



Council to Homeless Persons – Submission to City of Melbourne – Proposed amendments to the
Activities Local Law 2009

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Introduction

The Council to Homeless Persons

The Council to Homeless Persons (CHP) is the peak Victorian body representing organisations and individuals with a commitment to ending homelessness. CHP works to end homelessness through leadership in policy development, advocacy, capacity building and consumer participation.

The Council to Homeless Persons (CHP) welcomes the opportunity to respond to the City of Melbourne's proposed amendments to the Activities Local Law 2009. The proposed amendments will have a significant impact on those who are experiencing homelessness in the City of Melbourne and beyond, on specialist homelessness services working to assist people to gain and sustain housing, as well as on police, the courts and the municipal government itself.

What we mean by 'ending homelessness'

Homelessness occurs at the intersection of personal vulnerabilities and structural forces, such as poverty, housing affordability and security of tenure. People who become homeless are often financially disadvantaged and some will have spent a lifetime in insecure housing.

Ending homelessness doesn't mean that people will never find themselves without shelter. It means that homelessness will be rare, the experience brief, and it will not recur in a cycle of repeated homelessness.

To achieve this vision, Victoria requires the services to help people manage the vulnerabilities that can lead to homelessness. Pathways into homelessness include eviction, job loss, family violence, mental ill health, relationship breakdown, or indeed a combination of these factors. There is neither a single cause, nor a single solution. Some people may need relatively little assistance for a short period of time, while others may need support over a lifetime.

Ending homelessness also requires action to reduce poverty, increase access to employment and critically, to improve the supply of housing that is affordable to people on low incomes, and the security of people's tenure within that housing.

The proposed changes

The proposed amendments to the City of Melbourne's activities local law (2009) will have two substantive effects:

- Broadening the applicability of the term 'camping' so as to effectively prohibit rough sleeping (throughout this document we will call this measure the camping prohibition), and

- To increase Council officers' power to confiscate unattended belongings, and to charge those owners seeking their return (which we call the unattended goods provision).

While not explicitly stated in the bylaw, such changes are clearly designed to be primarily applied against those who are experiencing homelessness in the City of Melbourne. A broad ban on camping that fails to specify the defining traits of camping leaves Council officers with significant discretion over its application. It is extremely likely that it will be applied in such a manner as to prohibit those people who have no access to private space from sleeping in public space. Not only is this an indirect ban on homelessness, but it creates a bylaw which is impossible for people experiencing homelessness to comply with, and as such will not be effective.

The provision for powers to confiscate and dispose of unattended items also has extremely broad application, and is primarily directed once again at those experiencing homelessness. This will ultimately lead to the destruction of the property of those experiencing homelessness, and significant, regular, and compounding fines on individuals who do not have the choice to comply with directions not to leave belongings unattended. Its application will see significant cruelty rendered by the City of Melbourne on those experiencing homelessness as the City of Melbourne inadvertently destroys cherished belongings, critical medications and important documents.

Homelessness in Melbourne; the current state of affairs

Homelessness in Victoria, and its effect on the City of Melbourne

'If we had enough power we would say (to the City of Melbourne) "you can't put this ban in place unless you've got a place for people to go"... (If) you put a ban on their only form of accommodation, then that is neglecting their human rights'

- Jody Letts, Consumer / Advocate

A large and growing number of Victorians are without homes. In 2015-16 Victoria's specialist homelessness services assisted 105,287 unique clients experiencing or at risk of homelessness – 22 per cent more than just four years prior. The Australian Bureau of Statistics estimates that only one in three people experiencing homelessness seeks assistance from services. As such, the true extent of homelessness may be much greater.

People experience homelessness for a range of reasons. The major causes of homelessness in Victoria are a lack of available housing (39 per cent of homelessness) and family violence (34 per cent). Of particular importance to this submission 7,600 Victorians presented to a homelessness service in 2015-16 while sleeping rough – approximately the population of Flemington. With its access to jobs, relative safety,

and relative availability of services, many people sleeping rough across Victoria move to the Melbourne CBD.

'Coming to the city meant I might get opportunities like work. And I did get work'
- John Kenney, Consumer / Advocate

As such, the CHP encourages the City of Melbourne to continue its history of considering homelessness within its broader context, including a housing market in need of more opportunities for those on low incomes, the scourge of family violence, which is only beginning to be addressed, and the lack of access to support for people with complex mental health problems.

CHP opposes the proposed amendments because they will not achieve their intended objective of reducing street present homelessness. Conversely they will have direct negative impacts on those experiencing homelessness who are already extremely vulnerable, and because they will make the work of specialist homelessness agencies more difficult when assisting in rehousing and recovery.

The Central Business District, surveillance and safety

'The only thing that put me to sleep at night was knowing that there was light. It's the only way I felt safe'
- Jason Russell, Consumer / Advocate

Those experiencing homelessness are frequently subject to violent crime. A UK study found that those experiencing homelessness "... were 13 times more likely to have experienced violence and 47 times more likely to have been victims of theft. Almost one-tenth of those interviewed had experienced sexual assault in the last year... Almost two-thirds of homeless people reported having been insulted publicly and one-tenth had been urinated on whilst sleeping".

In order to address the inherent unsafeness of homelessness, those experiencing homelessness tell us that they seek out the 'safety of numbers', lighting and the passive surveillance of pedestrians.

'If you're in an environment where there's lots of people up and about, you feel safer'
- Jody Letts, Consumer / Advocate

As such, major cities across the world, including the City of Melbourne, with the abundance of light and passive surveillance provide a greater degree of safety than suburban areas or rural towns. Congregating in a CBD such as Melbourne's, those experiencing homelessness are less likely to experience violent crime.

¹ Newburn & Rock 2005, cited in *Australian Institute of Criminology*, 'Homeless people: their risk of victimization', 2008

The Council to Homeless Persons is concerned that this bylaw will cause some people to move to more hidden and less safe corners of inner Melbourne, where they are more likely to live in fear of, and to experience random violence and degradation.

“They’ve been offered housing”; Housing options for those experiencing homelessness

‘Offering a homeless guy a hotel, and then saying three days later you’ve got to go back to the street is ridiculous.... It’s not permanent’

- John Kenney, Consumer / Advocate

It has been reported through the media that those who are experiencing homelessness in the Melbourne CBD have been offered housing. CHP believes that such a statement may have obscured the nature of the housing offered and the complexities of these options.

Metropolitan Melbourne has a drastic shortage of independent housing that is affordable to a person on a low income. The Victorian Department of Human Services found that in the December quarter 2016, metropolitan Melbourne had 26 rental availabilities that were sustainably affordable for a single person on a Newstart income (with Commonwealth Rent Assistance)². Plainly, this is insufficient to house those rough sleepers in the City of Melbourne, let alone all of those across metropolitan Melbourne. As the peak body for Victoria’s specialist homelessness services, CHP can advise that it is often impossible to offer those experiencing homelessness secure and sustainable tenancies through the private rental market.

Access to public housing is similarly challenging, particularly for singles. In 2012 the Victorian Auditor General confirmed that 20,000 single people are on the public housing waiting list waiting to access around 18,000 single bedroom properties that are currently tenanted. Many of these are allocated only to single people over 55. As a consequence, the wait time for singles under 55 to get into public housing, even for those with the highest priority (the priority given to people experiencing long-term or chronic homelessness) is three to four years. People who have only recently begun sleeping rough, and who are therefore not eligible for the highest priority would wait many years longer.

Over the past year, significant media attention in relation to rough sleeping resulted in some additional resources being directed to housing rough sleepers. These have sped up processes for some people sleeping rough, enabling long-term housing outcomes to be achieved for a small number of rough sleepers.

Outside these additional housing opportunities, housing outcomes are generally achieved by amendments to prioritisation processes, such as the recent re-allocation of 40 transitional (temporary) housing vacancies to rough sleepers, or the protocol in place for Street to Home of back-dating a person’s public housing application to when

² Victorian Department of Health and Human Services, ‘Rental Report tables December quarter 2016’, 2017

they first experienced homelessness. While these processes enable an individual who is targeted to move into housing, those who would otherwise have 'got to the top of the list' and been housed remain homeless. They are effective individually, and can facilitate more rapid housing of person with very heightened vulnerability, but by their very nature can't be applied universally. The effect achieved in the overall number of people who are homeless from reallocation is the same effect you have on the volume of an inflated balloon by dinting one side with your finger.

In this context of constrained access to housing, most people sleeping rough are only able to be offered short stays of one to three days' duration in a motel, or accommodation in a rooming house, or other form of shared housing. This remains true for rough sleepers in Melbourne's CBD.

There is great variance in motels, rooming houses, or shared housing options with some providing security and stability to those in crisis, while others perpetuate homelessness through dangerous health and safety standards, and failing to protect people from criminal and violent behaviours of other residents.

Jody experienced homelessness after a prolonged health crisis caused her to lose her job in the public service. When she sought help they were offered a few nights in a motel.

'It was horrendous. We had no hot water in the bathroom, the microwave had this electrical current beaming out of the wall, so we couldn't get near it, let alone use it. When we reported it they didn't care. So we had a kettle to boil water and prepare food. The people next to us the first night were a family, and the second night was a young girl injecting drugs in the doorway – I was there with my 13 year old daughter.'

- Jody Letts, Consumer / Advocate

Kevin had a professional job when he assumed caring responsibilities for his terminally ill mother. But a history of family difficulties meant the move into his parents' house proved very unhealthy. Kevin's situation deteriorated to such a point that he moved into a rooming house. Kevin's story was reported in *The Saturday Paper*:

'Late one night, about two or three in the morning, Kevin was kept awake by another occupant's radio. For hours he had waited for the noise to subside, but it continued. Irritated, Kevin left his room and knocked on the man's door. "He erupted," Kevin tells me. "With the first couple of hits I knew I was out-powered. I was also outweighed by 20 or 30 kilograms. He beat me, He was relentless. I thought he was on something that gave him this incredible strength. I remember thinking 'Jesus, I think I'm going to die' and then I thought, 'I hope he finishes me soon' because the pain was the worst I've ever experienced. When I was lying prostrate on the ground, he began beating me with a chair... After the beating, Kevin moved out. He thought it safer to sleep rough and found a place under a brige"³

³ McKenzie-Murray, *The Saturday Paper*, *Inside Australia's growing homeless crisis*, 6 August 2016

The vast majority of those sleeping rough in Melbourne have not been offered safe, affordable homes.

'It's temporary, and it's not safe.'

- Christine Thirkell, Consumer / Advocate

Will this change reduce homelessness and its visibility?

Camping prohibitions overseas

'There are cities around the world where they simply bundle homeless people up and ship them out... I'd hate to think that we were ever that sort of city'.

- The Right Honourable Robert Doyle, Lord Mayor of Melbourne

A major objection to the proposed amendment is that it will do nothing to decrease homelessness in Melbourne, and little to decrease the visibility of homelessness. Here CHP provides information in relation to a city that has experienced increased homelessness (in large part due to housing affordability issues, much like in Melbourne) and that applied a similar punitive approach to its homeless population – the city of Los Angeles. This did not achieve the intended outcome of reducing visible street present homelessness.

Los Angeles (LA) in the United States had for a time one of the most punitive responses to rough sleeping in the world. LA's Safer Cities Initiative provided 71 police officers to proactively enforce all laws over a section of the city approximately five blocks large – a patch of the city which had previously been the focus of the municipal government's 'containment' strategy, and included a high concentration of people experiencing homelessness. From 2006 the Safer Cities Initiative had police issue citations at a rate 48 – 69 times higher than the municipal average. A police officer involved in the initiative, was reported in the news as having said: "he frequently arrests the same people over and over because of the revolving door for mentally ill people and others between the jails and prisons and (the area)"⁴. Following arrest, those experiencing homelessness typically return to the street, doing little to address the visibility of homelessness in the city – the LA homeless count identified approximately 5,000 people sleeping rough within a 50 block area.

The Los Angeles experience demonstrates that unless people are able to be housed, they have no option but to continue rough sleeping even in the face of a regime of fines and arrests.

Los Angeles experiences high levels of homelessness born of housing unaffordability, much like in Melbourne. Adopting a policy akin to that proposed under this amendment which saw those experiencing homelessness fined did not reduce visible homelessness – indeed, street present rough sleeping continued to grow. CHP urges the City of Melbourne to recognise that punitive and coercive approaches to homelessness fail to address the causes of homelessness, and fail to provide those

⁴ Holland, L.A Times, *Why most of the \$100 million L.A. spends on homelessness goes to police*, 17 April 2015

experiencing homelessness with choices that meet their needs and with which they can comply. Because of this, these approaches fail.

Fines as a motivator of behaviour change for those in crisis

'They sent someone out every day to put a parking fine on my car'

- John Kenney, Consumer / Advocate

Under regular circumstances, fines act as a deterrent to unlawful behaviour. For those experiencing crises including homelessness, this is not the case. Those who are experiencing homelessness face such enormous levels of danger and instability, that while they are in crisis, and while they have practically zero capacity to pay the fine, fines and orders for compliance hold very little significance. Even proactive enforcement strategies, such as that experienced by John Kenney (see above) do nothing to motivate behaviour change.

'I used to just keep racking up parking fines when I was living in the car. I just didn't care about the fines - there was no point in my worrying about it, because there was no way around them. You would get a fine for having the car anywhere for more than 4 hours, and you didn't have any other choice, so you didn't move the car much'.

- Christine Thirkell, Consumer / Advocate

Nor do those experiencing homelessness always have compliance available to them as an option, as the example of Christine Thirkell (immediately above) demonstrates. This is particularly true in the case of the proposed amendment, whereby in order to comply with these bylaws a person experiencing homelessness must have no belongings, nor require sleep.

Whether the capacity to comply with the bylaw is possible or not, the City of Melbourne will not effectively motivate compliance by those experiencing crisis and homelessness through fines.

What effect will the fines have in practice?

When interactions are adversarial

When asked whether the proposed bylaws will make interacting with those experiencing homelessness more difficult for specialist homelessness services and the police, homelessness service consumer and homelessness advocate John Kenney replied, as if to prove the point:

'I heard that they ARE pushing for the new rules, because they're sick of homeless people!'

- John Kenney, Consumer / Advocate

Many of those experiencing homelessness have widely varied relationships with different services and agencies, ranging from mutually respectful cooperation to hostility. This is highly influenced by the individual's perception of the service, the respect that the service accords them and their situation, and its ability to offer positive solutions, rather than seeking outcomes in which the individual has little interest. Importantly, this is influenced at both the practitioner *and* service level.

Where people's experience of 'services seeking to engage' is dominated by punitive and coercive enforcement actions, this makes engagement more difficult for other stakeholders.

'As soon as you mention a person coming, you see all the homeless people start to panic'

- John Kenney, Consumer / Advocate

The proposed amendments have the capacity to create an adversarial relationship between those experiencing homelessness, and those who would seek to work with them, including Council, homelessness services, and the police. It is likely to lead to less uptake of support offerings available through homelessness agencies, and worse outcomes for those experiencing homelessness.

'Of course they're going to disengage – once the police have told you off 1, 2, 3 times, you just think 'well here we go' because they haven't got the choices to do what the police say'.

- Jody Letts, Consumer / Advocate

If fines don't motivate behaviour change, what do they do?

'Well they don't disappear overnight, no matter what your social condition is. You can't get blood out of a stone when you are homeless, but the fines don't disappear once you get housed'

- Jason Russell, Consumer / Advocate

Fines are not an effective mechanism for achieving compliance from those experiencing homelessness, and indeed often have little tangible impact on a person while they are experiencing homelessness. However they do have a significant impact on people once they have obtained housing and are actively seeking to resolve their crises.

It is not uncommon for those in crises such as homelessness to have multiple unaddressed fines compounding to thousands of dollars. This would cause significant hardship for most people, but for those on low incomes seeking to resolve multiple complex crises, such fines put them at risk of new episodes of homelessness.

'You come up with these payment plans afterwards, but they're an added impact on your stabilising once you get a home. You're trying to pay your rent, but then you're trying to pay your fines, and your utilities'

- Christine Thirkell, Consumer / Advocate

While oftentimes leniency is available for those who have accrued large or multiple fines, this adds a significant and complex new difficulty into the mix for those who are trying to exit homelessness. In such scenarios, fines have typically been issued by a range of authorities rather than just one. This creates not one but multiple new crises to be resolved, as each authority will need to be dealt with separately utilising the authorities' differing processes. Even with the help of pro bono lawyers, the administrative complexity of these scenarios is such that these fines become incredibly burdensome just at the point of recovery, putting such recovery at risk.

Justice Connect Homeless Law provides legal support for those experiencing homelessness. An analysis of (13 of) their fines cases found that:

- On average, individuals accumulated 18 infringements each, valued at \$6,363 per person. One person had 61 infringements, with a total value of \$17,237.
- Duration of cases can vary, with cases analysed taking between 6 months and 2.5 years to resolve. The average time taken to resolve an infringements matter was 14 months.
- The average cost to pro bono law firms of running an infringements matter was \$19,825 per case. One case required an investment equivalent to \$54,000 in fees to resolve.⁵

Nor do all of those who have experienced homelessness obtain professional legal help to resolve their fines. For those seeking to navigate the administratively complex system of fine recovery, processes can appear arbitrary and unfair.

'Most Councils have a fine-proof law if your doctor can prove you were having a mental health episode at the time. Different local governments had different processes, and at some it took one go, but sometimes I had to provide evidence three times'

- Jody Letts, Consumer / Advocate

Results of continued non-compliance

'If you can't pay a penalty with money, you have to do it with your ass'

- Jason Russell, Consumer / Advocate

It is an unfortunate reality that those who ignore their fines, as many of those experiencing homelessness do, may end up in prison. For the most disengaged members of society, such as those sleeping rough, fines can escalate to the Infringements Court of the Magistrate's Court. While this court has the ability to cancel

⁵ Justice Connect Homeless Law, *What's the Cost?: Infringements System Review*, November 2013

fines, oftentimes those experiencing homelessness may not be represented there, or even be in attendance.

'It can happen without you being present at court. So any time they run your name they whip you off to prison'

- Jody Letts, Consumer / Advocate

Infringement Courts may issue an infringement warrant. This entitles the Sherriff to take action to recover what is owed, including selling the person's belongings. This presents a unique problem for those experiencing homelessness:

'The sheriffs will go through all of your stuff, (and) say that 'this person has no property to forfeit''

- John Kenney, Consumer / Advocate

As with the Infringements Court, the Sherriff can then apply to have the fines wiped. But that is not the only course of action available to the Sherriff, and without proper representation, those experiencing homelessness can receive harsher penalties than are necessary. For the most disengaged repeat offenders this often includes being sent before a Magistrate who sentences a jail term.

While CHP does not contend that this is the most common pathway for fine recipients who are experiencing homelessness, we believe that the City of Melbourne must understand that it is a pathway that occurs. By levying more fines (for unavoidable behaviours) on those experiencing homelessness, the City of Melbourne is facilitating many of these recipients into jail.

Exclusion and the length of episodes of homelessness

'When you're homeless, you think it sucks, and you want to get out of it. Once you accept it, you stop trying to get help'

- Jason Russell, Consumer / Advocate

There is a substantial body of evidence that shows that the more a person experiencing homelessness feels excluded from society, the longer their experience of homelessness⁶. The City of Melbourne's proposed amendments, particularly the camping prohibition will serve to increase the stigma of homelessness. Already we have been informed that individuals experiencing homelessness are being told that it is now illegal to sleep rough in the Melbourne CBD. While inaccurate, this treatment is extremely alienating, and tells people experiencing homelessness that they are not welcome.

The message that those experiencing homelessness are not welcome is not only conveyed by misinformed individuals however. This message is being conveyed by the City of Melbourne itself. In proposing these amendments, which have been widely

⁶ Johnson, Gronda and Coutts, *On the Outside; Pathways in and out of homelessness*, 2008

reported in the media, the unspoken message that those who are experiencing homelessness are not welcome here is already being conveyed.

'You feel like you've been kicked in the gut time and time again

- Jody Letts, Consumer / Advocate

There is a moral argument that the City of Melbourne should not be conveying such messages to those experiencing homelessness. Should this amendment pass, the City of Melbourne will lose its leadership role in homelessness responses. The effect of this amendment will be that those experiencing homelessness on the streets of Melbourne CBD, as well as those experiencing homelessness across Victoria will receive this message from the City of Melbourne, and that it will further their experience of stigma, isolation and exclusion. Not only is this extremely damaging to the wellbeing of individuals experiencing homelessness, it will prolong their experiences of homelessness.

'It all leads to depression in the end'

- John Kenney, Consumer / Advocate

Conclusion

'No matter how you end up homeless, we all started somewhere else'

- Jason Russell, Consumer / Advocate

The Council to Homeless Persons strongly opposes the proposed amendments, and urges the City of Melbourne not to adopt them. That the city serves to attract those experiencing homelessness is a phenomenon replicated across the world, and is to be expected. But our response to this phenomenon rests on the shoulders of Councillors at the City of Melbourne.

The proposed amendments will not be effective in addressing homelessness, as shown by the experience of Los Angeles, and by the ineffectuality of existing fines regimes when applied to those experiencing homelessness.

But worse than being merely ineffective, these amendments will cause harm. They will make it more difficult for homelessness services to engage positively with those experiencing homelessness, will place those exiting homelessness under significant pressure, further stigmatise those experiencing homelessness, and in some instances, will lead to jail time. These factors are actively detrimental, and will serve to prolong rather than shorten episodes of homelessness.

We urge the City of Melbourne to reject these amendments and to instead continue the progress achieved by its long standing humanitarian response to homelessness. We further urge the City of Melbourne to adopt the proposal outlined in the joint submission from Homeless Law, Council to Homeless Persons and others, the

‘Proposed Framework for Responding Effectively to Homelessness in the City of Melbourne’.