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Submission to the Melbourne City Council into the proposed Activities (Public Amenity and Security) Local Law 2017

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About us

Victorian Women Lawyers (**VWL**) is a voluntary association that promotes and protects the interests of women in the legal profession. Formed in 1996, VWL now has over 800 members. VWL provides a network for information exchange, social interaction and continuing education and reform within the legal profession and broader community. VWL has undertaken research into work practices affecting women in the legal profession, and provided protocols and training to effect change.

Details of our publications and submissions are available at www.vwl.asn.au under the 'Publications' tab.

Since 1996 VWL has advocated for the equal representation of women and promoted the understanding and support of women's legal and human rights by identifying, highlighting and eradicating discrimination against women in the law and in the legal system, and achieving justice and equality for all women.

Terms of Reference

On 7 February 2017, a report on homelessness and public amenity was presented to the Future Melbourne (Finance and Governance) Committee (**Committee**) for inquiry and report.¹ The purpose of this report was to provide an update on strategies to address homelessness in the City of Melbourne and seek to broaden the current ban on public camping and better respond to items left unattended in a public place.² Specifically, this involved a proposal to amend the Activities Local Law 2009 (**Local Law**), which regulates inter alia the use of public space in the City of Melbourne.

The Committee has endorsed the proposed amendments to the Local Law. As a result, the City of Melbourne is engaging in public consultation to understand the community's views on the proposed amendments.

The Amending Law – overview

Melbourne City Council has stated that the purpose and general purport of the amendments is to:

- a. amend the objectives of the Principal Local Law including inserting a new objective to support the Council's disability action plan prepared under section 38 of the *Disability Act 2006*
- b. broaden the definition of camping in the Principal Local Law
- c. provide that a person must not without a permit leave items unattended in a public place, an infringement penalty for contravention and a process by which such unattended items can be confiscated and impounded
- d. update the penalties fixed for infringements in the Principal Local Law as a consequence of the proposed Local Law
- e. provide for the peace, order and good government of the municipality.

¹ Ben Rimmer, Agenda item 6.2 to Future Melbourne (Finance and Governance) Committee, *Homelessness and public amenity*, 7 February 2017.

² Ibid 1.



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Key aspects of the proposed changes are set out in the Activities (Public Amenity and Security) Local Law 2017 (**Amending Law**) and include the following:

1. Broadening the ban on camping in public places by removing the reference to 'a vehicle, tent, caravan or any type of temporary or provisional form of accommodation,' in part 2, clause 2.8 and will instead provide: 'unless in accordance with a permit, a person must not camp in or on any public place'³; and
2. Providing for confiscation and disposal of unattended items set out in a new clause 2.12 that provides, unless in accordance with a permit, a person must not leave any item unattended in a public place.⁴ If an item is left unattended, an authorised officer may issue an infringement for \$388.65 (2.5 penalty units) or a person may be charged and brought before the Magistrates' Court. If a person is found guilty of an offence in court, they are liable to a penalty of up to \$3109.20.

In addition to giving someone an infringement notice for leaving items unattended, authorised officers can confiscate and impound the item, and can sell, destroy, or give away the item if a fee is not paid within 14 days.⁵ An authorised officer can also direct a person to leave a public place (i.e. can move someone on) and, if the person fails to do this, they can be fined or charged.

Under part 14 of the Local Law⁶, which is entitled 'Enforcement', it is an offence to:

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

Our key concerns

VWL expresses three key concerns with respect to the proposed changes to the Local Law as set out in the Amending Law.

1. Almost half of all Victorians experiencing homelessness are women, and the most common cause of homelessness in Victoria is family violence.⁷ Accordingly, women and children who are subject to family violence are particularly vulnerable to homelessness. When women and children make the decision to leave a situation of family violence, this usually requires that they flee their homes. Ongoing issues with insecure and inappropriate housing often follows, with disruption to employment and support networks, increasing the likelihood of homelessness. Traditionally, the focus of a social policy response has been to support women to leave situations of family violence through the funding of network emergency and transitional accommodation.⁸ As such, VWL believes that any law

³ Activities (Public Amenity and Security) Local Law 2017, cl 2.8.

⁴ Ibid cl 2.12.1.

⁵ Ibid cl 2.12.2-2.12.5.

⁶ Activities Local Law 2009, pt 14.

⁷ Justice Connect, 'Keeping Women and Children Housed – Women's Homelessness Prevention Program' 22 December 2016

⁸ Jenni Southwell, 'Family Violence and Homelessness – removing the perpetrator from the home' (Discussion Paper) No.3, Domestic Violence and Incest Resource Centre, Melbourne, 2002, 4-7.

reform in relation to homelessness of women and children, should seek to enhance their safety and wellbeing and reduce the risk of family violence.

VWL is particularly concerned about the negative impact of the proposed reforms increasing the risk of exposing women and children to dangerous situations, by pushing them further outside of Melbourne's city centre. Fear of such social disadvantage may have a disproportionate effect on women and may further discourage women from leaving violent relationships.

2. The proposed enforcement-based approaches to homelessness will be ineffective and administratively burdensome for authorised officers and the Council.

3. VWL considers that the Amending Law attempts to ban homelessness in the City of Melbourne. VWL submits that this is a breach of human rights law. As a result, the proposed changes are a backward step for the City of Melbourne's leadership and progress in respect of the message that, 'it is not illegal to be homeless'. The proposed laws undermine this important message and the beneficial work of the City of Melbourne, in collaboration with the Victorian government to address the underlying causes of homelessness, rather than focussing on measures that will have the effect of moving homeless people to another location.

Homelessness in Melbourne

Currently in Australia, 6,813 homeless people stay in improvised dwellings, tents or sleeping out.⁹ The City of Melbourne Homelessness Street Count recorded that in 2016 there were approximately 247 rough sleepers in Melbourne's central business district. This revealed an increase in Melbourne's homeless population from 142 since 2014, a 74% increase.¹⁰ In Victoria, there are 22,000 people experiencing homelessness and 33,000 on the waiting list for public housing.¹¹

In response, the Victorian government announced a \$616m homelessness package, which included better responses for women and children fleeing family violence and additionally \$185m towards 1,100 public housing properties last year.¹²

Comments on the issues for consideration:

1. Impact on people experiencing homelessness

Council's 2016-17 budget provided an intention to increase support for those experiencing homelessness in Melbourne's business district by investing an additional \$2m to deliver a full

⁹ Above n 8.

¹⁰ See City of Melbourne, *StreetCount highlights number of people sleeping rough* (9 June 2016) <<http://www.melbourne.vic.gov.au/news-and-media/Pages/streetcount-highlights-number-of-people-sleeping-rough.aspx>>.

¹¹ See Australian Bureau of Statistics, *Census of Population and Housing: Estimating Homelessness* (November 2012 <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/2049.0>>; Victorian State Government, *Public housing waiting and transfer list* (September 2016) <<http://www.dhs.vic.gov.au/about-the-department/documents-and-resources/research,-data-and-statistics/public-housing-waiting-and-transfer-list>>.

¹² Melissa Davey, 'Homelessness won't be banned in City of Melbourne says council', *The Guardian* (online), 3 February 2017 <<https://www.theguardian.com/australia-news/2017/feb/03/homelessness-wont-be-banned-in-city-of-melbourne-says-council>>.



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spectrum of activities including, but not limited to, safe night-time spaces and funding for housing programs.¹³ Yet, these amendments appear inconsistent with the Council's goals to assist the vulnerability of those sleeping rough.

The proposal to amend the definition of prohibited forms of camping in clause 2.8 of the Amending Law is extremely broad and effectively makes homelessness illegal in Melbourne. Further, these changes will enable authorised officers to require people sleeping rough to move on, which risks pushing homeless people outside of the city and isolating them from further services and supports. Council to Homeless Persons acting chief executive, Kate Colvin, stated that 'this could expose them to greater risk of assault' as rough sleepers pick visible parts of the city because it's usually safer due to CCTV cameras and lighting.¹⁴

The proposed provisions in clause 2.12 regarding unattended items, may also impact rough sleepers. Founder of Blessing Bags, Laura Toole, is concerned that the reforms will further marginalise the homeless and will cause difficulty for organisations that provide essential items such as toothpaste, mouth wash, razors, soup, food items, shampoo and conditioner and sanitary items.¹⁵ The organisation has distributed approximately 3,000 bags of essentials to the homeless in 1.5 years.¹⁶

There is also a significant risk that vulnerable members of the community will get caught up in the justice system through fines or charges, because of the inevitability that items may be left temporarily such as when obtaining food or using amenities. Justice Connect Homeless Law has reported assisting approximately 100 clients every year with fines and charges for 'public space offences' and as such, VWL expects this number to increase if these changes are implemented.¹⁷

2. Ineffectiveness of the Amending Law

The Principal Lawyer of Justice Connect Homeless Law, Lucy Adams, has commented that after speaking with over 60 experts regarding the challenges of regulating public space and responding effectively to homelessness, leading cities have not identified laws of this nature to be an effective response to homelessness.¹⁸ Justice Connect Homeless Laws commented as follows:

*'To go down this path would be a damaging step in the wrong direction for Melbourne. At a time when we could be leading best-practice responses to homelessness, instead we are at risk of taking a path that has been recognised as punitive, expensive and ineffective.'*¹⁹

¹³ Annual Plan and Budget 2016-2017 <<http://www.melbourne.vic.gov.au/about-council/vision-goals/Pages/annual-plan-budget.aspx>>.

¹⁴ Cassie Zervos and John Masanauskas, 'Melbourne rough sleepers exposed to risk if proposed changes go ahead, support services fear', *The Herald Sun* (online) 7 February 2017 <<http://www.heraldsun.com.au/news/victoria/melbourne-rough-sleepers-exposed-to-risk-if-proposed-changes-go-ahead-support-services-fear/news-story/9484751b0beca2cd582948f9b639ac69>>.

¹⁵ Comment to Victorian Women Lawyers (13 March 2017).

¹⁶ Blessing Bags Melbourne, *About us* <<https://www.blessingbagsmelbourne.com/>>.

¹⁷ Justice Connect, *Melbourne, don't criminalise homelessness* (February 2017)

<<https://www.justiceconnect.org.au/our-programs/homeless-law/law-and-policy-reform/infringements-and-public-space-offences/melbourne-dont-criminalise-homelessness>>.

¹⁸ Justice Connect Homeless Law submission to the Future Melbourne Committee on the Activities (Public Amenity and Security) Local Law 2017, 7 February 2017, 4.

¹⁹ Above n 15.



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Other cities, such as Los Angeles in the United States, have enacted similar laws empowering police to move people on for sitting or sleeping on the street. Despite these laws, at least 5,000 people still sleep in the 50-block central city area.²⁰ The US Federal Government's Interagency Council on Homelessness has said:

*'... there is ample evidence that alternatives to criminalization policies can adequately balance the needs of all parties. Community residents, government agencies, businesses, and men and women who are experiencing homelessness are better served by solutions that do not marginalise people experiencing homelessness, but rather strike at the core factors contributing to homelessness.'*²¹

3. Burden for authorised officers and the Council

The Amending Law increases enforcement powers for authorised officers and the Council. This places the burden on the Council to effectively implement the laws, placing responsibility on the Council to address our homelessness crisis. In reality, continued collaboration of the City of Melbourne and the government, alongside other organisations should be utilised to develop long-term solutions to address homelessness in Melbourne.

4. Potential human rights issues

VWL is concerned that the criminalisation of homelessness violates ss 10(b) and 13(a) of the *Victorian Charter of Human Rights and Responsibilities Act 2006* (Vic)²² (**Charter**) and international treaties.²³

As a signatory to multiple international human rights treaties, Australia (and the City of Melbourne) has a duty to implement solutions to homelessness that ensures the promotion and protection of the rights contained within those international laws. Leilani Farha, UN Special Rapporteur on adequate housing said in relation to the Amending Law:

*"The criminalisation 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."*²⁴

Concluding remarks

VWL does not endorse the Amending Law. In particular, VWL does not support the following:

1. proposal to broaden the definition of prohibited forms of camping; and

²⁰ Above n 16.

²¹ Ibid.

²² *Victorian Charter of Human Rights and Responsibilities Act 2006* (Vic) s 10(b): A person must not be treated or punished in a cruel, inhuman or degrading way. Charter s 13(a). A person has the right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with.

²³ Including but not limited to, the right to freedom from torture and cruel, inhuman and degrading treatment or punishment (article 7 International Covenant on Civil and Political Rights 9 (ICCPR)); the right to liberty and security of person (article 9 ICCPR); the right to privacy (article 17 ICCPR); the right to adequate housing (article 11 International Covenant on Economic Social and Cultural Rights).

²⁴ UN Human Rights, Office of the High Commissioner, 'Proposed "Homeless Ban" in Australia cause for concern – UN Expert', Geneva, 13 March 2017. This article is annexure A to our submissions.



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2. proposal to insert a new clause providing for confiscation and disposal of unattended items, as well as a fine of \$388.65 for leaving items unattended.

The Council claims that such changes will broaden restriction around camping to 'better balance' the needs of all people in sharing public space.²⁵ While VWL acknowledges that public spaces should be regulated to promote community health and safety, this should not be achieved by penalising some of the most vulnerable members of our community. This would further disadvantage rough sleepers including women and children fleeing family violence situations.

Instead, VWL supports solutions that focus on providing housing and support the homeless in Melbourne's central business district and welcomes the Victorian government's recent announcement to invest in a new homelessness package. VWL further supports the continued collaboration of the City of Melbourne and the government, alongside organisations in developing long-term solutions to addressing homelessness in Melbourne.

Annexure A

UN Human Rights, Office of the High Commissioner, 'Proposed "Homeless Ban" in Australia cause for concern – UN Expert', Geneva, 13 March 2017

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²⁵ Above n 10.

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Proposed “Homeless Ban” in Australia cause for concern – UN Expert

GENEVA (13 March 2017) - Amendments to a local law in Melbourne, Australia, targeting homeless people living on the streets have triggered serious international human rights concern.

The proposed measures include a ban on camping in Melbourne and the potential for penalties to be imposed on anyone who leaves items unattended in public. The city council is due to vote on the proposed changes on 17 March. If passed, the law would legitimize discriminatory stereotypes of an already marginalized population.

The UN Special Rapporteur on the right to housing, Leilani Farha, said that: “While homeless people are not specifically referenced, it is clear they are the target; the amendment was put forward following the forcible removal of a homeless camp in the city centre last month.”

“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,” Ms. Farha said.

The Special Rapporteur released a report on homelessness as a global human rights crisis, last year. Ms. Farha has also been in contact with the government of Australia to discuss the issues in question.

Under international human rights law, which applies to national as well as local governments, homelessness is a gross violation of the right to adequate housing. Discrimination against and social exclusion of people who are homeless is strictly prohibited. Governments are required to take immediate steps to ensure the right to housing is enjoyed on a short and long-term basis.

“While it is commendable that the local government is consulting the public on the proposed changes to the law, the discriminatory nature of the amendments and the accompanying public campaign discouraging donations to homeless people is unacceptable,” Ms. Farha stressed.

There has been a 74% increase in the homeless population in Melbourne over a two-year period prompting concern from residents and local advocates. In 2016 it was estimated that 250 people were sleeping rough in the city.

“The local council now has an opportunity to reverse its course at the next vote and reconsider the proposed changes. I encourage the city to focus on its human rights obligations, which leave no room for discrimination,” Ms. Farha said. She added she was looking forward to the response from the Australian government and would be watching the situation closely.

ENDS

***Ms. Leilani Farha** (Canada) is the UN Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context. She took up her mandate in June 2014. Ms. Farha is the Executive Director of the NGO Canada without Poverty, based in Ottawa, Canada. A lawyer by training, for the past 20 years Ms. Farha has worked both internationally and domestically on the implementation of the right to adequate housing for the most marginalized groups and on the situation of people living in poverty.*

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