionate to the aims of the Summary Offences Act.

Right to liberty

The right of liberty, as provided for in article 3 of the UDHR, allows for individual freedom to pursue economic, social and cultural development. Canadian and United States law has held that prohibitions against begging infringe on a person's right to provide for oneself by appealing to the compassion of others.⁶⁷

Section 49A discriminates against the right to security of person and liberty by denying a person the opportunity to seek aid from the community. As set out above, our particular experience has shown people who resort to begging are the most vulnerable - experiencing transience or homelessness, family violence or mental illness. The criminalisation of begging unfairly impacts those who have no other choice to pursue their own economic or social development, and punishes them harshly for doing so.

Right to equality before the law

The right to equality before the law, as provided for in article 7 of the UDHR, is breached by laws which overburden, target and regulate the lives of people experiencing homelessness.

From our specialised homelessness legal services across Victoria, we know that many people experiencing poverty are not generally treated equally before the law. In particular, people experiencing homelessness face discriminatory barriers in relation to accessing justice, along with significant challenges in understanding and enforcing their rights. This is seen through the practical application of s 49A, which disproportionately affects people experiencing homelessness, who feel they have no other option but to seek the aid of the community. The differences between Victoria's most vulnerable leads them to further disadvantage and serious sanctions due to their financial hardship.⁶⁸

⁶¹ We note that the right to freedom of speech is also replicated domestically under section 15 of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (**Victorian Charter**).

⁶² See Herschko and Cohen, 'Begging to Differ: The First Amendment and the Right to Beg' (1991) 104 *Harvard Law Review* 896.

⁶³ *Ramsden v Peterborough (City)*, [1993] 2 SCR 1084.

⁶⁴ In considering whether a law breaches the Canadian right to freedom of expression, Canadian Courts consider four questions need to be answered to determine whether a violation of the Canadian Charter exists. First, does the activity which is sought to be pursued consist of expression? Secondly, is the expression on public property protected by s 2(b)? Thirdly, is the purpose or effect of the impugned effect of the impugned legislation to restrict the freedom of expression? Fourthly, does the mode of expression promote one of the purposes underlying freedom of expression? See *Ramsden v Peterborough (City)*, [1993] 2 SCR 1084.

⁶⁵ Tamara Walsh, 'Defending Begging Offences' (2004) 4(1) *QUT Law and Justice Journal* 67.

⁶⁶ *Federated Anti-Poverty Groups of British Columbia v Vancouver (City)* [2002] BCTC 105.

⁶⁷ Tamara Walsh, *Defending Begging* (n 65), 73.

⁶⁸ *Ibid*, 74.



4. Fines and homelessness

4.1 Imprisonment for unpaid fines

In Victoria, there are over 1800 offences that can be dealt with through an infringement notice. Fines may be issued on-the-spot for common offences, such as public drunkenness, indecent language, and offensive behaviour. An infringement notice usually gives the recipient 21 days to take action.

The enforcement of infringement fines in Victoria is governed by the *Infringements Act 2006 (Vic)* and the *Fines Reform Act 2014 (Vic)* (**Fines Reform Act**). If a person does not take any action in response to an infringement notice, Fines Victoria will then proceed to enforce the fine, including through the courts.

A court fine is a fine ordered by a court pursuant to the *Sentencing Act 1991 (Vic)* (**Sentencing Act**), when a person is found guilty of a criminal offence. If the fine is not paid to the court on the same day the court fine was issued, a magistrate may choose to refer the fine to Fines Victoria for collection and enforcement. If the fine is not paid when it is due, Fines Victoria will begin enforcement action in the same way it enforces unpaid infringements.

Although - based on Justice Connect's experience – it rarely occurs in Victoria, technically a person with unpaid fines may be imprisoned if there are no other options to address the fine. There are two ways a warrant to imprison may be issued for unpaid fines:

- Firstly, under s 165 of the Fines Reform Act, the Magistrates' Court can make an order that a person in default be imprisoned if there is no other appropriate order in the circumstances.⁶⁹ The Magistrate is also empowered to order imprisonment in default of compliance with a payment plan.⁷⁰ The term for which the person in default may be imprisoned will depend on how much of the fine is owed, but shall not exceed 24 months.⁷¹
- Secondly, under sections 69G(2)(c) and 69H(2)(b) of the Sentencing Act, a Court may order that a person be sentenced to a term of imprisonment in default of payment of a Court fine or instalment order.

Warrants to imprison are issued under s 68 of the *Magistrates Court Act 1989 (Vic)* and if apprehended, the person issued with a warrant will go directly to prison.

4.2 The need to decriminalise public space offences

Each year, Justice Connect provides legal assistance to clients with fines directly related to their homelessness, particularly for what we call 'public space offences'. These include: being drunk in public, having an open container of liquor in public, begging, using offensive language, littering, minor theft, failure to vote, public transport offences, and parking or driving offences where the person is homeless or sleeping in their car.

Fines for public space offences have a disproportionate and discriminatory impact on people experiencing homelessness, who are forced to conduct their private lives in public spaces. This increases their exposure to receiving fines, including for behaviour that is not illegal in private spaces, for example drinking or swearing. Additionally, people experiencing homelessness may have additional and compounding vulnerabilities, such as mental health issues, substance dependence issues or trauma relating to family violence. These complexities can often lead to fines being incurred and, at the same time, limit a person's ability to resolve the fines through payment or by engaging in the review process.

In addition to being more likely to incur fines and less likely to be able to navigate the complex review process, people experiencing homelessness and related vulnerabilities are disproportionately affected by the monetary

⁶⁹ *Fines Reform Act 2014 (Vic)* ss 165(3)(e), 165(5).

⁷⁰ *Fines Reform Act 2014 (Vic)* sub-ss 165(3)(b)-(c), 165A(1), 165A(2)(b)

⁷¹ *Fines Reform Act 2014 (Vic)* s 165B.



penalty imposed by fines. In turn, people experiencing homelessness are more vulnerable to the possibility of imprisonment, which is only ordered where there is an inability to pay.

Justice Connect is engaged in advocacy for reform in the fines system, including co-convening the Infringements Working Group, an alliance of 37 legal and financial counselling organisations committed to evidence-based reforms of the fines system that benefit our clients, government agencies and the courts.

Most recently, in September 2021, Justice Connect made a submission to the Parliamentary Inquiry into Victoria's Criminal Justice System,⁷² providing several detailed recommendations to ensure that people experiencing homelessness are not caught up in the criminal justice system for unpaid fines related to their experience of homelessness.

⁷² Justice Connect, Submission to the Parliamentary Inquiry into Victoria's Criminal Justice System, *Closing the revolving door between the justice system, prison and homelessness* (September 2021) <<https://justiceconnect.org.au/wp-content/uploads/2021/10/Justice-Connect-submission-to-Victorias-criminal-justice-inquiry-Sept-2021.pdf>>. For further information about Justice Connect's current, evidence-based campaign to prevent the criminalisation of homelessness, please see: <<https://justiceconnect.org.au/campaigns/preventing-the-criminalisation-of-homelessness/>>.



Annexure 1 - Proposed Victorian Protocol for Responding to People Experiencing Homelessness in Public Places

Proposed Victorian Protocol for Responding to People Experiencing Homelessness in Public Places

The aim of the Victorian Protocol for Responding to People Experiencing Homelessness in Public Places (**Protocol**) is to provide a framework for relations between agencies⁷³ and people who are experiencing homelessness in public places. The Protocol has been developed to ensure that people experiencing homelessness are treated with respect and are not discriminated against due to their homelessness-status. The Protocol aims to help agencies and their authorised representatives to respond effectively to people experiencing homelessness in public places by assisting people to receive services if they need or request them.

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

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

The Protocol

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

- they request assistance;
- they appear distressed or in need of assistance;
- they are sheltering in circumstances that threaten the health and safety of themselves and/or others (e.g. in derelict buildings);
- they are a child who appears to be under the age of 18;⁷⁴
- their behaviour threatens their immediate safety or the immediate safety and security of people around them;
- their behaviour is likely to result in damage to property or to the environment;
- their safety is threatened by others.

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

⁷³ 'Agencies' refers to any organisation, including government departments, local councils, public authorities (as defined by the Victorian Charter) and public entities, that have endorsed the Protocol. 'Authorised representatives' include agency staff, contractors and any person authorised to act on behalf of the agency.

⁷⁴ In this situation, Victoria Police and Child Protection should be called.



The Protocol encourages agencies and their authorised representatives to take the Protocol and the circumstances of the person experiencing homelessness into consideration when enforcing laws and regulations and to use discretion as is appropriate under their own policies and procedures. This discretion should consider the complex needs of people experiencing homelessness.⁷⁵ As public authorities under the Victorian Charter, agencies and their authorised representatives must exercise their discretion in a way that respects the fundamental dignity and rights of people experiencing homelessness.

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

Who is considered homeless?

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

Underlying Principles

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

The Protocol is based on the following principles:

PRINCIPLE 1: Right to be in public places

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

- be in public places, at the same time respecting the right of local communities to live in a safe and peaceful environment;⁷⁶
- participate in public activities or events;⁷⁷ and
- carry with them and store their own belongings, at the same time respecting the right of other community members to safe and accessible public places.⁷⁸

PRINCIPLE 2: Communicating reasons for contact

If an authorised representative of an agency makes contact with a person experiencing homelessness, they should clearly communicate to that person who they are and on what basis they are approaching the person.⁷⁹

PRINCIPLE 3: Consideration of needs and diverse backgrounds

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

- Cultural sensitivity and respect should be applied when communicating and engaging with people experiencing homelessness.
- People experiencing homelessness often face discrimination and may include:
 - Aboriginal and Torres Strait Islander people;
 - People from culturally, linguistically or religiously diverse backgrounds;

⁷⁵ See also Principle 2 below.

⁷⁶ Relevant Victorian Charter rights: Section 8: Recognition and equality before the law; Section 12: Freedom of movement; Section 13: Privacy and reputation; Section 21: Liberty and security of person.

⁷⁷ Relevant Victorian Charter rights: Section 16: Peaceful assembly and freedom of association.

⁷⁸ Relevant Victorian Charter rights: Section 20: Property rights.

⁷⁹ Relevant Victorian Charter rights: Section 21: Right to liberty and security of person.



- Young people;
- Older people;
- Lesbian, gay, bisexual, transgender or intersex (LGBTI) people;
- People with a disability;
- People with a mental illness or cognitive impairment.⁸⁰
- People experiencing homelessness have often experienced trauma and can have complex social, mental and/or physical health needs. These issues may result in behaviour that is seen to be antisocial.⁸¹
- People experiencing homelessness may have experienced other issues that impact on their needs, such as family violence, exiting custody or statutory care, or asylum seekers with no contacts in the community.
- Interpreters should be used where necessary.

PRINCIPLE 4: Access to complaint mechanisms

People experiencing homelessness have the same access to complaints mechanisms as all members of the public and should be supported to exercise this right through the provision of information on relevant avenues of complaint.⁸²

PRINCIPLE 5: Partnerships, consistency and integrated responses

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

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

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

HOMELESSNESS ASSISTANCE IN VICTORIA

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

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

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

The following assistance is available in Victoria:

- **Opening Doors** (24-hour referrals for housing assistance)
1800 825 955
- **Safe Steps** (24-hour family violence referral service for women and children)
1800 015 188
- **Child protection**
13 12 78 (after hours service)
North Division Intake number 1300 664 977

⁸⁰ Relevant Victorian Charter rights: Section 8: Recognition and equality before the law; Section 19: Cultural rights; Section 14: Freedom of thought, conscience, religion and belief.

⁸¹ Relevant Victorian Charter rights: Section 8: Recognition and equality before the law.

⁸² Relevant Victorian Charter rights: Section 8: Recognition and equality before the law; Section 24: Right to a fair hearing.



South Division Intake number 1300 655 795
East Division Intake number 1300 360 391
West Division Intake - rural and regional only - number 1800 075 599
West Division Intake - metropolitan only - number 1300 664 977

- **Emergency services** (police/ambulance/fire brigade)
000
- **Lifeline** (24 hour telephone crisis support and suicide prevention)
13 11 14
- **Kids Helpline** (24 hour phone counselling for 5-25 year olds)
1800 55 1800
- **MensLine Australia** (24 hour phone counselling for men)
1300 78 99 78
- **Victoria Legal Aid** (state-wide legal advice weekdays 8.45am-5.15pm)
1300 792 387

Where needed, interpreting services should be used.

You can:

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

Where the Protocol applies

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

The following agencies have endorsed the Protocol:

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

Review of the Protocol

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





justice connect
fairer and better lives