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Please indicate which meeting you would like to make a submission to by selecting the appropriate button: \* Future Melbourne Committee meeting

Date of meeting: \* Tuesday 7 February 2017

Agenda item title: \* Agenda Item 6.1 Metro Tunnel Project and Management of Burke and Wills Memorial

**Please write your submission in the space provided below and submit by no later than noon on the day of the scheduled meeting. We encourage you to make your submission as early as possible.**

Dear City of Melbourne Committee Meeting Group Officers

This is a written submission in regards to the Future Melbourne Committee Meeting no. 5 , 7th February 2017 5.30pm. It is in regard to Agenda Item 6.1 Metro Tunnel Project (MTP) and Management of Burke and Wills Memorial (Memorial).

The Memorial will have to be moved from its present location to a secure site, whilst the Metro Tunnel Project works are undertaken.

I support the recommendation from the Management Group, to remove the Memorial and to have restoration work applied to this important Memorial (Key Issue 11) . The City of Melbourne Art and Heritage Collection Program Advisory panel, support the Memorial being returned to the current site, after the Metro Tunnel Project work at the City Square site is complete (Key Issue 8).

The cost for the removal and restorative works, storage and re-installation will be met by the MTP (Key Issue 9).

In regards to (Key Issue 11.3) the request by the Royal Society to have the Memorial re-located to a new location has merit, and further discussion on this may be appropriate. The Royal Society have highlighted their concerns about the care and security of the Memorial whilst it is in storage and a restorative program

is in activation.

I support the Recommendation from Management Group that the Memorial be returned to its current location after the MTP works have been completed.

### Cultural Significance

The Memorial has an important cultural significance. One aspect that Charles Summers acknowledges is the relationship that the Yandruwandha have with the Melbourne Expedition that was led by Robert O'Hara Burke, and included Wills and John King. The Yandruwandha have lived on and managed the country around Coopers Creek for 50,000 years.

In 2016 The Age Newspaper reported on the Burke, Wills, King and Yanruwandha Heritage Places –

"Five sites in a 70-kilometre radius along the banks of Cooper Creek in South Australia became the 104th addition to the list, including the famous Dig Tree where Burke and Wills arrived just hours after their comrades had given up a four-month wait for the men.

The tree where Burke's remains were buried and the site where John King, the expedition's sole survivor, lived with the Yandruwandha people were also among the landmarks added to the heritage list.

Federal Environment Minister Greg Hunt announced the latest addition in a ceremony at the Royal Society of Victoria, which organised the expedition in 1860."

<http://www.theage.com.au/victoria/burke-wills-king-and-yandruwandha-national-heritage-place-inscribed-onto-national-heritage-list-20160122-gmcOne.html>

Burke, Wills, King and Yandruwandha National Heritage ...

[www.theage.com.au](http://www.theage.com.au)

Burke, Wills, King and Yandruwandha National Heritage place inscribed onto National Heritage List

In one of the bas-reliefs on the memorial, there is a depiction of the relationship between John King and the Yandruwandha. One of the bas-reliefs shows the scene when John King showed the Yandruwandha Burke's body after he had passed away.

On the 16th December 2015, ABC News reported on the Yandruwandha winning native title over their outback land, and it mentions their relationship with Burke and Wills.

<http://www.abc.net.au/news/2015-12-16/native-title-claim-acknowledged-at-sa-bush-hearing/7033858>

Native title granted by Federal Court for Yandruwandha ...

[www.abc.net.au](http://www.abc.net.au)

Descendants of Aboriginal families who helped Burke and Wills on their ill-fated expedition through central Australia have won native title over their outback land ...

When John King returned to Melbourne as the sole survivor of the party of four that reached the Gulf of Carpentaria he spoke of the kindness shown to him by the Yandruwandha. Victorians were particularly taken by the respect they showed to Burke's remains. King recalled,

they [the Yandruwandha] were very anxious ... to know where Mr Burke lay, and one day ... I took them to the spot. On seeing his remains, the whole party wept bitterly, and covered them with bushes.

King's narrative, #255110, Box FB33, MS 13071, State Library of Victoria.

<http://burkeandwills.slv.vic.gov.au/ask-an-expert/yandruwandha-yawarrawarrka-cooper-creek>

Yandruwandha / Yawarrawarrka at Cooper Creek | Dig - The ...

[burkeandwills.slv.vic.gov.au](http://burkeandwills.slv.vic.gov.au)

Hi Dave, I am hoping you can assist me or at least point me in the right direction. My son (through his father's mother) is a descendant of the Innamincka ...

Finding Burke dead by Charles Summers, 1865.

One of four bas-reliefs at the base of Summer's 1865 Melbourne statue to Burke and Wills.

This description inspired Charles Summers to use it as the theme for one of the four bas-reliefs on his statue

The Burke and Wills digital archive has detailed the assistance and care that the Yandruwandha showed towards the explorers. The Relief Expeditions that set out to assist the Melbourne Expedition Party are recorded here.

[http://www.burkeandwills.net.au/Memorials/grave\\_burke.htm](http://www.burkeandwills.net.au/Memorials/grave_burke.htm)

Burke's Grave - Burke and Wills

[www.burkeandwills.net.au](http://www.burkeandwills.net.au)

Burke and Wills Web: digital research archive of records from the Burke and Wills Expedition (1860-1861) from Melbourne to the Gulf of Carpentaria, Australia. This ...



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**Please indicate which meeting you would like to make a submission to by selecting the appropriate button: \*** Future Melbourne Committee meeting

**Date of meeting: \*** Monday 7 August 2017

**Agenda item title: \*** Metro Tunnel Project and Management of Burke and Wills Memorial

**Alternatively you may attach your written submission by uploading your file here:**



[w\\_birch\\_to\\_future\\_melbourne\\_committee\\_622017.pdf](#) 483.33

KB · PDF

**Please indicate whether you would like to address the Future Melbourne Committee in support of your submission:** Yes

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The Royal Society of Victoria  
Founded 1854

Promotion and Advancement of Science and Technology

*Patron*

The Hon. Linda Dessau AM, Governor of Victoria

*President*

Dr William D. Birch AM

6 February, 2017

Future Melbourne Committee  
Melbourne City Council

Dear Committee Members,

Thank you for the opportunity to convey the Royal Society of Victoria's strong support for the relocation of the Burke and Wills statue to the Society's site in response to the Melbourne Metro Rail Project works currently underway along the Swanston Street corridor. We are in receipt of the Burke and Wills Historical Society's submission to the Committee, which our own Society's Policy & Communications and Executive Committees fully support. We understand the National Trust (Victoria) is also supportive of the relocation.

We are pleased to confirm our offer of land to site the Burke and Wills Memorial adjacent to our historic building. After so many ill-fated moves of this sadly damaged monument, the statue's permanent relocation to a position on our site would be a fitting acknowledgement of the Society's commissioning and governance role in the historic expedition, and a welcome enhancement to the existing World Heritage character of the "Golden Mile" Exhibition Building precinct. The precinct offers "long views" against the backdrops of the high density CBD to the south and the Carlton Gardens to the north. Hopefully, this relocation would also mitigate the chronic and repeated vandalism of the statue reported in its current, highly urbanised location.

We anticipate the corner of Victoria and Exhibition Streets (Figure 1) offers the best opportunity for the statue to be admired from many vantage points (including the Carlton Gardens) and to situate the two explorers facing north, towards the route of their fateful journey. Of further potential for the Future Melbourne Committee's consideration is a traffic island adjacent to the site (Figure 2), currently occupied by a disused fountain and presumably owned by the City of Melbourne, situated in a similar location to the land occupied by the 8 Hour Day Monument, further west on the corner of Victoria and Russell Streets. Siting the Memorial at, or adjacent to, this site would contribute to a "Heritage Walk" down Victoria Street, where there are many existing points of interest concerning Melbourne's colourful history.



Figure 1 – Eastern Corner of Victoria & Exhibition Streets



Figure 2 – Western Corner of Victoria & Exhibition Streets

Wherever the Memorial ends up, the Royal Society of Victoria would like to urge the Future Melbourne Committee to consider the statue's restoration as an opportunity to develop a complementary installation. This would serve as an enduring gesture of thanks and acknowledgement from the people of Victoria to the Yandruwandha people, without whose care and

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The Royal Society of Victoria

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compassion the Victorian Exploring Expedition's sole survivor, John King, would have surely perished. Our 19<sup>th</sup> century counterparts responded to this kindness in the well-intentioned manner of their era, but little remains of this acknowledgement on the site of the Memorial other than one of the bas relief panels depicting the "natives" mourning Burke's demise. The story of King and the Yandruwandha remains an opportunity to celebrate a positive early interaction between Europeans and Indigenous Australians during the tragic backdrop of the "frontier wars," contributing to our mutual heritage and shared future here in the 21<sup>st</sup> century.

I am pleased to delegate our Chief Executive Officer, Mr Mike Flattley, as our representative and point of contact for ongoing discussion and deliberation on this matter. Mike will be in attendance at the Committee meeting on the night of Tuesday, 7 February to address the Committee on this matter.

Yours sincerely,

A handwritten signature in black ink, reading "W Birch". The signature is fluid and cursive, with a long horizontal stroke at the end.

**Dr William Birch AM**  
**President**

cc. Dave Phoenix, President, Burke & Wills Historical Society

Name: \* David Dodd

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Please indicate which meeting you would like to make a submission to by selecting the appropriate button: \* Future Melbourne Committee meeting

Date of meeting: \* Tuesday 7 February 2017

Agenda item title: \* 6.1

Alternatively you may attach your written submission by uploading your file here:



[bwhs\\_letter\\_to\\_melbourne\\_futures\\_committee\\_7\\_feb\\_2017\\_v.1.pdf](#)

1.37 MB · PDF

Please indicate whether you would like to address the Future Melbourne Committee in support of your submission: Yes

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Submission to the City of Melbourne's Future Melbourne Committee

Tuesday 7 February 2017

from the Burke and Wills Historical Society Inc.  
on the matter of the management of

## Charles Summers' Burke and Wills Statue

currently located on the pedestrian footpath, north west corner of the  
City Square, corner of Swanston & Collins Streets.

### Agenda Item 6.1

To the Lord Mayor, Hon. Robert Doyle  
and Councillors of the City of Melbourne.

The Society is pleased to accept the invitation to be present at the Committee meeting and wishes to make the attached submission.

*The background to this submission is in part, based on matters contained in the following documents, which we understand members of the Committee have viewed or are familiar;-*

- 1. The Society's submission to the MMRA Inquiry and Advisory Committee dated 11 Sept. 2016 (circulated Attachment 6.1 with Future Melbourne Committee Papers)*
- 2. The Report of the Committee of enquiry dated 26 November 2016, in relation to the Society's submission about the Future of the Burke and Wills Memorial / Statue, and the relevant findings of the Committee therein; (Relevant Extracts below)*

The Society requests that its Executive Committee member, Mr David Dodd, address the Committee with respect to its agendaed Submission.

Dave Phoenix  
President  
6 February 2017

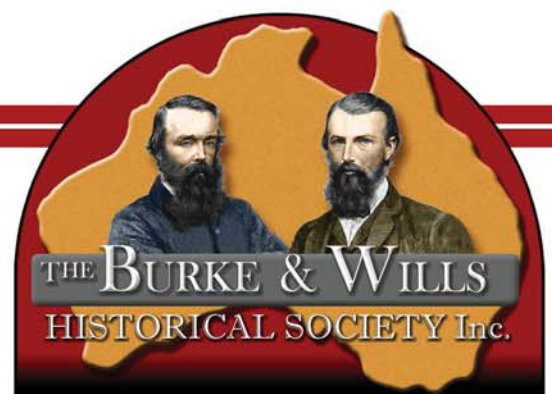
The Burke & Wills Historical Society Inc

A00047136E

PO Box 1511, University of Queensland, Gatton, QLD 4343

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burkeandwills.org



## SUBMISSION

### A. Background

1. In 2016, the proposals for the Extension of the Melbourne Metropolitan Underground Rail Project were first brought to public attention and the Burke and Wills Historical Society (BWHS) sought information about the **Future of the Burke and Wills Statue** in relation to the site works associated with the Project's Precinct 6 - CBD South Station site.
2. The BWHS was informed that it would be the intention of City of Melbourne (as the Statue's asset holder) that the Statue
 

would remain in situ, suitably protected and conserved throughout the early works and major (core project) construction phases and would then be relocated somewhere in the landscape of a revamped makeover of a new City Square.
3. The City of Melbourne's position was confirmed by Council Officers at a meeting held on 6 October 2016, although the Officers pointed out that this position was *fluid* and may change following discussions with the Early Works and /or Major Contractors for the CBD South Precinct. The BWHS and the Royal Society of Victoria (RSV) members present at this meeting, record their appreciation of the professional manner and transparent advice that these Officers provided in this regard.
4. The BWHS and RSV made a joint submission to the MMRA EES Inquiry and Advisory Committee and were subsequently pleased with the Committee's Findings in regard to their concerns on the future of the Statue and the fact that the matter had been brought into the public domain. The parties noted that;<sup>1</sup>

The Committee finds merit in the submissions about the potential relocation of the Burke and Wills Monument [Statue] but the final location is not a matter to be determined through this process. The Committee supports the retention of views to heritage places, especially the iconic views of St Paul's Cathedral from Federation Square, Princes Bridge and the City Square. It notes that the new station infrastructure should be subservient to the landmark qualities of these heritage places.

The parties further noted, with respect to the following observation from IAC Report and agreed entirely with the remarks of IAC's remarks and the City of Melbourne's acknowledgement,

that the future location of the Burke and Wills Statue needs a proper consultative process involving all relevant parties to ensure a final long term location for the Statue is found which will satisfy all principles of the Burra Charter.

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<sup>1</sup> Melbourne Metropolitan Rail Project - Inquiry and Advisory Committee Report, 21 November 2016.

(iv) Burke and Wills Monument

The Burke and Wills Monument is owned by the City of Melbourne and is to be relocated. The Burke and Wills Historical Society Inc (S269) submitted that the statue should be relocated to the Royal Society of Victoria (RSV) as the Society organised the Burke and Wills expedition, farewelled Burke and his party, and the remains of Burke and Wills were laid in state in the Society's hall prior to Australia's first state funeral in 1863. This submission was supported by the RSV and National Trust.

The City of Melbourne acknowledged these views but felt that broader consultation was required about the final location. It submitted "it would be premature if not inappropriate for a long term decision to be made through the EES process at this time".

The MMRA was not opposed to the relocation of the monument but stated that it was a matter for the asset owner. The monument would be protected during relocation, if needed, by EPR CH15 and EPR CH4. If the monument was retained in situ during works, EPR CH5 required appropriate protection measures.

## **B. Proposed Report & Recommendations for the Management of the Burke and Wills Memorial Statue to the Future Melbourne Committee from Management - 7 February 2017**

### **Comments on the Report and Recommendations from Management being put forward for consideration.**

**Re: Paragraphs 2 and 5.** - Consultation with the RSV and membership of the 'specially formed Committee'.

Any interpretation that the RSV, who offered a site and presented plans, etc., that they were party or implicitly supported the final recommendation to deploy the Statue to its current location, should be dispelled. A member of the BWHS, then a RSV Councillor attended that meeting and was struck by the fact that a decision had already been made. The RSV's preference for the re-siting of the Memorial to its site remains today, as it was then, unchanged.

### **Commentary on Key Issues**

#### **Paragraph 4**

The BWHS is pleased that its submission to the MMRA IA Committee has been enclosed as background as its submission is important to the discussion this evening (Attachment 2)

#### **Paragraph 3.**

The BWHS is also pleased that the MMRA has determined that the Memorial should be removed from the Precinct 6 CBD South construction site, however, one would have thought that this would have been an early decision by the asset owner.

**Paragraph 6.**

It appears that the 1993 ‘specially formed Committee’ did not rigorously apply the principles of the Burra Charter, particularly the intent of the sculptor, Charles Summers and appeared only to be interested in placing the Statue back in the City square, after the disastrous earlier attempt to position it over a waterfall (see photograph on page 7 of attachment 2).

**Paragraph 7.**

The original siting of the Statue was in the centre of the intersection of Collins and Russell Streets, not at the corner as suggested in the Report.

To say that the current site/position of the Statue is consistent with its original location is somewhat strained. More importantly to claim that the current siting of the Statue ‘encourages a more contemporary reading of the important artwork’ must be challenged. In *reading*, i.e., viewing, understanding, interpreting, the position and the context of the Statue in its current site cannot in all consciousness be supported.

The Statue’s orientation is incorrect and without interpretative signage, tourists and people with tour guides, stand in utter bewilderment trying to take photographs of the Statue at height (usually the rear of the Statue taken from an elevated position up the Collins Street Hill) and trying to understand why an iconic Statue has been sited at a busy, noisy intersection surrounded by traffic lights (and a lately, a tram sign), placed awkwardly on the footpath with Melbourne pedestrians frantically trying to navigate around at peak times.

**Paragraph 8.**

The Report of the City of Melbourne’s Expert Art and Heritage Collection Program Advisory Panel - Observations on matter raised in the Chairman’s letter of 22 December 2016 follow.

**Paragraph 9**

The BWHS endorses the move to transfer the Statue to a temporary secure storage facility, thus avoiding the debacle the last time it was removed to temporary storage in the early 1990s when ‘no particular care was taken to ensure the safe keeping of the historical important work’ (Para 3.3, page 5 of the BWHS MMRA submission attachment 6.2).

**Paragraph 10.**

The BWHS acknowledges the risks associated with multiple movements of the Statue.

### **C. Comments on the Letter dated 22 December 2016 from the Chairman of the City of Melbourne’s Art and Heritage Collection Advisory Panel (attachment 3)**

The BWHS has noted in paragraph 2 of the letter “that it was the **unanimous view** to approve a [suite] of recommendations for the accommodation of each artwork ... and to the continuation of the City Square as a location for public and site specific artwork once the MMRP is completed”.

Further in relation to the Statue, that “the Panel was of the **strong view** that the Summers’ iconic colonial sculpture of a key historic moment for Melbourne should be re-installed in the City Square after the MMRP works are completed.” “This would ensure that the Monument can be widely appreciated by the public and recognize the centrality of Melbourne’s history in the built and cultural fabric of the city.”

The BWHS has not been privy to the deliberations of the Advisory Panel which led to their recommendation to retain the Statue in City Square at the completion of MMRP construction.

The Management Report and Recommendations (**Key issues paragraph 8**), seem to base their case on two specific sentences of the Advisory Panel’s letter to justify its recommendations and the decision of the Council made 24 years ago. The character and the built environment of the City (the CBD in particular), has changed markedly since that time, most notably the development of Federation Square, and with the advent of the MMRA extension, the focus and loci of the daily life of the city is going to shift even further.

It is the view of the BWHS that the Advisory Panel has not presented a sufficiently detailed case for the retention of the Statue in City Square.

The BWHS is pleased to note, however, that the Advisory Panel has endorsed its concerns that the absence of the Statue in long term storage will remove from the consciousness of the citizens of Melbourne and our younger generation, the significance of the exploration history of our State and our nation of the Burke and Wills Expedition.

### **D. Absence of Public Consultation**

To date the only avenue for public consultation on the future of the Statue has been through the Melbourne Metropolitan Rail Projects EES Inquiry and Advisory Committee process.

The City of Melbourne in medium of its website prides itself in being transparent and open to all its stakeholders. Yet there has been no public consultation over the movement management of the Statue.



## E. The Recommendations before the Future Melbourne Committee 7 February 2017 as per Committee agenda Item 6.1.

Of the three recommendations from Management, two recommendations (11.1 and 11.2), are apparently **for noting**, with committed action taken or about to taken, by administrative delegation/ fiat.

The BWHS recognises that these ‘eleventh hour’ actions must now necessarily be actioned to enable the MMRA Precinct 6 CBD South Station Early Works construction timetable to proceed without impediment.

Placing the Statue in secure storage will allow time for a proper debate on the future deployment of the Statue, be it to the RSV site or to a revamped City Square makeover – the plans/concept of which have yet to be revealed and should be submitted for proper public consultation before these plans are finalised.

**Recommendation 11.3** is premature, as it binds a future Council 5+ years hence, with a requirement to move the Statue back to a re-vamped City Square, the same type of apparently binding decision, that a previous Council made 24 years ago, which the Management team have now sought to use to justify this recommendation.

While there are many examples of monuments being moved/relocated by Councils around the City CBD, by the Council’s revocation, either through public debate or change in public tastes, etc.; - the ‘Yellow Peril’ saga from the City Square and the move of the WWI Drivers and Ypres monument from the State Library lawns to the Shrine, readily spring to mind; its seemingly intractable attitude towards the Statue is difficult to understand.

One cannot help but reflect on the sobering prophesy issued in the *Melbourne Punch* in January 1864, during the debate on the original siting of the Statue in which it was noted that:

Sometime this month a hot wind will blow from a northerly direction and the BURKE and WILLS monument, after being moved fifteen times will tumble to pieces and pass from recollection.<sup>2</sup>

Clearly, the recommendations associated with yet another removal, storage and the proposed ultimate relocation of the Statue - now approach nearly half way towards Punch’s prophetic prophesy of fifteen moves.

The BWHS is reassured to know that the Statue will “not tumble to pieces”, given the Council’s proposal to have the Statue professionally curated during its storage, a move which will hopefully avoid a repeat of the damage that occurred to the Statue during previous storage at the Council’s facility.

The other undesirable outcome associated with the removal of the Statue from public view for a lengthy period is that it “may pass from recollection”. We have referred to this situation in Section C above. The BWHS is pleased that the Advisory Panel has had the foresight to identify this issue, as it

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<sup>2</sup>*Melbourne Punch*, 7 January 1864: 2.

would be a great pity if the efforts of the RSV and BWHS to rekindle the interest in the Burke and Wills Expedition saga with the 150<sup>th</sup> anniversary commemorations, across Victoria, interstate and around the world, would lose momentum during the Statue's long term storage.

Ironically, both Societies are sympathetic to plight which the City of Melbourne now finds itself over the quest for a final permanent position for the Statue.

The RSV has repeatedly offered a solution, although they have never been sure whether their offer has ever received serious consideration, as it appears that after 24 years, it has still fallen on deaf ears.

As already noted, the City CBD landscape, focus and loci has changed since 1993, and will change again with the opening of the MMRA extension. The BWHS hope the Melbourne City Council make the most of this opportunity to relocate the Statue to the RSV's grounds.

## **F. Concluding Remarks**

Accordingly, the RSV and BWHS hope that the Committee's meeting this evening results in an immediate consultative process to address the future location of the Statue.

The Societies believe that this action will finally see a resolution to the ongoing problem which has bedeviled the City of Melbourne for the past 152 years.

Placing the Statue at the RSV will provide an appropriate location in accordance with the original intentions of the Statue's creator, Charles Summers, while honouring the principles of the Burra Charter.

## **G. Some Important reflections on the Burke and Wills Statue.**

### **1. The Wills Monument at Totnes, Devon - A 'stationary' Monument.**

On the **22 June 1864**, the Mayor of the Totnes Town Council unveiled the Wills Monument at the entrance to the town alongside the river Dart. Ironically, it had been partly funded by moneys collected from the citizens of Melbourne and, as if to add further irony with its erection, the Monument stands proudly today 153 years on, still in its original position.

On 20 August 2010, His Excellency Hon. John Dauth, Australian High Commissioner to the United Kingdom and Hon. Sally Capp, Victorian Agent-General, London visited Totnes and unveiled a small plaque on the Monument recording the 150<sup>th</sup> anniversary of the Expedition. The Hon. Sally Capp also unveiled a plaque on the terrace house overlooking the monument originally owned by the Wills family.

## 2. The Burke and Wills Statue - A sobering Reflection from Adam Lindsay Gordon.

With apologies to Adam Lindsay Gordon, who wrote this enigmatic poem '*Gone*' about the Statue shortly after its erection in the centre of the intersection of Collins / Russell Street in **April 1865**:-

In Collins Street standeth a statue tall,  
A statue tall, on a pillar of stone,  
Telling its story, to **great and small**,

Gordon went on to write many verses to his poem, but the following verse seems particularly relevant and poignant, as if he had a premonition that the Statue would face an uncertain future in its deployment around the City;

We **tarry** yet, we are toiling still,  
He is gone and he fares the best,  
He fought against odds, he struggled up hill,  
He **has fairly earned his season of rest**;

Gordon's use of the expression, "*tarry*" has some sobering and salutary meanings in this context; - '*to delay or be tardy in acting or doing; to linger in expectation (wait) or to abide or stay in or at a place.*'

Let the City of Melbourne '*tarry*' no longer and acknowledge that the Statue, "*has fairly earned its season of rest*", and release the Statue to its long awaited permanent site at the RSV.

## 3. A Suggested Anniversary Relocation Commemoration timetable.

On **30 November 2018**, it will be the 140<sup>th</sup> anniversary of the death in Paris of Charles Summers, the celebrated sculptor who created the Statue.

*This date could be an unveiling date if there is acceptance of the Royal Society of Victoria's offer to provide a site for the Statue to its grounds.*

There is however another opportunity **three years later on 6 May 2021**, when it will be the 200<sup>th</sup> anniversary of birth of Robert O'Hara Burke at St Clerans, County Galway. Ireland.

*Regrettably, it appears that this 2021 date will be unworkable, given the proposed City Square construction time line, as the Statue will still be languishing in storage awaiting its fate, if the decision of the City of Melbourne is upheld, namely; relocated to a revamped City Square, effectively frustrating any thought of an anniversary commemoration / unveiling of the Statue.*

Either way, this long awaited relocation will hopefully at last witness the end of the saga which has bedeviled the City Fathers since the Statue was first erected in **1865** and enable future generations of Victorians to enjoy the expedition's story as Gordon so eloquently put it, by '*great and small*'.



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Please indicate which meeting you would like to make a submission to by selecting the appropriate button: \*

Date of meeting: \* Tuesday 7 February 2017

Agenda item title: Homelessness and public amenity

\*

**Please write your submission in the space provided below and submit by no later than noon on the day of the scheduled meeting. We encourage you to make your submission as early as possible.**

Dear Future Melbourne Committee,

I am writing to express my disapproval of the proposed laws relating to homeless people in the strongest of terms. I support all efforts to provide Melbourne's rough sleepers with stable rather than short-term transitional accommodation, and am concerned that a punitive legal response to camping in the city is only likely to cause the optics of the situation to change, satisfying people more concerned with Melbourne's visual landscape than the welfare of all its citizens, without addressing the real and systemic problems caused by insufficient long-term publicly funded affordable housing. In my work in the criminal justice area, including as a former legal associate at the Victorian Court of Appeal, I have witnessed firsthand the likely results when people who struggle financially and personally, already in a state of disadvantage, are funnelled into the criminal justice system, and it is for this reason that I believe criminalisation of rough sleeping is a wholly inappropriate response to the struggles of the homeless in Melbourne. Please, please pursue alternate strategies that are more likely to provide long-term accommodation alternatives to those struggling with homelessness without adding punitive legal measures to this situation. It is also wildly inappropriate to suggest that homeless individuals' small store of accumulated personal possessions, which often serve as the chief

tools of survival, should be confiscated in the name of making the city look more pleasant.

I do not care whether Melbourne looks pretty or looks like it doesn't have a homeless problem – we clearly do. I care whether Melbourne actually looks after its own, and it appears to me that you are currently failing to pursue the most important and long-term effective methods of doing this. I dearly hope to hear that I am wrong and that you will pursue an alternative proposal, rather than putting in place any further legal sanctions that will make the lives of the homeless population more difficult.

Yours sincerely,

Hannah Aroni

**Please indicate**      No  
**whether you**  
**would like to**  
**address the Future**  
**Melbourne**  
**Committee in**  
**support of your**  
**submission:**

*(No opportunity is  
provided for  
submitters to be  
heard at Council  
meetings.) \**

**Privacy**                      I have read and acknowledge how Council will use and disclose my personal  
**acknowledgement:** information.

\*

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Please indicate which meeting you would like to make a submission to by selecting the appropriate button: \* Future Melbourne Committee meeting

Date of meeting: \* Tuesday 7 February 2017

Agenda item title: \* Homelessness

Please write your submission in the space provided below and submit by no later than noon on the day of the scheduled meeting. We encourage you to make your submission as early as possible.

It is not the City of Melbourne (COM) responsibility to solve Victorian homelessness. This issue is a State Govt problem. The COM should focus on it's responsibility to look after it's ratepayers. In the CBD this means keeping the city "the most liveable city in the world". Allowing beggars, rough sleepers and drug addicts to take over public spaces makes the city seedy and unwelcome for visitors and regular users of the COM.

Do everyone a favor including the bums that have taken over the streets and send them back to where they came from.

Please indicate whether you would like to address the Future Melbourne Committee in support of your submission: Yes

*(No opportunity is provided for submitters to be heard at Council meetings.) \**

Privacy acknowledgement: \* I have read and acknowledge how Council will use and disclose my personal information.

Name: \* Andrew Klein

Email address: \* [andrewpaulklein@hotmail.com](mailto:andrewpaulklein@hotmail.com)

Contact phone number (optional): 0413683469

Please indicate which meeting you would like to make a submission to by selecting the appropriate button: \*

Date of meeting: \* Tuesday 7 February 2017

Agenda item title: Homelessness and public amenity Agenda item 6.2

\*

**Please write your submission in the space provided below and submit by no later than noon on the day of the scheduled meeting. We encourage you to make your submission as early as possible.**

As a Chaplain for Outreach Ministries Australia , a resident of Melbourne Victoria I come into contact with a large number of individuals that have recently been the subject of much negative Media Publicity . I am aware that Homelessness is at a crisis level in Victoria and is not confined to the Melbourne CBD. It is obvious that there are members of what may be loosely described as the 'Homeless Community ' that have at times behaved in inappropriate and anti-social behaviours . Such behaviours are not confined to the Homeless Community but given the visibility of individuals , their behaviours are more easily seen and are easily viewed out of context. Many of those with whom I have spoken personally choose to live in the CBD simply because it offers a degree of safety and the ability to find shelter and extant servcices . The proposed legislation does not address the many causes of homelessness and the varied circumstances that cause this crisis. The lifestyle cannot be seen as a persons first option in terms of finding safe spaces . Squatting in abandoned buildings is at best a short term solution for those dealing with multiple problems , a history of abuse and adverse interactions with established service providers. ( See Royal Commission into abuse of Children in care ). Thus certain service providers are viewed with suspicion and although these providers do offer genuine support , the options offered are short term only. The fact that there are those that have for many reasons opted out of what are seen as acceptable life styles and become 'rough sleepers' must

not dictate an approach that demonizes and creates the image of the less worthy. This approach will only make the most vulnerable in these Communities more vulnerable to physical and emotional abuse . I can understand that the Rate Payers and Business owners have an interest in ensuring that their 'City' is seen as a safe space for visitors and those seeking to enjoy the amenities of Melbourne have a desire to have Melbourne seen in the best possible light. We all want to be proud of Melbourne , a City that could easily be a leading light in addressing the genuine needs of the Homeless and with some insightful research and street work a model could be created that could be World's best practice. It is a reality of homeless life that the individual is compelled to carry all their personal belongings with them , the uglier reality is that leaving anything valuable exposed and un-attended leaves that person vulnerable to theft . The proposed confiscation of un-attended items is at best a short term approach , at the other end of the spectrum of social justice it would compel those with few funds to pay penalties and fines which would in due course turn otherwise law abiding people into criminals of sort for non-compliance. The Lord Mayor bravely stated that Homelessness is not a Crime and I would ask the Lord Mayor to make those words his mission. The recent media created hype has done little to enhance the Global Image of the Homeless plight. Nor should we allow any group to hijack the agenda and crisis for their own ends. Members of the Homeless Community have their own voice , their own stories and there are none that can claim with any legitimacy that they represent the many 'individual ' stories and narratives involved with this Crisis. A heavy handed approach will simply shift people into other outlying suburbs that have no established links to service providers and lack the great number of service providers ( secular and faith based ) already operating in the Melbourne CBD. One must also consider that the very existence of such projects as 614 is a supportive environment for people facing extremes . The need for basics , blankets and shower facilities are slowly being addressed mostly through the efforts of Volunteer Groups. Melbourne weather can be unforgiving and I am unable to find statistics that indicate the rate of admissions and the use of Medical Systems that meet the needs of those that are rough sleepers or other homeless. There should be thought given into the provision of lockable and secure spaces for the storage of personal belongings . The sad reality is that there is simply not enough in terms of affordable housing , Public Housing too is stretched in meeting the demands of our Society. On the other hand , the fact that many non Government and Volunteer groups formed to address the perceived needs of those seen as homeless can be viewed in the light of serious Community Building . Breaking down stereotypes and perceptions even between volunteer groups from varied multi cultural backgrounds . This unplanned outcome highlights the beauty of Melbourne as a diverse and caring Community and this should be encouraged . Police powers as currently in place are adequate to deal with those crimes that are reported or detected . To place a greater burden on Police in dealing with what is a social problem seems inappropriate to me . It might be better to give Police access to appropriate links and support services and approach this matter as a Community

Welfare Matter that will enable Police to communicate with 'Rough Sleepers' and the 'Homeless' in their duties to ensure public safety and address other security concerns. It is not difficult to assume that it is the very people on the street that will quickly notice something that may be suspect or present a security concern ( if security is an issue ). The claim that up to 150kg of material is being removed weekly ( see Age 2nd February ) seems a canard to me . It would not be impossible to collect such a quantity of what is deemed waste from any other Community , be it the urban street or the bins that deal with waste in the CBD. Homeless and Housing may go hand in hand and the Council could easily appoint support officers that deal with those in Cr isis in a caring and supportive way . The current approach of created conflict and perceptions of the less worthy will simply drive people into even less safe spaces and possibly expose them to criminal behaviours that exploit their vulnerable status at this time . Melbourne as a City will always attract those that see the bright lights as a beacon of hope i.e. Employment and Social Interaction. From my own experiences I found that within some Homeless Communities there are supports for individuals that are lacking elsewhere , a sense of Community and belonging that has declined in many areas . Social Isolation , fleeing from domestic violence or simply opting out of the perceived acceptable social forms of living should not allow Melbourne to become a place that is less caring and concerned for the welfare of those experiencing difficult times often through sets of circumstances that are well beyond them and would probably present problems to any of us where we to find ourselves la cking a roof . I cannot speak for the Homeless , I cannot speak for the rough sleepers. I can though convey my own personal observations and I am aware of many of the personal stories shared with me . Melbourne City Council , led by our Mayor , could easily become a City that becomes a global example. If the suggested figures of around 250 people as homeless in the CBD , this is not a great number given the overall population. If the 'Homeless' are forced to move on they will be denied access to the already established support services . To me it would be better to establish more safe spaces , reduce the impact of criminal behaviour on the Homeless ( they too fall victim but often fail to report incidents for fear of repercussions ). It should also be considered that what ever decision Council makes , that change or proposed legislation must comply with the Victorian Charter of Human Rights. The recent events as demonstrated in the Media should be viewed as a golden oport unity to acknowledge a crisis and find positive and life enhancing ways to deal with individuals. Making individuals dependent will not work , but empowering and being involved in the decision making process will change the dynamics that have been created .

**Please indicate**      Yes  
**whether you**  
**would like to**  
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**Melbourne**

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Committee in  
support of your  
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*(No opportunity is  
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heard at Council  
meetings.) \**

**Privacy** I have read and acknowledge how Council will use and disclose my personal  
**acknowledgement:** information.

\*

Name: \* KEN DATE

Email address: \* [krdcountry@hotmail.com](mailto:krdcountry@hotmail.com)

Contact phone number (optional): 0417034075

Please indicate which meeting you would like to make a submission to by selecting the appropriate button: \*

Future Melbourne Committee meeting

Date of meeting: \* Tuesday 7 February 2017

Agenda item title: \* Homelessness and public amenity

**Please write your submission in the space provided below and submit by no later than noon on the day of the scheduled meeting. We encourage you to make your submission as early as possible.**

I refer to the recent instance of a 'camp' being set up outside Flinders Street station and the adoption of this area by allegedly homeless people as a 'residence'.

The extent of homeless people sleeping on the streets in the CBD is unsightly, unhealthy and potentially dangerous. The spectacle that it presents to visitors and residents alike is extremely poor and should not be tolerated in a city such as Melbourne.

I note that the council has proposed to establish a by-law that makes 'camping' in public places illegal and that move has my full support. I expect the council will strongly defend this position, including against any challenges that may be put to it by agitators and protestors. Any legal challenge will also need to be strongly resisted.

As well as the general problem of homeless people on the streets, there is also the growing problem of beggars, especially in the popular areas, where passersby are constantly harassed for money. There are also beggars who sit on the footpath with their hand out, another unsightly aspect to city life.

I suspect many of these beggars are actually not financially stretched and they merely see begging as an opportune way to gain extra (tax free) income. This problem also needs to be addressed.

As someone who lives in the city, walking past homeless people and beggars every day is tiresome and



irritating, not to mention the unpleasantness associated with poor hygiene, alcohol/drug consumption and violence that inevitably accompanies such modes of living. Whether or not these people are genuinely homeless (I suspect many of them are not) the streets are not where they should be indulging in drinking and consumption of drugs.

I urge the council to move quickly on these matters. In addition to your stated intention to make it an offence to sleep on the streets I also urge you to outlaw begging. Resolving these two matters in a positive way will greatly improve the amenity of this city and present a far more attractive image to the many visitors and tourists that Melbourne attracts each year as well as making life better for the locals. Taxpayers and ratepayers expect better than to see the streets being abused by illegal campers and beggars.

The police have confirmed that they are powerless to act without supporting legislation, which makes it all the more important that you quickly attend to the legislative changes that are required to ensure the streets are cleaned up.

I look forward to hearing from you with regard to the manner in which these issues will be addressed.

Thank you and kind regards,

Ken Date

**Please indicate whether**  **No**  
**you would like to**  
**address the Future**  
**Melbourne Committee**  
**in support of your**  
**submission:**

*(No opportunity is  
provided for submitters  
to be heard at Council  
meetings.) \**

**Privacy**

**acknowledgement: \***

I have read and acknowledge how Council will use and disclose my personal information.

Name: \* Anna McCauley

Email address: \* [anna.india92@gmail.com](mailto:anna.india92@gmail.com)

Please indicate which meeting you would like to make a submission to by selecting the appropriate button: \*

Future Melbourne Committee meeting

Date of meeting: \* Tuesday 7 February 2017

Agenda item title: Agenda item 6.2

\*

**Please write your submission in the space provided below and submit by no later than noon on the day of the scheduled meeting. We encourage you to make your submission as early as possible.**

To City of Melbourne,

My submission today is in regards to the proposed amendment to the Public Activity and security law 2017 that is to be voted on on Tuesday 7th of February.

This method of "addressing homelessness" posits people without homes as the issue, rather than a lack of housing, and works to reduce the options for people in this position. The streets of Melbourne can be a safe haven for people experiencing homelessness; the proximity of amenities and support services makes surviving without a home just bearable for the people for whom this is the best option. These people should not be made to suffer more, least at the hands of people who are elected to protect their interests. It is well known that homeless shelters and other forms of emergency housing do not suit every persons needs, and a sense of community, autonomy and freedom can be found on the streets.

The Victorian government have not adequately responded to the issue of insufficient affordable housing and other factors that have lead to 22 000 people without homes in Victoria (census 2014).

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The proposed amendment takes away specifications that make it clear what "camping" entails, and leaves up to the discretion of officers whether people should be moved on or fined. This cannot be afforded of some of Victoria's most vulnerable, who often suffer layers of disenfranchisement.

I encourage City of Melbourne to remember that its streets are for everyone. Business owners, tourists or anyone else are no more entitled to influence how these public spaces are used than homeless people, who pay GST on a daily basis. With this and the above point considered, I can not see how these amendments can be passed.

I hope and trust City of Melbourne can make a grounded decision in the best interests of its people, and a decision that priorities needs over shallow desires for "clean streets".

Yours Sincerely,

Anna McCauley

Please indicate  No  
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Melbourne  
Committee in  
support of your  
submission:

*(No opportunity is  
provided for  
submitters to be  
heard at Council  
meetings.) \**

**Privacy acknowledgement:** I have read and acknowledge how Council will use and disclose my personal information.

\*

Name: \* Chris Honig

Email address: \* [chrisdhonig@gmail.com](mailto:chrisdhonig@gmail.com)

Please indicate which meeting you would like to make a submission to by selecting the appropriate button: \* Future Melbourne Committee meeting

Date of meeting: \* Tuesday 7 February 2017

Agenda item title: \* Homelessness and public amenity

Please write your submission in the space provided below and submit by no later than noon on the day of the scheduled meeting. We encourage you to make your submission as early as possible.

Not all rough sleepers diminish the public amenity of our city. Many rough sleepers are accomplished street artists who regularly paint murals in Hosier Lane.

<https://theconversation.com/some-rough-sleepers-are-attracting-tourists-with-their-street-art-71983>

I am concerned the proposed by-laws may have an adverse effect on the street art ecosystem in the laneway, by displacing homeless street artists and the people who support them.

It would be very constructive even to just verbally acknowledge the contribution of these artists at the meeting.

Please indicate whether you would like to address the Future Melbourne Committee in support of your submission: No

*(No opportunity is provided for submitters to be heard at Council meetings.) \**

Privacy acknowledgement: \* I have read and acknowledge how Council will use and disclose my personal information.

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Name: \* Dave Burrows

Email address: \* [hello@freedomfrompoverty.org](mailto:hello@freedomfrompoverty.org)

Contact phone number (optional): 0431563270

Please indicate which meeting you would like to make a submission to by selecting the appropriate button: \*

Date of meeting: \* Tuesday 7 February 2017

Agenda item title: 6.2 Homelessness and Public Amenity / Public Questions

\*

**Please write your submission in the space provided below and submit by no later than noon on the day of the scheduled meeting. We encourage you to make your submission as early as possible.**

Dear Councillors of the City of Melbourne and the Future Melbourne Committee,

We are writing in regards to the proposed amendments to bylaws at your meeting tomorrow, and the approach Council have taken to people facing homelessness in our city.

The proposed amendments have raised serious concerns with our organisation and the people of Melbourne, that we believe deserve consideration by each of you.

These laws will criminalise rough sleeping. These laws will mean someone without home or storage cannot possess anything more than what they can carry. These laws will not fix homelessness – they just grant legal powers to sweep it under the rug and push desperate people out of the CBD and into surrounding areas municipalities that lack the resources to support them.

You can't end homelessness by hiding it. You can't shift your responsibility to the people of

Melbourne over to another council. There are 22,000+ people homeless in Victoria. Band-aid solutions and bans will not fix this.

We need you to stop these attacks.

We need you to work with State and Federal Government to ensure every person has safe, long-term housing.

We need you to publicly fight for ending homelessness.

We need you to fulfil your responsibilities as elected public representatives and work for all the people of Melbourne.

Anything less means you are consciously choosing to abandon your people. It's your choice – do you want to be remembered as the councillors that threw your most vulnerable citizens out to destitution? Or the council that finally took a stand and did the right thing by them all?

We request a response from each of you on what we have discussed above. We also request the opportunity for Duncan, Kate and others to ask questions at the Future Melbourne Committee meeting on the 7th February 2017.

Sincerely,

Dave Burrows, Duncan Storrar and Kate Hamley  
Human Rights Activists for Freedom from Poverty

**Please indicate**      Yes  
**whether you**  
**would like to**  
**address the Future**  
**Melbourne**  
**Committee in**  
**support of your**  
**submission:**

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*(No opportunity is provided for submitters to be heard at Council meetings.) \**

**Privacy acknowledgement:** I have read and acknowledge how Council will use and disclose my personal information.

\*

Name: \* David Wilson

Email address: \* [david.wilson@urbanseed.org](mailto:david.wilson@urbanseed.org)

Contact phone number (optional): 0414862922

Please indicate which meeting you would like to make a submission to by selecting the appropriate button: \* Future Melbourne Committee meeting

Date of meeting: \* Tuesday 7 February 2017

Agenda item title: \* Homelessness and Public Amenity

Alternatively you may attach your written submission by uploading your file here:



[homelessness\\_and\\_public\\_amenity\\_submission.docx](#)

402.44 KB · .DOCX

Please indicate whether you would like to address the Future Melbourne Committee in support of your submission: Yes

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Future Melbourne Committee  
February 7<sup>th</sup>, 2017

Homelessness and Public Amenity Submission  
Dr. David Wilson  
CEO  
Urban Seed

Street homelessness is obviously a problem in the City of Melbourne at the moment. Some tourists don't like seeing it, businesses are sick to death of it, and the Council is struggling to know how best to treat it. Most of the rough sleepers are not keen on it either. In many ways rough sleeping has become rough camping and it's a growing problem.

When I was a Councillor with the City of Melbourne the Commonwealth Games were upon us. There was talk of moving the Homeless on to the outer suburbs and hiding them in cheap motels for the duration of the Games. The City of Melbourne stood up against this and developed their 'Homelessness Protocol'. The Council officer who put it together was Nanette Mitchell, a champion of human rights and the marginalised. In explaining the Protocol's approach she said:

"The principles of the protocol are based on a human rights approach which is consistent with the City of Melbourne Homelessness Strategy 2006–2009 and the current Homelessness Strategy 2011–2013. Key principles of the protocol are that all people have the right to be in public places, participate in public events and activities while at the same time, respecting the right of local communities to live in a safe and peaceful environment. People experiencing homelessness were actively involved in discussion and development of the protocol" (Parity, Vol.25, Issue 2, May 2012).

The City of Melbourne was praised for taking a human rights approach and it became an example to other municipalities and organisations on respectfully addressing the issues surrounding marginalisation. I urge the current Council to live up to this fine reputation in addressing the complexities of rough sleeping today.

The proposed draft of the Activities (Public Amenity and Security) Local Law 2017 seeks to address two major issues. The first is what has become rough camping compared to rough sleeping and the second (which is largely a result of the first) is the amount of property left unattended in the public space. The definition of camping as compared with sleeping is paramount in consideration

of these amendments and their impact on the most vulnerable human beings in our City.

This definition is addressed within the proposed changes by simply deleting in paragraph 2.8 the words 'in a car, tent, caravan or any type of temporary or provisional form of accommodation'. The lack of clarity around 'any type of temporary or provisional form of accommodation' is where my concern lies. If this extends to a roll out mattress and/or swag and/or blankets then it effectively outlaws rough sleeping and is therefore antithetical to the City's homelessness protocol. I urge the Council to address this lack of clarity to make sure that rough sleeping is not outlawed in the City.

I also refer Council to the draft United Nations resolution on 'The New Urban Agenda', coming out of their Habitat 3 Conference in Quito Ecuador, 2016. Paragraph 11 of this document talks of the right to the city for all people and in later paragraphs applies that to the City's most vulnerable. This is one of the underlying features of Melbourne's Homelessness Protocol and we have the opportunity to continue to be a leader in human rights with the disadvantaged in mind. I urge Council to not take a step backwards in this area.

I applaud the City's efforts in other areas that seek to create sustainable pathways out of homelessness. The commitment to resource supported housing, to seek safe spaces for sleeping, and to create expert panels to address the deeper problems are just examples of this commitment. Thank you. However, the ongoing, increasing problem of rough sleeping needs to be addressed in humane ways while more sustainable pathways are being implemented.

There are ways to work with this problem that address the rights and responsibilities of all groups of people effected by the problem. Here's a few ideas that need to be discussed in a forum of all effected parties before any far reaching, ineffectual 'solutions' are passed down.

- The Council needs to differentiate between rough sleeping and rough camping. Its one thing to ban camping on the streets of the City but quite another to ban rough sleeping.
- There's a movement in various places around the world, Sydney and Hobart included, that provides lockers for the use of the homeless during the day. Rough sleepers have their belongings packed up by a set time in the morning and they put those belongings into storage lockers in the area, provided by the Council. They access those lockers in the evening to set up their rough sleeping for the night. If their belongings are not removed by the set time in the morning Council workers clean them up.
- One of the problems associated with this action is the displacement of rough sleepers during the day. A solution would include the setting up of various Drop-in Centers across the CBD to be places of welcome, activities, skills training, and service provision that would help create

*Urban Seed: 3/174 Collins St Melbourne 3000.*

*03 9650 4023 [www.urbanseed.org](http://www.urbanseed.org)*

sustainable pathways out of homelessness, while treating the homeless with dignity. A lot more needs to be done in envisaging and then implementing this program but for now it needs to be seen in association with the idea of lockers, for the lockers by them selves would create a huge displacement.

At Urban Seed we are ready to work with Council, Victoria Police, and Service Providers to address the problems of street homelessness. We bring over 21 years of experience in Community Development and Place Management, personnel trained and experienced in these areas, City property that can be utilized, and a generally good reputation with those experiencing homelessness.

We are ready when you are.

Dr. David R Wilson

CEO

Urban Seed

Name: \* Fiona Ross

Email address: \* [housing.humanrights@gmail.com](mailto:housing.humanrights@gmail.com)

Please indicate which meeting you would like to make a submission to by selecting the appropriate button: \*

Date of meeting: \* Tuesday 7 February 2017

Agenda item title: 6.2 Homelessness and Public Amenity

\*

Please write your submission in the space provided below and submit **by no later than noon on the day of the scheduled meeting**. We encourage you to make your submission as early as possible.

Dear Lord Mayor, Deputy Lord Mayor and City of Melbourne Councillors,

We believe that the proposed changes to legislation by City of Melbourne Council discriminates against homeless people.

Please can the Council demonstrate how it has considered and applied the Victorian Charter of Human Rights and Responsibilities in the process of formulating these proposals.

We believe this should be undertaken before any amendments are made, rather than afterwards as outlined in 11.2 of the document.

( 11.2. notes that an assessment will be made in respect to the Amending Local Law and its compatibility with the human rights set out in part 2 of the Charter of Human Rights and Responsibilities Act 2006 )

Assessing how the proposed amendments comply ( or otherwise ) with the Human Rights Charter

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should be transparent and open to public scrutiny and input.

This is particularly important considering the extreme vulnerability of homeless people, many of whom present with complex needs and disabilities.

Thank-you

Friends of Public Housing Victoria ( FOPHV )

Homeless Persons Union ( HPU )

Experts by Experience ( eXe )

Public Interests before Corporate Interests ( PIBCI )

Defend and Extend Public Housing ( DAEPH )

# No Homeless Ban

Community Housing Support Group

Please indicate  No  
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Name: \* J Gonzo

Email address: \* [jess.m.gonsalvez@gmail.com](mailto:jess.m.gonsalvez@gmail.com)

Please indicate which meeting you would like to make a submission to by selecting the appropriate button: \*

Date of meeting: \* Tuesday 7 February 2017

Agenda item title: 6.2: Homelessness and Public Amenity

\*

**Please write your submission in the space provided below and submit by no later than noon on the day of the scheduled meeting. We encourage you to make your submission as early as possible.**

"Unattended Item in a Public Place": 2.12.1 to 2.12.5

Homeless people, by definition, have nowhere secure to store their personal belongings. If a homeless person cannot leave their belongings unattended, how are they to use a bathroom? How are they to get food? This sort of legislation encourages them into situations in which several people stay together so that they can make arrangements for their belongings to be looked after – and then they are punished for their small communities being "unsightly" or drawing attention from tourists. Not to mention that asking people to pay fines to recover their confiscated bedding when they are homeless and often unemployed is particularly cruel and callous behaviour.

"Camping in public places": 2.8

There is not enough crisis accommodation for people in need (such as those fleeing domestic violence). There are homeless folk who cannot get places in shelters because they do not want to surrender their pets to animal shelters that might put them down (many of which serve as service animals for people dealing with mental illness). Squatting in unoccupied housing is an offence. Where else are people to sleep? Does the council seriously object to homeless people sheltering in boxes or tents from our wildly unpredictable weather? Would you have those people go without even that

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shelter, because it was confiscated and they cannot afford to buy it back from the police?

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Setting systems up so that when they band together homeless communities are forced to move on from accessible, central areas of the city is not a solution to homelessness; it is the first step sanctioning the creation of slums. The world's most liveable city does not need slums, it needs to address the housing crisis of its citizens. Punishing people for being homeless by removing their property and support networks does nothing to reduce homelessness.

Why not instead look into projects like tiny housing or co-ops that provide shelter and access to amenities and community services, as a way of helping people off of our streets and back onto their feet? (eg like NSW: <http://www.abc.net.au/news/2016-08-30/first-tiny-homes-foundation-project-to-be-built-for-homeless/7798042>) Why not be the council who reduced homelessness through providing homes, rather than the council who oversaw the creation of slums for people who were already in dire need?

Please indicate  No  
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meetings.) \**

Privacy  I have read and acknowledge how Council will use and disclose my personal  
acknowledgement: information.

\*

Name: \* Kate Colvin

Email address: \* [kate@chp.org.au](mailto:kate@chp.org.au)

Contact phone number (optional): 0418103292

Please indicate which meeting you would like to make a submission to by selecting the appropriate button: \*

Date of meeting: \* Tuesday 7 February 2017

Agenda item title: Homelessness and Public Amenity

\*

Please write your submission in the space provided below and submit **by no later than noon on the day of the scheduled meeting**. We encourage you to make your submission as early as possible.

Council to Homeless Persons support the work done by Council over a long period to respond to the crisis of homelessness, and support efforts to strengthen those efforts by appointing Bernie Geary to the role indicated. However, we call on Councillors to not proceed further with proposed amendments to expand the definition of camping or to confiscate the belongings of people sleeping rough. Whilst the intent of these amendments may not be to cause harm to people who are homeless, the evidence from overseas indicates the amendments will cause harm, and at the same time fail to address the problem they attempt to address. A brief statement outlining our response and cosigned by agencies active in the CBD is attached.

Alternatively you may attach your written submission by uploading your file here:



[170206\\_joint\\_statement\\_for\\_council.pdf](#) 360.86 KB . PDF



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would like to  
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## We call on Melbourne City Councillors to reject homeless laws that have failed elsewhere

**Joint statement from Council to Homeless Persons, Launch Housing, Melbourne City Mission, The Salvation Army, VincentCare and Justice Connect Homeless Law**

### Monday 6 February

We are concerned the proposed amendments to by laws to be discussed by the City of Melbourne on Tuesday 7 February will compound the vulnerability of already vulnerable citizens, while not reducing the numbers of people sleeping rough.

The proposed amendment to clause 2.8 of the City of Melbourne Activities Local Law 2009 says: 'unless in accordance with a permit, a person must not camp in or on any public place'.

The City of Melbourne has also proposed amendments to insert a new provision clause 2.12 into the Local Law to bar people from leaving items unattended in a public place. It would allow for belongings to be confiscated and impounded and then sold, destroyed or given away unless a fee is paid within 14 days.

These reforms will enable police and council officers to require people sleeping in the street to move on, forcing people who are already extremely vulnerable into more hidden, and consequently more unsafe corners of our city.

This will expose them to greater risk of assault, and will make it more difficult for homeless services to locate and engage people to support them into housing.

Other cities, such as Los Angeles have previously enacted similar laws empowering police to move people on for sitting or sleeping on the street. Despite these laws, and considerable cost expended enforcing the provisions, at least 5,000 people still sleep in the 50-block central city area.

The laws in Los Angeles had so little effect because the drivers of homelessness remain unaddressed. Like Melbourne, Los Angeles lacks housing that people on low incomes can afford.

The City of Melbourne has had a very positive record working constructively with services and police to manage the humanitarian crisis on our streets in a way that considers public safety. The Victorian Government has also made a series of funding commitments to address homelessness over the past year.

However, the housing crisis has been created by decades of state and federal governments failing to address the growing crisis in affordable housing, both in private rental and social housing, and will take a sustained effort to turn around.

The only solution is for state and federal governments to join together to tackle the housing crisis that underlies our homelessness epidemic. In the short term the most effective solution to prevent and respond to growing homelessness in our community would be the immediate spot purchase of new public housing.

We urge Councillors to focus Council efforts on maximising the City of Melbourne's own capacity to deliver housing opportunities, and on advocacy for state and federal governments to address the housing crisis.

Undersigned by:

**Council to Homeless Persons**, Acting CEO, Kate Colvin

**Launch Housing**, CEO, Tony Keenan

**The Salvation Army Victoria**, Major Michael Coleman,  
State Social Commander

**Melbourne City Mission**, CEO, Vicki Sutton

**VincentCare**, CEO, John Blewonski

**Justice Connect Homeless Law**, Manager and Principal  
Lawyer, Lucy Adams

Name: \* Victoria Zurek

Email address: \* [vicky\\_zurek@hotmail.com](mailto:vicky_zurek@hotmail.com)

Contact phone number (optional): 0416591955

Please indicate which meeting you would like to make a submission to by selecting the appropriate button: \* Council meeting

Date of meeting: \* Tuesday 7 February 2017

Agenda item title: \* Homelessness and Public Amenity

**Please write your submission in the space provided below and submit by no later than noon on the day of the scheduled meeting. We encourage you to make your submission as early as possible.**

Melbourne is currently in the midst of a housing crisis the likes of which we haven't seen before; there are over 25,000 homeless people living in Victoria.

I have had experience both sleeping rough, in transitional housing, and in rooming houses.

None of these options address the crucial need for permanent housing for people in crisis.

My experiences in rooming houses were nothing short of horrific: being woken by screaming in the middle of the night, domestic violence, physical and sexual assault, witnessing someone being stabbed, coming home to police tape around the house, and multiple overdoses. I have a close friend who lived in one of these places for a little over five years. Two people died in the house during that time. Their bodies were only discovered after the stench of rotting flesh became too strong.

Many people would prefer to sleep rough than in these privately owned hell-holes.

In my time in rooming houses I was constantly on edge, unable to sleep, developed chronic anxiety issues, had people break into my room several times, had possessions stolen, and was even unable to use the kitchen as my meagre possessions would likely be stolen. As a 26 year old woman I frequently had to defend myself and other people from being assaulted by grown men.

There were no common areas, very little sense of community, and a real lack of support services.

The proposed ban on sleeping rough in Melbourne CBD and the accompanying By-Laws that increase police powers are nothing more than an attempt to bully, intimidate and steal from people who are already at their most vulnerable.

What kind of approach is this? We desperately need more and better community services and more and better long-term housing options, not laws that push the already vulnerable into increasingly dangerous situations. Community-based outreach is desperately needed.

What is meant by assertive outreach? Outreach work is only effective if the person is willing to seek help. You can't force people to make decisions, you can only build trust and hope that, with time, people are able to make positive decisions for themselves.

I'm questioning this terminology as I think it implies 'either get help or get off the street' and it just doesn't work like that in practice. I don't think it's ethical or effective to force people into support services, it often drives them further away from trusting services in the long-term.

I question the motivation behind introducing these new By-Laws.

Are you really seeking to help people in need? Or merely hoping to sweep a chronic and pervasive issue under the rug -- and out of sight?

Please, as someone who has experienced these issues, has worked with people who are homeless and has friends who are currently sleeping on the street, do not support the introduction of these By-Laws. If you do, you will be effectively putting people at greater risk: of increased mental health issues, suicide and overdose; of losing the few possessions they have left, of losing the small sense of community that keeps them alive, and of losing hope.

This proposal is unethical and a disgrace to Melbourne City Council.

People's needs are very clear. Rough sleeping is not a legal issue, it is a reflection of a failure to provide adequate housing and public services: the proposed By-Laws will not make the issue of rough sleeping go away, but merely compound the distress of those already on the social margins.

**Privacy**

**acknowledgement: \***

I have read and acknowledge how Council will use and disclose my personal information.

Name: \* Rebecca Temple

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Contact phone number (optional): 0459 974 637

Please indicate which meeting you would like to make a submission to by selecting the appropriate button: \* Future Melbourne Committee meeting

Date of meeting: \* Tuesday 7 February 2017

Agenda item title: \* Homelessness bylaw

Please write your submission in the space provided below and submit by no later than noon on the day of the scheduled meeting. We encourage you to make your submission as early as possible. Rebecca is currently homeless and wants the opportunity to speak to councillors about her personal experience and the negative impact the proposed bylaws will have on people who are forced to sleep rough in the city.

Please indicate whether you would like to address the Future Melbourne Committee in support of your submission: Yes

*(No opportunity is provided for submitters to be heard at Council meetings.) \**

Privacy acknowledgement: \* I have read and acknowledge how Council will use and disclose my personal information.

Name: \* Mark Towler

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Please indicate which meeting you would like to make a submission to by selecting the appropriate button: \* Future Melbourne Committee meeting

Date of meeting: \* Tuesday 7 February 2017

Agenda item title: \* Homelessness

**Please write your submission in the space provided below and submit by no later than noon on the day of the scheduled meeting. We encourage you to make your submission as early as possible.**

I object to the proposed action as recommended by Martin Cutler re: Amending the DEFINITION OF CAMPING on the following grounds:-

1. It beeches the Victorian Charter of Human Rights
2. It breaches the UN Charter of Human Rights
3. It condemns public-place dwellers to hypothermia, and 'exposure' related health emergencies
4. It exposes public-place dwellers to heightened possibility of illness, assault, robbery, sexual and physical abuse
5. It flies in the face of the humanitarian and compassionate stance of the Victorian and Melbournian communities
6. It should be entirely moot, given the state government and the Melb City Council have together committed approx. \$24.4million since 11 May 2016 to address the endemic, traumatic situation for public-place dwellers
- 6.1 The allocation of the \$24.4m has not been based on consultation with the affected communities nor their nominated advocates
7. The 'Ban' plan has not been subject to public consultation
8. The 'Ban' has not been subject to DIRECT CONSULTATION WITH THE AFFECTED COMMUNITY OF

## ROUGH-SLEEPERS

9. The 'Ban' is not accompanied by an Impact Assessment vis a vis the affected community, nor does it refer or rely on a Statement of Compliance' with the Victorian Charter of Human Rights

10. The Ban' plan fails to include an Information Strategy aimed at ensuring the victims aware they will be criminals for sleeping under a blanket

11. The action plan to lock up rough-sleepers and concurrently prohibit on-going essential support for survival (food, clothing, peer social and mental health support, etc) suggests the Ban both CRUEL, and HARSH.

12. Both this 'Ban' plan, together with the separate but intimately-related paper from December 2016 Council

Mtg ["Supported Housing Options Feasibility Study Report"] fail the test of natural justice in that –

a. Affected peeps were never afforded an opportunity to be included or heard

b. No rough-sleepers NOR ANY REPRESENTATIVES NOMINATED BY THEN were involved, surveyed, asked to contribute

c. None of the 4(four) Council to Homeless Persons nominees involved in this process have EVER sought out input or endorsement from rough-sleepers

d. None of these CHP Nominees has ever provided an avenue for dialogue, info sharing or any communication whatsoever.

13. The 'Ban' has been condemned by the rough-sleepers

14. The 'Ban' has been condemned by Justice Connect

15. The 'Ban' has been endorsed by the Herald-Sun

**Please indicate whether you**      Yes  
**would like to address the**  
**Future Melbourne Committee**  
**in support of your submission:**

*(No opportunity is provided  
for submitters to be heard at  
Council meetings.) \**

**Privacy acknowledgement: \***      I have read and acknowledge how Council will use and disclose my personal information.

Name: \* Daniel Scoullar

Email address: \* [daniel@socialchangeprojects.com.au](mailto:daniel@socialchangeprojects.com.au)

Contact phone number (optional): 0402596297

Please indicate which meeting you would like to make a submission to by selecting the appropriate button: \*

Date of meeting: \* Tuesday 7 February 2017

Agenda item title: Homelessness bylaws

\*

Please write your submission in the space provided below and submit **by no later than noon on the day of the scheduled meeting**. We encourage you to make your submission as early as possible.

If these bylaws are passed, Melbourne will receive worldwide attention for criminalising homelessness instead of helping people in crisis. It is entirely the wrong approach and it will hurt Melbourne's reputation for social justice and progressive policies.

Even worse, it will impose punitive fines for people who have nowhere else to go. The definition of 'camping' must not include people sleeping on the street. Where else can they go if they are accessing emergency services in the city? Most do not offer accommodation.

The confiscation of property might be okay if there wasn't another \$400 fine for people to get their things back. People who are homeless don't have this money.

Housing and support is the way to 'clean up our streets', this bylaw is entirely wrongheaded. It could be improved by fixing the definition of 'camping' to the traditional definition and by eliminating the penalty units for people who are being fined due to their homelessness.



Melbourne is Australia's best city and we stand by our values. Any councillor who votes for this will not receive support from me again in the future.

Please indicate  No  
whether you  
would like to  
address the Future  
Melbourne  
Committee in  
support of your  
submission:

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acknowledgement: information.

\*

**Name: \*** Homeless Persons Union Victoria

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**Contact phone number (optional):** 0450730252

**Please indicate which meeting you would like to make a submission to by selecting the appropriate button: \*** Future Melbourne Committee meeting

**Date of meeting: \*** Tuesday 7 February 2017

**Agenda item title:** 5 Public Questions/6.2 Homelessness and Public Amenity

\*

**Please write your submission in the space provided below and submit by no later than noon on the day of the scheduled meeting. We encourage you to make your submission as early as possible.**

The link below directs councillors to an online petition named 'Public Space For ALL – Melbournians Against the Criminalisation of Homelessness'. The petition is meant for the reading of Melbourne City Councillors. It calls on Melbourne City Council to refrain from introducing any new or amended by-law that will criminalise those experiencing homelessness in the municipality. The petition has garnered 691 signees and 154 comments in two weeks and the number is growing. We expect councillors to take on board what the signees have expressed in their comments about the proposed amendments to or the introduction of new by-laws which will unfairly target people experiencing homelessness. Thank-you, Homeless Persons Union Victoria.

[https://www.change.org/p/melbourne-city-council-public-space-for-all-melbournians-against-the-criminalisation-of-homelessness/w?source\\_location=petition\\_show](https://www.change.org/p/melbourne-city-council-public-space-for-all-melbournians-against-the-criminalisation-of-homelessness/w?source_location=petition_show)

**Please indicate whether you would like to** Yes

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*(No opportunity is  
provided for  
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meetings.) \**

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\*

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Contact phone number (optional): 0449551900

Please indicate which meeting you would like to make a submission to by selecting the appropriate button: \*

Date of meeting: \* Tuesday 7 February 2017

Agenda item title: \* Report to the Future Melbourne Committee – Homelessness and public amenity \*

**Please write your submission in the space provided below and submit by no later than noon on the day of the scheduled meeting. We encourage you to make your submission as early as possible.**

Please accept this as my submission to the Future Melbourne (Finance and Governance) Committee Homelessness and public amenity report. My name is Lisa Peterson; I'm a homelessness advocate; I sit on your Homelessness Advisory Committee; I work closely with the City of Melbourne (CoM) Rough Sleeping Community and I have to object to many points in the above mentioned report.

I'm not really sure how these changes are useful – \$25million poured into this 'problem' in less than twelve months, how does a broadening of the bylaws, fix it? One of the problems out on the street is the lack of consistency with the application of bylaws – it causes confusion – broadening the definition would only add to the confusion as I'm guessing Authorised Officers would have discretion – as they would with the application of infringement notices (which people can't afford and won't pay) and notices to comply – there has to be a better way. I'll get to this later, but speak to the people who are living out there.

From my understanding, at the moment most of the items collected go straight to the tip – these

amendments seem like they're creating a whole lot of extra work for your staff. Again, speak to the peeps about how best to handle this.

I'm concerned that this was the way Victoria Police chose to respond particularly when there was no liaising with the rough sleeping community first. I spent some time down at the Flinders St camp and a number of times I saw a few so-called supporters do things that warranted at least a warning from police and I saw them walk straight passed – maybe some of the later action could have been avoided had the police acted earlier. It seems rather unreasonable to impose such draconian measures on an entire community when it's the preventable actions of so few affecting so many.

The 74% increase is set to get worse with rooming house and caravan park closing and whilst I applaud Council's \$2mil investment it concerns me that 'assertive outreach' won't include peer support workers and that it will try to force people into situations they don't want to go to because they find them unsafe. I'm also concerned that 'safe night time spaces' will be more of the night cafe where you could get a toastie and sexually assaulted. I'm also concerned that all of this will be designed without direct consultation with the community most affected.

This point outrages me. Since December there has been a weekly meeting discussing the rough sleeping community and there has been no representative of the rough sleeping community? This is outrageous! The CoM would go to the people of Chinatown to design a new entry to Chinatown, not to the legal precinct and everywhere else but – how is it fair in this case that this report says management have gone everywhere else but the affected community?

I ask that a member or representative of the rough sleeping community be appointed to assist Mr Bernie Geary.

This could be handled better if Council communicated with community.

In light of the above, I ask that Council delays any amendments to the Activities Local Law 2009 until after it has consulted with the affected community and not everybody else.

11.1 Again I ask that Council delay any decision until rough sleeping community is consulted.

11.2 I'd like to see the assessment made against the Charter when it's available

11.3 It concerns me that management would recommend a communication campaign in how to screw the rough sleeping community over, but doesn't not recommend a communication campaign to inform the rough sleeping community how these changes will screw them over ( changes being decided about them without them of course). It's bad enough that decisions about people's lives have been announced through the Herald Sun, we don't need to continue that way.

11.4 That'll be interesting... \$25mil so far. How much more?

11.5 As per 6. I ask that a member or representative of the rough sleeping community be appointed to assist Mr Bernie Geary.

Prior to Flinders Street, 247 people lived pretty peacefully on the streets, it was bad enough watching the impact of Flinders St on THEIR live playing out in the media – now their lives are potentially being turned upside-down again, without their knowledge, input or provision for information gathering (other than through media I'm guessing) – what is management trying to do? In your 'Melbourne for All People' document in Goal 6. It is stated "Melbourne is a place where people are involved in civic decision-making and where all voices are recognised, heard and valued." Why in this case has management put forward recommendations without living up to Council's goals?

We call the rough sleeping community 'vulnerable', 'marginalised', 'complex', discuss mental health and AOD issues and then set up conditions to make it worse – this has got to stop. In City Square last year the rough sleeping community asked for 'safe space' – basically a place of last resort where they could sleep without being moved on – we were told we wanted housing – ultimately, yes, we all want housing, but we know there's a long wait and want to know 'where do we sleep tonight'. All current options have been rejected by those sleeping rough, mostly because they are unsafe and/or unaffordable – forcing these opinions on already traumatised people seems like cruel and unusual punishment – unfortunately every option we've put forward was met with a 'No'. – Flinders St may have been avoided if 'yes' was said even once.

\$25mil has gone into rough sleeping for it only to be getting worse. Whilst some of this can be attributed to the lack of affordable housing, the closure of rooming houses and caravan parks; some also has to be attributed to the fact they throw housing at people who dig-in – a concern we had when they told us we wanted housing in City Square (there's an Age article that confirms this concern) – unfortunately more will come. Maybe instead of wasting more money on draconian and inhumane measures to potentially not resolve this issue, can we please do it another way, by speaking with and listening to the people who live this life and not just those looking for a handout?

**Please indicate**      Yes  
**whether you**

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provided for  
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\*

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Email address: \* [rachelzbukvic@gmail.com](mailto:rachelzbukvic@gmail.com)

Contact phone number (optional): 0422070633

Please indicate which meeting you would like to make a submission to by selecting the appropriate button: \* Future Melbourne Committee meeting

Date of meeting: \* Tuesday 7 February 2017

Agenda item title: \* 6.2 Homelessness and Public Amenity

**Please write your submission in the space provided below and submit by no later than noon on the day of the scheduled meeting. We encourage you to make your submission as early as possible.**

As a Social Worker within the Homelessness sector, and am disgusted that the proposed homelessness and public amenity laws are even being considered. It is your responsibility as of our government to protect all members of the community by providing a safe place for everyone, not one where poverty is criminalised and those living in crisis are vilified. With limited access to affordable housing or crisis accommodation, or even affordable storage for the short term placement of personal items, these laws are neither logical nor practical. I will be standing strong with the homeless community, housing workers and compassionate members of Melbourne to oppose these laws. I stand for more housing, more support and compassion, and more listening to the voices of those you are making life-changing/devastating decisions for.

Please indicate whether you would like to address the Future Melbourne Committee in support of your submission: Yes

*(No opportunity is provided for submitters to be heard at Council meetings.) \**

Privacy acknowledgement: \* I have read and acknowledge how Council will use and disclose my personal information.



Name: \* Lucas Heenan

Email address: \* [jeremycare@gmail.com](mailto:jeremycare@gmail.com)

Please indicate which meeting you would like to make a submission to by selecting the appropriate button: \*

Date of meeting: \* Sunday 7 February 2016

Agenda item title: Meeting no. 5, 6.2 Homelessness and Public Amenity

\*

Please write your submission in the space provided below and submit **by no later than noon on the day of the scheduled meeting**. We encourage you to make your submission as early as possible.

Dear 'Lord' Mayor and Melbourne Council,

Lets not pretend for a second that what you are doing is ethically or solution based.

You are in practice and ideology;

- prioritising the 'look' of the city over the actual reality and welfare of ALL it's inhabitants (including both non-homeless and homeless people)
- prioritising the comfort and relative safety of non-homeless people over the comfort and very present safety concerns of rough sleepers (who face much higher risk of violence and harassment ESPECIALLY outside the CBD)

You are able to do this because rough sleepers are stigmatised and you are utilising public apathy/hate to determine the level of effort/funds allocated because you know you can.

I understand that for you this is politically the easier solution but again I demand that we don't pretend

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that your actions are based in true empathy for rough sleepers or a true desire to reduce homelessness.

What is it? 49 temporary houses the governments proposed? Yet there are 250 rough sleepers? So what, 200 people remain homeless? Or is it 5 people in every house? How many adults do you share a house with? These people need regular homes like anyone else, with privacy and a space that is safe JUST AS YOU ALL HAVE.

It is appalling and mind boggling that you are considering going with the HISTORICALLY PROVEN failure of "moving on" homeless people. Police are NOT social workers.

It is a politically motivated 'solution' to avoid admitting there is a problem that you are unable to fix.

These people need mental health support, addiction support for some, financial support and LONG TERM SUSTAINABLE support if you are interested in their welfare (which your actions determine you are not).

I wonder how many of you have actually bothered attending or paying attention to the protests of rough sleepers organised by various groups.

Go and listen to their stories and gain an insight because as it stands you are demonstrating through your actions that you are either ignorant and ill-informed of the situation or are maliciously choosing to ignore it so that it benefits you politically.

I beg you to consider using your hearts instead of your careers when deciding the fates of some of our most under recognised, mistreated and abused citizens.

True leadership of the future is inclusive and compassionate – as opposed to regressive and manipulative.

Be the change.

Sincerely,

---

Mx. Lucas Heenan

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\*

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Contact phone number (optional): 0386364409

Please indicate which meeting you would like to make a submission to by selecting the appropriate button: \* Future Melbourne Committee meeting

Date of meeting: \* Tuesday 7 February 2017

Agenda item title: \* Homelessness and public amenity

Please write your submission in the space provided below and submit by no later than noon on the day of the scheduled meeting. We encourage you to make your submission as early as possible.

Please see two attachments:

- 1) submission from Justice Connect Homeless Law
- 2) Churchill Fellowship report

Alternatively you may attach your written submission by uploading your file here:



[justice\\_connect\\_submission\\_to\\_future\\_melbourne\\_committee\\_7.02.2017.pdf](#)

350.29 KB . PDF

Please indicate whether you would like to address the Future Melbourne Committee in support of your submission:

Yes

*(No opportunity is provided for submitters to be heard at Council meetings.) \**

Privacy acknowledgement: I have read and acknowledge how Council will use and disclose my personal information.

\*

Dear Sir / Madam

Please find attached the document referred to in Justice Connect Homeless Law's written submission to the Future Melbourne Committee (also attached), *Churchill Fellowship Report: Addressing the Negative Impact of Laws Regulating Public Space on People Experiencing Homelessness*.

Please confirm that this will be circulated to Councillors and relevant Council staff prior to the Committee meeting, together with the brief submission.

Call me on 0409 664 883 if you have any questions at all.

Many thanks

Lucy

**Lucy Adams**

Manager and Principal Lawyer | Homeless Law



---

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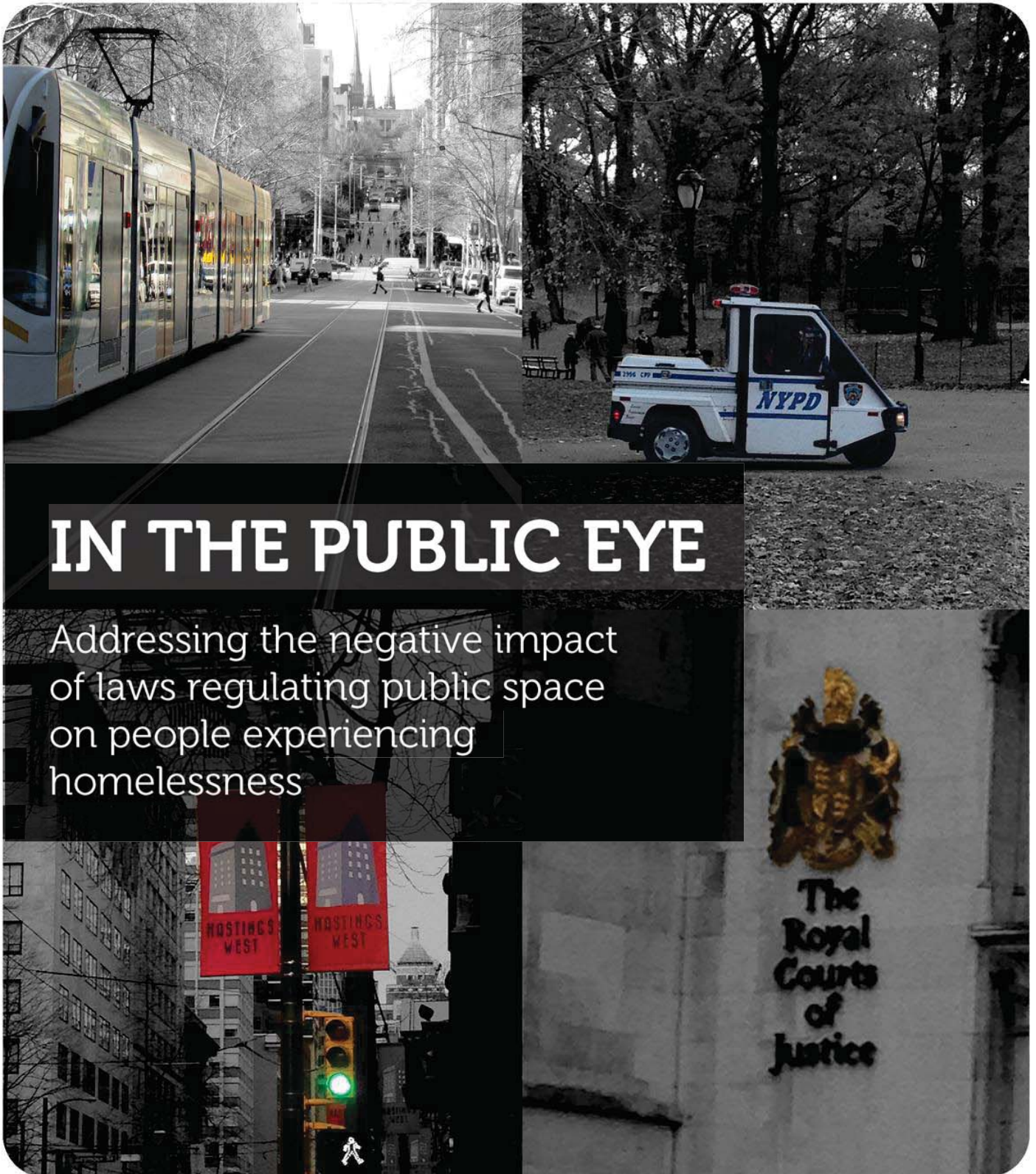
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# IN THE PUBLIC EYE

Addressing the negative impact of laws regulating public space on people experiencing homelessness

THE WINSTON CHURCHILL MEMORIAL TRUST OF AUSTRALIA

Lucy Adams  
2013 Churchill Fellow

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I indemnify the Churchill Trust against any loss, costs or damages it may suffer arising out of any claim or proceedings made against the Trust in respect of or arising out of the publication of any Report submitted to the Trust and which the Trust places on a website for access over the internet.

I also warrant that my Final Report is original and does not infringe the copyright of any person, or contain anything which is, or the incorporation of which into the Final Report is, actionable for defamation, a breach of any privacy law or obligation, breach of confidence, contempt of court, passing-off or contravention of any other private right or of any law.

Signed:

A handwritten signature in blue ink, appearing to read 'L Adams', with a horizontal line extending to the right. The signature is written over a faint, light blue watermark that reads 'CONFIDENTIAL NOT FOR PUBLICATION'.

Dated: 16 April 2014



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# 1. EXECUTIVE SUMMARY

Project	In the Public Eye: Addressing the negative impact of laws regulating public space on people experiencing homelessness
Contact details	Lucy Adams Manager and Principal Lawyer Justice Connect Homeless Law E: lucy.adams@justiceconnect.org.au T: +613 8636 4408

## 1.1. The background

Scott<sup>1</sup> is a 42 year old father of five. He has an acquired brain injury, he battles depression and anxiety and he has struggled with alcohol dependence for over 20 years. He has been homeless for large parts of his adult life. Scott approached Justice Connect Homeless Law for assistance with thousands of dollars in fines for being drunk in a public place. Each one was over \$500. His weekly income was \$250. We assisted Scott to navigate the legal system set up to deal with fines and infringements. Two years, four court appearances and 13 supporting reports later, the fines had been resolved. Throughout the protracted process, despite a concerted effort at recovery, Scott had received more fines during relapses. And so the process started again.

Justice Connect Homeless Law is a legal service for people who are homeless or at risk of homelessness.<sup>2</sup> Each year we provide legal assistance to approximately 200 people who have received fines or charges for ‘public space offences’, including having an open container of liquor in public, begging, being drunk in a public place, littering, and conduct on public transport (for example, not paying to travel, smoking on the platform or having your feet on the seat).

Homelessness makes it:

- more likely that you will receive fines or charges for public space offences because you are carrying out your private life in a public place; and
- extremely difficult to deal with fines or charges either through payment or navigating the unwieldy legal process.

The laws, policies and practices that seek to regulate public space in Victoria do not effectively address the underlying causes of a person’s offending. Instead, financial penalties or charges are issued to struggling people, increasing the strain they’re already under. The system also places a burden on legal and community services that assist clients to deal with their fines and charges and causes congestion in the courts.<sup>3</sup>

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<sup>1</sup> Name has been changed.

<sup>2</sup> Justice Connect Homeless Law was formerly the PILCH Homeless Persons’ Legal Clinic. Established 12 years ago, Justice Connect Homeless Law is a specialist legal service for people experiencing or at risk of homelessness. Homeless Law staff work closely with over 400 pro bono lawyers to provide legal information, advice and representation to hundreds of people experiencing or at risk of homelessness each year. Our services are outreach based and client centred, and we don’t just focus on legal issues. Our Homeless Law social workers and our relationships with the homelessness sector build our capacity to understand and respond to clients with a range of non-legal needs. Our vision is to improve outcomes for our clients through the provision of holistic legal services and evidence-based advocacy. For more information see [www.justiceconnect.org.au/our-programs/homeless-law](http://www.justiceconnect.org.au/our-programs/homeless-law).

<sup>3</sup> See, eg. Justice Connect Homeless Law, *What’s the Cost? Infringements System Review* (November 2013) (available at: <http://www.justiceconnect.org.au/our-programs/homeless-law/law-and-policy-reform/infringements-and-public-space-offences/infringements-public-space-and-homelessness>) (**Justice Connect Homeless Law, What’s the Cost?**).

## 1.2. Enforcement-based approaches to homelessness

The use of enforcement to deal with the presence and activities of people experiencing homelessness in public spaces is not unique to Victoria.

There has been a proliferation of laws, policies and practices internationally that seek to address homelessness through enforcement-based measures. These measures vary significantly in their form, intention and impact. They include laws expressly prohibiting the presence or activities of people experiencing homelessness (such as laws prohibiting sitting, sleeping or lying on the sidewalk and begging); differential or discriminatory enforcement of neutral laws (for example, laws prohibiting jaywalking or public drunkenness); and the collaborative use of enforcement measures, including police involvement and court orders, intended to prompt people experiencing homelessness to engage with services.

When considering enforcement-based approaches to homelessness, the following factors are relevant:

- what the laws are;
- how the laws are enforced by decision-makers and enforcement officers (including police and ticket inspectors, and encompassing collaborative relationships with homeless services as part of ‘assertive outreach’); and
- how the justice system deals with people once they have entered it (including through tickets, fines, prison, anti-social behaviour orders or tailored community orders).

At each tier of the enforcement process – through law reform, improved enforcement practices and more effective use of justice mechanisms – there is significant potential to reduce the negative impact of laws regulating public space on people experiencing homelessness.

## 1.3. Nine cities, over 60 experts – understanding enforcement and identifying alternatives

The Churchill Fellowship gave me the rare privilege of speaking with over 60 experts in nine cities throughout the US, Canada and Europe about homelessness and the regulation of public space.<sup>4</sup>

In addition to organisations like Homeless Law that do both direct casework and law reform work, I spoke with police officers, government agencies, advocacy groups, academics, UN experts, community organisers and people with a direct experience of homelessness in Los Angeles, Washington DC, New York City, Vancouver, London, Edinburgh, Geneva, Lyon and Brussels. In addition to face-to-face meetings with a diverse range of experts, I observed the Red Hook Community Justice Center and the Midtown Community Court in New York City, attended the City of London Anti-Social Behaviour Interagency Working Group, accompanied Pivot Legal Society to a homeless encampment in preparation for potential litigation and attended the fundraising event of Picture the Homeless, one of the US’s most active grassroots organisations, founded and led by people who are, or have been, homeless.

There were three main components to this research:

- **Understanding enforcement-based approaches to homelessness** – I wanted to understand the pressures and motivations behind local decisions to use law enforcement to address homelessness, a trend often referred to as the ‘criminalisation’ of homelessness. I also wanted to learn about the impacts (positive and negative)

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<sup>4</sup> For reflections about each city, as well as links to the websites and work of the organisations and experts I met with, see this blog: Lucy Adams, *In the Public Eye* (available at: [www.inthepubliceyeblog.wordpress.com](http://www.inthepubliceyeblog.wordpress.com)).

of enforcement-based approaches on individuals experiencing homelessness, as well as law enforcement, services, the courts and communities. We need to understand what is behind these laws and policies and what their impacts are if we are going to develop effective, constructive proposals for reform.

- **Changing the conversation** – the regulation of public space and homelessness is often framed as an issue of law and order, safe streets and getting tough on crime. It is important that laws, policies and practices designed to respond to homelessness are informed by evidence about the nature and extent of ‘public space offending’ (including begging, public drinking, travelling without a ticket and rough sleeping) and its causes. There is currently limited understanding amongst the general public or decision-makers about the impact of these laws, policies and practices on people experiencing homelessness. I wanted to learn about effective ways of communicating about these issues, including how we can challenge stereotypes about homelessness and its causes in a way that makes room for better informed approaches to dealing with visible homelessness in our communities.
- **Creating alternatives to enforcement** – there is no one place that has a perfect model for regulating public space, but I wanted to get new insights about ways of addressing homelessness that look beyond law enforcement and the justice system (or contemplate a different role for these agencies). Through conversations with people working on the ground, the aim was to pull together new ideas for practical, effective models for dealing with homelessness and related public conduct in a way that addresses the causes instead of punishing the symptoms.

One of the consistent messages from my conversations is that decision-makers often turn to enforcement because of a perceived lack of alternatives. Part of this project is about identifying alternatives by highlighting jurisdictions that are doing things differently. If we can see models that are working in other places, there is little justification for us to persist with inefficient, ineffective enforcement-based approaches to visible homelessness in our communities.



## 1.4. Ten recommendations

Informed by the insights, expertise and practical experience of over 60 experts from over 40 organisations in nine cities, as well as the evidence-base from Homeless Law's provision of direct legal services to approximately 200 clients with fines and charges for conduct directly related to homelessness each year, this report presents 10 recommendations for a better informed, more effective, more efficient approach to dealing with the presence and activities of people experiencing homelessness in public spaces.

It is hoped that these recommendations will inform conversations and contemplations about the way we as a community respond to visible homelessness and hardship, and contribute to a shift away from law enforcement and the justice system as the first resort for regulating public space.

- 1. Recognise that law enforcement is not the obvious solution** – there are practical, workable housing, health and service-based models that more effectively address the underlying causes of a person's homelessness and associated conduct in public places. We need to shift away from the assumption that law enforcement and the justice system are the obvious or only mechanisms for dealing with the use of public space by people experiencing homelessness. If we recognise that law enforcement should not be the automatic first resort, there will be room to consider more efficient and effective responses.
- 2. Distinguish between health problems and criminal ones** – the circumstances that often underpin rough sleeping and associated activities such as public drunkenness or begging (including mental illness or substance dependence) are health issues, not criminal ones. Service-based responses to conduct such as begging and public drunkenness will deliver better outcomes to people experiencing homelessness without the need for the costly use of police, jail and court resources. Service-based responses include sobering up centres, civilian outreach workers and access to housing with tailored supports. There are international examples of how these models work in practice, which show that although they are not inexpensive to implement, they deliver overall cost savings, while also avoiding the harsh impact of tickets, warrants, arrests and jail on a community's most struggling members.
- 3. Acknowledge the reasons behind enforcement** – it is rare that laws, policies or practices regulating public space are developed and implemented with the intention of punishing people for their homelessness (although in practice this is often the impact). Some of the motivations for enforcement-based approaches to homelessness include: a lack of awareness about other solutions; pressure on decision-makers from local communities or businesses; the belief that enforcement is needed to prompt people who are homeless to engage with services; and the 'broken windows' theory of policing, which suggests that minor forms of disorder (for example, jaywalking, begging, graffiti and litter) will, if left unaddressed, result in an increase in serious criminal activity. We need to acknowledge the pressures or motivations that lead to enforcement-based approaches to homelessness if we are going to develop effective, constructive proposals for reform.
- 4. Avoid enforcement-based approaches that react to community discomfort** – many people are uncomfortable with visible homelessness and hardship. This can lead to heightened perceptions of aggression, or complaints from individuals or businesses about the presence and conduct of people experiencing homelessness in their communities. This tension continues to grow as gentrification changes local communities. It is important to consider what shapes community perceptions of people experiencing homelessness so that we can distinguish – both at a policy level and on the ground – between actual aggression, which is unacceptable and can be dealt with via existing justice mechanisms, and perceived aggression, which may be informed by lack of understanding, stereotypes and the general public's discomfort with people experiencing very obvious hardship in our communities. Laws, policies and practices should respond to evidence about crime and its causes, not to uneasiness or annoyance with people experiencing homelessness.
- 5. Collect and rely on evidence about causes and impacts** – there are multiple relevant qualitative and quantitative studies about the impact of enforcement on people experiencing homelessness, the cost to government of ticketing people experiencing homelessness and the circumstances of people who beg. This evidence is, however, rarely gathered by decision-makers either before introducing enforcement-based

approaches or in the course of evaluating the success or otherwise of these approaches. In the absence of a well-informed understanding of the problems and their causes, it is impossible to design responses that effectively address those problems and it is more likely that unanticipated negative consequences will arise (including in the form of significant costs, congestion in the courts and exacerbated hardship for people experiencing homelessness). We need to include quantitative and qualitative evidence in the development and evaluation of laws, policies and practices dealing with the use of public space by people experiencing homelessness.

- 6. Work with non-traditional partners** – often we assume that government, police, business, homeless advocates and people experiencing homelessness have incompatible interests in relation to homelessness and public space. Homelessness is a problem for the entire community and it requires us to work together to address it. There is significant potential for these groups to collaborate to provide the expertise, insights and resources needed to develop and implement effective solutions to homelessness and associated conduct in public places.
- 7. Break down stereotypes through advocacy, education and awareness raising** – many enforcement-based approaches to homelessness (including new laws, disproportionate enforcement of existing laws and ‘crackdowns’ or ‘blitzes’ on conduct in public spaces) are a response to pressure from local communities and businesses who are concerned about the presence and activities of people experiencing homelessness in their local area. Increased community understanding of homelessness, including who it affects and why, will lead to better-informed conversations about appropriate responses to homelessness. We need to communicate personal stories that help challenge stereotypes and build awareness and understanding of homelessness, its causes and its impacts. The role of people with a direct experience of homelessness is critical – their insights are crucial to the development and implementation of well thought out, appropriate, effective responses to homelessness.
- 8. Recognise that enforcement is a high-risk option for dealing with people experiencing homelessness** – enforcement-based approaches present risks to the wellbeing and safety of people experiencing homelessness, including excluding them from safe spaces, dislocating existing relationships with services or pushing them into more damaging activities. Although there are respected outreach workers and agencies that identify enforcement as having a role to play, as a last resort, in prompting people to engage with services, there are a number of safeguards that are important components of enforcement-based outreach models, including: they should not be used with extremely vulnerable people, particularly people experiencing mental illness; they must be carefully integrated with individually tailored and immediately accessible support services; and there must always be appropriate warning stages. Importantly, these measures will minimise, but not eliminate the risk that enforcement will have a harmful impact on people experiencing homelessness. In light of the high and unavoidable risks, all decision-makers should question whether these initiatives are justified. Furthermore, prison is not a substitute for supported housing, mental health care or substance dependence treatment and its role as the ‘stick’ in enforcement-based approaches to homelessness should be re-considered.
- 9. Undertake transparent cost assessments before, during and after enforcement-based approaches** – the financial costs of alternatives to enforcement-based approaches to homelessness are often identified as a barrier to their adoption or implementation. There is no doubt that housing, health and service-based responses to homelessness cost money to implement. However, there is often little analysis of the cost implications for government, police and the courts of developing and implementing enforcement-based approaches to homelessness (for example, considering the costs of police time to issue tickets and carry out arrests for ‘public space offences’, court time to process fines, charges or warrants and jail time). Transparent assessments of the costs of enforcement must be a feature of conversations and decisions about effective and efficient approaches to addressing homelessness and regulating public space in our communities.
- 10. Work effectively with law enforcement officers** – there is significant potential to develop strong, effective partnerships with police in a co-operative effort to respond to homelessness and related conduct in public places. Enforcement-based responses to homelessness are resource intensive for police and police are not always equipped to deal with the complex health and social problems underpinning a person’s homelessness

or conduct. Local police should work with government and non-government agencies to develop a protocol that aims to: avoid unnecessary interactions with people experiencing homelessness; make sure that where interactions do occur they are appropriate; and support officers to consider options other than fines and arrests when dealing with people experiencing homelessness. Leadership within the police force is essential and the protocol needs to be accompanied by education and training to build police awareness about homelessness, its causes and its impact on people's conduct in public places. Police also need to have access to services and referral pathways, so that they are in a position to link people with supports and play a frontline role in diverting people from the criminal justice path that will not effectively change a person's conduct or address the underlying causes of offending. There should be a stated and measurable goal of reducing the number of tickets given to, and arrests of, people experiencing homelessness.



## 2. HOMELESSNESS, PUBLIC SPACE AND THE LAW

The laws, policies and practices that seek to deal with homelessness through enforcement-based measures vary significantly in their form, intention and impact. This section:

- Identifies six different types of enforcement-based approaches to homelessness;
- Explains the Victorian context for regulating homelessness and related conduct, including through the fines and infringements system and a recent targeted response to begging; and
- Provides international examples of enforcement-based approaches to homelessness.

This section provides the definitions and context for the discussion throughout this report.

### 2.1. Enforcement-based approaches to homelessness and ‘criminalisation’

When this report talks about ‘enforcement-based approaches to homelessness’ it refers to the following types of laws, policies and practices.

#### Enforcement-based approaches to homelessness

1. **Express laws** – laws that directly prohibit the activities of people experiencing homelessness, including laws prohibiting sleeping in public places, sitting on sidewalks and begging.<sup>5</sup>
2. **Neutral laws with a disproportionate impact** – neutral laws that impact disproportionately on people experiencing homelessness because they are more likely to be carrying out their private activities in public (for example, drinking in public or public urination).<sup>6</sup>
3. **Neutral laws enforced differently** – neutral laws (for example, laws prohibiting jaywalking, public drunkenness and public transport offences and general ‘stop and search’ powers) that are enforced differently because of the increased visibility of people experiencing homelessness and/or attitudes of law enforcement officers toward people experiencing homelessness.
4. **Targeted collaborative enforcement** – targeted use of police enforcement (for example, arrest or move-on powers) in collaboration with homelessness support agencies to ‘disrupt’ rough sleepers and promote engagement with services.
5. **‘Crackdowns’ or blitzes** – more intensive, targeted enforcement of existing laws prohibiting, for example,

<sup>5</sup> There is often debate about whether people who beg are experiencing homelessness. This is discussed further in parts 4.2 and 6.1 below.

<sup>6</sup> See, eg, Dr Tamara Walsh, *Homelessness and the Law* (Federation Press, 2011) 71. Dr Walsh notes that laws creating public space offences ‘criminalise behaviour conducted in public space that would be lawful if conducted in private space, such as urinating, drinking alcohol or being drunk’.

begging, sleeping in public places and sitting on sidewalks, for short periods as part of a direction by government or law enforcement officers.

6. **Tickets, fines, court orders and sentences** – use of tickets, fines, court orders and sentences, including community corrections orders and ‘anti-social behaviour orders’, to deter or modify the movement and activities of people experiencing homelessness.

When considering enforcement-based approaches to homelessness, the following factors are relevant:

- what the laws are;
- how the laws are enforced by decision-makers and enforcement officers (including police and ticket inspectors, and encompassing collaborative relationships with homeless services as part of ‘assertive outreach’); and
- how the justice system deals with people once they have entered it (including through tickets, fines, prison, anti-social behaviour orders or tailored community orders).

My research did not assume that there is no role for enforcement in addressing homelessness and use of public space. I considered models that balance enforcement with service provision and learned from international research about what works and in what circumstances.<sup>7</sup> I learned about the benefits and the often high risks of enforcement-based approaches to use of public space by people experiencing homelessness.

Accordingly, references to ‘enforcement-based approaches to homelessness’ in this report are not necessarily critical. Many of the experts I spoke with saw some role for enforcement, particularly in relation to rough sleeping and begging and these models have been given careful consideration (for example part 4.1).

The term ‘criminalisation’ of homelessness is used throughout this report. ‘Criminalisation’ is widely used in the US,<sup>8</sup> but is not commonly used in the UK and has only recently been invoked in other parts of Europe.<sup>9</sup> The term is succinctly explained by O’Grady, Gaetz and Buccieri as ‘[the] use of policing and the criminal justice system as central features of our response to homelessness’.<sup>10</sup>

‘Criminalisation’ does not necessarily capture all enforcement-based approaches to homelessness, including, for example, ‘designing out’ people experiencing homelessness through measures such as modification of park benches or use of ‘trespass barriers’. ‘Criminalisation’ could also be interpreted as a partisan term and is commonly used for advocacy purposes to criticise enforcement-based approaches to homelessness. This report does not use the term in that way. Rather, it is used to recognise the reality of most enforcement-based approaches, which is that using law enforcement mechanisms to address homelessness means that people enter the criminal justice system. Even carefully considered, service integrated, last resort enforcement measures still entail interaction with the criminal justice system and this is something we should be open about when considering the benefits and risks of such approaches.

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<sup>7</sup> See, eg. Sarah Johnsen and Suzanne Fitzpatrick, *The Impact of Enforcement on Street Users In England* (Joseph Rowntree Foundation, 10 July 2007) (Johnsen and Fitzpatrick, *The Impact of Enforcement*) 7, citing R Pawson and N Tilley, *Realistic evaluation* (1997) 85.

<sup>8</sup> See, eg. National Law Center on Homelessness and Poverty and National Coalition for the Homeless, *Homes not Handcuffs: The Criminalization of Homelessness in US Cities* (Washington DC, July 2009) (NLCHP and NCH 2009, *Homes not Handcuffs*).

<sup>9</sup> See, eg. European Federation of National Organisations Working with the Homeless (FEANTSA), *On the Way Home? FEANTSA Monitoring Report on Homelessness and Homeless Policies in Europe* (2012) (FEANTSA, *Monitoring Report*).

<sup>10</sup> Bill O’Grady, Stephen Gaetz and Kristy Buccieri, *Can I See Your ID? The Policing of Youth Homelessness in Toronto* (The Homeless Hub Report Series, No 5, 2011) 7 (O’Grady, Gaetz and Buccieri, *Can I See your ID?*).

## 2.2. The Victorian context



### *Homelessness, public space offences and fines*

There are 22,789 people experiencing homelessness in Victoria; 1092 people sleep rough and others stay in refuges, temporary accommodation or rooming houses, sleep in cars or couch surf.<sup>11</sup>

The lack of a safe and secure home means that you are carrying out most of your life in public places. In addition, you are reliant on public transport, experiencing severe financial hardship and may be dealing with other complex circumstances including deteriorating mental health or escalating substance use. Homelessness also makes you very visible to enforcement officers. As the system currently works, these factors mean that, during periods of homelessness, people can accrue multiple charges or thousands of dollars in fines and infringements for a range of behaviours directly related to their homelessness.

Justice Connect Homeless Law assists about 200 clients every year with fines and infringements directly related to homelessness.<sup>12</sup> The main offences that our clients present with are: having an open container of liquor in public, begging, being drunk in a public place, littering, and conduct on public transport (for example, not paying to travel, smoking on the platform or having your feet on the seat). People sleeping in their cars or travelling between crisis accommodation often also incur fines for parking or tollway offences.

### **Overwhelming debts and prison**

The most common type of enforcement we see is that our clients are issued with infringements (i.e. tickets or citations) for these offences, rather than a charge and summons (which were more common in many of the cities I visited).

A fine for being drunk in a public place is approximately \$600 and a fine for not having a valid public transport ticket or for having your feet on the seat is \$212. The average weekly wage in Australia is \$1422.70 (as at May

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<sup>11</sup> Australian Bureau of Statistics, *Census of Population and Housing: Estimating Homelessness 2011* (Australian Government, Canberra, 2012).

<sup>12</sup> Between 1 July 2012 – 30 June 2013, Homeless Law took 310 enquiries from people seeking assistance with fines and infringements. We opened 166 new matters for clients needing legal assistance with fines and infringements directly related to homelessness.

2013)<sup>13</sup> and the weekly income of a person on Newstart Allowance (Australia's most basic level of social welfare) is \$248.50, i.e. 17.5% of the average weekly earnings.

This means that an infringement for not having a ticket on public transport is 85% of a Newstart recipient's weekly income. A fine for being drunk in public is 240% of that weekly income.

A person's poverty and special circumstances may mean that they are unable to pay their fines or engage with the review process within required timeframes. Infringements and penalty costs and fees can become overwhelming debts and cause significant stress and financial strain for disadvantaged Victorians.

If a person does not address their infringements, warrants are issued and the person can have their licence or registration suspended or their property seized. Clients with no assets, who are not eligible for community work (for example, because the amount owing exceeds \$15,000 or there are factors such as mental illness, substance dependence or caring obligations that would prevent them completing the work), are arrested, brought before the court and can face imprisonment.<sup>14</sup>

In summary, what we see through our work is that the burden of multiple infringements and the threat of enforcement, including the risk of imprisonment, exacerbate the stress and social exclusion of homelessness.

## The 'special circumstances' process (and its costs)

A strength of the Victorian system is the 'special circumstances' process, which allows a fine or fines to be waived where it can be shown that a person's mental illness, substance dependence and/or homelessness caused them to be unable to understand or control the offending conduct.<sup>15</sup> Unfortunately, it is an unwieldy, inefficient process, which often takes over 12 months and makes it very difficult for clients to stay engaged.<sup>16</sup> It also imposes a significant resource burden on legal and community services that assist clients to deal with their infringements and creates congestion in the justice system.

By way of example, in 2013 Homeless Law engaged an independent consultant to analyse the resource implications of the infringements system. The consultant reviewed 13 infringements files run by Homeless Law and made the following key findings:

- **Overwhelming debts** – 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.
- **Difficult to resolve** – 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.
- **Expensive** – 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.<sup>17</sup>

The current system is a costly one, both in terms of its impact on vulnerable people and its strain courts and services.

## Begging in Melbourne

In 2005 Victoria repealed the *Vagrancy Act 1966* (Vic), but retained the offence of 'beg or gather alms' in the *Summary Offences Act 1966* (Vic).<sup>18</sup>

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<sup>13</sup> Australian Bureau of Statistics, *Average Weekly Earnings* (Australian Government, Canberra, May 2013) (available at: <http://www.abs.gov.au/ausstats/abs@.nsf/Products/6302.0~May+2013~Main+Features~Australia?OpenDocument>).

<sup>14</sup> *Infringements Act 2006* (Vic) s 160.

<sup>15</sup> *Infringements Act 2006* (Vic) ss 3, 25 and 65.

<sup>16</sup> For an overview of the operation of the 'special circumstances' process, see Lucy Adams, 'One Decade On: Fines, Infringements and Homelessness continued ...' 25(2) (2012) *Parity: Policing Homelessness* 23.

<sup>17</sup> Justice Connect Homeless Law, *What's the Cost?*, above n 3.



In 2008 Homeless Law surveyed people begging in the City of Melbourne: 54% had a mental illness; 73% were experiencing long-term unemployment; 23% were victims of domestic or family violence; and 90% were sleeping rough or staying in men's shelters, squats or rooming houses.<sup>19</sup>

In early 2013 in response to a reported increase in 'aggressive' begging, an enforcement-based approach to begging in the City of Melbourne was commenced.<sup>20</sup> Operation Minta is a coordinated response by the City of Melbourne, Victoria Police and the Salvation Army (with some involvement from other agencies including the Magistrates' Court and Homeless Law).

Under Operation Minta, people begging in the City of Melbourne are charged and required to attend court on a nominated day. They are then put on a compulsory diversion program by a Magistrate. Defendants' matters are adjourned for three months during which they are required to participate in the court ordered diversion program:

The diversion program would be pretty basic: attend at the Salvos, and get a health check with some counselling and advice; take advantage of the available health, training and employment opportunities; and stay off the streets ... If beggars continue to beg, or continually fail to meet the very basic requirements of a diversion program, legal consequences should follow.<sup>21</sup>

At the time of the Operation's introduction in 2013, there was significant media attention on begging in Melbourne, much of which was negative.<sup>22</sup> In recent months, the public conversations around homelessness and poverty in Melbourne have shifted slightly. On 5 January 2014, Wayne 'Mousey' Perry, was fatally stabbed while sleeping under a bridge in central Melbourne.<sup>23</sup> Mr Perry's tragic death has increased community awareness of the danger and hardship that homelessness brings with it.<sup>24</sup> It has drawn attention to the fact that homelessness services cannot keep up with demand and that 86 Victorians are turned away each night.<sup>25</sup>

The City of Melbourne has also recently published the results of its qualitative research involving interviews with 35 people sleeping rough in the Melbourne. *Living Rough in Melbourne* aims to capture: 'the lived experience of those who live rough in the city of Melbourne, with a view to better understanding the pathways into, through and out of rough sleeping'.<sup>26</sup> The research identified that:

[T]hroughout their lives, many of the participants had experienced violence, sexual abuse, poverty, neglect, incarceration and exposure to drugs or alcohol from a young age ... the pathways into homelessness are complex and individual. These are people whose lives have been defined by disadvantage.<sup>27</sup>

These changes to awareness and perceptions of homelessness in Melbourne create an opening for careful consideration of how we respond to visible homelessness and hardship, including begging, in our community.

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<sup>18</sup> Summary Offences Act 1966 (Vic) s 49A. See Fergus Shiel, 'Begging to remain a criminal offence', *The Age*, 23 April 2003.

<sup>19</sup> PILCH Homeless Persons' Legal Clinic, *We Want Change: Calling for the abolition of the criminal offence of begging* (November 2010).

<sup>20</sup> See, eg, Lord Mayor Robert Doyle, 'I have a plan to deal with scourge of our streets', *Herald Sun* (10 March 2013).

<sup>21</sup> Ibid. See also, John Masanauskas, 'Police appeal to public to refuse aggressive begging' *The Australian* (19 April 2013).

<sup>22</sup> See, eg, Lord Mayor Robert Doyle, above n 20; John Masanauskas, 'Tough love plan for city beggars and homeless' *Herald Sun* (10 March 2013); Adrian Lowe, 'New Plan for city's beggars' *The Age* (11 March 2013); Samantha Donovan, 'Melbourne denies begging crackdown' *ABC PM* (11 March 2013); Rebekah Cavanagh, 'Beggar forced to ask for money because he says he is barely getting by' *Herald Sun* (10 March 2013).

<sup>23</sup> See Aisha Dow, 'Teen in court over Morgan Wayne 'Mousey' Perry's death' *The Age* (7 January 2014); Caroline Zielinski, 'Murder charge laid over death of Wayne 'Mousey' Perry' *The Age* (7 January 2014).

<sup>24</sup> See, eg, Aisha Dow, 'Family and friends farewell Wayne 'Mousey' Perry' *The Age* (10 January 2014); Aisha Dow, 'Murdered homeless man Wayne "Mousey" Perry a grandfather, says son' *The Age* (10 January 2014); Aisha Dow, 'Hundreds gather to show Wayne "Mousey" Perry's death not in vain' *The Age* (17 February 2014); Kathy Marks, 'Forgotten in life, a victim shames a city: The violent murder of a homeless man triggers Melbourne's remorse' *The Independent* (12 January 2014).

<sup>25</sup> Australian Institute of Health and Welfare, *Specialist Homelessness Services 2012–13* (Cat No HOU 273, Canberra) Table VIC 6.4: Daily average of unmet requests for assistance 2012–13, adjusted for non-response.

<sup>26</sup> City of Melbourne, *Living Rough in Melbourne: Street Count 2013* (January 2014) (City of Melbourne, *Living Rough in Melbourne*).

<sup>27</sup> City of Melbourne, *Media Release: Finding a Way Out: New Study into Homelessness* (29 January 2014) (available at: <http://www.melbourne.vic.gov.au/AboutCouncil/MediaReleases/Pages/Findingawayoutnewstudyintohomelessness.aspx>). See City of Melbourne, *Living Rough in Melbourne*, above n 26: 78% of participants had been exposed to drugs and alcohol as a teenager, 70% experienced childhood sexual or physical abuse, 67% had left school early, 45% had a disability of some kind and 21% had been in state care. Half of those interviewed had been assaulted at some stage while living on the streets.

## 2.3. International examples of enforcement-based approaches to homelessness

Enforcement-based approaches to homelessness take a range of different forms and I wanted to get a sense of what these laws, policies and practices look like in other jurisdictions. This section collates a number of examples that fall into the six categories of enforcement-based approaches to homelessness identified in part 2.1:

1. laws that expressly prohibit the activities of people experiencing homelessness;
2. neutral laws that impact disproportionately on people experiencing homelessness because they are more likely to be carrying out their private activities in public places;
3. neutral laws that are enforced differently because of the increased visibility of people experiencing homelessness and/or attitudes of law enforcement officers toward people experiencing homelessness;
4. targeted use of enforcement in collaboration with homelessness support agencies to 'disrupt' rough sleepers and promote engagement with services;
5. 'crackdowns' or blitzes or enforcement for short periods as part of a direction by government or law enforcement officers; and
6. use of tickets, fines, court orders and sentences to deter or modify the movement and activities of people experiencing homelessness.

There may be some debate about which category these examples fall into (particularly regarding the cause of differential enforcement and, accordingly, whether an example falls into category 2 or 3). In fact, a number of the examples listed could fall into either category 2 or 3 depending on the nature of enforcement. Furthermore, many enforcement activities will involve more than one of these components. For example:

- a blitz or 'crackdown' (5) using an existing law that prohibits sitting, sleeping or lying on the sidewalk (1), which is enforced through arrest and sentencing (6); or
- targeted use of enforcement in collaboration with homelessness support agencies to disrupt rough sleepers and promote engagement with services (4), which relies on laws that expressly prohibit 'vagrancy' (1) and where an anti-social behaviour order regulating movement and conduct will be applied for in the event of non-engagement with services (6).

This is not intended to be a comprehensive summary of enforcement-based mechanisms in the jurisdictions I visited. The examples are provided to give context to the analysis carried out below, including the motivation for different enforcement-based measures and their impact on people experiencing homelessness, services, communities and the courts.

Type of enforcement-based law, policy or practice	Jurisdiction and example
1 Express laws – laws that expressly prohibit the activities of people experiencing homelessness	<p><b>Los Angeles – prohibition on sitting, sleeping or lying on the sidewalk</b>            Section 41.18 (d) of the <i>Los Angeles Municipal Code</i> provides that '[n]o person shall sit, lie or sleep in or upon any street, sidewalk or other public way'. Violation of s 41.18(d) is punishable by a fine of up to \$1000 or up to six months imprisonment.<sup>28</sup></p> <p><b>Toronto – panhandling and squeegeeing</b></p>

<sup>28</sup> Sarah Gerry, 'Jones v. City of Los Angeles: A Moral Response to One City's Attempt To Criminalize, Rather than Confront, Its Homelessness Crisis' (2007) 42 *Harvard Civil Rights – Civil Liberties Law Review* 239, 241–242 (available at: [http://www.law.harvard.edu/students/orgs/crcl/vol42\\_1/gerry.pdf](http://www.law.harvard.edu/students/orgs/crcl/vol42_1/gerry.pdf)) (Gerry, *Jones v City of Los Angeles*).

The Ontario *Safe Streets Act 1999* was introduced in response to an increase in homelessness and concerns about associated increases in panhandling and ‘squeegeeing’ (window washing at traffic lights). The Act prohibits solicitation ‘in an aggressive manner’ and of a ‘captive audience’. It defines:

- ‘solicit’ to mean ‘to request, in person, the immediate provision of money or another thing of value, regardless of whether consideration is offered or provided in return, using the spoken, written or printed word, a gesture or other means’; and
- ‘aggressive manner’ to mean ‘a manner that is likely to cause a reasonable person to be concerned for his or her safety or security’.

It identifies examples of aggressive solicitation, including: ‘[s]oliciting while intoxicated by alcohol or drugs’; and ‘[c]ontinuing to solicit a person in a persistent manner after the person has responded negatively to the solicitation’. In relation to solicitation of a ‘captive audience’, the Act provides that a person must not solicit a person who is: using, waiting to use, or departing from an automated teller machine; using or waiting to use a pay telephone or a public toilet facility; waiting at a taxi stand or a public transit stop; in or on a public transit vehicle; in the process of getting in, out of, on or off a vehicle or who is in a parking lot; or in or on a stopped, standing or parked vehicle on a roadway.

#### **Denver – ban on urban camping**

In May 2012 Denver passed the *Unauthorized Camping Ordinance*, which makes it a crime for a person to shelter from the elements while residing on any public or private property, without appropriate permission: ‘Under this law, it is illegal for homeless people to sleep, sit for extended periods, or store their personal belongings anywhere in Denver, if they use any form of protection other than their clothing (for example, a blanket or a piece of cardboard to sit upon)’.<sup>29</sup> Violations of the urban camping ban can result in fines up to \$999 or one year imprisonment.<sup>30</sup>

#### **Hungary – Constitution provides for prohibition of rough sleeping**

On 11 March 2013 the Parliament of Hungary adopted the Fourth Amendment to Hungary’s *Fundamental Law*:

‘Article XXII

(1) Hungary shall strive to provide the conditions for housing with human dignity and to guarantee access to public services for everyone.

(2) The State and local governments shall contribute to creating the conditions for housing with human dignity by striving to guarantee housing for every homeless person.

(3) An Act of Parliament or local government decree may outlaw the use of certain public spaces for habitation in order to preserve the public order, public safety, public health and cultural values.’<sup>31</sup>

#### **England – begging and rough sleeping**

Sections 3 and 4 of the *Vagrancy Act 1824* respectively deal with:

- ‘Every person wandering abroad, or placing himself or herself in any public place, street, highway, court, or passage, to beg or gather alms’; and

<sup>29</sup> Denver Homeless Out Loud, *The Denver Camping Ban: A Report from the Street* (3 April 2013) (available at <http://issuu.com/denverhomelessoutloud/docs/surveyreport>) 7 (**Denver Homeless Out Loud, Report from the Street**).

<sup>30</sup> Ibid.

<sup>31</sup> See 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 and the Special Rapporteur on extreme poverty and human rights, *Letter of Allegation: Hungary*, UA Housing (2000-9) Poverty (1998-11) HUN 1/2013 (12 March 2013) (available at: [https://spdb.ohchr.org/hrdb/23rd/public\\_-\\_UA\\_Hungary\\_12.03.13\\_\(1.2013\).pdf](https://spdb.ohchr.org/hrdb/23rd/public_-_UA_Hungary_12.03.13_(1.2013).pdf)) (**Hungary 2013 Letter of Allegation**).

Type of enforcement-based law, policy or practice	Jurisdiction and example
<p>2</p> <p><b>Neutral laws with a disproportionate impact – neutral laws that impact disproportionately on people experiencing homelessness because they are more likely to be carrying out their private activities in public places</b></p>	<p>– ‘Every person wandering abroad and lodging in any barn or outhouse, or in any deserted or unoccupied building, or in the open air, or under a tent, or in any cart or wagon, not having any visible means of subsistence and not giving a good account of himself or herself’.</p> <p><b>Victoria – begging or gathering alms</b> Under s 49A(1) of the <i>Summary Offences Act 1966</i> (Vic) ‘[a] person must not beg or gather alms’.</p> <p><b>Public urination in US cities</b> In 2011, the National Law Center on Homelessness and Poverty (NLCHP) surveyed 154 homeless advocates (43%), service providers (51%) and people who were experiencing or had experienced homelessness (6%) about enforcement-based approaches to homelessness in their cities. When asked whether people experiencing homelessness in their cities were given citations or arrested from conduct in public places, 73% said homeless people were arrested or given a citation for public urination or defecation.<sup>32</sup> In March 2011, UN independent expert Catarina de Albuquerque, who is mandated by the UN Human Rights Council to examine human rights obligations for access to safe drinking water and sanitation, noted that local statutes prohibiting public urination and defecation, ‘while facially constitutional are often discriminatory in their effects’ and, further: ‘Such discrimination often occurs because such statutes are enforced against homeless individuals, who often have no access to public restrooms and are given no alternatives’.<sup>33</sup></p> <p><b>Victoria – public drunkenness laws</b> Despite several major reports recommending that public drunkenness be decriminalised in Victoria,<sup>34</sup> s 13 of the <i>Summary Offences Act 1966</i> (Vic) continues to provide that ‘any person found drunk in a public place shall be guilty of an offence’ punishable by a fine of up to eight penalty units.<sup>35</sup> In December 2009, changes to the <i>Summary Offences Act 1966</i> (Vic) expanded the use of infringement notices for public drunkenness offences. These changes were part of ‘an initiative by Government to give police greater powers to combat violence and antisocial behaviour’.<sup>36</sup> Under the new powers, between 16 December 2009 and 18 July 2012, 32,474 infringement notices were issued for being drunk in a public place.<sup>37</sup> In 2011/2012, 14,557 people were taken into custody where the custody reason was listed as ‘arrest – drunk’.<sup>38</sup></p>
<p>3</p> <p><b>Neutral laws enforced</b></p>	<p><b>New York City – stop and frisk</b></p>

<sup>32</sup> National Law Center on Homelessness and Poverty, *Criminalizing Crisis: The Criminalization of Homelessness in US Cities* (Washington DC, November 2011) 17–18 (NLCHP 2011, *Criminalizing Crisis*).

<sup>33</sup> UN independent expert Catarina de Albuquerque, ‘US discriminates on right to safe water and sanitation, says UN expert’ *UN News Centre* (4 March 2011).

<sup>34</sup> See, eg, Report of Ombudsman Victoria and Office of Police Integrity, *Conditions for Persons in Custody* (July 2006) 18 (available at: <http://www.opi.vic.gov.au/index.php?i=85>) (Ombudsman and OPI Report); Smart Justice, *Reducing Alcohol-Related Violence* (25 May 2010) (available at: [www.smartjustice.org.au](http://www.smartjustice.org.au)); Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into Public Drunkenness* (2001); Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into Strategies to Reduce Harmful Alcohol Consumption* (2006) xxvi.

<sup>35</sup> *Summary Offences Act 1966* (Vic) s 13. ‘Public place’ is defined extremely broadly in s 3 of the *Summary Offences Act* and includes: public highways, roads, streets, bridges, footpaths, alleys or thoroughfares; parks, gardens and other places of public recreation or resort; railway stations, platforms or carriages; wharfs, piers and jetties; public vehicles ‘plying for hire’; churches or chapels open to the public ‘or any other building where divine service is being publicly held’; Government schools or their land; public halls, theatres or rooms ‘while members of the public are in attendance at, or are assembling for or departing from, a public entertainment or meeting therein’; markets; licensed premises or authorised premises within the meaning of the *Liquor Control Reform Act 1998* (Vic); race-courses, cricket or football grounds; and open places that the public are permitted to have access to, whether with or without payment for admission.

<sup>36</sup> Victoria Police, *Crime Statistics 2011/2012* (3 September 2012) 49.

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*



## Type of enforcement-based law, policy or practice

## Jurisdiction and example

**differently – neutral laws that are enforced differently because of the increased visibility of people experiencing homelessness and/or attitudes of law enforcement officers toward people experiencing homelessness**

'Stop and frisk' is the police practice of temporarily detaining people on the street, questioning them, and possibly also frisking or searching them. Section 140.50 of the New York Criminal Procedure Law authorises a police officer 'to stop a person in a public place ... when he reasonably suspects that such person is committing, has committed or is about to commit either (a) a felony or (b) a misdemeanor'. Approximately 685,000 stop and frisks were carried out in 2011.

Approximately 2.4 million stops occurred between 2009 – 2012. Close to 150,000 arrests resulted from those stops (i.e. only 6% of stops resulted in arrest). On 12 August 2013, a federal court judge found that the stops disproportionately impacted minorities (84% of people stopped were black and Latino despite these two groups only making up 52% of the city's population) and were unconstitutional (i.e. the New York Police Department (NYPD) had violated the equal protection clause in the Fourteenth Amendment and the Fourth Amendment, which prohibits unreasonable searches and seizures).<sup>39</sup>

### **Jaywalking and illegal street vending in the Downtown Eastside, Vancouver, Canada**

In 2013, the Vancouver Area Network of Drug Users (VANDU) and Pivot Legal Society filed a complaint against the Vancouver Police Department after the results of a freedom of information request showed that 95% of tickets issued under the *Street and Traffic Bylaw* (for jaywalking and illegal street vending)<sup>40</sup> had been issued in the Downtown Eastside (DTES) (the Vancouver area with the highest concentration of homelessness and poverty).<sup>41</sup>

The data showed that 1448 tickets were given out in the DTES, followed by 28 in the next highest neighbourhood. The complaint highlighted that the enforcement of these offences and the issuing of tickets was discriminatory and disproportionately targeted homeless and low income residents in the DTES.

The Police Board dismissed the complaint. Pivot and VANDU subsequently asked the Office of the Police Complaint Commissioner to review this dismissal. The Complaint Commissioner found that the Police Department's report was flawed, and called on the Police Board to develop a policy aimed at reducing the number of tickets issued for minor offences in the Downtown Eastside.

### **Pedestrian citations in LA's Skid Row**

A review of 'pedestrian citations' (walking on the 'don't walk' signal, jaywalking and walking on a roadway) showed that Safer Cities Initiative police issued about 875 pedestrian citations per month in Skid Row. This compared with 6,977 pedestrian citations per month written by all the officers of the Los Angeles Police Department across the entire City. Skid Row makes up 0.18% of the City's area and 0.26% of the City's population, but was home to 12.5% of pedestrian citations. Analysis indicated that 'all other things being equal, the odds of a person receiving a pedestrian citation are between 48 and 69 times greater in Skid Row than in the rest of the City'.<sup>42</sup>

### **Various public conduct under local US laws**

In the 2011 NLCHP survey of homeless advocates, service providers and people who were experiencing or had experienced homelessness, respondents reported arrests, citations or both in their city for the following offences:

<sup>39</sup> *Floyd v City of New York* 08 Civ 1034 (SAS), 2013 US Dist (SDNY 12 August 2013).

<sup>40</sup> City of Vancouver British Columbia Street and Traffic By-Law No 2849 ss 12 and 66.

<sup>41</sup> Douglas King, *VANDU and Pivot Allege Discrimination by VPD in By-Law Ticketing* (6 March 2013) (available at: [http://www.pivotlegal.org/vandu\\_and\\_pivot\\_allege\\_discrimination\\_by\\_vpd\\_in\\_by-law\\_ticketing](http://www.pivotlegal.org/vandu_and_pivot_allege_discrimination_by_vpd_in_by-law_ticketing)) (**King, VANDU and Pivot Allege Discrimination**).

<sup>42</sup> See Gary Blasi et al, *Policing Our Way Out of Homelessness? The First Year of the Safer Cities Initiative on Skid Row* (24 September 2007) (available at: [http://www.ced.berkeley.edu/downloads/pubs/faculty/wolch\\_2007\\_report-card-policing-homelessness.pdf](http://www.ced.berkeley.edu/downloads/pubs/faculty/wolch_2007_report-card-policing-homelessness.pdf)) (**Blasi et al, Policing Our Way out of Homelessness?**) 30.

## Type of enforcement-based law, policy or practice

## Jurisdiction and example

- Public urination/defecation – 73%
- Camping/sleeping in public – 55%
- Loitering – 55%
- Panhandling – 53%
- Public storage of belongings – 20%
- Sidewalk-sitting – 19%.

When asked whether people experiencing homelessness are disproportionately targeted by law enforcement, 65% of respondents said that they believed homeless people are more likely than other individuals to be given citations and/or arrested for similar violations.<sup>43</sup>

### 4 Targeted collaborative enforcement – targeted use of enforcement in collaboration with homelessness support agencies to ‘disrupt’ rough sleepers and promote engagement with services

#### London – assertive outreach

The UK has been the site of sophisticated homelessness reduction strategies since the 1990s.<sup>44</sup> One aspect of strategies to reduce homelessness, particularly rough sleeping, is a number of collaborative ‘tough love’ approaches to homelessness and public space, involving homeless outreach agencies, police, housing services, local councils and/or drug and alcohol services.<sup>45</sup>

One example is Operation Poncho: ‘Operation Poncho is an integral part of the approach to engaging with rough sleepers and highlights the effective partnership of Broadway, City of London departments and the police. The operation is running five days a week, financed from the homelessness budget and the Cleansing Services Department of the Built Environment’. Operation Poncho involves homeless outreach workers patrolling streets with police at approximately 1:00 – 3:00am to ‘disrupt’ rough sleepers and prompt them to engage with services.<sup>46</sup>

#### New York City Encampments Initiative

The New York City (NYC) Department of Homeless Services (DHS) has worked closely with homeless services, the NYPD, Sanitation and Parks on a revamped outreach strategy, including Street Stat and the Encampments Initiative. Street Stat is a monthly meeting of DHS, the Department of Health and Mental Hygiene and outreach partners, including the NYPD, Sanitation and Parks to discuss (amongst other things): housing placements, homeless encampments, the number of involuntary transports of people into shelters (under mental health legislation), deaths of people experiencing street homelessness and 311 response times (the non-emergency alternative to 911, which is staffed 24 hours and responds to calls from the community about homeless people by sending out an outreach team).

The Homeless Encampments Initiative involves the enforcement agency (for example, NYPD or Sanitation and Parks) attending the encampment site with DHS outreach workers. They speak with the people living there about their options and the timeframes for removing the camp (2–3 weeks is often given). An anecdotal estimate was that about 30% of people accept the City’s offer of accommodation and others move on. One example DHS provided was two men who had been homeless for eight and 15 years

<sup>43</sup> NLCHP 2011, *Criminalizing Crisis*, above n 32, 17.

<sup>44</sup> See, eg, Suzanne Fitzpatrick, Peter Kemp and Susanne Klinker, *Single homelessness: An overview of research in Britain* (Policy Press, Bristol UK, 2000) (Fitzpatrick, Kemp and Klinker, *Single homelessness*).

<sup>45</sup> *Ibid* 6.

<sup>46</sup> See Director of Community and Children’s Services, *Rough Sleepers Update* (12 July 2013) (available at: <http://democracy.cityoflondon.gov.uk/documents/s23237/PAn%202.pdf>).

Type of enforcement-based law, policy or practice	Jurisdiction and example
<p>5</p> <p><b>'Crackdowns' or blitzes – more intensive, targeted enforcement of existing laws as part of a direction by government or law enforcement officers</b></p>	<p>respectively who moved into accommodation through this model of outreach and enforcement.<sup>47</sup></p> <p><b>Vancouver – pre-Olympic Games ticketing blitz</b>  A 'ticketing blitz' began in late 2008, in the lead up to the 2010 Olympic Games. A year-end report showed 1,264 municipal and provincial bylaw-violation tickets were handed out in December 2008 alone, compared to 544 tickets in all of 2007.<sup>48</sup></p> <p><b>Begging blitz in the City of London</b>  In the early months of 2013 the City of London Police undertook a blitz on people begging in the City (an area of one square mile with a resident population of approximately 7,400 but a daily influx of approximately 300,000 commuters and business people per day).<sup>49</sup> Police Sergeant Mark Montgomery from the City of London Police Street Intervention Team explained that, after arresting 48 people and seeing the same faces 'again and again', they thought: 'this is ridiculous, surely there's got to be a better way of dealing with this'. Sergeant Montgomery said the motivation to implement a program that addressed the causes of offending behaviour led to Operation Fennel.</p>
<p>6</p> <p><b>Tickets, fines, court orders and sentences – use of tickets, fines, court orders and sentences to deter or modify the movement and activities of people experiencing homelessness</b></p>	<p><b>Anti-social behaviour orders</b>  Anti-social behaviour orders (<b>ASBOs</b>) were introduced by the <i>Crime and Disorder Act 1998</i> and strengthened by the <i>Police Reform Act 2002</i>. They are civil orders that exist to protect the public from behaviour that causes or is likely to cause 'harassment, alarm or distress'. Applications for ASBOs can be made to the Magistrates' Court acting in its civil capacity or the order can be requested if a defendant is convicted of an offence in the criminal courts. It is a civil order, but breach is a criminal offence carrying a sentence of up to five years jail.</p> <p>The kinds of conditions attached to ASBOs include that the individual must not:</p> <ul style="list-style-type: none"> <li>– enter a prescribed geographical area;</li> <li>– be within sight of any entrance of a railway station unless in possession of a valid ticket for departure within one hour;</li> <li>– ask any person in a prescribed geographical area for money except as part of a retail or banking transaction or under a contract of employment or legitimate benefit claim; or</li> <li>– be in possession of any item that is believed by officers to have been modified for drug use,</li> </ul> <p>for a set period (often 2 – 3 years).</p> <p><b>Ticketing in Ontario under the Safe Streets Act</b>  The <i>Safe Streets Act 1999</i> makes aggressive panhandling and 'squeegeeing' and offence. A total of 67,388 tickets were issued throughout 2000 – 2010, with a total value of \$4,043,280; \$8,086.56 of the fines has been paid over the 11 year period.<sup>50</sup></p>

<sup>47</sup> Based on conversation with, and material provided by, representatives from New York City Department of Homeless Services, the NYPD and Sanitation and Parks on 18 November 2013.

<sup>48</sup> Sunny Dhillon, 'Ease up on minor Downtown Eastside offences, Vancouver police urged' *The Globe and Mail* (5 December 2013).

<sup>49</sup> Department of the Built Environment, *City of London Resident Population: Census 2011 (2011)* (**Department of the Built Environment 2011, City of London Census**).

<sup>50</sup> O'Grady, Gaetz and Buccieri, *Can I See your ID?*, above n 10, 10.

Type of enforcement-based law, policy or practice

Jurisdiction and example

**Community courts – orders targeted at underlying causes**

Community courts ‘seek to address crime, public safety, and quality of life problems at the neighborhood level’. They are multi-jurisdictional in that they cover a range of legal issues arising in the community, including some or all of family law, criminal matters and housing and tenancy, and a range of different support services are co-located at the court site. Core characteristics of their sentencing practices are: ‘the increased use of alternative sanctions; a decrease in the probability of a “walk” without meaningful consequences; a reduced likelihood of a jail sentence; increased use of secondary jail sentences for initial noncompliance; stricter monitoring and enforcement of the court mandate; and an emphasis on procedural justice in the judge-defendant interaction’.<sup>51</sup>

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<sup>51</sup> Cynthia G Lee, Fred L Cheesman, David B Rottman, Rachel Swaner, Suvi Lambson, Mike Rempel and Ric Curtis, *A Community Court Grown in Brooklyn: A Comprehensive Evaluation of the Red Hook Community Justice Center* (National Center for State Courts, Williamsburg VA, September 2013) (available at: [http://www.courtinnovation.org/sites/default/files/documents/RH\\_Report\\_ES.pdf](http://www.courtinnovation.org/sites/default/files/documents/RH_Report_ES.pdf)) (Lee et al, *A Community Court Grown in Brooklyn*).

# 3. WHAT MOTIVATES ENFORCEMENT-BASED RESPONSES TO HOMELESSNESS?

There are a range of social, political and economic factors that underpin enforcement-based approaches to homelessness. Understanding the motivations for certain approaches is key to identifying:

- what the aim of the law, policy or practice is (for example, to reduce or remove visible homelessness from city centres or to promote engagement of people experiencing homelessness with services);
- whether the initiative is achieving its aim; and
- whether an alternative approach could achieve that outcome more effectively and efficiently.

With this in mind, I wanted to understand the pressures that had led to enforcement-based responses to homelessness in the cities I visited.

I overwhelmingly heard that enforcement-based approaches to homelessness are not usually motivated by punitive intentions. While the impact is often punitive, the factors that lead to these laws or practices are usually more complex than an intention to punish people experiencing homelessness.

The key causal factors include:

- a lack of understanding of alternative ways of dealing with homelessness;
- public pressure on government decision-makers and law enforcement, often stemming from:
- community discomfort with visible poverty, including concerns about ‘aggressive’ activity by people experiencing homelessness and poverty; and
- changing city dynamics as a result of gentrification and/or business and retail concerns about the commercial impact of people begging or sleeping rough near their premises;
- the view that enforcement is needed to prompt people who are homeless to engage with services; and
- the ‘broken windows’ theory of policing, which suggests that minor forms of disorder (for example, jaywalking, begging, graffiti and litter) will, if left unaddressed, result in an increase in serious criminal activity (this approach focuses on cleaning up minor disorder with a view to reducing serious crime).<sup>52</sup>

Often it is a combination of these factors that contributes to intensified enforcement in response to homelessness.

Each of these motivations is discussed in more detail in this section.

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<sup>52</sup> George L Kelling and James Q Wilson, ‘Broken Windows: The police and neighborhood safety’ *The Atlantic* (1 March 1982) 29 (Kelling and Wilson, *Broken Windows*).

### 3.1. A local response to a complex problem

In explaining the proliferation of local US laws criminalising homelessness, Executive Director of the National Coalition for the Homeless, Jerry Jones, said: 'it's not always deliberately punitive. Often criminalisation is used by local decision-makers confronted with a problem for which they don't know the real solution ... [it's] used because local officials don't have better ideas'. Mr Jones also said, 'the larger mistake is using the law to address homelessness ... it's the wrong policy instrument'.

Jeremy Rosen, Policy Director at the National Law Center on Homelessness and Poverty (NLCHP), also spoke about the proliferation of enforcement-based approaches to homelessness in US cities and the circumstances behind this:

Unfortunately I think we have seen an epidemic in terms of new laws and policies, largely at the city level, with respect to criminalisation over the past few years. We've been in a period of economic downturn and seen cuts to social services at all levels of government whether it's Federal, state or local government. It seems that under those conditions our communities feel challenged and instead of responding to homelessness by providing housing and social services, they instead adopt the approach of either arresting their way out of the problem or by essentially pushing people who are homeless out of their communities and sending them somewhere else.

Similarly, Professor Stephen Gaetz from York University in Toronto said criminalisation measures are 'tied to the inadequacy of our response to homelessness ... because we're not sure what else to do, we get law enforcement involved'.

In addition to prompting government representatives to introduce new laws or initiate more intensive enforcement of existing laws, the lack of awareness of alternatives also impacts on the decisions made by law enforcement officers on the ground. Nan Roman, President and CEO of the National Alliance to End Homelessness, summarised it well when we spoke about the need to create alternatives for police: 'if they don't know what else to do, police will arrest people'.

One of the aims of this report is to build awareness of alternatives to enforcement-based approaches, both for government decision-makers and for law enforcement officers, so that the justice system is not seen as the automatic solution when trying to deal with the presence and conduct of people experiencing homelessness in public places.

### 3.2. Public pressure – visible hardship, discomfort and perceived aggression

In Melbourne, one of the factors that motivated the City's targeted response to begging, Operation Minta, was a reported increase in complaints about 'aggressive begging' in the CBD.<sup>53</sup>

Professor Stephen Gaetz from York University in Toronto touched on a similar issue when he talked about the introduction of the Ontario *Safe Streets Act 1999* in response to an increase in homelessness and heightened concerns about panhandling and 'squeegeeing' (window washing at traffic lights). The *Safe Streets Act* makes squeegeeing and some forms of panhandling illegal and Professor Gaetz expressed concern about the public sentiment behind the Act's introduction, particularly the public appetite for enforcement. He said: 'as long as we make homelessness visible, there are people who don't want to see it and who are afraid of it and that's what decision-makers are responding to'.

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<sup>53</sup> See above at part 2.2.



It is important to consider what shapes community perceptions of people experiencing homelessness so that we can distinguish – both at a policy level and on the ground – between actual aggression, which is unacceptable and can be dealt with via existing justice mechanisms, and perceived aggression, which may be informed by lack of understanding, stereotypes and the general public’s discomfort with people experiencing very obvious hardship in our communities.

## Increased ticketing in Toronto under the Safe Streets Act – evidence-based or reactive?

O’Grady, Gaetz and Buccieri analysed tickets issued under Ontario’s *Safe Streets Act 1999* (for aggressive panhandling and ‘squeegeeing’) over an 11 year period using data obtained from the Toronto Police Service and the Ontario Ministry of the Attorney General via freedom of information.

They found that, despite the decrease in homeless people begging and squeegeeing (in 1999, 29% of their street youth sample reported panhandling and squeegeeing as their main source of income compared with less than 3% in 2009; and the 2009 City of Toronto Street Needs Assessment also showed a decline in panhandling as a source of income from 17.4% in 2006 to 9.7% in 2009), the number of tickets issued by the Toronto Police Service under the *Safe Streets Act* increased from 710 in 2000 to 15,324 in 2010 (an increase of 2,147%).

O’Grady, Gaetz and Buccieri ask: ‘are police responding to a dramatic ... growth in aggressive panhandling and squeegeeing, or is the increase in ticketing part of a broader strategy to respond to the enduring visibility of homeless persons in public places in Toronto?’<sup>54</sup>

In considering the impact of enforcement on street users in England, Dr Sarah Johnsen and Professor Suzanne Fitzpatrick conducted interviews with 27 members of local communities where ‘enforcement interventions’ had been implemented.<sup>55</sup> Their research considered the local pressures that prompted a shift toward enforcement.<sup>56</sup> Based on the interviews, Johnsen and Fitzpatrick note that, while not groundless, ‘community fears may well be heightened by an instinctive fear of those who are visibly “different”’.<sup>57</sup> They found that ‘[c]oncerns voiced by members of the local community were usually founded on a *fear* of threat or danger, rather than a personal experience of verbal or physical abuse from street users’.<sup>58</sup> Further, the research showed that ‘while incidences of verbal abuse and/or physical violence are not uncommon *within* the street population – particularly among street drinkers – such expressions of aggression are only very rarely directed at members of the wider public’.<sup>59</sup>

Assistant Chief Diane Groomes of the District of Columbia Metropolitan Police Department also noted the difference between perceived aggression and actual aggression: ‘a lot of the business community are concerned about panhandling. Most is not aggressive, but if it is aggressive, it’s due to people’s circumstances, including their mental health. When I was commander, most assaults I saw were homeless people against other homeless people. It was very rarely against another member of the community’.

Emeritus Professor Gary Blasi from UCLA School of Law directed me to the work of Robert Sampson and Stephen Raudenbush, which discusses ‘seeing disorder’ in the context of the ‘broken windows’ theory.<sup>60</sup> Their research examined what shapes individuals’ perceptions of disorder and proposed that ‘perceptions of disorder are socially constructed and are shaped by much more than actual levels of disorder.’ They assessed this hypothesis using

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<sup>54</sup> O’Grady, Gaetz and Buccieri, *Can I See your ID?*, above n 10, 10.

<sup>55</sup> Johnsen and Fitzpatrick, *The Impact of Enforcement*, above n 7.

<sup>56</sup> *Ibid* 9.

<sup>57</sup> *Ibid* 11.

<sup>58</sup> *Ibid* 11.

<sup>59</sup> Johnsen and Fitzpatrick, *The Impact of Enforcement*, above n 7, 11.

<sup>60</sup> Robert J Sampson and Stephen W Raudenbush, ‘Seeing Disorder: Neighborhood Stigma and the Social Construction of Broken Windows’ 67 *Social Psychology Quarterly* (2004) 319 (Sampson and Raudenbush, *Seeing Disorder*).

census and police data on key neighbourhood characteristics, compared with personal interviews and the observation of city streets (through video-taping street scapes from the window of an SUV).<sup>61</sup> They concluded that ‘concentrated poverty, proportion black, and proportion Latino are related positively and significantly to perceived disorder’<sup>62</sup> and ‘in fact, social structure proved a more powerful predictor of perceived disorder than did carefully observed disorder’.<sup>63</sup> In short, ‘perceived disorder reflects more than meets the eye’.<sup>64</sup>

The UN Special Rapporteur on Extreme Poverty and Human Rights (2010 – 2014), Ms Magdalena Sepúlveda Carmona, also spoke of the way in which ‘perceptions, prejudices, stigma and stereotypes perpetuate discriminatory social attitudes’ and influence public policy. She described stigma as ‘a major obstacle to effective poverty reduction strategies’ and said ‘crackdowns on people living in poverty through law and policy are happening everywhere and in my view it’s stigma and prejudice that motivates these approaches – the idea that poor people are lazy and it’s their fault’. The Special Rapporteur also identified the role the media plays in generating and perpetuating these attitudes, noting that: ‘the media feeds into this idea of the deserving and undeserving poor’.<sup>65</sup>

In addition to prompting the introduction of new laws or stronger enforcement of existing laws, perceptions and stereotypes of, and discomfort with, visible homelessness can also inform how laws are enforced on the ground. I heard a clear example of this in Vancouver where a police officer identified Mr Shawn Cossaboom’s passive presence as ‘obstructive solicitation’.



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<sup>61</sup> Ibid 320. In addition to physical disorder such as graffiti, broken windows and litter, they considered ‘social disorder’, including ‘the presence or absence of adults loitering or congregating, drinking alcohol in public, peer group with gang indicators, public intoxication, adults fighting or arguing in a hostile manner, selling drugs, and street prostitution’ (326).

<sup>62</sup> Ibid 330.

<sup>63</sup> Ibid 330.

<sup>64</sup> Ibid 329.

<sup>65</sup> See also Raquel Rolnik (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) and Maria Magdalena Sepúlveda Carmona (Special Rapporteur on extreme poverty and human rights), ‘Foreword’ (Rolnik and Sepúlveda, *Foreword to Mean Streets*) in Guillem Fernandez Evangelista and Samara Jones (ed), *Mean Streets: A Report on the Criminalisation of Homelessness in Europe* (2013) (Evangelista and Jones, *Mean Streets*) 12: ‘We have noted with alarm the rise in stigmatising and hostile language used by politicians and sections of the media to justify discriminatory public policies toward homeless persons and persons living in poverty. Prejudices preclude policy makers from addressing the systemic factors that create poverty and homelessness, and instead paint the most disadvantaged people as authors of their own misfortune and therefore less deserving of respect, rights and public resources’; Magdalena Sepúlveda Carmona, *Report of the Special Rapporteur on Extreme Poverty and Human Rights* (4 August 2011) A/66/265 [7] (Sepúlveda, *Report of the Special Rapporteur*).



## Visible hardship as an obstruction in Vancouver

In his blog, *Asking for Help Will Cost You*,<sup>66</sup> Douglas King, Barrister and Solicitor with Vancouver's Pivot Legal Society, writes about his client Shawn Cossaboom who received 20 tickets for begging in five months.

The tickets were for 'obstructive solicitation'. Shawn was sitting with a book and his dog outside the local Safeway, he didn't ask for money verbally, he just used a sign. There hadn't been any complaints and the supermarket permitted him to be there. On one occasion, Shawn was given a ticket for begging and when he didn't reach out to take it, the officer dropped it on the ground and ticketed Shawn for littering.

When questioned by the judge at the trial, the police officer noted that Shawn hadn't been physically obstructive, but 'people were obstructed by Shawn's presence'. The prosecutor acknowledged this was not what the law meant, and asked the judge to acquit.

Mr King writes:

That one question, and answer, says a lot about how many of us view poverty in our city. Its existence offends us. We want it to be gone, but we don't have the means to fix it. Police officers feel the need to act, and dig into their toolbox to grab what they have been trained and told to use, in an effort to force the sight of poverty into remission ... At Pivot we don't pretend to know all the answers, or to have all the solutions. Our hope is that as a society we will continue to move forward, and use the law as a tool to open doors and minds, not suppress the most vulnerable members of our society ... At the end of the day poverty has never left town because someone gave it a ticket.

In formulating laws, policies and practices for dealing with visible homelessness and its symptoms, including begging, we need to be mindful of the fact that public uneasiness, while not always unwarranted, is often informed by stereotypes, stigma and a fundamental misunderstanding of the circumstances of people experiencing homelessness.

We should avoid introducing reactive enforcement-based responses to homelessness. These approaches will fail to address the underlying causes of the conduct because the conduct itself (or its agent) has been miscategorised. Laws, policies and practices that avoid reacting to stereotypes and assumptions about people experiencing homelessness and instead rely on evidence are better equipped to deal effectively with the complex circumstances that underpin homelessness and related conduct in public places.

### 3.3. Changing communities and commercial concerns

Another causal factor behind enforcement-based approaches to homelessness is the disharmony between changing city landscapes and visible hardship and poverty. Executive Director of the National Coalition for the Homeless, Jerry Jones, touched on this when he spoke about 'local laws put in place to push people out of locations that are developing' and 'selective enforcement that occurs to get homeless folks out of areas that are gentrifying'.

One of the clearest examples of the way in which friction between visible homelessness and gentrification can contribute to intensified enforcement is Los Angeles's Skid Row.

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<sup>66</sup> Doug King, 'Asking for Help Will Cost You' *The Pivot Blog* (25 November 2013) (available at: [http://www.pivotlegal.org/asking\\_for\\_help\\_will\\_cost\\_you](http://www.pivotlegal.org/asking_for_help_will_cost_you)).



RISK mural: part of the Skid Row Freewalls Project, a collaboration by the Skid Row Housing Trust and LALA Arts



Beds outside an overflowing LA shelter (photograph from Public Counsel)

## The changing landscape of LA's Skid Row and the Safer Cities Initiative

Los Angeles's Skid Row has the highest concentration of homelessness in the US, with an estimated 5000 people experiencing homelessness living in a 50 block area.<sup>67</sup>

This concentration was the product of city planning strategies in the 1970s, which aimed to contain homelessness and increase homeless services in Skid Row.<sup>68</sup> As a result, services providing shelter, housing, food, clothing, health care and addiction treatment are also located in Skid Row.<sup>69</sup>

For decades, this concentration meant that LA's homelessness problem was largely invisible to the mainstream population; out of sight, out of mind. The central location is, however, increasingly sought after for business and residential use (Skid Row 'abuts a fashionable area the city is trying to redevelop')<sup>70</sup> and the confronting hardship of Skid Row sits uneasily with this shift.<sup>71</sup>

In addition to the density, the visibility of homelessness on Skid Row is amplified by the presence of many of the hardships that can accompany homelessness. It has been estimated that 'well over two thirds of the homeless population on Skid Row have a severe and chronic mental illness, a serious addiction problem, or very frequently, both major mental illness and a substance abuse problem'.<sup>72</sup> Professor Gary Blasi suggested that the visibility of the homeless population in Skid Row was heightened by 'media coverage and attention brought to the area by the rapid redevelopment and gentrification occurring in recent years', including 'no fewer than 165 articles, columns, and other pieces referring to homelessness and Skid Row' published by the *Los Angeles Times* in an 18 month period.<sup>73</sup>

It's in this context – i.e. a high concentration of homelessness, and the hardships that accompany it, in a changing city landscape – that the Safer Cities Initiative (SCI) was commenced in September 2006<sup>74</sup> and 50 additional Los Angeles Police Department (LAPD) officers were added to patrol the central LA area, in particular a five block area of Skid Row.<sup>75</sup>

There are conflicting views on the role gentrification played in the decision to introduce SCI. LAPD Senior Lead Officer Deon Joseph said:

Many in the Skid Row community and outside of it have asked and have been asked "Why SCI?" Some have said that it is for gentrification, others have tried to tout that this is some adversarial movement against the poor. These are complete falsehoods because the service providers of Skid Row are not going anywhere ... What we are for is ridding this community of the lawlessness ... we are trying to create an environment conducive to real change in the lives of those with the will to change.<sup>76</sup>

General Dogan, a resident of Skid Row and member of the LA Community Action Network, articulated an

<sup>67</sup> See Blasi et al, *Policing Our Way out of Homelessness?*, above n 42, 9: 'Comprising about 0.85 square miles, Skid Row contains about 0.18% of the land area in the City but about 7.6% of the homeless population, a density 42 times the citywide average'.

<sup>68</sup> See, eg, Harold Katz (former Chairman of the Citizens' Advisory Committee on the Central Business District Redevelopment Project), 'Skid Row Housing' *Los Angeles Times* (30 August 1987): 'We did an intensive study of Skid Row and its impact on the downtown community and came up with the policy of containment and increased services. It is my opinion that, if this committee was reformed now and an update of the study performed, we would come up with exactly the same recommendations'.

<sup>69</sup> See Los Angeles Community Design Center, 'Skid Row: Recommendations to Citizens Advisory Committee on the Central Business District Plan for the City of Los Angeles, Part 4: Physical Containment' (1976) cited in Blasi et al, *Policing Our Way out of Homelessness?*, above n 42, 10.

<sup>70</sup> Paul Boden, 'The Quality of Whose Life? An Introduction to America's Modern Anti-Poor Movement' *Huffington Post* (5 October 2010).

<sup>71</sup> See, eg, Nicholas Dahmann with the Los Angeles Community Action Network, 'Los Angeles: I Do Mind Dying Recent Reflections on Urban Revolution in Skid Row' (2010) 2 *Los Angeles Public Interest Law Journal* 210, 215: 'Landlords, developers and other business interests became increasingly anxious and reactionary, fearing the presence of poor and homeless people threatened their profits. In 2006 they escalated their gentrifying efforts to push the "New Downtown" into and across Skid Row'.

<sup>72</sup> Blasi et al, *Policing Our Way out of Homelessness?*, above n 42, 12.

<sup>73</sup> *Ibid* 10.

<sup>74</sup> See Patt Morrison, 'Homelessness in Los Angeles—Part One: the Safer City Initiative' *Southern California Public Radio* (26 January 2011) (**Morrison, Safer City Initiative**).

<sup>75</sup> Press release: Los Angeles Police Department: *Chief Bratton Gives Safer Cities Update on Skid Row* (8 June 2007) (**LAPD SCI Press Release**).

<sup>76</sup> LAPD Senior Lead Officer Deon Joseph, 'Why Safer Cities Initiative?' *LAPD Blog* (4 March 2009) (available at: [http://lapdblog.typepad.com/lapd\\_blog/2009/03/why-safer-cities-initiative.html](http://lapdblog.typepad.com/lapd_blog/2009/03/why-safer-cities-initiative.html)).



alternative view:

The only thing they care about is removing the poor and brown people off of Skid Row so that these yuppies in the lofts can walk their \$5000 French poodle down Main Street without seeing Ed the wino or Ted the panhandler. This is what it's all about – it's all about displacing the poor, the homeless. The first year SCI put 50 cops [in Skid Row], they spent \$6.2 million on just 50 cops but they spent \$5 million citywide on homeless services. All this money for what?<sup>77</sup>

What is largely uncontested is the scale of enforcement as part of SCI. A report on the first year of the SCI estimated that the LAPD had issued approximately 12,000 citations (the majority for 'pedestrian violations'), which was 48–69 times the rate of citations issued citywide.<sup>78</sup> Figures from 2009 estimated over 30,000 citations and 25,000 arrests since the SCI's commencement.<sup>79</sup>

Not dissimilar to the 'containment' of Skid Row in Los Angeles, Vancouver's rough sleeping population is concentrated in the Downtown Eastside (DTES), particularly in Hastings Street. The Vancouver Homeless Count conducted on 13 March 2013, 'while always an undercount', identified 1,600 people experiencing homelessness, comprised of 273 people who were unsheltered and 1,327 who were sheltered.<sup>80</sup> Also similar to Los Angeles, the central location of DTES is increasingly coveted for condominiums and commercial use and there is palpable concern that changes to the area will push low income people out of its familiar streets.<sup>81</sup> In addition to being 'priced out' of the community, DJ Larkin, Barrister and Lawyer from Pivot Legal Society explained that the residents fear that the movement of wealthier people into their community brings with it tougher treatment of the original residents. She commented 'the moving organism that is [the DTES] is very complicated' and said she wouldn't be surprised if there was another increase in ticketing in response to new residents' discomfort with visible hardship in their adopted streets and consequent pressure for tougher enforcement in relation to public space offences.

On top of the concerns of residents, are the concerns of business and retailers. The significant potential for positive collaboration with business in developing solutions to homelessness is discussed in part 6.2. In the absence of a constructive relationship, however, business lobby groups, including Business Improvement Districts in many cities in the US, Canada and the UK, can be a vocal source of pressure for 'crackdowns' on homeless people in public places motivated by commercial concerns.

Johnsen and Fitzpatrick's research on enforcement responses in England refers to the view of business proprietors that 'the presence of street users deterred potential customers from entering their shops' and quoted a Leeds shop proprietor: '[Begging] actually puts people off and turns people away. You'll actually see people make a diversion to go away from them and that possibly actually turns people away from our store'.<sup>82</sup>

As previously 'undesirable' parts of cities become increasingly occupied by residents and businesses that are uneasy with visible poverty and homelessness, decision-makers and law enforcement officers will come under greater pressure. Police Sergeant Mark Montgomery from the City of London Police Street Intervention Team said:

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<sup>77</sup> Morrison, *Safer City Initiative*, above n 74.

<sup>78</sup> Press Release: Los Angeles Community Action Network with Gary Blasi, Nicholas Dahmann, Anat Rubin and Forrest Stuart, *Safer Cities Initiative Third Year Analysis* (September 2009) cited in Blasi et al, *Policing Our Way out of Homelessness?*, above n 42; Gary Blasi and Forrest Stuart, 'Research Report: Has the Safer Cities Initiative in Skid Row Reduced Serious Crime?' (15 September 2008) (available at: [http://wraphome.org/downloads/safer\\_cities.pdf](http://wraphome.org/downloads/safer_cities.pdf)) (Blasi and Stuart, *Has the Safer Cities Initiative Reduced Serious Crime?*). See also LAPD SCI Press Release, above n 75, which reported that between 17 September 2006 when SCI commenced and 1 June 2007, 'the uniformed component of the Safer Cities Initiative, comprised of the Safer Cities Task Force, Eastside Detail and officers assigned to the Metropolitan Division Mounted Unit' had: made 1,800 felony arrests and 1,300 misdemeanor arrests; performed 8,000 warrant checks; impounded 208 vehicles; issued more than 8,000 citations; and responded to 424 calls for service.

<sup>79</sup> See Blasi and Stuart, *Has the Safer Cities Initiative Reduced Serious Crime?*, above n 78.

<sup>80</sup> Eberle Planning and Research, *Vancouver Homeless Count 2013* (August 2013) (available at: <http://vancouver.ca/files/cov/report-2013-homeless-count-2013-oct8.pdf>).

<sup>81</sup> See, eg, Travis Lupick, 'Protesters target Cuchillo as another symbol of gentrification in Vancouver's Downtown Eastside' *Straight.com* (5 July 2013).

<sup>82</sup> Johnsen and Fitzpatrick, *The Impact of Enforcement*, above n 7, 10.

We face pressure from residents, business people and politicians to ‘clean up the streets’ or move homeless people on. We have to remind them that it’s not an offence for homeless people just to be in public and, unless there’s legislation that empowers us, we can’t just move people on.

It’s helpful to recognise the community dynamics that are often behind tougher enforcement-based approaches to homelessness, which on their face may seem to come directly from law enforcement officers or government. We need to work on improving community awareness and understanding of homelessness and its causes, with a view to reducing the public appetite for enforcement and making room for more thoughtful responses to homelessness by government and community members.

### 3.4. Using enforcement to promote service engagement

The UK has been the site of sophisticated homelessness reduction strategies since the 1990s.<sup>83</sup> Despite years of these successful programs, however, the economic crisis, combined with tough cuts to welfare and social services and a lack of affordable housing, have seen a worrying resurgence of homelessness in England and present a risk for Scotland’s first class homelessness prevention model.<sup>84</sup>

In the earlier landscape of successful homelessness reduction, particularly rough sleeping, England developed a number of collaborative ‘tough love’ approaches to homelessness and public space, involving some or all of homeless outreach agencies, police, housing services, local councils and drug and alcohol services.<sup>85</sup>

Liz Blackender, Team Leader City Outreach and Pan London Personalised Budgets at Broadway Homelessness and Support summarised the philosophy that underpins the multi-agency approaches to rough sleeping in the UK: ‘it’s not okay for people to sleep rough. They’re not going to be left alone. We live in the 21st Century and everyone should have a roof over their head’. Ms Blackender explained that the police are seen as having a role to play in assertive outreach: ‘we use a multi-agency approach, including some disruption which can encourage entrenched rough sleepers to engage with outreach services and consider change’.

I saw this inter-agency cooperation in practice at the monthly City of London Anti-Social Behaviour Interagency Working Group, which has been running for over 18 months and is attended by a range of government and non-government services, including police, housing services, homelessness outreach agencies, local council and substance misuse services. There was a high level of information sharing and collaboration at the meeting; individuals were identified by name and updates were provided on whether or not they are engaging with services (for example, housing or drug and alcohol). Where individuals weren’t engaging with the services on offer, enforcement-based responses, including arrests under the *Vagrancy Act 1824*<sup>86</sup> or an application for an anti-social behaviour order (**ASBO**), were discussed.

The collaboration between different agencies is strong and Ms Blackender explained the understanding that ‘if you work in partnership with other agencies, you get results ... we’re all singing from the same song book’.

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<sup>83</sup> See, eg, Fitzpatrick, Kemp and Klinker, *Single homelessness*, above n 44: ‘Statutory responses to homelessness initially focused on families with children rather than single people ... The growing numbers of single homeless people sleeping rough in the late 1980s prompted central government to establish a series of Rough Sleepers Initiatives (RSI); first in London in 1990, and then elsewhere in England and in Scotland’. The Rough Sleepers Unit and the Scottish Homelessness Task Force prioritised homelessness prevention and reduction from 1999 and 2000 respectively.

<sup>84</sup> Suzanne Fitzpatrick, Hal Pawson, Glen Bramley, Steve Wilcox and Beth Watts, *The Homelessness Monitor: England 2013* (December 2013) and *The Homelessness Monitor: Scotland 2012* (December 2012) (both available at: <http://www.crisis.org.uk/pages/homelessnessmonitor.html>).

<sup>85</sup> See, eg, Fitzpatrick, Kemp and Klinker, *Single homelessness*, above n 44.

<sup>86</sup> See *Vagrancy Act 1824* which makes it an offence to beg (s 3), persistently beg (s 4) and sleep rough where it can be shown that the individual has been directed to a ‘free’ place of shelter and has failed to take this up (s 4). If convicted people can be fined (but not imprisoned).

In this model, the motivation for an enforcement-based approach is a commitment to the idea that people can be offered services and encouraged to engage to a point, but beyond that, the stick of enforcement has a role to play in moving people off the streets.<sup>87</sup>

### 3.5. Crime prevention, public order and broken windows



George Kelling and James Wilson published 'Broken Windows: The police and neighborhood safety' in the *Atlantic Monthly*<sup>88</sup> in 1982 and since that time, as a theory of policing and crime prevention, '[f]ew ideas have become more influential than "broken windows"'.<sup>89</sup> The theory can be summarised as the idea that: 'if minor offenses and local disorder are not addressed, they will create an environment that encourages more serious crime'.<sup>90</sup>

The wording in Kelling and Wilson's original article is less benign:

The citizen who fears the ill-smelling drunk, the rowdy teenager, or the importuning beggar is not merely expressing his distaste for unseemly behavior; he is also giving voice to a bit of folk wisdom that happens to be a correct generalization—namely, that serious street crime flourishes in areas in which disorderly behavior goes unchecked. The unchecked panhandler is, in effect, the first broken window. Muggers and robbers, whether opportunistic or professional, believe they reduce their chances of being caught or even identified if they operate on streets where potential victims are already intimidated by prevailing conditions. If the neighborhood cannot keep a bothersome panhandler from annoying passersby, the thief may reason, it is even less likely to call the police to identify a potential mugger or to interfere if the mugging actually takes place.<sup>91</sup>

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<sup>87</sup> See, eg, Fitzpatrick, Kemp and Klinker, *Single homelessness*, above n 44, 6, which refers to 'the threat of punitive action if they do not take up the opportunities offered' as underlying the UK approach to homelessness.

<sup>88</sup> Kelling and Wilson, *Broken Windows*, above n 52.

<sup>89</sup> Sampson and Raudenbush, *Seeing Disorder*, above n 60.

<sup>90</sup> Greg Berman, 'NYC's Midtown Community Court: 20 Years of Testing New Ideas' *The Crime Report* (17 October 2013) (Berman, *NYC's Midtown Community Court*).

<sup>91</sup> Kelling and Wilson, *Broken Windows*, above n 52, 29.

The outdated wording of the original article has not stopped the theory enjoying significant traction. Its influence extends beyond law enforcement agencies and the 'place-based' approach of broken windows has also been adopted by innovative justice programs that aim to regenerate local communities. By way of example, the Midtown Community Court in New York City recently marked its twentieth birthday and the celebratory reflections included recognition that 'the Court was inspired, at least in part, by James Q Wilson and George Kelling's groundbreaking "Broken Windows" theory'.<sup>92</sup> The court's mission 'to reduce both crime and incarceration by linking misdemeanor defendants to community restitution projects and social services instead of short-term jail sentences' arose from:

the realities of the early 1990s, when low-level crime—shoplifting, fare-beating, vandalism and the like—seemed a permanent feature of New York City. Lacking other options, judges at the time often had to choose between sentencing defendants to a few days of jail time and nothing at all. Either choice failed to impress upon victims, the community, or defendants that these offenses were being taken seriously.<sup>93</sup>



New York City: Midtown Community Court

The broken windows theory suggests that police and enforcement have a role to play in maintaining community order which will, in turn, lead to safer communities. It provides support for using law enforcement to regulate public spaces and its followers are likely to be strong opponents of alternative mechanisms for dealing with visible homelessness and the conduct that can accompany it:

This wish to "decriminalize" disreputable behavior that "harms no one"—and thus remove the ultimate sanction the police can employ to maintain neighborhood order—is, we think, a mistake. Arresting a single drunk or a single vagrant who has harmed no identifiable person seems unjust, and in a sense it is. But failing to do anything about a score of drunks or a hundred vagrants may destroy an entire community. A particular rule that seems to make sense in the individual case makes no sense when it is made a universal rule and applied to all cases. It makes no sense because it fails to take into account the connection between one broken window left untended and a thousand broken windows.<sup>94</sup>

Interestingly, the theory is not solely aimed at reducing crime, but also at minimising fear of crime. Kelling and Wilson state:

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<sup>92</sup> Berman, *NYC's Midtown Community Court*, above n 90.

<sup>93</sup> *Ibid.*

<sup>94</sup> Kelling and Wilson, *Broken Windows*, above n 52, 29.



But how can a neighborhood be "safer" when the crime rate has not gone down—in fact, may have gone up? Finding the answer requires first that we understand what most often frightens people in public places. Many citizens, of course, are primarily frightened by crime, especially crime involving a sudden, violent attack by a stranger. This risk is very real ... But we tend to overlook another source of fear—the fear of being bothered by disorderly people. Not violent people, nor, necessarily, criminals, but disreputable or obstreperous or unpredictable people: panhandlers, drunks, addicts, rowdy teenagers, prostitutes, loiterers, the mentally disturbed.<sup>95</sup>

The controversy of the broken windows theory will not be resolved by this report. For present purposes, it is adequate to point out that, when considering the motivations behind enforcement-based approaches to public space and homelessness, we need to be mindful of the view that the visible minor disorder of homelessness and poverty needs to be addressed as part of 'a larger strategy to prevent and reduce crime ... [and] to address social conditions that contribute to crime'.<sup>96</sup> Unless we are able to present constructive solutions that address these concerns – either through limiting public disorder via other means or through addressing the public's perception of, and reaction to, disorder – suggestions for alternatives are likely to meet strong opposition.



New York City: Central Park

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<sup>95</sup> Ibid.

<sup>96</sup> William J Bratton, Former Chief of Police, Los Angeles Police Department, 'What Skid Row Offensive?' *LAPD Blog* (17 August 2006) (available at: [http://lapdblog.typepad.com/lapd\\_blog/2006/08/what\\_skid\\_row\\_o.html](http://lapdblog.typepad.com/lapd_blog/2006/08/what_skid_row_o.html)).



# 4. THE IMPACTS OF ENFORCEMENT-BASED APPROACHES TO HOMELESSNESS

One of the aims of the fellowship was to get insights about the impact of different enforcement-based approaches to homelessness on homeless individuals, services, enforcement agencies, courts and communities.

Keeping in mind the six categories of enforcement-based interventions (see part 2), some key factors that are relevant to the impact of enforcement are:

- what the laws are (i.e. what conduct is prohibited);
- how the laws are enforced, by whom and for what purpose; and
- the enforcement mechanism, including tickets, fines, court orders or sentences.

As discussed, the motivations for enforcement-based approaches to homelessness are complex and varied and what the approach intends to do will determine whether or not it is successful. By way of example, the Safer Cities Initiative in Los Angeles has been identified by many as a success because its intention was to reduce crime and, by some evaluations, it has done so.<sup>97</sup> In doing so, however, it has taken an overwhelmingly heavy toll on an already struggling population, imposed a strain on the courts and prison system and required a reported annual investment of approximately \$6 million.<sup>98</sup>

It is important that we evaluate programs regulating public space in the broad context in which they exist. A narrow impact assessment will disguise potentially costly impacts. With this in mind, this section discusses the following impacts – both positive and negative – of enforcement-based approaches to homelessness and public space:

- Impacts on **people experiencing homelessness**
  - Linking people with services, successful interventions or ‘turning points’
  - Entrenching marginalisation and isolation
    - Personal marginalisation – limiting access to services and leading to more damaging conduct
    - Practical exclusion – jailed and excluded from safe spaces, employment and housing
    - Financial marginalisation – overwhelming debts spiralling into something bigger
- Impacts on the **community**
  - Increased public safety and order and deterrence
  - Reinforcing and responding to public stereotypes about homelessness

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<sup>97</sup> Richard Berk and John MacDonald, ‘Policing the Homeless: An Evaluation of Efforts to Reduce Homeless-Related Crime’ (2010) 9 *Criminology and Public Policy* (2010) 813 (Berk and MacDonald, *Policing the homeless*).

<sup>98</sup> Blasi et al, *Policing Our Way out of Homelessness?*, above n 42, 7: ‘The estimated cost of just the 50-officer SCI Task Force in Skid Row is about \$6 million per year. [In 2007] the City has budgeted \$5.7 million out of the same General Fund for homeless shelters and services for the entire City’.

- Impacts on **police and relationships with communities**
  - The strain on police
  - Diminished trust in law enforcement and broken relationships with police
- Impacts on the effectiveness and efficiency of the **justice system**
  - The burden on legal services
  - Judicial responses and congestion in the courts
- The **financial costs**.

## 4.1. Impacts on people experiencing homelessness

Much of the focus when considering the success or otherwise of laws or practices regulating public space focuses on ‘cleaning up the streets’ and, accordingly, impact is assessed using measurements such as reduced numbers of rough sleepers or people begging in the local area and fewer complaints about people experiencing homelessness.<sup>99</sup>

This section considers the personal, health, financial and legal impacts of enforcement-based approaches to homelessness on the individuals themselves. If we are aiming to address underlying causes of offending conduct, the impact on the people whose conduct is being targeted is a critical consideration in any intervention.

### *Linking people with services, successful interventions or ‘turning points’*

Some of the experts I spoke with saw a role for enforcement – primarily in the form of police intervention through use of move-on powers or arrests and potentially with the prospect of a court order such as an anti-social behaviour order – in addressing rough sleeping and problematic conduct in public places. They noted though that it must be accompanied by services and, crucially, the interests of the person must be at the heart of it: ‘It’s a different story if the sole reason for the action is to clean up the streets’.

The City of London Police’s begging initiative, Operation Fennel, is an example of a program where enforcement (in the form of targeted police approaches of people begging and collaborative engagement with services, underpinned by the prospect of an anti-social behaviour order) features as a component of homeless outreach.

### Operation Fennel – City of London Police linking people begging with services

Operation Fennel has been running since June 2013 and has the stated intention of providing ‘help, guidance and assistance to persons suspected of begging with a view to preventing further offences’.<sup>100</sup>

The City of London Police have reported on the outcomes in relation to the 180 tickets for begging issued to 94 people between July – November 2013.<sup>101</sup> The majority of the reported outcomes are focussed on linking people with services, assisting them to move into housing and building relationships and understanding between the police and people who are begging in the City of London. Two of the outcomes are responding to other aims (i.e.

<sup>99</sup> See, eg. Johnsen and Fitzpatrick, *The Impact of Enforcement*, above n 7, viii: ‘Affected members of the public and enforcement agents, were not unsympathetic to the vulnerability of street users, but were clear that their top priority was a reduction in the negative impact of street culture on their daily lives. Most felt that the strategies adopted in their local area had been successful in bringing about a sharp decline in street activities’.

<sup>100</sup> Operation Fennel, *City of London Policing Plan 2013–2016* (December 2013) (document provided by City of London Police on 2 December 2013) (**Operation Fennel, City of London Policing Plan**).

<sup>101</sup> Ibid.

'prolific beggars' leaving the City area and praise from the business community). The final outcome, which is 15 applications for anti-social behaviour orders (**ASBOs**) comes at the end of a process that appears to be genuinely aimed at prompting engagement with supports and addressing the underlying causes of the person's begging.

Operation Fennel is discussed in detail in part 6.4 below.

The research of Dr Johnsen and Professor Fitzpatrick assesses the impact of enforcement on the welfare of 'street users' in England.<sup>102</sup> The research for the report, *The Impact of Enforcement on Street Users in England*, involved case studies of five different local areas that had introduced 'enforcement interventions' in response to 'problematic street culture', particularly begging and street drinking. The research considered the motivations for these interventions and, importantly, 37 in-depth interviews were conducted with current or former 'street users' to assess the impact of enforcement on their wellbeing.

The below case study extracted from Johnsen and Fitzpatrick's report provides an example of an enforcement-based approach – in this case the use of anti-social behaviour order and subsequent prison sentence – presenting a turning point or critical intervention for a person experiencing homelessness and substance dependence.

### Adam – ASBO and prison as an intervention point

'Aged 33, Adam was living in shared accommodation run by a drug treatment agency while subject to a two-year ASBO for begging. He had lived in local authority care from the age of 12, where he was introduced to drugs by other residents in a children's home. Adam claimed that much of his life could be described as "a mission to self-destruct", evidenced by a self-perpetuating cycle of drug abuse, dealing, burglary, prison and homelessness (including extended periods of rough sleeping): "I'd lost interest in life really, I didn't want to know.... It was get up in the morning, do what I had to do and spend the rest of the day using drugs".

He was targeted by a street community police team and arrested regularly for begging, while being offered intensive support by the street outreach team. Having lost hope of ever being drug free because of previous relapses, Adam rejected all supportive interventions at the time. He was served an ASBO but carried on begging and breached it several times: "I didn't care what they were saying.... If you want to send me to prison, send me to prison". Adam had recently served a 10-week sentence for breaching his ASBO and had successfully remained 'clean' since release, but found it difficult to explain why treatment had 'worked' this time. His health had improved dramatically, he had re-entered education, was working as a volunteer, and looked forward to establishing a relationship with a daughter he had never met. He concluded that "I think I am probably an ASBO success story.... I had my first clean birthday as an adult about two weeks ago".<sup>103</sup>

Johnsen and Fitzpatrick undertake a careful analysis of the factors that influence the impact of enforcement on individuals. They ask: 'when can enforcement benefit street users?' and identify the following policy and practice conditions in which enforcement action is most likely to have positive benefits for street users:<sup>104</sup>

<sup>102</sup> Johnsen and Fitzpatrick, *The Impact of Enforcement*, above n 7.

<sup>103</sup> Extracted in full from Johnsen and Fitzpatrick, *The Impact of Enforcement*, above n 7, 27.

<sup>104</sup> Johnsen and Fitzpatrick, *The Impact of Enforcement*, above n 7, 44.

- it must always be carefully integrated with individually tailored and (immediately) accessible supportive interventions, so that support workers can take advantage of any ‘window of opportunity’ for engagement that enforcement might present;
- it requires effective interagency working between police and support providers (including accommodation, drug and alcohol and outreach services);
- harder enforcement measures (including ASBOs) should only be used as a last resort, after appropriate ‘warning stages’, and should never be used with extremely vulnerable street users, particularly those people with mental health problems; and
- ‘blanket’ enforcement policies are inappropriate.<sup>105</sup>

Johnsen and Fitzpatrick are cautious though: ‘the existence of these conditions in no way guarantees success, but positive outcomes appear highly unlikely if these arrangements are not in place when any enforcement initiative is implemented’<sup>106</sup> and further, ‘if taken into account within enforcement strategies, these considerations will minimise, although not eliminate, the risk of harm to vulnerable street users by enforcement action’.<sup>107</sup>

The adverse consequences of enforcement, the risks of which Johnsen and Fitzpatrick note are high and cannot be eliminated, are discussed in the next section.

### ***Entrenched marginalisation and isolation***

While, as discussed in part 3, it is rare that the intention of public space regulation is solely to punish people for their disadvantage, the impact of enforcement-based measures, including tickets, arrests and anti-social behaviour orders, can be punitive regardless of the intention or motivation. There is a risk that enforcement-based approaches, even when thoughtfully implemented, can further marginalise people:

- personally (though interfering with service engagement and pushing people into more damaging activities);
- practically (through geographical exclusion, jail, ineligibility for housing and criminal records); and
- financially and socially (through overwhelming debts and the risk of jail stemming from tickets and fines).

In these ways, enforcement-based measures can risk impeding rather than supporting people’s exit from homelessness.

### **Personal marginalisation – interfering with service engagement and pushing people into more damaging activities**

The use of law enforcement to address conduct directly related to homelessness (including sleeping rough, begging or public intoxication) is intended to, and often does, affect the activities and movements of people experiencing homelessness. While there is debate about the ‘deterrent’ effect of enforcement-mechanisms (particularly fines and tickets (see part 4.2)), the risk of being approached by police, arrested, repeatedly ticketed, becoming the subject of a court order or even jailed, may alter the conduct of people experiencing homelessness in unanticipated, unhelpful and even damaging ways.

In relation to anti-social behaviour orders in the UK, Peter Cockersell, Director of Health and Recovery at St Mungo’s, one of Britain’s largest charities supporting people who are homeless or at risk of homelessness, said that it was relatively uncommon for their clients to be the subject of ASBOs because St Mungo’s does a lot of work with the police and encourages them to work with services and supports rather than resorting to an ASBO. He said support workers would prefer the police to engage with them rather than apply for an ASBO because ‘often

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<sup>105</sup> Ibid ix–x and 46–8.

<sup>106</sup> Ibid x.

<sup>107</sup> Ibid 52.

[ASBOs] can prevent people doing things that are useful to their recovery ... sometimes, not always, they are blunt and unhelpful instruments’.

A London-based homeless outreach worker I spoke with said that once people are the subject of an ASBO, ‘they are constantly in and out of prison; as soon as services start to do something, he’s whisked off to prison’.

In contrast to Adam’s ‘ASBO success story’ above, Johnsen and Fitzpatrick’s report contained the following case study of a homeless teenager who had resorted to sex work to support his drug dependence to avoid the police crackdown on begging and being jailed for breach of his anti-social behaviour order.

### Matt – turning to more dangerous activity to avoid going to prison for begging

‘Aged 19, Matt had had a stable childhood until his father left when he was eight years old and his mother developed a heroin habit. He left home when he was 15, by which time he already had a heroin addiction himself, and later took crack. He said that he craved the drugs to “... give you some peace and take away the pain”. He had ‘sofa-surfed’ (staying with different friends) and slept rough since then.

Matt was heavily involved in begging and was moved on and arrested for this many times, ultimately receiving an ASBO for begging that barred him from the city centre. He had also been an occasional Big Issue vendor but again, since being excluded from the city centre, did not do this any more. He had not breached his ASBO but had become involved in street sex work to feed his drug habit, and claimed that this was a direct result of the restrictions imposed by his ASBO.

He was not offered any support as part of the ASBO process, and was extremely bitter about the impact of the ASBO that drove him, as he saw it, into sex work. He seemed very isolated and the only support he was receiving was on an informal basis from a project worker who saw him on the street in her own time.’<sup>108</sup>

Examples like this make it apparent that enforcement-based approaches, including targeted ‘crackdowns’ on conduct of people experiencing homelessness in public places, are high risk practices that carry the potential to have negative and harmful effects on vulnerable people.

Unless the people implementing these strategies – often the police on the beat – are equipped to balance these complex personal and policy considerations, there are significant risks that using arrests, tickets, move-on powers and court orders to regulate public space will have a harsh and damaging impact on people experiencing homelessness.

## Practical exclusion – jailed and excluded from safe spaces, employment and housing

As discussed in part 3.1, enforcement-based approaches to homelessness are often local responses to local concerns. Often they are responding to community or business pressure about visible homelessness and poverty. Alternatively, they may be designed in co-operation with local homelessness agencies to prompt engagement by people experiencing homelessness or they may be designed to tackle low level crime with a view to preventing more serious crime in a particular community.

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<sup>108</sup> Extracted in full from Johnsen and Fitzpatrick, *The Impact of Enforcement*, above n 7, 23–4.

Given this local focus, it is easy for assessments of the success of enforcement-based measures to be narrowly concentrated on local indicators.

By way of example, enforcement-based initiatives in London are localised and primarily implemented borough to borough. Evaluation shows that Operation Fennel has been very successful at reducing the number of people begging on the beat of the City of London. While the figures show that a number of people have stopped begging and are engaged with services,<sup>109</sup> for others it is not clear whether they have stopped begging or moved to an area with fewer police resources.

We need to be mindful of the risk that this type of enforcement will simply push homeless people to move themselves on and in doing so to become more isolated, less safe and more difficult for services engage with.

This risk was examined in relation to the ban on 'urban camping' in Denver, Colorado.

## The risks of excluding homeless people from central areas – Denver, Colorado

In May 2012, Denver passed the Unauthorized Camping Ordinance, which makes it a crime for a person to shelter from the elements while residing on any public or private property, without appropriate permission: 'Under this law, it is illegal for homeless people to sleep, sit for extended periods, or store their personal belongings anywhere in Denver, if they use any form of protection other than their clothing (e.g., a blanket or a piece of cardboard to sit upon)'.<sup>110</sup> Violations of the urban camping ban can result in fines up to \$999 or one year imprisonment.<sup>111</sup>

Local council representatives suggested that the ordinance is 'the first step in providing services to those who truly need them, while simultaneously creating a healthy environment for residents of Denver's urban core' and indicated that police were using their discretion in enforcing the ban so that people are linked with services rather than arrested.<sup>112</sup>

The Denver Police Department reported that 158 street checks for unauthorised camping impacting 386 members of the homeless community occurred in the first four months of the urban camping ban. Local advocacy organisation, Denver Homeless Out Loud, and the University of Colorado then undertook a survey of 512 members of the homeless community to determine the impact of the ban on their lives (see part 6.1 ).

A snap shot of the survey results is:

- 57% of survey respondents were contacted by police regarding violations of the camping ban.
- 83% of those were asked by police to 'move along' without being offered alternative services.
- 76% were issued a formal oral or written warning of camping ban violation.
- 26% were arrested or cited for other violations (the most common citations were violations of park curfew or trespassing on private property).
- Only 12% of respondents were advised by police of available social services; 4% of respondents said the police contacted an outreach worker to help them.
- 52% of respondents who used to sleep downtown said they did so because that area was safe and well-lit and 66% said they now usually sleep in more hidden and unsafe locations.

<sup>109</sup> Operation Fennel, *City of London Policing Plan*, above n 100.

<sup>110</sup> Denver Homeless Out Loud, *Report from the Street*, above n 29, 7.

<sup>111</sup> *Ibid.*

<sup>112</sup> See, eg. Albus Brooks, 'Denver's camping ordinance helps us address needs of homeless' *The Denver Post* (19 July 2013).



- 40% have tried to get into shelters more often, but 63% say shelters are more crowded and harder to get into than they used to be; 73% report being turned away from shelters with some frequency.
- 60% report that they get less sleep as they frequently are being ‘moved along’ (or live in fear of this), and feel less secure in the new areas they are finding to sleep.
- 58% say that it has become more necessary to avoid the police (4% say the police have become more helpful).<sup>113</sup>

In summary, the respondents indicated that they find it increasingly difficult to access overcrowded shelters, they avoid well-lit and safe downtown areas for hidden locations and they feel less safe.<sup>114</sup>

In relation to efforts to reduce visible homelessness in particular geographical areas, Professor Blasi reminds us: ‘over policing of homelessness doesn’t address homelessness, it just moves it’. One of the places that it moves people to is prison. Both under ASBOs in the UK and broken windows policing in the US, I heard about people cycling in and out of prison. One person Professor Blasi spoke about was a woman called Annie. Annie has been arrested 93 times and the first 60 times were for being on the same corner of the same intersection (under s 41.18(d) of the *Los Angeles Municipal Code* which prohibits sitting, lying or sleeping on the footpath). She moved corners and the process started again. She was recently sentenced to six months in prison (although was released early due to prison overcrowding). Annie is homeless and has a mental illness.

In New York City I also heard about people being taken into the cells for the night for public space offences and the consequences this had. Nahal Zamani, Advocacy Program Manager, Government Misconduct and Racial Justice with the Center for Constitutional Rights (CCR) coordinated 54 interviews with people who had been stopped under the NYPD’s stop and frisk policy as part of CCR’s report *Stop and Frisk: The Human Impact*.<sup>115</sup> Ms Zamani spoke about homeless people who were sleeping in shelters being arrested for a ‘quality of life offence’, put in lock-up and losing their bed because it had been unattended for over 48 hours.<sup>116</sup> She described it as: ‘a forced introduction to the criminal justice system via tickets and arrests for minor offences’.

In addition to the immediate impact of physical exclusion or jail, enforcement-based approaches can have longer term impacts on individuals, including through the imposition of criminal records which can limit employment opportunities<sup>117</sup> and, in some cases, eligibility for affordable housing.

By way of example, in the US, it is common for people to be denied access to social housing because of a criminal record.<sup>118</sup> Given the abundant evidence regarding the need for stable housing to minimise the risk of recidivism,<sup>119</sup> this is a harsh and perplexing policy. It was explained to me as a matter of discretion of social landlords: only around one-quarter of people nationally who need a housing subsidy get it; ‘will they house the single mum or the guy with a criminal record?’<sup>120</sup> In this environment, the impact of convictions for public space offences is acute — they directly prevent people exiting homelessness.

<sup>113</sup> Denver Homeless Out Loud, *Report from the Street*, above n 29, 8–9.

<sup>114</sup> Tony Robinson, ‘Denver’s camping ban is counterproductive’ *The Denver Post* (19 July 2013).

<sup>115</sup> Center for Constitutional Rights, *Stop and Frisk: The Human Impact* (July 2012) (available at: <http://stopandfrisk.org/the-human-impact-report.pdf>) (CCR, *Stop and Frisk: The Human Impact*).

<sup>116</sup> *Ibid* 9.

<sup>117</sup> See, eg, NLCHP 2011, *Criminalizing Crisis*, above n 32, 32 regarding the impact of criminal records on employment: 38 out of 50 US states permit employers to ask about or rely on arrests that never resulted in convictions when making employment decisions. In Victoria, criminal records will be released with any finding of guilt for a period of ten years from date of sentencing (five years if sentenced as a minor) and include findings of guilt where no conviction is recorded.

<sup>118</sup> See, eg, NLCHP 2011, *Criminalizing Crisis*, above n 32.

<sup>119</sup> See, eg, Justice Center, the Council of State Governments, *Housing* (available at: <http://csjusticecenter.org/reentry/issue-areas/housing/>).

<sup>120</sup> See NLCHP 2011, *Criminalizing Crisis*, above n 32, 34: ‘Despite the need of many homeless individuals for permanent housing, many Public Housing Authorities (PHAs) use overly exclusive policies when determining whether an applicant with a criminal record is eligible for public housing’. See also, US Department of Housing and Urban Development, ‘“One Strike and You’re Out” Screening and Eviction Guidelines for Public Housing Authorities’ Notice PIH 96-16 (HA) (1996). In 2011, following commitments made during the Universal Periodic Review, the Department of Housing and Urban

## Financial marginalisation – overwhelming debts spiralling into something bigger

In 2013, Homeless Law worked with six people who had experienced homelessness and been issued with fines or tickets for conduct directly related to their homelessness (including begging, being drunk in public and travelling on public transport without a ticket). The project, *In the Public Eye – personal stories of homelessness and fines* captured the participants' insights in short films, audio recordings and photographs.<sup>121</sup>

The six participants talk about the impossibility of paying fines on limited incomes and the complexity of the process required to address fines and infringements. They talk about being overwhelmed financially and psychologically by their infringements.

### Julia – the stress of \$2000 in public transport fines

Julia\* found herself homeless after having to leave private rental. During her time staying in emergency accommodation and couch surfing she accrued about \$2000 in fines for travelling on public transport without a ticket and failing to vote. She said:

Well the effect of having the fines is very stressful because when you are unemployed or you are on a pension it is pretty difficult to survive as it is – because the fines are quite expensive and if you are on a pension or any kind of Centrelink payment it is a lot of money, it is quite a large percentage of your fortnightly budget and you don't have a spare \$200 just to give to a fine and if you are homeless as well it is even more stressful because it's already incredibly stressful not having a place of your own.<sup>122</sup>

\*Name has been changed

### Emma – the build-up of fines for begging

Emma became homeless at 16. During her time sleeping on the streets she got fines for not having a tram ticket and for begging. She has two young sons and is now housed. She said:

I got a lot of fines during my time being on the streets due to either not having a ticket on public transport, on the trains, which is probably quite a common occurrence, and then there was also the fines with beg alms – when I was begging on the streets to support my drug habit ... The effect of fines on my life I guess – at the time there wasn't really much of an effect but now it is – they built up and built up and you get quite a shock to see how much they really add up to. Even with my lifestyle at the moment and trying to budget the fine system is just ridiculous – how is someone on a pension expected to pay \$250 for not having a ticket?<sup>123</sup>

### Darren – overwhelming fines for public drunkenness

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

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Development issued a letter to Public Housing Authorities (PHAs) recommending that they reduce exclusion from public housing for ex-offenders, but despite this, many PHAs continue to bar many ex-offenders from eligibility. See National Law Center on Homelessness and Poverty, *Cruel, Inhuman, and Degrading: Homelessness in the United States under the International Covenant on Civil and Political Rights* (submitted to the UN Human Rights Committee on 23 August 2013) 8 (NLCHP, **Human Rights Committee Report**).

<sup>121</sup> Justice Connect Homeless Law, *In the Public Eye – personal stories of homelessness and fines* (August 2013) (available at: <http://www.justiceconnect.org.au/our-programs/homeless-law/law-and-policy-reform/infringements-and-public-space-offences/public-eye-personal-stories-homelessness-and-fines>) (**Justice Connect Homeless Law, In the Public Eye**).

<sup>122</sup> Ibid (Julia).

<sup>123</sup> Ibid (Emma).



The impact of the fines in my case just got harder because I kept getting more of them. Before I was able to address or pay for the existing one I already had I would cop another one and another one and it just got overwhelming. I was unable to pay due to the fact that I was only on Newstart at that time and living in boarding houses, which the rent there was pretty much a third of my payment so I couldn't live.<sup>124</sup>

In Vancouver, Aiyanas Ormond, Community Organiser from Vancouver Area Network of Drug Users (**VANDU**), spoke about tickets issued for minor offences such as jaywalking, illegal vending and public urination escalating into warrants for failure to appear in court. Mr Ormond said they see VANDU members going to jail as an indirect consequence of tickets for minor offences. He also said: 'Another part of the dynamic is that people start to rack up long rap sheets for procedural offences and when they come before a court the lengthy list and failure to appear warrants make a harsher sentence more likely'.

Professor Blasi also paints a picture of tickets and citations spiralling into larger criminal matters under the Safer Cities Initiative in LA's Skid Row:

For most residents of the City, a citation for jaywalking or walking against a signal light are a reminder, an inconvenience, and an unplanned expense. The "fine or bail" for the most common violation, walking against the "don't walk" signal is \$25.00. But by the time the various penalties and assessments are added (including sums earmarked for court facilities, DNA testing, and emergency medical services), the total comes to \$159.00. Again, for many of us this may be an inconvenience. But to someone subsisting on County General Relief, it is equal to nearly three weeks total income. And for a person with no income at all, there is no possibility of paying the "fine or bail." Those who do not pay can try to contest the citation in court, but a very high proportion of those cited in Skid Row are simply too disabled to comprehend what that might entail ... An interaction that began with an officer writing a ticket to a mentally disabled person unable to get his shopping cart across the intersection in time will have a more severe result the next time that person encounters a police officer: he will be arrested and taken to jail pursuant to the warrant. Fragile arrangements for food and shelter are likely to be disrupted and possessions lost in the shuffle. Certainly, there is no apparent mental health benefit to a trip to the County Jail, even for a short time.<sup>125</sup>

Javier Beltran, Directing Attorney of the Los Angeles Inner City Law Center Homelessness Prevention Project, spoke about the flow-on effects of citations or warrants for public space offences once people are housed. He said a lot of the issues they see with people facing eviction for rent arrears are 'to do with other baggage, including trying to pay their citations or warrants. It's hard for people to prioritise and it can jeopardise their housing'.

The above accounts make it clear that the burden of multiple citations or fines, the threat of enforcement and the very real risk of prison can exacerbate the stress and social exclusion of homelessness.

In thinking about policies and processes for regulating public space, we can't ignore the impact tickets have on people's already difficult circumstances and their future opportunities — it doesn't stop with the ticket.

The wisdom of using financial penalties to regulate use of public space by people experiencing the social and financial hardship of homelessness should be re-considered. In addition to the personal financial burdens they place on people experiencing or exiting homelessness, the financial costs they impose on the justice system are discussed in part 4.5 below.

## 4.2. Impacts on community safety and wellbeing

As discussed in part 3, the impetus for enforcement-based approaches to homelessness is often concerns about the impact of visible homelessness, and associated conduct, on the quality of life of other members of residential

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<sup>124</sup> Ibid (Darren).

<sup>125</sup> Blasi et al, *Policing Our Way out of Homelessness?*, above n 42, 30–1 (citations omitted).

and business communities. Decision-makers are required to balance the circumstances of the general community against those of individuals experiencing homelessness.

This section considers the impact of enforcement-based approaches to public space on communities. It discusses two different impacts:

- increased public safety and order, including through deterrence; and
- reinforced or legitimised public stereotypes about homelessness.

### ***Increased public safety and order and deterrence***

As has been discussed throughout this report, members of the general public or businesses can be uncomfortable with the presence of people experiencing homelessness sleeping rough, begging or drinking in their neighbourhood. In response, enforcement-based measures are introduced to address this conduct or remove it from local areas.

As has also been discussed, in many cases the issue is *perceived* disorder or lack of public safety, rather than an actual threat or risk. As Johnsen and Fitzpatrick acknowledge, however, ‘the impact of these [street] activities on other members of the community must be given due regard when assessing the overall appropriateness and justice of interventions, particularly where street activities have a major impact on particular sections of the community’.<sup>126</sup>

With this in mind, this section considers whether enforcement-based initiatives are effective in improving public safety and order in local communities through reducing crime and ‘anti-social behaviour’, including any deterrent effect of potential enforcement.

The table below provides a snap shot of evaluations and assessments of enforcement-based initiatives in terms of whether or not they have improved public order and safety. The examples focus only on reported outcomes as they relate to actual or perceived improvements in public safety and order – they are of course not comprehensive evaluations.

<b>Jurisdiction</b>	<b>Enforcement-based approach</b>	<b>Impact on public safety and order</b>
<b>Los Angeles</b>	<b>Safer Cities Initiative (SCI) – 50 new police officers deployed to police Skid Row (see part 3.3)</b>	There are conflicting views on whether the SCI has reduced crime in Skid Row. Berk and MacDonald’s evaluation of the SCI found a small decline in each type of crime (nuisance, property and violent crimes) after the SCI was implemented and, while this trend was also found in comparison areas (i.e. areas where SCI had not been introduced), their analysis indicated a downward trend unique to the Central Division of Los Angeles, where the SCI was targeted. <sup>127</sup> In contrast, Blasi and Stuart analysed figures for the year prior to the launch of SCI and the year after and compared the data on crimes occurring in Skid Row with those occurring in the remainder of the Central Area. They found that, ‘as to overall serious or violent crime, the reduction in crime in the SCI

<sup>126</sup> Johnsen and Fitzpatrick, *The Impact of Enforcement*, above n 7, 7.

<sup>127</sup> Berk and MacDonald, *Policing the homeless*, above n 97.

Jurisdiction	Enforcement-based approach	Impact on public safety and order
		<p>deployment area was not statistically significant from the reduction in the non-SCI area'.<sup>128</sup> Their figures show:</p> <ul style="list-style-type: none"> <li>– The SCI resulted in about 750 arrests per month.</li> <li>– Of these, more than half (55.3%) were for drug offences. Of the drug offences, there were a nearly equal number of arrests for drug sales as for drug possession and the high percentage of drug sales arrests appeared to result from 'buy/bust' stings targeting ordinary addicts.</li> <li>– Of the non-drug offences, few arrests were for serious, violent crimes. Of 1,346 arrests by the SCI Task Force, only 22 were for homicide (1), robbery (8), rape (0), or aggravated assault (13).<sup>129</sup></li> </ul>
New York City	Stop and frisk <sup>130</sup>	<p>Approximately 2.4 million stops occurred between 2009 – 2012. Close to 150,000 arrests resulted from those stops (i.e. only 6% of stops resulted in arrest).</p> <p>On 12 August 2013, a federal court judge found that the stops disproportionately impacted minorities (84% of people stopped were black and Latino despite these two groups only making up 52% of the city's population) and were unconstitutional (i.e. the NYPD had violated the equal protection clause in the Fourteenth Amendment and the Fourth Amendment, which prohibits unreasonable searches and seizures).<sup>131</sup></p> <p>The Attorney General released a report finding that:</p> <ul style="list-style-type: none"> <li>– of the 6% of people stopped and frisked who were arrested, roughly half (i.e. 3% of total stops) led to guilty pleas or convictions at trial;</li> <li>– 0.3% of total stops led to jail sentences of more than 30 days; and</li> <li>– 0.1% of total stops led to convictions for a violent crime.<sup>132</sup></li> </ul> <p>The Attorney General's report states: 'These findings merit consideration in the broader discussion of the efficacy of stop and frisk as a law enforcement tool'.<sup>133</sup></p>
City of London	Operation Fennel – targeted begging initiative, combining services and enforcement	As discussed in part 4.1, a number of the reported outcomes for Operation Fennel focussed on linking people suspected of begging with services and shelter. Four reported outcomes refer to improved public

<sup>128</sup> Blasi and Stuart, *Has the Safer Cities Initiative Reduced Serious Crime?*, above n 78.

<sup>129</sup> Ibid.

<sup>130</sup> Under stop and frisk, citizens are temporarily detained for purposes of questioning, and at times frisked or searched. Section 140.50 of the *New York Criminal Procedure Law* authorizes a police officer 'to stop a person in a public place ... when he reasonably suspects that such person is committing, has committed or is about to commit either (a) a felony or (b) a misdemeanor.' Once that stop has been made, the Criminal Procedure Law authorises a frisk of the person only if the officer 'reasonably suspects' that he is in danger of physical injury.

<sup>131</sup> *Floyd v City of New York* 08 Civ 1034 (SAS), 2013 US Dist (SDNY 12 August 2013).

<sup>132</sup> Eric T Schneiderman (New York State Attorney General, Civil Rights Bureau), *A Report on Arrests Arising from the New York City Police Department's Stop-and-Frisk Practices* (November 2013) (available at: [http://www.ag.ny.gov/pdfs/OAG\\_REPORT\\_ON\\_SQF\\_PRACTICES\\_NOV\\_2013.pdf](http://www.ag.ny.gov/pdfs/OAG_REPORT_ON_SQF_PRACTICES_NOV_2013.pdf)) (**Schneiderman, Report on Arrests from Stop and Frisk Practices**) 3.

<sup>133</sup> Ibid 4.

Jurisdiction	Enforcement-based approach	Impact on public safety and order
	(see part 4.1 and part 6.4)	<p>order or the reduced presence of people begging in the City:</p> <ul style="list-style-type: none"> <li>– relocation assistance to homeless people who want to go home to other parts of the country;</li> <li>– 3 prolific and problem beggars have left the City area;</li> <li>– the business community has praised Operation Fennel for its success in dealing with their begging issues; and</li> <li>– public houses having far less trouble with anti social behaviour.<sup>134</sup></li> </ul>
United Kingdom	<p><b>Enforcement interventions in five UK cities, including ASBOs, injunctions, arrests for begging or sleeping rough under the Vagrancy Act 1824, controlled drinking zones, dispersal orders, designing out and alternative giving schemes</b></p>	<p>‘Affected members of the public, and enforcement agents, were not unsympathetic to the vulnerability of street users, but were clear that their top priority was a reduction in the negative impact of street culture on their daily lives. Most felt that the strategies adopted in their local area had been successful in bringing about a sharp decline in street activities ... “Harder” forms of enforcement – particularly ASBOs – were key to the reduction of street activities in targeted areas and clearly had a powerful (direct and indirect) deterrent effect ... “softer” forms of enforcement – especially controlled drinking zones and environmental designing out measures – were highly effective in reducing the visibility of street activities.’<sup>135</sup></p>
Hungary	<p><b>Prohibition on habitually residing in a public place (see part 5.5)</b></p>	<p>‘[R]egarding busy public places and transport hubs, overcrowding decreased visibly and public health conditions were improved as a consequence of the measures’.<sup>136</sup></p>
Toronto	<p><b>Safe Streets Act (SSA) – prohibition on aggressive begging and ‘squeegeeing’ (see part 3.2)</b></p>	<p>O’Grady, Gaetz and Buccieri note:</p> <ul style="list-style-type: none"> <li>– There is evidence that panhandling and squeegeeing have declined over the past decade – in 1999 29% of the street youth sample reported panhandling and squeegeeing as their main source of income compared with less than 3% in 2009.</li> <li>– The 2009 City of Toronto Street Needs Assessment also shows a decline in panhandling as a source of income, from 17.4% in 2006, to 9.7% in 2009.</li> <li>– It is not clear whether or not the SSA is a major factor in precipitating this decline (other factors including the outreach strategy of Streets to Home also undoubtedly contributed), but ‘there is little doubt that the SSA has also had an impact’.<sup>137</sup></li> </ul>

<sup>134</sup> Operation Fennel, *City of London Policing Plan*, above n 100.

<sup>135</sup> Johnsen and Fitzpatrick, *The Impact of Enforcement*, above n 7, viii–ix .

<sup>136</sup> Permanent Mission of Hungary to the United Nations Office and Other International Organizations in Geneva, *Response of the Government of Hungary to the Joint Urgent Appeal dated 12 March 2013* (19 April 2013) 4 (available at: [https://spdb.ohchr.org/hrdb/23rd/Hungary\\_19.04.13\\_\(1.2013\).pdf](https://spdb.ohchr.org/hrdb/23rd/Hungary_19.04.13_(1.2013).pdf)) (**Government of Hungary Response to Joint Urgent Appeal 2013**).

<sup>137</sup> O’Grady, Gaetz and Buccieri, *Can I See your ID?*, above n 10, 29.

Jurisdiction	Enforcement-based approach	Impact on public safety and order
		<ul style="list-style-type: none"> <li data-bbox="699 215 1441 315">– The law ‘is designed to address aggressive panhandling and squeegeeing, not as a broader and more general strategy to eradicate these forms of income generation’.<sup>138</sup></li> <li data-bbox="699 349 1441 472">– Despite the decrease in homeless people begging and squeegeeing, the number of tickets issued by the Toronto Police Service under the SSA increased from 710 in 2000 to 15,324 in 2010 (an increase of 2,147%).<sup>139</sup></li> </ul>

From the sample above, most of the jurisdictions reported a decline in ‘street activity’ including begging, street drinking or squeegeeing, which was at least partly attributable to enforcement-based measures. However, evidence regarding any improvement in public safety through a reduction in serious crime is inconclusive (in New York City, only 6% of people stopped under stop and frisk were arrested and 0.1% were convicted of a violent crime).<sup>140</sup> Furthermore, there are findings of discriminatory impacts on innocent members of the community and in some cases a sense that activity is moved elsewhere rather than addressed. Essentially, the causal link between tougher enforcement and improved public safety is not clear.

In examining the impact of enforcement on improved safety and public order, we also need to consider the deterrent effect of enforcement i.e. the idea that people will modify their behaviour in response to the risk of enforcement.

Johnsen and Fitzpatrick found that:

even the threat of an ASBO could bring about substantial changes in street behaviour because of the possibility of long prison sentences for breach of ASBO conditions. Moreover, when preceded by warning stages ... and integrated with intensive support interventions, ASBOs could bring about positive benefits for some street users – causing them to desist from anti-social behaviour ... and engage with drug treatment and other services.<sup>141</sup>

In this example, ASBOs were used as a last resort after warning stages and accompanied by access to supports. Even then, there was a significant risk of the ‘deterrent’ manifesting in unpredictable, negative ways on vulnerable people, including geographical and activity displacement (i.e. isolation from services and supports and engagement in potentially higher risk activities).<sup>142</sup>

The case study below highlights the limited deterrent effect of tickets, infringements or fines as an enforcement-based mechanism for regulating public space.

## The deterrent of ticketing or fining people experiencing homelessness – Victoria

Homeless Law client Scott, whose circumstances motivated this project, initially sought legal assistance with approximately \$6000 in fines for being drunk in public. Scott battles chronic alcohol dependence, depression and

<sup>138</sup> Ibid 9.

<sup>139</sup> Ibid 10.

<sup>140</sup> Schneiderman, *Report on Arrests from Stop and Frisk Practices*, above n 132, 3.

<sup>141</sup> Johnsen and Fitzpatrick, *The Impact of Enforcement*, above n 7, ix.

<sup>142</sup> Ibid.

anxiety, an acquired brain injury and has cycled in and out of homelessness for much of his adult life.

When he came before the court the first time, Scott's matter was adjourned subject to an undertaking to be of 'good behaviour' and continue to engage with his psychologist and drug and alcohol counsellor.

The undertaking was for a six-month period. During this time, Scott's relationship broke down, he was forced to move back into a boarding house and he was unable to maintain sobriety. Scott relied heavily on alcohol to deal with the end of his relationship and the danger of his living environment. He received two more fines for being drunk in public during the undertaking period.

Scott had to go back before the court three more times in relation to these fines. Throughout this time, he consistently engaged with his psychologist and drug and alcohol counsellor and was dedicated to his recovery.

Scott provides a compelling example of someone who should not be caught up in the fines system in the first place. The prospect of being fined for public drunkenness did not act as a deterrent for him because his behaviour was dictated by addiction and homelessness; nor did it provide an incentive for him to recover.

Scott was making a committed effort to engage with support services to assist him with his rehabilitation and he indicated that he was motivated to do this by the needs of his children and his health rather than the stressful legal proceedings. The fact that he suffered countless barriers to overcoming his 20 year alcohol dependence was not addressed by criminalising what is a health and social issue.<sup>143</sup>

In summary, fining people experiencing homelessness, mental illness and/or substance dependence rarely has the preventative effect that it might otherwise have for people whose conduct is not so heavily influenced by severe hardship. Furthermore, enforcement mechanisms such as anti-social behaviour orders which are powerful deterrents because of the potentially severe consequences ('[t]he ASBO is what scares people because that's the thing that's really gonna impact on their life')<sup>144</sup> present high risks in terms of the re-direction of vulnerable people's conduct (for example, toward theft or sex work).<sup>145</sup>

The risks of (a) ineffectiveness; or (b) ostensible effectiveness, but with highly adverse consequences for vulnerable people, must be kept in mind when assessing the potential for enforcement-based mechanisms to address conduct related to homelessness and improve safety and public order in local areas.

## ***Reinforcing and responding to public stereotypes about homelessness***

As discussed throughout this report, enforcement-based approaches to homelessness are often motivated by public concerns about the presence and conduct of people experiencing homelessness in local areas.

Professor Stephen Gaetz discussed reactive law-making in the context of Ontario's *Safe Streets Act*. He recounted that at the time of introducing the Act, the then Attorney-General had said words to the effect of: 'when the public feels unsafe walking on the street, that's when it's time for government to act'. Professor Gaetz said: 'that's not the case at all ... legislators need to respond to criminality, not fear and prejudice'.

Reflecting on the extract of *Broken Windows* in part 3.5 above, which refers to law enforcement that seeks to minimise 'fear' of crime not necessarily crime itself, it is important to consider whether such unquestioning reactions to public concern are the foundation of effective law and policy. While certainly community concerns

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<sup>143</sup> See Lucy Adams, 'A Glass Half Empty: Perspectives on Criminalising Homelessness and Alcohol Dependence' (2012) 25(2) *Parity: Policing Homelessness* 15.

<sup>144</sup> Johnsen and Fitzpatrick, *The Impact of Enforcement*, above n 7, 30 quoting a police representative from Birmingham.

<sup>145</sup> Johnsen and Fitzpatrick, *The Impact of Enforcement*, above n 7, 31.



must be heard and considered, they are not the only factor that should determine whether an enforcement-based approach is necessary and appropriate.

The Leeds 'zero tolerance' approach to people begging in the city is another example of reactive enforcement-based responses to community pressures.

## Leeds – market research poll informs response to begging

In 2004, the police in Leeds adopted a 'zero tolerance' approach to people begging in the city, under which they arrested all people begging regardless of whether it was passive or aggressive. This decision was informed by market research poll which found that members of the public felt threatened even by those begging 'passively'.<sup>146</sup>

Over three years, there were 300 arrests (of 106 individuals) for begging and 37 ASBOs were issued. Members of the community were given information leaflets, which included the individual's name, photograph and a list of activities prohibited by their ASBO so they could easily identify and report alleged breaches of the ASBO.<sup>147</sup>

An 'alternative giving' scheme was also introduced, which reminded people that 'begging is a crime' and discouraged the public from giving directly to people begging but suggested that they instead donate to a local homeless agency.<sup>148</sup>

'Alternative' or 'diverted' giving schemes are community education initiatives that discourage members of the public from giving money directly to people begging and instead encourage donations to identified local homeless charities. They usually entail a public awareness campaign, including posters and stalls at train stations where homeless sector workers explain to commuters why they should avoid giving money to people who are begging.

The *Killing with Kindness* 'alternative giving' scheme was on foot while I was in London.



London: Killing with Kindness campaign poster

<sup>146</sup> See Johnsen and Fitzpatrick, *The Impact of Enforcement*, above n 7, 16.

<sup>147</sup> Ibid.

<sup>148</sup> Ibid.

## Killing with Kindness – alternative or diverted giving campaigns

The *Killing with Kindness* campaign has been run by Thames Reach – a large London-based homeless charity with the ultimate goal of ending street homelessness – since 2003 and is supported by a number of other agencies.<sup>149</sup>

An earlier campaign poster delivered the message: ‘Can you spare 20p for a cup of tea? How about £10 for a bag of heroin? Or £12 for a rock of crack? The money you give to those who beg may help keep them on the streets. It may even help to buy the drugs that kill them. Put your spare change where it counts instead. Thames Reach Bondway – Ending street homelessness’.<sup>150</sup>

A newer version of the poster says: ‘Are you killing with kindness? The money you give to people begging is likely to be spent on heroin, crack cocaine and alcohol. Don’t line the pockets of drug dealers – support your local homelessness charity instead. If you see someone sleeping rough or begging, you can call the Lambeth SORT helpline on 0870 383 3300 so that our outreach team can help. To make a donation, volunteer your time, or for more information on how we are working to end rough sleeping, visit [www.thamesreach.org.uk](http://www.thamesreach.org.uk). Thank you’.<sup>151</sup>

The campaign is based on ‘[o]verwhelming evidence [which] shows that people who beg on the streets of London do so in order to buy hard drugs, particularly crack cocaine and heroin, and super-strength alcoholic beers and ciders’.<sup>152</sup> The evidence cited includes evidence from outreach teams who say ‘80 per cent of people begging do so to support a drug habit’ and drug testing of people arrested for begging done by the Metropolitan Police, which ‘indicated that between 70 and 80 per cent tested positive for Class A drugs’.<sup>153</sup>

The campaign is also based on the suggestion that ‘only 40 per cent of people arrested for begging in a Metropolitan Police operation claimed to be homeless. Most people begging have accommodation of sorts, either a hostel place or a flat or bed-sit’.<sup>154</sup>

Underpinning the campaign is the notion that ‘people are more likely to accept help and to address their addictions when they are not receiving money from begging’, which is drawn from the experience of frontline outreach workers.<sup>155</sup>

The risks, desperation and health implications that substance dependence can bring are clear and efforts to support people to deal with their addictions, including through assisting the efforts of frontline outreach workers, should be welcomed. However, the following aspects of this campaign and others like it warrant further consideration:

- **Evidence-base and communication** – the evidence does not appear to be as ‘overwhelming’ as indicated: it is made up of anecdotal (although important) evidence from outreach teams and drug testing and questioning by the Metropolitan Police. Moreover, it refers to 70 – 80% of people arrested for begging testing positive for drugs and ‘only 40%’ being homeless. Phrased differently, almost half of people begging were homeless and 20 – 30% showed no signs of drug use. These are important figures.

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<sup>149</sup> See Thames Reach, *Killing with Kindness* (available at: <http://www.thamesreach.org.uk/news-and-views/campaigns/giving-to-beggars/>) (**Thames Reach, *Killing with Kindness***); Jeremy Swain (CEO of Thames Reach), ‘Do the Right Thing’ *Inside Housing UK* (25 October 2013) (**Swain, *Do the Right Thing***). In 2013, Thames Reach joined forces with the City of London, Tower Hamlets and Broadway to run the ‘advertising campaign’ in two boroughs.

<sup>150</sup> Thames Reach, *Campaign Materials: Killing with Kindness* (available at: <http://www.thamesreach.org.uk/publications/campaign-materials/>).

<sup>151</sup> Thames Reach, *Killing with Kindness*, above n 149; Swain, *Do the Right Thing*, above n 149.

<sup>152</sup> Thames Reach, *Killing with Kindness*, above n 149.

<sup>153</sup> *Ibid.*

<sup>154</sup> *Ibid.*

<sup>155</sup> *Ibid.*; Swain, *Do the Right Thing*, above n 149.



- **Links with homelessness** – the links between homelessness and begging are unclear: in noting that only 40% of people arrested for begging by the Metropolitan Police were homeless, Thames Reach indicates that the other 60% had ‘accommodation of sorts, either a hostel place or a flat or bed-sit’. Hostels are emergency accommodation ‘for single homeless people ... where you can stay for a short time’.<sup>156</sup> By many definitions, including in the UK and Australia, people in hostels are homeless.<sup>157</sup> Furthermore, this evidence is not incontrovertible. By way of example, all of the ‘street users’ interviewed as part of Fitzpatrick and Johnsen’s research on the impact of enforcement on street users were homeless or had a history of homelessness:

Given the controversy over this issue ... it is important to highlight that three quarters of the in-depth interview sample (27 interviewees) were homeless at the point of interview: 10 were sleeping rough, 11 were living in hostels, rolling/night shelters or Bed and Breakfast hotels, five were “sofa-surfing” round friends and relatives and one was staying in a squat. All of the 10 interviewees who had settled accommodation at the point of the interview had a history of homelessness.<sup>158</sup>

An earlier study of 19 people begging in London, Luton, York and Edinburgh found that almost 50% (nine) of participants were sleeping rough, seven were staying in hostels or with friends and three had accommodation.<sup>159</sup>

- **Impact on public understanding** – even if people begging are battling drug dependence and are not ‘homeless’, these strongly delivered messages oversimplify complex circumstances and reinforce stereotypes about poverty, homelessness and substance dependence that we’ve all fought hard to dispel. In its simplest form it says people whose hardship is extremely visible all have a drug problem and in this way it risks leading to broader, unhelpful changes in public attitudes to poverty (or indeed entrenching attitudes that still exist).<sup>160</sup> There is also the risk that engagement with support isn’t the only alternative to begging and if a person is dealing with acute drug dependence other measures that are less safe for the community and the individual may be resorted to.<sup>161</sup>

While they are driven by very different motives – (a) to encourage people to engage with services and (b) to clean up the streets to avoid public discomfort with people begging – both alternative giving schemes and ‘zero tolerance’ approaches to begging reinforce and respond to unhelpful attitudes about people experiencing homelessness and poverty.

Instead, we should be working to improve community understanding about the complex causal factors behind homelessness, begging and substance dependence and encouraging more evidence-based, less reactive responses to these issues.

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<sup>156</sup> See Shelter, *Where to stay in an emergency: Night shelters and emergency hostels* (available at: [http://england.shelter.org.uk/get\\_advice/homelessness/emergency\\_accommodation\\_if\\_homeless/nightshelters\\_and\\_hostels\\_for\\_homeless\\_people](http://england.shelter.org.uk/get_advice/homelessness/emergency_accommodation_if_homeless/nightshelters_and_hostels_for_homeless_people)).

<sup>157</sup> See, eg, Australian Bureau of Statistics, *Information Paper – A Statistical Definition of Homelessness* (4922.0: 4 September 2012), which explains the ABS definition: ‘When a person does not have suitable accommodation alternatives they are considered homeless if their current living arrangement: is in a dwelling that is inadequate; or has no tenure, or if their initial tenure is short and not extendable; or does not allow them to have control of, and access to space for social relations’.

<sup>158</sup> Johnsen and Fitzpatrick, *The Impact of Enforcement*, above n 7, 6.

<sup>159</sup> Hartley Dean and Margaret Melrose, ‘Easy Pickings or Hard Profession? Begging as an Economic Activity’ in Hartley Dean, *Begging Questions: Street-Level Economic Activity and Social Policy Failure* (Policy Press, Bristol UK, 1999) 83 (**Dean, Begging Questions**), 85.

<sup>160</sup> See, eg, Joe Hermer, ‘Policing compassion: “Diverted Giving” on the Winchester High Street’ in Dean, *Begging Questions*, above n 159: ‘retailers benefited from a moralised environment where anyone begging in the downtown area could be labelled as unworthy and subjected to being moved on’. Hermer also said that the scheme: ‘generated a coherent and concrete set of circumstances which was aligned with the interests of city officials, retailers, and the police: to “target the undesirables” and configure public compassion in a way that made the “moving on” of beggars acceptable to the pedestrian conscience’ (215).

<sup>161</sup> See part 4.1 above. See also *ibid* 203, which discusses an early ‘diverted giving’ scheme and the unanticipated impact on homelessness services. The nominated homelessness charities reported that the ‘diverted giving’ money accounted for less than 2% of their operating budget, but because of the significant promotion around the scheme, people experiencing homelessness requested free or reduced cost shelter and meals. When staff indicated it wasn’t possible, people would – understandably – refer to local newspaper articles stating that the service just got £2000 from the ‘begging boxes’. People experiencing homelessness also resented the services for the perceived role they played in the parallel ‘harsher policing regime’. One of the services requested that their name be removed from the begging boxes.

## 4.3. Impacts on police and relationships with communities

The reliance on enforcement-based responses to homelessness requires a heavy investment of resources from police. This role can present challenges for local police both in terms of their capacity and their skill set – police are not always equipped to play this role and in many cases it is not a role they want to play.

In addition to considering these pressures, this section discusses the impact that frequent contact with police in relation to minor offences can have on relationships between police and homeless members of the community and the increased vulnerability of people experiencing homelessness that can result from this fractured relationship.

### *The strain on police*

The focus of enforcement-based approaches to regulating public space is often on the role of police as enforcing laws and implementing ‘crackdowns’ or targeted responses to people experiencing homelessness. Frequently, however, it is not police initiating these responses, rather the response comes from government decision-makers and police are directed to implement it. Sometimes it is the police who resist tougher enforcement or, as was the case with the City of London Police’s Operation Fennel, propose an alternative approach.

#### South Carolina – ban on homeless people resisted by local police

In an effort to revitalise the city, Columbia, South Carolina proposed a plan to ban homeless people from the local downtown area.<sup>162</sup> The operation hours of the 240-bed homeless shelter on the outskirts of the city were going to be extended and it was proposed that vans would shuttle homeless clients to daily appointments for jobs, medical services or mental health treatment.

The 1500 people experiencing homelessness would be asked to leave the city centre and existing ordinances, including prohibitions on loitering, public urination and other nuisance violations were going to be strictly enforced against homeless people in the city. The city would post more police officers on key downtown streets to enforce public space laws and at least one police officer would be posted at a key access road to the shelter to make sure homeless people were not entering the city centre on foot.<sup>163</sup> There was going to be a ‘hotline’ for community or business members to contact if homeless people were identified in the city.

Homelessness advocates expressed significant concern about the proposal, but the plan was passed by the Council. The local police chief then opposed the plan, identifying that this wasn’t what he wanted to spend limited police resources on. Executive Director of the National Coalition for the Homeless, Jerry Jones, indicated that the police’s resistance to the proposal was crucial to its eventual revocation.

The Columbia police chief’s concern with implementing the proposed plan was the strain it would place on police resources. Police forces have not been immune to budget cuts in recent years and their limited resources must be allocated carefully. By way of example, no additional resources were available to the City of London Police to run Operation Fennel, so other police operations had to be cut back to make room for the targeted begging initiative.

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<sup>162</sup> Clif Le Blanc, ‘Being homeless in Columbia could get you arrested’ *The State* (10 August 2013).

<sup>163</sup> Ibid citing the Emergency Homeless Response Plan proposed by Councillor Cameron Runyan (available here: [http://www.columbiasc.net/depts/city-council/docs/old\\_downloads/08\\_13\\_2013\\_Agenda\\_Items/Emergency\\_Homeless\\_Response\\_13\\_August\\_2013.pdf](http://www.columbiasc.net/depts/city-council/docs/old_downloads/08_13_2013_Agenda_Items/Emergency_Homeless_Response_13_August_2013.pdf)).

In addition to the resource pressure, a number of people I spoke with recognised that ‘police are not social workers’. While on the one hand, it is critical that they are provided with comprehensive training to assist them to understand and respond appropriately to people experiencing homelessness, including through choosing options other than arrests or tickets; on the other hand, there are limits to the role police can play in addressing the complex economic, social and health-based problems that underpin homelessness.

Assistant Chief Diane Groomes of the District of Columbia Metropolitan Police Department summarised this well:

A lot of what we deal with now is not crime ... a lot of investment should go into services instead of using police to solve these problems: we’re not psychologists ... At the moment it’s so easy to find police, but people need services.

Police are often the automatic go-to agency for concerns about problematic conduct in public places. In addition to imposing a resource burden on the police – and potentially diverting resources from more serious crime – this role is not necessarily a role officers are best equipped to play and in these ways enforcement-based approaches to homelessness can place an unreasonable strain on local police.

## ***Diminished trust in law enforcement and broken relationships with police***

People experiencing homelessness have a disproportionate amount of contact with police and enforcement officers. This contact may be initiated because the person is:

- breaking a law that specifically prohibits homelessness (for example, laws prohibiting rough sleeping, urban camping or sitting or lying on the sidewalk);
- breaking a law which he or she would not have broken if they had a private place to conduct their private lives (for example, public drunkenness or urination);
- breaking a law that is enforced in a discretionary way and may go unpunished for other members of the community (for example, jaywalking or being drunk in a public place);
- undertaking activity that is the subject of a ‘crackdown’, blitz or targeted law enforcement operation (for example, an operation to target begging or rough sleeping in the local area); and/or
- not breaking any law, but the attention of law enforcement officers is heightened by the visibility of homelessness and, in some cases, the attitudes of enforcement officers to people experiencing homelessness.

The impact of repeatedly coming to the attention of enforcement officers for one or more of the above reasons can cause people experiencing homelessness to feel targeted, harassed and/or discriminated against. One of the participants in *In the Public Eye – personal stories of homelessness and fines* spoke about what it’s like to feel targeted by enforcement officers. Hamish has been homeless since his mid-teens. He has battled drug dependence and mental illness and accrued \$13,000 in infringements for not having a ticket on trains and trams. He said:

It’s a bit upsetting when you are on a tram or train and you find that whenever there is a ticket officer they immediately bee-line their way to you. It does something to your self esteem. The first few times it happens you think nothing of it, but then by the end you are looking for these people. I’m like a dog who has been hit. Once you’ve had the crap beaten out of you a few times it just becomes “yes sir”, it’s kind of sad in a way.<sup>164</sup>

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<sup>164</sup> Justice Connect Homeless Law, *In the Public Eye*, above n 121 (Hamish) (name has been changed).

In addition to causing people experiencing homelessness to be caught up in the justice system, with overwhelming debts, outstanding warrants or facing jail, frequent contact between enforcement officers and homeless people erodes trust and damages the relationship between police and homeless members of the community.<sup>165</sup>

In relation to tickets issued to homeless youth in Toronto, O'Grady, Gaetz and Buccieri note that while many of the 244 homeless young people they interviewed acknowledge that they were breaking the law at the time, 'one third believe[d] the charges to be frivolous, and that they were singled out for offences that the average person would not be'.<sup>166</sup>

The way in which the regularity of contact between police and people experiencing homelessness impacts on the relationship between these two groups was apparent when I spoke with the City of London Police about the attempts of Operation Fennel to link people begging in the City with support services.

## Trust and policing – fear of getting nicked

A primary stated aim of Operation Fennel is to link people begging in the City of London with services to help them address the underlying causes of their begging.

The fragile relationship between police and people experiencing homelessness (for various reasons, including past interactions) initially impacted on Operation Fennel and people didn't show up to the service hubs. The service hubs brought together a range of services and attendance at the hub was the alternative to being charged for begging by the City of London Police.

Sergeant Montgomery explained: 'they thought we were trying to get them in one place and nab them; they thought it was a trick'. Gradually, through word of mouth, trust was built and more people started to show up and Sergeant Montgomery said 'it's picking up steam now'.

This is a clear example of the impact that policing practices or interactions can have on the relationship between police and people experiencing homelessness. This lack of trust affects the way in which people experiencing homelessness respond to police. The trust can be damaged by regularity of contact and it is further eroded if there is actual perceived discrimination in the policing of marginalised groups in the community.

Kelling and Wilson, creators of the broken windows theory and arguably the world's most well-known proponents of rigorous policing, were mindful of the risk of discrimination in their proposed policing method:

The concern about equity is more serious. We might agree that certain behavior makes one person more undesirable than another but how do we ensure that age or skin color or national origin or harmless mannerisms will not also become the basis for distinguishing the undesirable from the desirable? How do we ensure, in short, that the police do not become the agents of neighborhood bigotry?

We can offer no wholly satisfactory answer to this important question. We are not confident that there is a satisfactory answer except to hope that by their selection, training, and supervision, the police will be inculcated with a clear sense of the outer limit of their discretionary authority. That limit, roughly, is this—the police exist to help regulate behavior, not to maintain the racial or ethnic purity of a neighborhood.<sup>167</sup>

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<sup>165</sup> See, eg. Roger Hopkins Burke, 'Tolerance or intolerance? The policing of begging in the urban context' in Dean, *Begging Questions*, above n 159, 219, 227 discussing 'zero tolerance' policing in the UK in the late 1990s and quoting Charles Pollard, Chief Constable of the Thames Valley Constabulary, who described it as a 'short-term fix and long-term liability'. Hopkins Burke notes that a 'key main concern from this viewpoint is that insensitive policing could lead to an escalation of conflict between the police and the communities they are charged with policing'.

<sup>166</sup> O'Grady, Gaetz and Buccieri, *Can I See your ID?*, above n 10, 11.

<sup>167</sup> Kelling and Wilson, *Broken Windows*, above n 52.

A US federal court has recently found that discrimination was a factor in the NYPD's use of their 'discretionary authority' and that stop and frisk practices impacted disproportionately on racial minorities and violated the Constitution.<sup>168</sup> The impact of this approach on the community's confidence in the police was apparent when I visited New York City.

## Stop and frisk – the impact on relationships with the NYPD

In 2011–12 the Center for Constitutional Rights (CCR) conducted 54 interviews with people who had been stopped and frisked by the NYPD about the impact those stops had on them. Although the focus was on race-based stops, Nahal Zamani, Advocacy Program Manager, Government Misconduct and Racial Justice with CCR said: 'we couldn't divorce housing status, income and people who were, or were perceived to be, homeless from what we were hearing: people were stopped for who they were, not what they were doing and it was having a lasting effect'.

A clear message from the Talking Transition forum on policing and public safety (a community conversation in preparation for Mayor Bill de Blasio's inauguration) was: 'you should feel safe when you see the police'. When people don't have this confidence, they don't seek help when things go wrong, which makes communities or groups within communities less safe.

People at the forum called for a new era of safety and respect in their communities. They talked about wanting a change in practices and law, but also 'a change in tone'. One young person said: 'we want it to be about protecting us, not criminalising us'. The message was that it's possible to have policing that's 'lawful and just and effective'.

The CCR points out: 'NYPD's aggressive use of stop and frisk does significant damage to police-community relations in ways that may actually reduce public safety'.<sup>169</sup> It refers to several of the 54 people interviewed about their experience of stop and frisk as saying that they would never call the police if they needed help.<sup>170</sup>

The danger of these broken police-community relationships was apparent in the Missing Women Commission of Inquiry in Vancouver, which identified that local low income women's vulnerability was amplified by their reluctance to engage with police, including because of outstanding warrants.

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<sup>168</sup> *Floyd v City of New York* 08 Civ 1034 (SAS), 2013 US Dist (SDNY 12 August 2013).

<sup>169</sup> CCR, *Stop and Frisk: The Human Impact*, above n 115, 15.

<sup>170</sup> *Ibid.*





Vancouver: An infamous SRO, Hotel Balmoral

## Missing Women Commission – the dangerous consequences of broken relationships with police

In September 2010 the Missing Women Commission of Inquiry was established to examine police investigations into the murders and disappearances of numerous women from the Downtown Eastside between 1997 and 2002. The inquiry was also reconsidering the decision of the Criminal Justice Branch to stay proceedings against Robert Pickton on charges of attempted murder, assault with a weapon, forcible confinement, and aggravated assault. Pickton was later convicted of the murder of six women and sentenced to life in prison.

The final report of the Commission, *Forsaken*,<sup>171</sup> was released by Commissioner Wally Oppal QC in November 2012. It is 1,448 pages, contains 63 recommendations and concludes that 'the police investigations into the missing and murdered women were blatant failures'.<sup>172</sup>

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

Addressing the relationship between Vancouver's poorest neighbourhood and the Vancouver Police Department, Oppal recommended 'that the City of Vancouver and the Vancouver Police Department take proactive measures to reduce the number of court warrants issued for minor offences by:

- reducing the number of tickets issued and charges laid for minor offences;
- developing guidelines to facilitate greater and more consistent use of police discretion not to lay charges;
- and

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<sup>171</sup> The Honourable Wally T Oppal QC, Commissioner, *Forsaken: The Report of the Missing Women Commission of Inquiry* (19 November 2012) (available at: [http://www.ag.gov.bc.ca/public\\_inquiries/docs/Forsaken-ES.pdf](http://www.ag.gov.bc.ca/public_inquiries/docs/Forsaken-ES.pdf)).

<sup>172</sup> Ibid 160.

- increasing the ways in which failures to appear can be quashed early in the judicial process'.<sup>173</sup>

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

## 4.4. Impacts on the effectiveness and efficiency of the justice system

Enforcement-based responses to homelessness invoke law enforcement and the justice system as tools for managing the presence and activities of homeless people in public places. Depending on the nature of the enforcement mechanism (for example, infringements or tickets, arrests, move-on powers, sentencing and/or court orders), different arms of the justice system will be impacted to varying degrees.

This section considers the impacts of using enforcement-based mechanisms to deal with homelessness on the following players in the justice system:

- legal and community services that assist clients to navigate the legal system; and
- courts.

### *The burden on legal services*

Part of the motivation for this project was the recognition that, for Homeless Law's 13 year existence, fines, infringements and warrants for conduct directly related to homelessness have prevailed as the most common legal issue affecting our clients. Assisting clients with these matters comprises approximately 50% of our annual work and in FY 2012 – 2013 we opened 166 new matters for clients overwhelmed with fines, some of whom were facing prison.

As discussed above, an analysis of 13 Homeless Law public space files by an external consultant showed that cases took between 6 months and 2.5 years to resolve (the average time was 14 months) and the average cost to pro bono law firms of running a public space file was \$19,825 per matter. One matter required an investment equivalent to \$54,000 in fees to resolve.<sup>174</sup>

In a recent position paper, a working group of Victorian community legal centres and financial counselling services noted: 'In addition to imposing hardship on individuals, the current system presents a significant resource burden for the legal services, financial counsellors and other support services that assist clients to deal with infringements'.<sup>175</sup>

This is not unique to Victoria:

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<sup>173</sup> Ibid 131.

<sup>174</sup> Justice Connect Homeless Law, *What's the Cost?*, above n 3.

<sup>175</sup> Infringements Working Group, *Position Paper: A simple, fair and effective infringements system for all Victorians* (July 2013).

- Pivot Legal Society does not generally provide direct legal services to individuals with tickets or warrants – the demand would be completely unmanageable. They run strategic matters and advocate for reform as part of their Accountable Police program.<sup>176</sup>
- The National Law Center on Homelessness and Poverty (NLCHP) reported that a public defender in St Petersburg, Florida announced that he would no longer represent indigent people arrested for violating municipal ordinances to protest what he called excessive arrests of homeless individuals by the City of St Petersburg. The records of the public defender’s office showed that the vast majority of people in the local jail on municipal ordinances were people experiencing homelessness.<sup>177</sup>

In contrast, Patty Mullahy Fugere, co-founder and Executive Director of the Washington Legal Clinic for the Homeless (WLCH) said that citations, charges and warrants for public space offences do not make up a significant proportion of the WLCH’s total work. It is possible that this is linked with the approach to policing taken by the District of Columbia Metropolitan Police Department (MPD), as well as the increased awareness of homelessness generated through the Homelessness 101 training that WLCH delivers to the MPD (see part 6.4). Accordingly, this serves as a good example of the way in which an informed, appropriate frontline response can reduce the burden on homeless individuals, police, services and the courts.

### *Judicial responses and congestion in the courts*

Enforcement-based approaches to homelessness can bring people experiencing homelessness into the court system via a number of avenues, including charges, warrants for unpaid fines or tickets and applications for anti-social behaviour orders (or alleged breaches of these orders).

Douglas King, Barrister and Solicitor with Vancouver’s Pivot Legal Society, highlighted the effects on the court system that flow directly from enforcement-based approaches to homelessness on the ground. He referred to the congestion in the courts that resulted from a ‘ticketing blitz’ by the Vancouver Police Department in the Downtown Eastside in 2008. He said, ‘the court system couldn’t keep up with the tickets and the prosecutors did not see it as the best use of their time to pursue these matters against homeless people, so many of the matters were dropped’.

One of the judicial responses to the proliferation of tickets and charges issued to people experiencing homelessness in the US is ‘homeless courts’.

## The Homeless Court Program

There are 25 specialist homeless courts (or specialist lists/dockets) in the US. The first was started in San Diego in 1989. They are special court sessions convened in homeless shelters where homeless participants can voluntarily resolve outstanding misdemeanour offences and warrants. Models vary, but at their best, US homeless courts:

- build partnerships between the court, the prosecutor, the public defender, local shelters, service agencies and homeless participants;
- are voluntary (a person signs up through a service provider and the service provider refers the person to the

<sup>176</sup> Pivot Legal Society, *Our Work: Accountable Policing* (available at: [http://www.pivotlegal.org/accountable\\_policing](http://www.pivotlegal.org/accountable_policing)). (Pivot Legal, Accountable Policing).

<sup>177</sup> NLCHP and NCH 2009, *Homes not Handcuffs*, above n 8, 11.



Homeless Court Program);

- can resolve people’s misdemeanours in 3 – 4 months (participants complete their participation in service provider programs before appearing at the Homeless Court Program session and most cases are heard and resolved in one hearing);<sup>178</sup> and
- do not require a guilty plea and therefore do not appear on a person’s criminal record (an important distinction from Victoria’s system).

The foundation of the Homeless Court Program is ‘a collaborative effort to promote trust and confidence in the court while addressing community safety issues and removing legal barriers to self-sufficiency’.<sup>179</sup>

The Homeless Court Program addresses a wide range of misdemeanour offences including charges of being under the influence of a controlled substance, theft and driving under the influence. It is noted that in many cases the voluntary program activities required as part of the Homeless Court actually ‘exceed the demands a court might order for treatment of low-term felony cases’, including certain drug and theft charges.<sup>180</sup>

Amy Horton-Newell, Director of the American Bar Association Commission on Homelessness and Poverty, explained that ‘some homeless courts can get through 200 cases (many people have multiple cases) in an afternoon thanks to the voluntary participation of homeless clients, as opposed to the traditional court where homeless defendants often fail to appear and significant court time is wasted’. Ms Horton-Newell also summarised the guiding principles of the courts:

- participation is voluntary;
- no-one goes to jail;
- traditional court sanctions such as fines are replaced with credit for participation in appropriate treatment and services; and
- participants retain the option to be transferred to the general court if needed.

Ninety per cent of the cases in the Homeless Court Program are dismissed.<sup>181</sup>

I also spoke with Lucy Fitzpatrick, Supervising Senior Staff Attorney with the Homelessness Prevention Law Project at Public Counsel, who is responsible for Los Angeles’ Homeless Court.<sup>182</sup>

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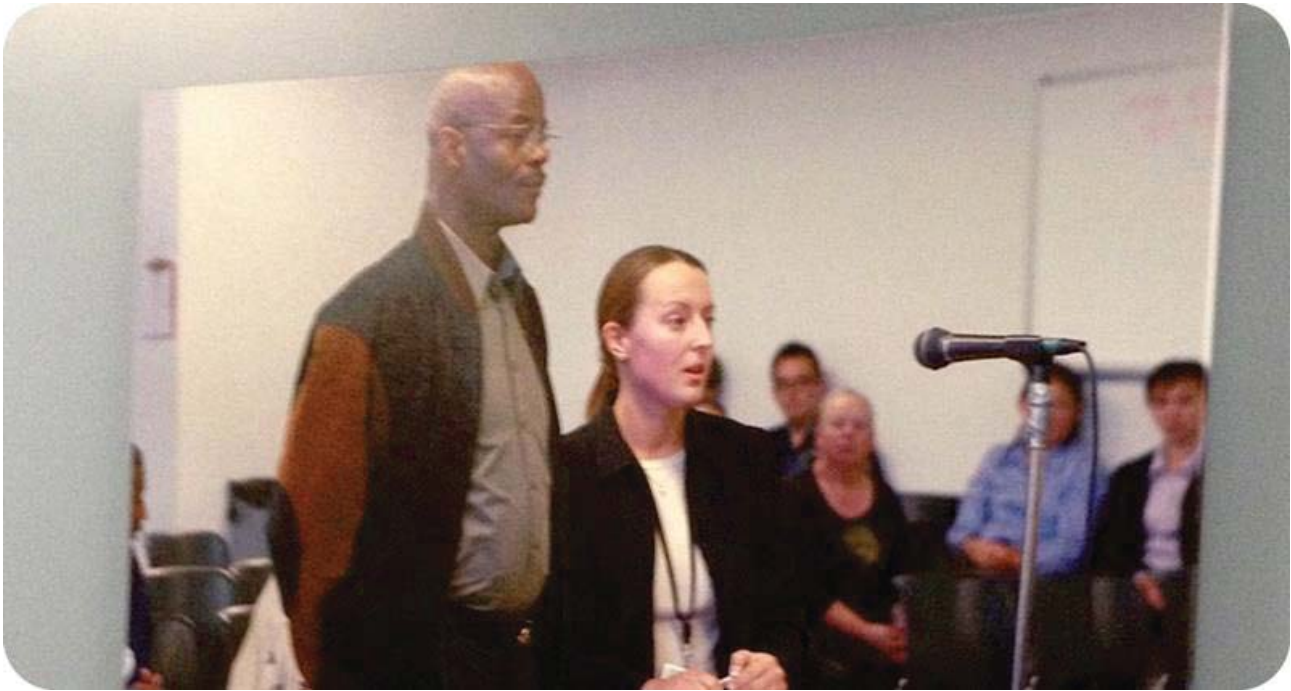
<sup>178</sup> See Steve Binder and Steve Merriam, *Homeless Court: The San Diego Service Provider Toolkit* (2009) (available at: [http://www.americanbar.org/content/dam/aba/migrated/homeless/aba\\_homeless\\_court\\_sandiego\\_book.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/homeless/aba_homeless_court_sandiego_book.authcheckdam.pdf)) (**Binder and Merriam, San Diego Service Provider Toolkit**) 3.

<sup>179</sup> Ibid x referring to the American Bar Association Homeless Court Program Guidelines (2006).

<sup>180</sup> Ibid 5.

<sup>181</sup> Ibid 7.

<sup>182</sup> See photographs of the Los Angeles Homeless Court: Public Counsel, *Homeless Court 2013: Homeless Court helps people with minor tickets and warrants get a second chance* (2013) (available at: [http://www.flickr.com/photos/public\\_counsel/sets/72157633532038089/](http://www.flickr.com/photos/public_counsel/sets/72157633532038089/)).



Los Angeles: A photo of Homeless Court displayed in the Public Counsel office

## Homeless Court in Los Angeles

One of the service-based accompaniments to the tough enforcement-based approach of the Safer Cities Initiative in Los Angeles is the Homeless Court,<sup>183</sup> which was created by the Los Angeles County Superior Court, Los Angeles City Attorney, the Los Angeles County Public Defender and advocates including Public Counsel and the LA Homeless Service Authority.

The LA Homeless Court operates differently to the Homeless Court Program. In the LA Homeless Court, if a person with a history of homelessness has undertaken 90 days of rehabilitation, has not offended in 6 months and can obtain a satisfactory report from a service provider, they can apply to have certain tickets and warrants dismissed (the program does not apply to offences involving a victim, a weapon or possession of drugs).

Many of the challenges the court faces are similar to Victoria's special circumstances process: it is administratively burdensome for social services required to provide documentation, as well as legal services assisting clients to navigate the system and enforcement agencies assessing the applications; and the process takes a minimum of six months, which presents problems for client engagement.

These burdens have weighed down the court and required it at times to put a temporary hold on new applications.

That said, the benefits delivered to people who are able to have their warrants addressed and 'begin fresh' are significant and an essential (if inadequate) feature of a system in which homelessness is so harshly penalised.

Homeless Courts represent the judiciary's response to the 'criminalisation' of homelessness. They recognise that the scale of ticketing or charging and the vulnerability of the respondents present challenges for courts' efficiency

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<sup>183</sup> See Department of Public Social Services, *Homeless Court* (available at: [http://www.ladpss.org/dpss/grow/homeless\\_court.cfm](http://www.ladpss.org/dpss/grow/homeless_court.cfm)).

and effectiveness. In commenting on the Homeless Court Program, San Diego County Judge, Hon David Ryan, said:

The Homeless Court Program tries to get away from the criminalization of substance abuse. And it's incredibly cost effective. Taxpayers pay about \$25 a minute to hear one case in one traditional court. In Homeless Court, we do 200 cases in three hours. That's efficiency.<sup>184</sup>

Professor Blasi, however, expressed concern about the impact of the Homeless Court 'in a city where homelessness has been so intensely criminalised'. He has also written on this point:

We observed one session of "Homeless Court" and understand how valuable it can be for those who are able to access it. Given the number of citations and low grade misdemeanor arrests taking place as part of [the Safer Cities Initiative], however, it is clear that "Homeless Court" offers scant amelioration for the effects of 1,000 citations per month.<sup>185</sup>

Even with the innovative development of Homeless Courts around the US, the inundation of courts with homeless people who have been given tickets or charges for conduct directly related to homelessness imposes a burden on the justice system and presents questions about whether the courts are the best mechanism for addressing some of the complex health and social problems that bring homeless defendants before them.

## 4.5. The financial costs

The development and implementation of enforcement-based approaches to homelessness has budgetary implications for government, including police and the courts.

This section identifies three studies that analyse the costs of enforcement-based approaches to homelessness, including by calculating the:

- prevalence of homelessness amongst a city's 'chronic offenders' (41% of those who were arrested at least five times in the prior year were homeless);
- average annual number of arrests and nights in jail for 33 people experiencing homelessness (and the annual cost of this of \$9,266.20 per offender or approximately \$306,000 in total);
- interactions with the justice system of 37 people experiencing homelessness over a three year period (they were arrested 1,271 times) and the cost of this (the total jail cost was \$278,000); and
- police time spent issuing tickets for begging and squeegeeing and the associated financial cost of this over an 11 year period (67,388 tickets were issued at a cost of \$936,019 and 16,847 hours of police time).

The examples below set out interesting, practical ways of monitoring the impact of enforcement-based approaches to homelessness on homeless individuals and the financial implications of these approaches.

### Review of North Carolina city's 81 'chronic offenders'

The Sheriff's Department in North Carolina city, Charlotte-Mecklenburg, reviewed data on 81 'chronic offenders' (arrested at least five times in the prior year) and found:

- 33 (41%) were experiencing homelessness;
- the average number of arrests for the 33 homeless chronic offenders was 11.1 per year;

<sup>184</sup> See Binder and Merriam, *San Diego Service Provider Toolkit*, above n 178, 52.

<sup>185</sup> Blasi et al, *Policing Our Way out of Homelessness?*, above n 42, 31.

- the average length of stay in jail over the course of a year was 86.6 days; and
- this translated into an annual cost to the County of \$9,266.20 per offender or a total of nearly \$306,000 annually.

The report noted: 'Petty larceny, trespassing, drug and alcohol and public disturbance charges were the most common for this group. Most are not hard-core criminals'.

It also identified that 'housing' a person in the county jail costs approximately \$107 per night. In contrast, the cost of housing a person in a shelter for an entire year in Charlotte ranged from \$16.50 to \$38 per night, which is 15 – 35 % the cost of detaining an individual in jail.<sup>186</sup>

## Three year review of 37 rough sleepers' contact with police, jail and hospital

Buncombe County in North Carolina followed 37 people experiencing chronic homelessness over a three year period and recorded that:

- they were arrested 1,271 times over three years;
- the total jail cost was \$278,000;
- when police costs, prosecution and court costs were added, the total cost, according to the Asheville Police Department, climbed to about \$10,000 per person per year;
- the same 37 people used ambulance services 280 times over the same three year period, costing \$120,000; and
- hospitalisation costs for the same time period were \$425,000.<sup>187</sup>

## The financial costs of ticketing homeless young people

The research of O'Grady, Gaetz and Buccieri, *Can I See your ID? The Policing of Youth Homelessness in Toronto*<sup>188</sup> analyses the financial costs of issuing tickets to homeless young people. The report considers tickets issued under Ontario's *Safe Streets Act* (for aggressive panhandling and 'squeegeeing') over an 11 year period (2000 – 2010). The authors obtained the relevant data through two freedom of information requests from the Toronto Police Service, and the Ontario Ministry of the Attorney General.

A total of 67,388 tickets were issued throughout 2000 – 2010, with a total value of \$4,043,280.<sup>189</sup>

The research identifies that over an 11 year period, it has:

- cost \$936,019 to issue tickets under the *Safe Streets Act* (based on 15 minutes of time (\$13.89) for a

<sup>186</sup> NLCHP 2011, *Criminalizing Crisis*, above n 32, 40 citing Charlotte-Mecklenburg County, *More Than Shelter! Charlotte-Mecklenburg's Ten-Year Implementation Plan to End and Prevent Homelessness – One Person /One Family at a Time* (October 2006) 5 (available at: <http://charmeck.org/city/charlotte/nbs/housing/documents/10yearplantoendandpreventhomelessness.pdf>).

<sup>187</sup> NLCHP 2011, *Criminalizing Crisis*, above n 32, 40 citing Asheville and Buncombe County, North Carolina, *Looking Homeward: The 10-Year Plan to End Homelessness* (2005) 8 (available at: <http://www.ashevillenc.gov/Portals/0/city-documents/CommunityDevelopment/Homeless/10Yearplan.pdf>).

<sup>188</sup> O'Grady, Gaetz and Buccieri, *Can I See your ID?*, above n 10.

<sup>189</sup> *Ibid* 10.

Toronto Police Services First Class Constable); and

- used 16,847 hours of police time (calculated based on the number of tickets and an estimate that each ticket takes approximately 15 minutes to issue).<sup>190</sup>

This doesn't include the cost of processing the tickets, follow-up, court and warrants, so shows only a fraction of the overall expenditure of time and money.

The report notes that only \$8,086.56 of the fines has been paid over the 11 year period and questions: 'Is this a reasonable use of resources, and may there be other crimes deserving of more attention?'<sup>191</sup>

These studies show that in addition to having a heavy impact on vulnerable people, delivering questionable improvements to levels of public safety and imposing a resource burden on police, services and courts, enforcement-based approaches to homelessness are also extremely expensive. As the US Interagency Council on Homelessness identifies: 'In today's economic climate, it is important for state, county, and local entities to invest in programs that work rather than spend money on activities that are unlikely to achieve the desired result.'<sup>192</sup>

The financial costs of alternatives to enforcement-based approaches to homelessness are often identified as a barrier to their adoption or implementation. However, as these case studies show, transparent assessments of the costs of enforcement must be a feature of conversations and decisions about effective and efficient approaches to addressing homelessness and regulating public space in our communities.

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<sup>190</sup> Ibid.

<sup>191</sup> Ibid.

<sup>192</sup> US Interagency Council on Homelessness, *Searching Out Solutions: Constructive Alternatives to the Criminalization of Homelessness* (2012) 2 (US Interagency Council on Homelessness, *Searching Out Solutions*).

# 5. CHANGING THE CONVERSATION – INCREASING UNDERSTANDING AND ADVOCATING EFFECTIVELY

The regulation of public space and homelessness is often framed as an issue of law and order, safe streets and getting tough on crime. It is important that laws, policies and practices designed to respond to visible homelessness are informed by evidence about the nature and extent of 'public space offending' (including begging, public drinking, travelling without a ticket and rough sleeping) and its causes. In contributing to conversations about homelessness and public space, I wanted to learn about how we can reframe these issues so that there is room for evidence, planning, evaluation and new ideas, which do not automatically turn to law enforcement to regulate conduct related to homelessness.

This section deals with interesting, effective ways of communicating about these issues. It discusses methods we can use to talk about the work we do in a way that cuts through stereotypes. It is about building awareness both within decision-makers and within the general public. As it stands, these are not issues that attract the attention or the empathy of the general population. There is little understanding about the impact of these laws, practices and policies on people experiencing homelessness.

This section identifies a range of different strategies, approaches and methods for increasing awareness about the impact of these laws, policies and practices and presents new ideas for changing laws and how they are enforced. It is about changing the conversation to make room for informed, evidence-based approaches to dealing with people experiencing homelessness and regulation of public space.

The strategies, approaches and methods discussed are:

- reporting – collating and using evidence effectively;
- community organising – member-based initiatives;
- building understanding and challenging stereotypes through personal stories;
- litigation – challenging 'criminalisation' in the courts; and
- human rights based work.

## 5.1. Reporting – collating and using evidence effectively

In Canada, I spoke with Professor Stephen Gaetz about the way public perceptions of people experiencing homelessness inform laws and policies designed to regulate public space. I asked about the most effective ways to break through some of these perceptions, which are often based on stereotypes or lack of understanding. Professor Gaetz said: 'changing public opinion is really difficult ... Personal stories will resonate with different people who'll say, "I never thought about that", but you also need the quantitative evidence ... we need to come at it from different angles'.



The National Law Center on Homelessness and Poverty (NLCHP) are experts at collating and documenting evidence about laws ‘criminalising’ homelessness throughout the United States. They describe this work and its purpose:

The Law Center creates reports on homelessness and poverty and leverages these as outreach tools for policymakers, advocates, and the public. These reports analyze emerging trends and discuss their legal and policy implications while offering recommendations. The Law Center’s reports are widely covered in the media, ensuring the public and policymakers remain abreast of growing trends and giving advocates concrete tools with which to create change.<sup>193</sup>

## Documenting the ‘criminalisation’ of homelessness in the US and equipping advocates

The NLCHP has produced 10 reports on criminalisation and homelessness since 1991. The reports document ‘cities with the worst record related to criminalizing homelessness and trends in the criminalization of homelessness, as well as initiatives in some cities that constituted more constructive approaches to street homelessness’.<sup>194</sup>

A snap shot of the two most recent reports on criminalisation of homelessness in the US is below.

*Homes Not Handcuffs: The Criminalisation of Homelessness in U.S. Cities* – prepared by the NLCHP and the National Coalition for the Homeless in 2009, the report discusses the costs of criminalisation (including studies done in five cities) and constructive alternatives to criminalisation. It also identifies the ‘10 meanest cities’. The report is 191 pages long, almost 100 of which are a ‘prohibited conduct chart’ listing laws and practices of 235 surveyed US cities and case summaries of approximately 130 State and Federal lawsuits challenging laws criminalising homelessness.<sup>195</sup>

*Criminalizing Crisis: The Criminalization of Homelessness in U.S. Cities* – prepared by the NLCHP in 2011, the report documents the results of a survey of 154 homeless advocates (43%), service providers (51%) and people who were experiencing or had experienced homelessness (6%). The reported results include the percentage of respondents who noted arrests, citations or both in their city for the following offences:

- public urination/defecation – 73%;
- camping/sleeping in public – 55%;
- loitering – 55%;
- panhandling – 53%;
- public storage of belongings – 20%; and
- sidewalk-sitting – 19%.<sup>196</sup>

The 2011 report updates information on the laws, polices or practices of the 235 cities surveyed in 2009 and notes changes, including a trend of increased criminalisation of homelessness, showing that between the 2009 – 2011 results, there had been a 7% increase in prohibitions on panhandling and camping in public places and a 10% increase in prohibitions on loitering in certain public places.<sup>197</sup>

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<sup>193</sup> National Law Center on Homelessness and Poverty, *Reports* (available at: <http://www.nlchp.org/reports>).

<sup>194</sup> NLCHP and NCH 2009, *Homes not Handcuffs*, above n 8, 15.

<sup>195</sup> NLCHP and NCH 2009, *Homes not Handcuffs*, above n 8 .

<sup>196</sup> NLCHP 2011, *Criminalizing Crisis*, above n 32, 17.

<sup>197</sup> *Ibid* 8.



The 2011 report also considers the costs and other impacts of criminalisation, including the impact on homeless people, service providers, the criminal justice system and the broader community.<sup>198</sup> The report attaches an Advocacy Manual, which provides guidance and tools for advocates, including in relation to dispelling myths, calculating costs, ‘grading your city’ and bringing litigation. The Advocacy Manual also contains a *Model General Police Order* to guide police interactions with people experiencing homelessness, including use of move-on orders, arrests, referrals to services and treatment of personal property. The 2011 report includes the prohibited conduct chart and case summaries as annexures to the Advocacy Manual.

The reports contain quotes and stories from individuals impacted by these laws and collate research and evidence collected throughout the country. Together with the Advocacy Manual, these documents ‘help advocates, service providers, attorneys, and homeless people combat such counterproductive laws and policies. [They provide] information on legal and non-legal strategies they can use in their own communities’.<sup>199</sup>

The comprehensive evidence gathering and reporting on criminalisation of homelessness by the NLCHP is an effective tool for raising awareness of the scale of criminalisation in the US, as well as providing comparative information so cities can assess what other jurisdictions are doing in a national context. It is a powerful instrument for equipping both advocates and policy-makers with the evidence they need to make informed arguments and decisions about the criminalisation of homelessness. By way of example, the NLCHP’s report is cited extensively throughout the report by the US Interagency Council on Homelessness, *Searching Out Solutions: Constructive Alternatives to the Criminalization of Homelessness* and, in this way, the NLCHP’s work informed an unprecedentedly balanced, constructive federal policy contribution on the criminalisation of homelessness in the US.

No similar evidence gathering and reporting had previously existed in Europe. In fact, when I spoke with Professor Gaetz, he said that 10 years ago when he had discussed the ‘criminalisation’ of homelessness in Canada and the US, a European counterpart had indicated: ‘that would never happen in Europe’. It is now recognised, however, that in Europe:

Laws, regulations and administrative measures penalising homelessness are being introduced during an economic crisis that has resulted in record levels of unemployment and poverty, driving entire families to live on the streets. Such measures are often motivated by the desire to reduce the visibility of homelessness and poverty and hide them as social issues.<sup>200</sup>

In light of this, the European Federation of National Organisations working with the Homeless (**FEANTSA**) and Housing Rights Watch produced a report on the nature and extent of the penalisation of homelessness in Europe in 2013.

## Mean Streets – Europe’s first analysis of laws ‘criminalising’ homelessness

The challenges of a European report include diverse and numerous local and national legal frameworks and

<sup>198</sup> Ibid.

<sup>199</sup> Ibid 16.

<sup>200</sup> Nils Muiznieks, Council of Europe Commissioner for Human Rights, ‘Preface to the FEANTSA Report: Penalisation of Homelessness and Human Rights in Europe’ in Evangelista and Jones, above n 65, 9.

associated language barriers, which makes it a formidable task to liaise with local agencies and document 'criminalisation' measures in the same way as the NLCHP. Instead, the report includes articles from academics, activists, lawyers and NGOs, which discuss the historical context of penalisation of homelessness in Europe and highlight examples (including case studies from Belgium, Poland and Hungary). *Mean Streets* also makes recommendations for reform in the European Union and at national and local government levels.

The report strongly positions penalisation of homelessness in a human rights context and, in their joint foreword, 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, Raquel Rolnik, and Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, state that the work 'will contribute significantly toward scholarship, advocacy and public debate on this issue'.<sup>201</sup>

In addition to advocacy organisations, universities and academics play a valuable role in the contributing to the evidence base that informs homelessness law and policy. The Canadian Homelessness Research Network is a strong example of this.

## Mobilising homelessness research and knowledge

The work of the Canadian Homelessness Research Network (CHRN)<sup>202</sup> and the Homeless Hub<sup>203</sup> is an impressive example of research presented in a way that is accessible outside its immediate academic context.

The CHRN is 'dedicated to helping end homelessness by improving the impact of homelessness research on policy and practice' and the Homeless Hub was created to address the need for a single place to find homelessness information from across Canada: '[It] is a web-based research library and information center representing an innovative step forward in the use of technology to enhance knowledge mobilization and networking. The Homeless Hub has emerged as a place where community services providers, researchers, government representatives, and the general public can access and share research, stories, and best practices'.

It is a pleasure to look at CHRN's clear, concise reports, as well as the infographics, videos, blogs, media and social media that generally accompany their research publications. By presenting their research in this way, the network aims to equip advocates with the material they need to advocate for change through their work on the ground. Put simply: 'the CHRN is committed to enhancing the impact of research on the homelessness crisis'.

Bridging the gap between research and evidence on one hand and homelessness policy and practice on the other is critical to making sure we develop well-informed programs and initiatives for addressing homelessness in our communities. For as long as our policies and practices continue to be based on sentiment and anecdote rather than evidence and research, they will continue to be flawed and present risks of being ineffective, costly and potentially harmful.

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<sup>201</sup> Rolnik and Sepúlveda, *Foreword to Mean Streets*, above n 65, 12.

<sup>202</sup> See Canadian Homelessness Research Network (available at: <http://homelessresearch.net/>).

<sup>203</sup> Homeless Hub, *About Us* (available at: <http://www.homelesshub.ca/about-us>).

## 5.2. Community organising – member-based initiatives

Too often decisions about homelessness and public space are made behind closed doors, with little or no input from the people directly affected by the proposed laws, policies or practices.

The insights, experience and expertise that can be brought to the table by people who are or have been homeless should not be understated. This input is crucial in the development of effective strategies and the evaluation of existing strategies. It also plays a critical role in increasing awareness about the realities of homelessness, including its causes and its impacts on a person's life.

Eric Post, Staff Attorney at Public Counsel's Homelessness Prevention Law Project in Los Angeles said:

[m]ore and more homeless folks are starting to organise and that's an important effort. Empowering folks to make a change both in terms of policy and in their own lives makes people realise "hey these are people" and we need to create space for these voices to be heard.

This section contains a snap shot of the member-based campaigns or initiatives I came across during my fellowship.

### Nothing about us, without us – community action in and around Vancouver

I had the privilege of travelling with the Pivot Legal Society team to Abbotsford about 40 minutes outside Vancouver to observe their work with a group of local people experiencing homelessness who had been sleeping in tents in Jubilee Park for about 30 days at that time.

Previously all the camp members slept rough separately, but in recent times a sense of community had grown amongst the group and they had merged both their location and their voices to call for more affordable housing and better homelessness services in Abbotsford.<sup>204</sup> When I visited, the City had successfully applied for an injunction requiring the camp members to leave Jubilee Park and the community had relocated to the neighbouring parking lot pending further legal proceedings.

The call of the group was 'nothing about us, without us!' Unsurprisingly, the group wanted a say in the City's decision about how to tackle Abbotsford's growing homelessness problem.

During my brief visit, I got a sense that this kind of powerful community organising isn't unusual in and around Vancouver. In addition to the Jubilee Park community, the member run campaigns of the Vancouver Area Network of Drug Users (**VANDU**) make sure the voices of the people directly affected by legal and policy decisions are heard in what can otherwise become highly bureaucratic debates.

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<sup>204</sup> Pivot Legal, *Abbotsford homeless file human rights complaint as City prepares to clear out encampment* (27 November 2013) (available at: [http://www.pivotlegal.org/abbotsford\\_homeless\\_file\\_human\\_rights\\_complaint\\_as\\_city\\_prepares\\_to\\_clear\\_out\\_encampment](http://www.pivotlegal.org/abbotsford_homeless_file_human_rights_complaint_as_city_prepares_to_clear_out_encampment)); Peter Wrinch, 'Abbotsford's Homeless ask court to recognize their right to exist as equal citizens' *Pivot Legal Society Blog* (7 March 2014) (available at: [http://www.pivotlegal.org/abbotsford\\_s\\_homeless\\_ask\\_court\\_to\\_recognize\\_their\\_right\\_to\\_exist\\_as\\_equal\\_citizens](http://www.pivotlegal.org/abbotsford_s_homeless_ask_court_to_recognize_their_right_to_exist_as_equal_citizens)).

My visit to New York City coincided with the 'dancegiving' event of Picture the Homeless (PTH): 'celebrating our struggles [and] our victories and getting ready for the work that lies ahead'. PTH is 'a grassroots organization, founded and led by homeless people'. PTH's work includes 'know your rights' training and information sessions for people experiencing homelessness as well as community organising around housing and homelessness issues, including policing.

In PTH's own words: 'It's about homeless leaders being their own advocates for police reform legislation ... [and] it means challenging stereotypes that dehumanise homeless New Yorkers by highlighting the valuable contributions that PTH members make everyday towards building a more just and respectful New York City for all'.

In addition to ensuring better informed policies Aiyanas Ormond, VANDU Community Organiser, said:

Participating in a broader social justice project is a public health intervention ... there's recognition that playing a role of leadership in their community is beneficial for people's health ... [Further] any number of good arguments, based on good evidence won't change things – the affected communities have to stand up and demand change.

In short, the input of people with a direct experience of homelessness is critical to the development of well-informed laws and policies regulating public space and their insights should be included in decision-making processes.

### 5.3. Building understanding and challenging stereotypes through personal stories

Eric Post, Staff Attorney with Public Counsel's Homelessness Prevention Law Project in Los Angeles, identified that there is a problem with the 'imagery' or perception of people who are homeless. He explained that 'we need to combat this with personal stories that humanise these issues and build understanding ... We need to make space for more first person accounts; they're powerful and compelling and have potential to gradually change attitudes and break down stereotypes'.

I spoke with Katharine Sacks-Jones, Head of Policy and Campaigns at Crisis about the use of personal stories in campaign and advocacy work. She said: 'it's about understanding what resonates. Practicalities and costs might resonate with government, but then there's the question of how you win over the public. It's not enough just to talk about facts and figures; we need to tell a human story'.

When I was in Washington DC, Nan Roman, President and CEO of the National Alliance to End Homelessness (NAEH), said that the NAEH is cautious about using people's stories in their advocacy. She said individual stories 'can backfire' because they can encourage community members and decision-makers to think: 'is this a good person? I'm happy for them to be helped if they're a good person' and can feed problematic notions about the deserving and undeserving poor. She also said that using personal stories risks perpetuating the suggestion that individuals cause homelessness, and distracting from the fact that the main causes of homelessness – poverty and an acute shortage of affordable housing – are structural and have little to do with individuals. Ms Roman said: 'Homelessness is a macroeconomic problem. There are solutions to it. It costs us money to let it happen. We can do better and smarter'.

On the question of where this caution leaves the use of personal stories in advocacy and campaigns about homelessness, Ms Sacks-Jones said: 'It depends how you tell the story and what the story is. Often it is very clear

where the systemic issues are. The overwhelming evidence is that facts and figures don't work'. She referred to focus groups and polling, which showed that 'people just don't hear facts and figures'. She said:

If a person holds a belief and you try to challenge it with a fact, they will try to challenge the fact. People just don't think in that way ... political parties are a good example, they don't rely just on facts but find ways to try and talk to people's values. Images and stories are incredibly powerful. We kid ourselves if we think we can challenge that emotion and that imagery with facts.

The UN Special Rapporteur on Extreme Poverty and Human Rights (2010 – 2014), Magdalena Sepúlveda Carmona, also spoke about the importance of communicating people's personal stories to change attitudes and increase awareness. She said: 'these things are very difficult for the middle classes to understand ... they don't see the impact'. She encouraged us to work to show the personal impact of these laws on people: 'changing culture and educating people about this impact ... this is where we currently fail. How we cut through the stigma is the million dollar question, and my guess is it's with education'.

This section sets out examples of personal stories that help raise awareness, challenge stereotypes, humanise issues that are otherwise abstract (in particular questions of law enforcement) and generally build awareness and understanding of homelessness, its causes and its impacts.



New York City: Talking Transition event, Communities United for Police Reform #Wherelamgoing campaign

## The human impact of stop and frisk in New York City

'The stories behind the numbers, the effects on our communities' is the sub-title for the 2012 report of the Center for Constitutional Rights (CCR), *Stop and Frisk: The Human Impact*. The report 'documents some of the human



stories behind the staggering statistics and sheds new light on the breadth of impact this policy is having on individuals and groups, in neighborhoods, and citywide'.<sup>205</sup> It recognises that the numbers alone do not tell the whole story.

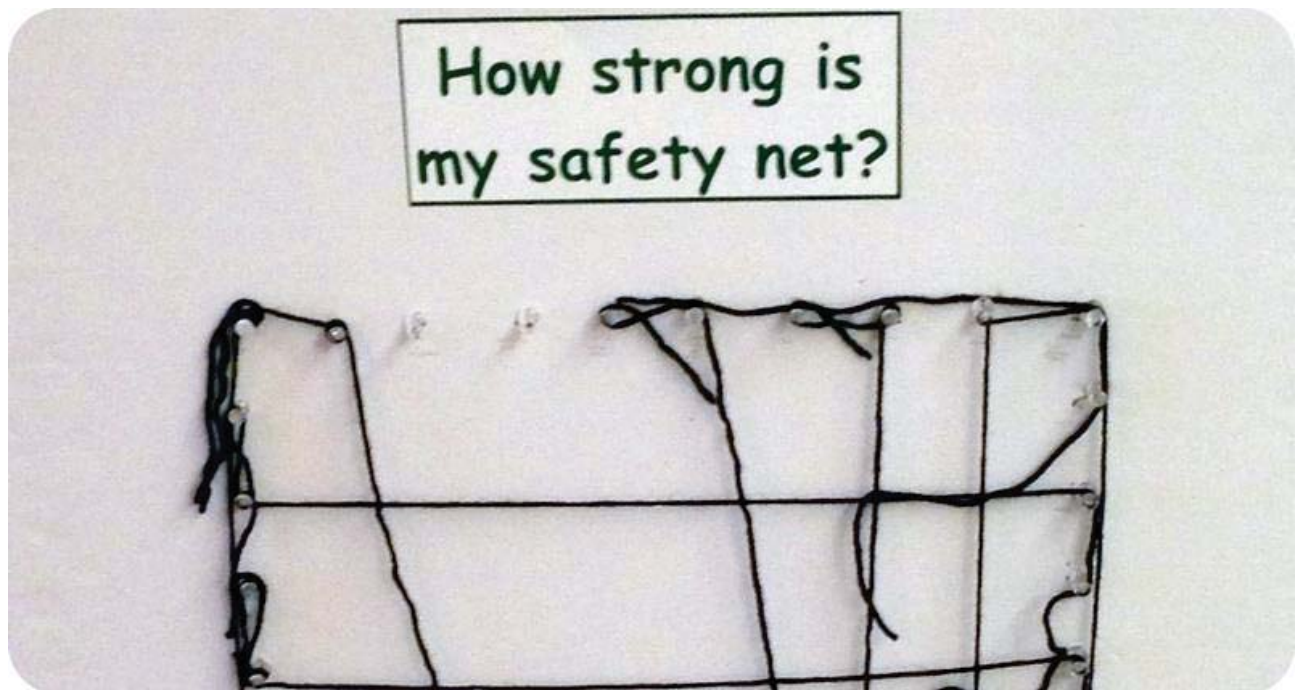
The report captures quotes from 54 people who had been the subject of stop and frisk that draw attention to the lasting effects the practices has on people:

If you have violations or you have [been] convicted of crimes, you can't get into public housing. So that's one of the ways that it really crushes people that are homeless. It closes off that gate into New York City housing right away. Just by being arrested and coming out. And here's the thing about it: Nobody informs you of this. [They] never tell you, "You know what? If you plead guilty today, you're never going to be able to get New York City housing."<sup>206</sup>

The CCR is also a member of Communities United for Police Reform (**CUPR**), which is 'an unprecedented campaign to end discriminatory policing practices in New York, bringing together a movement of community members, lawyers, researchers and activists to work for change'.<sup>207</sup> CUPR has made three short films about stop and frisk practices and their impact from three different perspectives: a young person; a pastor; and a police officer.

The 'docuseries' is called *Where I am Going* and states: 'We all have places to go. Stop-and-frisk shouldn't stop us'.<sup>208</sup> Police officer, Adhyl Polanco, talks about growing up with the constant crime and shootings in Washington Heights and always dreaming of becoming one of the 'good guys'. He explains that after the '1 arrest / 20 summons / 5 stop and frisks' monthly policy was mandated by the NYPD in 2009, he reached a turning point that compelled him to choose between his career and his morals.

Mr Polanco's story has been viewed online approximately 168,400 times.



Washington Legal Clinic for the Homeless: the safety net exercise

<sup>205</sup> CCR, *Stop and Frisk: The Human Impact*, above n 115, 1.

<sup>206</sup> Ibid 9 citing the interview with Michael P (pseudonym), New York (24 January 2012).

<sup>207</sup> See Communities United for Police Reform (available at: <http://changethenypd.org/>).

<sup>208</sup> See *Where I am Going* (available at: [www.whereiamgoing.org](http://www.whereiamgoing.org)).

## What's your safety net? Increasing awareness of the causes of homelessness

When I visited the Washington Legal Clinic for the Homeless (**WLCH**), co-founder and Executive Director, Patty Mullahy Fugere, told me about the safety net training WLCH runs. The straightforward, powerful exercise steps people through a series of questions to work out what their personal safety net is.

Horizontal strings in the net represent factors that you have little or no control over, including whether you grew up knowing both parents, any physical illnesses, whether you've experienced abuse and whether or not you've ever been discriminated against on the basis of your race, gender or ethnicity. Vertical strings represent factors that you have some control over, but which are 'rooted in what horizontal threads we have'. These include whether you have a college degree, a job, access to a car, a good credit record, substance use problems or involvement with the justice system.

Often the people participating in the exercise will realise that their safety net is reasonably robust. Ms Mullahy Fugere then steps through the same questions for a person experiencing or at risk of homelessness. The example she shared was a 20 year-old single mother of two children with health problems who has been the victim of family violence and whose mother passed away when she was two. This woman's safety net is threadbare. Her situation is perpetually fragile and there is no room for anything to go wrong.

An hi-tech version of this exercise is Spent ([www.playspent.org](http://www.playspent.org)),<sup>209</sup> which is a confronting choose-your-own-adventure that prompts participants to navigate their way through poverty on their screens. It opens with: 'Urban Ministries of Durham serves over 6000 people per year. But you'd never need help right?' It then explains that you have lost your job and your home, you're a single parent and you have \$1000 left. It presents the challenge – can you get through the month? It then steps you through the impossible decisions you have to make each day between housing that is cheaper but 50 miles from work, health insurance, paying for kids' excursions and which bills to pay. I made it nine days in before the \$1000 was gone.

These kinds of tools have a role to play in building community understanding about how little people on very low incomes have to survive on, the kinds of decisions they have to make about how to spend their extremely limited money and the debilitating consequences of not being able to stretch your income far enough. Ultimately, they help people understand how people can end up homeless through no fault of their own.

## Sugar – 'Life on the street isn't exciting ... Life on the streets is mundane, and lonely'

Into the mix of an indie film with a young, talented cast, a good soundtrack and a Venice Beach backdrop, writer and director Rotimi Rainwater puts the more unexpected ingredient of youth homelessness. The authenticity of the film is undeniably assisted by Rotimi's own experience of teen homelessness:

[I] hope to give people a realistic view of what it's like on the streets, to humanize the youth who've ended up homeless; because no child on the streets is there by choice. No 13-year old watching Disney with his or her parents wakes up one day and decides to leave home and go eat out of a garbage can.<sup>210</sup>

The film is the anchor for a campaign to end youth homelessness and in mid-2013 it was screened to Congress on

<sup>209</sup> Urban Ministries of Durham, *Spent* (available at: <http://www.playspent.org>).

<sup>210</sup> *Ibid.*



Capitol Hill. Its Washington DC premiere was supported by the US Interagency Council on Homelessness, the National Coalition for the Homeless, the National Law Center on Homelessness and Poverty, the National Alliance to End Homelessness, the National Network for Youth and the Sasha Bruce Youthwork.

Films like this have the potential to appeal to a mainstream, outside-the-homelessness-sector audience. In doing this, it has a role to play in building community awareness of the 10,000 young people who are homeless in the US and generating momentum for change.

Many enforcement-based approaches to homelessness (including new laws, disproportionate enforcement of existing laws and ‘crackdowns’ or ‘blitzes’ on conduct in public places), are a response to pressure from local communities and businesses who are concerned about the presence and activities of people experiencing homelessness in their local area. While it is essential that steps are taken to address homelessness, increasing community understanding of homelessness, including who it affects and why, will lead to better-informed conversations about appropriate responses to homelessness.

Importantly, we are not trying to generate a situation where visible homelessness and poverty are accepted or tolerated by the community, but rather a situation where community attitudes leave room for non-punitive responses to people experiencing these problems.

## 5.4. Litigation – challenging ‘criminalisation’ in the courts

In some cases, often where communication has broken down and other alternatives have been exhausted, individuals turn to the courts to resolve questions about their rights and the limitation of laws regulating public space.

In addition to being of benefit to the individual, litigation can also have a wide reaching strategic impact, in some cases leading to significant reform of laws or practices that affect people experiencing homelessness in a disproportionate or discriminatory way.

Litigation is by its nature adversarial. The process is protracted and potentially expensive and, for clients experiencing homelessness and any of the hardships that may accompany it, it will not always be a desirable or feasible option. Where alternative mechanisms, including training, negotiation and protocols (see part 6.4 below) are an option, it is questionable whether the courts are the most effective avenue for achieving reform. When litigation is successful, however, it can be a highly effective catalyst for change, particularly when it is accompanied by broad awareness raising, educative, advocacy activities.

The context of litigation in relation to regulation of public space and homelessness in the US is markedly different from Australia because of the Constitutional protection of rights. The National Law Center on Homelessness and Poverty summarises the ‘constitutional questions’ raised by ‘criminalization measures’ in the US:

- ‘Laws that restrict or penalize begging may raise free speech concerns, as courts have found begging to be protected speech under the First Amendment.
- When a city destroys a homeless person’s belongings, such actions may violate the Fourth Amendment right to be free from unreasonable searches and seizures.
- When a city enforces a law that imposes criminal penalties on a homeless person for engaging in necessary life activities such as sleeping in public, such a law could violate that person’s Eighth Amendment right to be free from cruel and unusual punishment if the person has nowhere else to perform the activity.

- When a city passes a loitering or vagrancy law that provides insufficient notice of what types of conduct it prohibits, or allows for arbitrary enforcement by law enforcement officials, such a law may be overly vague, in violation of the Constitution'.<sup>211</sup>

Two examples of the use of litigation to reduce the negative impact of laws regulating public space on people experiencing homelessness and minority members of the community are set out below. They highlight the benefits and challenges of litigation and the need to push for change both inside and outside the court room.

## Taking the Safer Cities Initiative to the Courts in Los Angeles

In 2003, the American Civil Liberties Union (ACLU) of Southern California the National Lawyers Guild filed proceedings seeking to limit the enforcement of s 41.18 (d) of Los Angeles Municipal Code, which provides that '[n]o person shall sit, lie or sleep in or upon any street, sidewalk or other public way'.<sup>212</sup>

The ACLU identified that 'in Los Angeles County at least 88,000 men, women and children – 8,000 to 10,000 in Downtown Los Angeles alone – are without homes. There are beds for less than half of the homeless in Los Angeles county, comprehensive services are available to far fewer than half, and the county jails are routinely used as a substitution for mental health facilities'.<sup>213</sup>

The plaintiffs were six people experiencing homelessness and living on the streets of Skid Row: Edward Jones, Patricia Vinson, George Vinson, Thomas Cash, Stanley Barger, and Robert Lee Purrie.<sup>214</sup>

They alleged that the City was criminalising the status of homelessness in contravention of the Eighth Amendment protection against cruel and unusual punishment and the Fourteenth Amendment's equal protection clause. The district court dismissed the application, finding that the ordinance criminalised conduct rather than status.<sup>215</sup>

On appeal in *Jones v City of Los Angeles (Jones)*<sup>216</sup> a panel of Ninth Circuit judges held 2 to 1 to reverse the district court's decision. The appeals court found that, for as long as there are insufficient places to sleep, it was unconstitutional to criminalise sitting, lying or sleeping on the street. The court found that: 'Section 41.18(d) is one of the most restrictive municipal laws regulating public spaces in the United States'.<sup>217</sup> Judge Wardlaw stated: 'The Eighth Amendment prohibits the City from punishing involuntary sitting, lying, or sleeping on public sidewalks that is an unavoidable consequence of being human and homeless without shelter in the City of Los Angeles'.<sup>218</sup>

Key to the court's finding was that what was being prohibited was an involuntary status (rather than conduct): homelessness is 'a chronic state that may have been acquired "innocently or involuntarily"' and sleeping or lying on the streets of Skid Row is an inevitable consequence of this status'.<sup>219</sup>

The City filed a motion for rehearing and the court ordered mediation. The matter was settled by agreement that the Los Angeles Police Department would not enforce this law between 9:00pm – 6:00am until an additional

<sup>211</sup> NLCHP 2011, *Criminalizing Crisis*, above n 32, 10. See also NLCHP and NCH 2009, *Homes not Handcuffs*, above n 8, 85–165 for case summaries of cases where people experiencing homelessness or advocates have sought to challenge laws and policies that criminalise homelessness in the courts, including: challenges to restrictions on sleeping, camping, sitting, or storing property in public places; challenges to anti-begging, anti-soliciting and anti-peddling laws; challenges to vagrancy, loitering and curfew laws; and challenges to restrictions on food sharing in state and federal courts.

<sup>212</sup> See Gerry, *Jones v City of Los Angeles*, above n 28.

<sup>213</sup> See American Civil Liberties Union of Southern California, *ACLU of Southern California Wins Historic Victory in Homeless Rights Case: Appeals Court Ruling Ends the Criminalization of Homelessness* (14 April 2006) (available at: [https://www.aclu.org/racial-justice\\_prisoners-rights\\_drug-law-reform\\_immigrants-rights/aclu-southern-california-wins-hist](https://www.aclu.org/racial-justice_prisoners-rights_drug-law-reform_immigrants-rights/aclu-southern-california-wins-hist)).

<sup>214</sup> See *Jones v City of Los Angeles*, 444 F.3d 1118, 1124–5 (9th Cir 2006) for an account of the plaintiffs' circumstances and the situations in which they were cited or arrested under s 41.18(d).

<sup>215</sup> *Ibid.*

<sup>216</sup> *Ibid.*

<sup>217</sup> *Ibid* 1123.

<sup>218</sup> *Ibid* 1138.

<sup>219</sup> *Ibid.*

1250 units of permanent supportive housing were constructed within the City of Los Angeles, at least 50% of which are in Skid Row or greater downtown Los Angeles.<sup>220</sup>

Professor Gary Blasi indicated that this housing target is close to being met and – despite levels of homelessness remaining at crisis level – the return of 24 hour policing in Skid Row could be on the immediate horizon.

Professor Blasi discussed the limitations of litigation and the potential unanticipated consequences. He mentioned the case of *Lavan v City of Los Angeles*,<sup>221</sup> which limited the way in which police can dispose of a person's goods in the absence of procedural fairness (arising out of the situation where the possessions – often the only possessions – of people experiencing homelessness were being destroyed if temporarily left on the streets of Skid Row). Professor Blasi explained that the impact of this decision has been constrained by the increase in the number of private security officers – the 'red shirts' – taking part in law enforcement in LA who aren't bound by the authority and who can therefore carry out the problematic disposals.

An even stronger example of the limitations of litigation is an alleged comment Professor Blasi became aware of made by an LA law enforcement officer in response to *Jones*: 'it doesn't change anything, we've still got 50 more things we can do to them'. Gerry acknowledges this reaction and articulates an explanation for it in her article on *Jones*: 'Localities ... have rebelled against exertions of judicial authority that officials view as robbing them of valuable tools in the fight against social unrest'.<sup>222</sup>

Contrasted with more collaborative, negotiated approaches to reducing the impact of enforcement on people experiencing homelessness, there are barriers to the effectiveness of litigation as a tool for generating change. That said, when the door is not open to discussions, litigation can be a necessary (and effective) avenue. I asked Robert Gangi, Director of the Police Reform Organizing Project (**PROP**) at the Urban Justice Center in New York City, about whether PROP has a contact person or liaison within the NYPD that they can work effectively with or whether the relationship has broken down. He said 'Kelly and Bloomberg [former New York City Police Commissioner and Mayor] made it very clear, very early on that there was no room for discussion about stop and frisk'. From that point PROP and other community and advocacy organisations focussed on building coalitions, community organising, reporting, activism and, in some cases, litigation.<sup>223</sup>

## Stop and Frisk in the courts and on the streets – New York City

The recent case of *Floyd et al v City of New York et al (Floyd)*<sup>224</sup> challenged New York City's stop and frisk program as discriminatory and unconstitutional. The plaintiffs submitted that searches were carried out without reasonable suspicion, that 84% of people stopped were black and latino (despite these two groups only making up 52% of the city's population), that 88% of the people stopped were neither arrested nor received summonses and, despite the stated purpose of the policy, weapons and contraband were recovered less than 2% of the time.<sup>225</sup>

The plaintiffs in the case – David Floyd, David Ourlicht, Lalit Clarkson, and Deon Dennis – are men of colour who,

<sup>220</sup> See NLCHP and NCH 2009, *Homes not Handcuffs*, above n 8, 103–4.

<sup>221</sup> *Lavan v City of Los Angeles* 797F.Supp. 2d 1005, 1020 CCD Cal. 2011; Jonah, 'Protecting Property Left by the Homeless on the Sidewalk' (11 September 2012) *Harvard Journal of Law and Public Policy* (available at: <http://www.harvard-jlpp.com/2012/09/534/>).

<sup>222</sup> Gerry, *Jones v City of Los Angeles*, above n 28, 239.

<sup>223</sup> Note that in my most recent correspondence with Robert Gangi on 25 March 2014 he noted: 'the situation has changed with the new administration in the city – we've already had two meetings with high-level police officials to discuss our concerns, the kinds of meetings that would have never taken place during the Bloomberg/Kelly years'.

<sup>224</sup> 813 F.Supp.2d 457 (2011).

<sup>225</sup> Center for Constitutional Rights, *Floyd, et al. v. City of New York, et al* – Synopsis (available at: <http://ccrjustice.org/floyd>).

it was argued, were stopped by NYPD officers 'without any cause on the way to work, in front of their house, or just walking down the street'.<sup>226</sup> Law firms Beldock, Levine and Hoffman, and Covington & Burling LLP were co-counsel in the matter.

The background to the trial was proceedings that the Center for Constitutional Rights (CCR) commenced in 1999, *Daniels v City of New York*.<sup>227</sup> Daniels settled in 2003 and the terms required the NYPD to provide quarterly stop and frisk data to CCR. When this data showed an increase in stop and frisks (the NYPD reported a record 685,724 stops in 2011) and a continuing race-based pattern in the stops, CCR commenced the *Floyd* case.

Following a 10-week trial, on 12 August 2013, a federal court judge found that the NYPD had violated the equal protection clause in the Fourteenth Amendment and the Fourth Amendment, which prohibits unreasonable searches and seizures. The court issued two rulings: an Order on Liability and an Order on Remedy. The City appealed and filed a Motion to Stay the court's Remedial Order pending appeal with the US Second Circuit Court of Appeals.

On 1 January 2014, Mayor de Blasio took office, replacing Bloomberg and becoming New York City's first new mayor in 12 years. Mayor de Blasio had campaigned on a platform of police reform and, on 30 January 2014, the City of New York agreed to withdraw its appeal.<sup>228</sup> The agreed remedies include: a court-appointed monitor with a term of three years, conditional on the City substantially complying with the remedies, and a joint reform process involving all the stakeholders to ensure accountability to directly affected communities.

The process of bringing meaningful change to the NYPD and the communities they police will now begin.

Because of the long road to the court room and the significant community organising work surrounding stop and frisk (for example, Communities United for Police Reform),<sup>229</sup> *Floyd* was unlike typical litigation – the court room was packed every day and the case received significant local, national and international media attention. It is a relatively rare example of litigation joining community organising in a way that extends awareness of discriminatory policing beyond the court room and, in doing so, significantly amplifies the potential for social change.<sup>230</sup>

There are a number of factors to consider when determining whether litigation is an appropriate mechanism to challenge the negative impact of laws regulating public space on people experiencing homelessness, including: the grounds for challenging the law (i.e. the legislative or Constitutional protections in the relevant jurisdiction); the resources of the legal services assisting the client; and, of course, the client themselves and their wishes and instructions in light of the protracted, stressful nature of the proceedings and the potential cost consequences.

Furthermore, as Professor Blasi reminded me: 'litigation will address isolated aspects of criminalisation, but without leadership or political will it doesn't necessarily deliver a solution'.

In light of this, we need to keep litigation in mind as one option for generating change, but we also need to be aware that litigation alone will not deliver effective, sustainable solutions to the negative impact of laws regulating

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<sup>226</sup> Ibid.

<sup>227</sup> Center for Constitutional Rights, *Daniels, et al. v. the City of New York – Synopsis* (available at: <http://ccrjustice.org/ourcases/past-cases/daniels,-et-al.-v.-city-new-york>).

<sup>228</sup> See Center for Constitutional Rights, *City of New York and Center for Constitutional Rights Announce Agreement in Landmark Stop and Frisk Case* (30 January 2014) (available at: <http://www.ccrjustice.org/newsroom/press-releases/city-of-new-york-and-center-constitutional-rights-announce-agreement-landmark-stop-and-frisk-case>).

<sup>229</sup> See: <http://changethenypd.org/>.

<sup>230</sup> For an Australian example of the effective combination of strategic litigation and community organising see the impressive work of Flemington Kensington Community Legal Centre, *Victoria Police Response to Racial Profiling* (available at: [http://www.communitylaw.org.au/flemingtonkensington/cb\\_pages/victoria\\_police\\_inquiry\\_2013.php](http://www.communitylaw.org.au/flemingtonkensington/cb_pages/victoria_police_inquiry_2013.php)).

public space on minorities, including people experiencing homelessness. It needs to be accompanied by a range of activities that generate momentum for reform in the community and amongst decision-makers.

## 5.5. Human rights based work

Much of the discussion regarding appropriate approaches to addressing homelessness and regulating public space turns on pragmatic positions based on evidence and cost effectiveness. In addition to these undeniably compelling arguments, it is important not to forget the human rights implications of enforcement-based approaches to homelessness. We need to balance pragmatic arguments based on the inefficiency of criminalisation with the position that the criminalisation of homelessness is, in many cases, also a contravention of governments' human rights obligations under the *International Covenant on Civil and Political Rights (ICCPR)* and the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*.

The international human rights framework can often seem impenetrable and removed when doing the day-to-day work on the ground. However, it is incumbent on us, as members of the homelessness sector, to give human rights – and the legal frameworks set up to protect them – a place in our strategies to improve outcomes for people experiencing homelessness in our communities.

This section highlights campaigns, actions and mechanisms that have drawn on human rights protections to reduce the negative impact of laws regulating public space on people experiencing homelessness.

### *Framing 'criminalisation' as a human rights issue nationally and internationally*

The National Law Center on Homelessness and Poverty (NLCHP) has been instrumental in framing the 'criminalisation' of homelessness as a human rights issue both at the US federal level and internationally.

Eric Tars, Director of Human Rights and Children's Rights Programs at the NLCHP, explained the NLCHP's human rights work:

the human rights work is really trying to bring international human rights standards and mechanisms into our litigation and our policy and advocacy. For example, right now we're really active in trying to get the issue of criminalisation of homelessness reframed as cruel, inhuman and degrading treatment because that's very similar to our own Eighth Amendment cruel and unusual standards and it could be a good entry point for using some of the international standards in litigation.

Through their sophisticated advocacy, which contextualises on the ground evidence of criminalisation within international human rights frameworks, the NLCHP has highlighted that enforcement-based approaches to homelessness cannot be considered purely as a local issue – in many cases, these practices contravene international human rights standards and warrant international attention and federal government action.

### Federal agency recognition of criminalisation as a human rights issue

In its 2012 report, *Searching Out Solutions: Constructive Alternatives to the Criminalization of Homelessness*, the US Interagency Council on Homelessness recognised that: 'in addition to violating domestic law, criminalization measures may also violate international human rights law, specifically the Convention Against Torture and the [ICCPR]'.<sup>231</sup> This was the first time a US federal government agency had 'recognized domestic practices toward

<sup>231</sup> US Interagency Council on Homelessness, *Searching Out Solutions*, above n 192, 8.

homeless people as potential sources of a treaty violation<sup>232</sup> and was a significant breakthrough for homelessness advocates.

This recognition has been useful both in terms of raising awareness and as a tool for advocates. Barbara Poppe, Executive Director of the US Interagency Council on Homelessness, said that the report has ‘created a level of awareness’ and been a ‘public governmental statement’ about criminalisation. She said it ‘it is one of the tools of persuasion that advocates have when presenting constructive alternatives to enforcement’.

Ms Poppe said that ‘the train of enforcement can be difficult to stop if local political forces mobilise around criminalisation as a solution and this national report supports advocates in local areas to weigh in on the debate’.

The NLCHP has used this federal government recognition as part of its ongoing work ‘to integrate international human rights standards into the domestic policy discourse on issues of homelessness’.<sup>233</sup>

Despite this powerful acknowledgement of the human rights impact of criminalisation, ‘the federal government’s recognition that criminalization of homelessness is poor public policy and contrary to its legal obligations has not translated to improved treatment of homeless people in many communities’.<sup>234</sup> The US has continued to see a growing number of laws prohibiting conduct directly related to homelessness (including urban camping, sitting or lying in public places, loitering and begging), as well as the disparate enforcement of laws against people experiencing homelessness.<sup>235</sup>

The NLCHP extended its advocacy to the international arena via the fourth periodic review of the US’s compliance with the ICCPR by the UN Human Rights Committee. In its report to the Committee in preparation for the review, the NLCHP identified that: ‘Explicit recognition that criminalization of homelessness is discriminatory and constitutes cruel, inhuman, and degrading treatment would be a powerful affirmation for advocates working to safeguard the fundamental rights of homeless people in the United States’.<sup>236</sup>

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<sup>232</sup> NLCHP, Human Rights Committee Report, above n 120, 9.

<sup>233</sup> National Law Center on Homelessness and Poverty, *UN to Sacramento: You’re Violating Human Rights of Homeless People* (available at: <http://homelessnesslaw.org/2012/02/un-to-sacramento-youre-violating-human-rights-of-homeless-people/>).

<sup>234</sup> NLCHP Human Rights Committee Report, above n 120, 6.

<sup>235</sup> Ibid 7.

<sup>236</sup> Ibid 5.





Geneva: UN Human Rights and Alliance of Civilisations Chamber, Palais des Nations

## Cruel, inhuman and degrading – UN Human Rights Committee reports on US criminalisation

The NLCHP has done ground-breaking, persistent and compelling work identifying the ways in which criminalisation of homelessness is inconsistent with obligations under the ICCPR. US NGOs have focussed their attention on the ICCPR because the US remains one of the few countries that have not ratified the ICESCR. That said, it also provides an opportunity to remind the US and international community that the two sets of rights are indivisible.

The NLCHP submitted a detailed report on the criminalisation of homelessness in the US to the UN Human Rights Committee in advance of the fourth review of the US's compliance with the ICCPR. In *Cruel, Inhuman, and Degrading: Homelessness in the United States Under the International Covenant on Civil and Political Rights*, the NLCHP identifies that laws that penalise people for their involuntary homeless status contravene the following obligations under the ICCPR:

- The right to non-discrimination (Articles 2 and 26) – '[c]riminalization measures discriminate against homeless people on the basis of their status or property. Discrimination also affects homeless subpopulations, such as racial minorities, women and transgender people, in unique ways'.<sup>237</sup>
- The right to be free from cruel, inhuman and degrading treatment (Article 7) – 'criminalization of homelessness and its associated activities in public space, when people have nowhere else to go, deprives individuals of safe, legal, and dignified opportunities to perform necessary human functions, such as sleeping, eating, urinating, and defecating. This deprivation constitutes a violation of the Article 7 rights of homeless people'.<sup>238</sup>
- The right to liberty and security of the person (Article 9) – '[r]egulations and practices that criminalize behavior that homeless people cannot avoid routinely result in unjustified arrests under Article 9 ... These

<sup>237</sup> Ibid 15.

<sup>238</sup> Ibid 6.

deprivations of homeless people's liberty are disproportionate, unfair, and irregular, violating Article 9's protection against arbitrary arrest and detention'.<sup>239</sup>

- The right to privacy (Article 17) – '[s]ince the United States fails to provide homeless people with adequate shelter, they have no choice but to live on the streets ... the harsh repercussions that sweeps impose on homeless people are disproportionate to the ends of cleaning up public spaces and are a violation of the homeless population's right to privacy'.<sup>240</sup>
- The right to family (Articles 17 and 23) – shelters that impose regulations based on sex or familial status, for example by excluding fathers or adolescent males, threaten family integrity. Homeless families (in 2009, 535,000 families sought shelter in the US) are also at increased risk of separation from state removal of children for 'neglect' related to homelessness and poverty. 'When the United States follows laws and practices that obstruct the integrity of homeless families, it violates the children's and parents' rights under Article 17 and Article 23'.<sup>241</sup>
- The right to freedom of assembly (Article 21) – '[a]ssembly by people in homelessness serves many purposes, including safety, community formation, expression, and access to services. Unjustified restrictions on the use of public space by homeless people undercuts their ability to enjoy these basic human goods'.<sup>242</sup>
- Voting rights (Article 25) – 'US laws increasingly disenfranchise homeless people by making voting contingent upon proof of identification, citizenship, or residency'.<sup>243</sup>

On 13 March 2014, the UN Human Rights Committee reviewed US compliance with ICCPR. This is the first time that issues of criminalisation have been brought before the Committee and, accordingly, is a ground-breaking achievement in terms of promoting recognition that punitive approaches to homelessness are, in addition to being ineffective and expensive, often a violation of the human rights of homeless members of the community; rights which governments have a legal obligation to uphold.

Chair of the UN Human Rights Committee, Sir Nigel Rodley, concluded the review of the US by saying:

In terms of victims victimised ... I'm simply baffled by the idea that people can be without shelter in a country and then be treated as criminals for being without shelter ... the idea of criminalising people who don't have shelter is something that I think many of my colleagues would find as difficult as I do to even begin to comprehend.<sup>244</sup>

On 26 March 2014, the UN Human Rights Committee handed down its Concluding Observations, which specifically identify the 'criminalization of homelessness' as raising concerns of cruel, inhuman, or degrading treatment and call on the US government to take corrective action:

While appreciating the steps taken by federal and some state and local authorities to address homelessness, the Committee is concerned about reports of criminalization of people living on the street for everyday activities such as eating, sleeping, sitting in particular areas etc. The Committee notes that such criminalization raises concerns of discrimination and cruel, inhuman, or degrading treatment (arts. 2, 7, 9, 17, and 26).

**The State party should engage with state and local authorities to: (a) abolish criminalization of homelessness laws and policies at state and local levels; (b) ensure close cooperation between all relevant stakeholders including social, health, law enforcement and justice professionals at all levels to intensify efforts to find solutions for the homeless in accordance with human rights standards; and (c) offer incentives for decriminalization and implementation of such**

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<sup>239</sup> Ibid 10.

<sup>240</sup> Ibid 12.

<sup>241</sup> Ibid 14.

<sup>242</sup> Ibid 9.

<sup>243</sup> Ibid 14.

<sup>244</sup> Sir Nigel Rodley, Chair of the UN Human Rights Committee, *Concluding Comments* (13 March 2014); see *US ICCPR Review 2014: Cruel, Inhuman, and Degrading* (available at: <https://www.youtube.com/watch?v=IM6eXpJVuIA&feature=youtu.be>).

**solutions, including by providing continued financial support to local authorities implementing alternatives to criminalization and withdrawing funding for local authorities criminalizing the homeless.<sup>245</sup>**

This advocacy by the NLCHP is a compelling reminder of the importance of using international human rights mechanisms to draw attention to local laws and policies that impact disproportionately on people experiencing homelessness. Recognising that human rights mechanisms deal directly with federal governments, rather than the local authorities that often introduce enforcement-based approaches to homelessness, the NLCHP proposed ways in which the federal government could influence local governments to reverse the trend of criminalisation. They sought recommendations from the Human Rights Committee (which were largely reflected in the Committee's Concluding Observations) that federal agencies should:

- promulgate guidance for communities emphasising the negative consequences of criminalisation;
- provide incentives for decriminalisation and constructive alternative approaches;
- discontinue their funding of local law enforcement practices that criminalise homelessness; and
- investigate and prosecute criminalisation policies or enforcement whenever they occur.<sup>246</sup>

The goal is for international advocacy to have a local impact and the NLCHP has run its international work alongside its ongoing relationships with federal agencies, the Department of Housing and Urban Development, which has 'indicated a willingness to use its influence to reverse this inhumane, costly and senseless trend', and that the US Interagency Council on Homelessness, which 'is working with [the NLCHP] to encourage its members to forgo criminalization in favor of constructive alternatives that respect human rights'.<sup>247</sup>

Reframing local enforcement-based approaches to homelessness in an international human rights context is an important way in which we can generate new perspectives and insights, as well as questions or challenges, about how we are dealing with homelessness in our communities and whether these approaches are justified and proportionate. Contextualising these issues in a human rights framework also shifts the conversation from one of charity or welfare to one of rights and obligations. It provides a mechanism for balancing competing rights and obligations and it comes with international systems of reporting, accountability and scrutiny.

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<sup>245</sup> UN Human Rights Committee, *Concluding observations on the fourth report of the United States of America* (advance unedited version) (26 March 2014) [19].

<sup>246</sup> NLCHP Human Rights Committee Report, above n 120, 17.

<sup>247</sup> Maria Foscarinis, Executive Director, National Law Center on Homelessness and Poverty, *In Just Times* (March 2014).



In addition to making use of the periodic reviews of countries' human rights compliance, we should keep in mind the complaints-based mechanisms, which UN Special Rapporteur on Extreme Poverty and Human Rights (2010 – 2014), Ms Magdalena Sepúlveda Carmona, described as an 'amazing tool' for placing pressure on states and encouraging accountability.

By way of background, 'special procedures' are the mechanisms (either individual experts such as special rapporteurs or working groups) set up to address specific country situations and 'thematic issues' throughout the world: 'They are prominent, independent experts working on a voluntary basis, appointed by the Human Rights Council'.<sup>248</sup> The two most relevant experts in relation to enforcement-based approaches to homelessness are the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and the Special Rapporteur on Extreme Poverty and Human Rights.

The Special Rapporteur on Extreme Poverty and Human Rights is the global expert on 'the relationship between the enjoyment of human rights and extreme poverty' and 'is required by the Human Rights Council to examine and report back to member States on initiatives taken to promote and protect the rights of those living in extreme poverty'.<sup>249</sup> The Special Rapporteur's activities include:

- country visits;
- responding to information provided about the human rights of people living in extreme poverty (including individual complaints about alleged violations);
- developing constructive dialogue with governments, international organisations, civil society and other relevant actors with a view to identifying ways to remove all obstacles to the full enjoyment of human rights for people living in extreme poverty; and
- submitting annual reports to the Human Rights Council and the General Assembly.<sup>250</sup>

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<sup>248</sup> Office of the High Commissioner for Human Rights, *Human Rights Bodies* (available at: <http://www.ohchr.org/en/hrbodies/Pages/HumanRightsBodies.aspx>).

<sup>249</sup> Office of the High Commissioner for Human Rights, *Special Rapporteur on extreme poverty and human rights* (available at: <http://www.ohchr.org/EN/Issues/Poverty/Pages/SRExtremePovertyIndex.aspx>).

<sup>250</sup> Ibid.



Where individuals or advocates are concerned about the impact of laws or policies on people experiencing homelessness, the Special Rapporteur encourages individual complaints.

An example of what this complaints process looks like in practice – including the complaint, the letter of allegation (which includes targeted questions and requests for evidence), the country response and associated media releases and local advocacy – are discussed below in relation to laws prohibiting rough sleeping in Hungary.

## Complaints to the Special Rapporteur – the case of Hungary

### Background

In April 2011, the Budapest City Council issued a decree that made sleeping on the street an offence and subjected people sleeping rough to fines of €200 and detention. Based on these amendments, during October 2011, Budapest police allegedly evicted homeless persons from 13 underpasses in the inner city and demolished multiple self-made shelters in various parts of the city. The evicted persons were reportedly not provided with alternative shelter options and some were arrested.

In November 2011, the Hungarian Parliament introduced a law which allowed for the imprisonment (up to 60 days) or a €600 fine for people found guilty of rough sleeping twice in a six month period.<sup>251</sup> The law refers to 'habitual residing' in public places.<sup>252</sup>

### Individual complaint mechanism

An individual or agency can make an individual complaint to a Special Rapporteur about human rights concerns in their country. Unlike treaty body mechanisms, domestic avenues do not have to be exhausted before making an individual complaint, which makes it easier to incorporate this step into an organisation's advocacy strategy. The source of the individual complaint can also remain anonymous.

In response to an individual complaint, the Special Rapporteur, either herself or together with another Special Rapporteur can send a 'letter of allegation' to the head of a country identifying human rights concerns and presenting a series of questions. The country has 60 days to respond.

### Letter of allegation, targeted questions and government response

On 21 December 2011, a letter of allegation was sent to the Hungarian Government by the Special Rapporteur on extreme poverty and human rights and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living. The letter outlined the Special Rapporteurs' concerns about the human rights impact of the alleged laws and practices criminalising rough sleeping in Hungary. They presented a series of questions, including requests for:

- details of the shelter available to people experiencing homelessness in Hungary, particularly Budapest;
- details of a National Housing Strategy;
- information about any consultation that occurred in relation to the legislative amendments;
- information about any human rights impact assessment that was carried out in relation to the new laws;
- an estimate of the costs of enforcing the new laws; and

<sup>251</sup> See FEANTSA, *Monitoring Report*, above n 9, 76.

<sup>252</sup> See Balint Missetics, 'The Criminalisation of Homelessness in Hungary' in Evangelista and Jones, above n 65, 103, 104.

- information about the legal resources available to people affected by the new legislation, including the provision of legal aid.<sup>253</sup>

The Hungarian Government provided a detailed response on 21 February 2012,<sup>254</sup> but before it had done so (it was outside the 60 day period), the Special Rapporteurs issued a press release: *Hungary's homeless need roofs, not handcuffs* calling on Hungary to reconsider the legislation.<sup>255</sup>

### Successful constitutional challenge

The City is for All, an organisation of 'homeless and formerly homeless people, those struggling with housing problems and their allies',<sup>256</sup> initiated a constitutional challenge of the legislation prohibiting rough sleeping.

In 2012, the Hungarian Constitutional Court (decision II/1477/2012) annulled the legislation as contravening the constitutional requirements for legal certainty and the protection of the right to human dignity and the right to property.<sup>257</sup>

The Special Rapporteurs issued another press release: *UN experts urge Hungary to uphold Constitutional Court decision to decriminalize homelessness*,<sup>258</sup> which called on the Hungarian Government: 'to uphold the recent Constitutional Court decision decriminalizing homelessness, to amend the anti-homeless legislation and to adopt a national housing strategy, which will take into account the needs and views of the homeless and those inadequately housed, in conformity with international human rights obligations'.<sup>259</sup>

### Outcome – the impact of grassroots advocacy and human rights accountability

Ordinarily, this would have been a successful outcome and a strong positive example of the role grassroots advocacy, litigation and international human rights mechanisms can play in reforming laws that criminalise homelessness.

However, the Hungarian Government was determined to have legislative power to prohibit rough sleeping and amended the Constitution to reflect this. On 11 March 2013 the Hungarian Parliament adopted the Fourth Amendment to Hungary's *Fundamental Law*. Article 8(3) of the amendment states: 'an Act of Parliament or local government decree may outlaw the use of certain public spaces for habitation in order to preserve the public order, public safety, public health and cultural values'.<sup>260</sup>

The Special Rapporteurs issued a second letter of allegation on 12 March 2013 presenting a number of questions, including in relation to consultation about the constitutional changes, consideration of the human rights impact of the changes, current housing and homelessness strategies and whether any assessment was conducted about the impact of the previous legislation and relevant details (including the number of people arrested or detained under the legislation, the number of people fined and whether or not the legislation had any impact on the extent of homelessness and rough sleeping in Budapest or other municipalities).<sup>261</sup>

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<sup>253</sup> See Hungary 2013 Letter of Allegation, above n 31.

<sup>254</sup> Government of Hungary Response to Joint Urgent Appeal 2013, above n 136.

<sup>255</sup> Press release: 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 and the Special Rapporteur on extreme poverty and human rights, *Hungary's homeless need roofs, not handcuffs – UN experts on poverty and housing* (15 February 2012) (available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11829&LangID=E>).

<sup>256</sup> The City is For All, *Who are we?* (available at: [http://avarosmindenkie.blog.hu/2011/12/04/who\\_are\\_we\\_3](http://avarosmindenkie.blog.hu/2011/12/04/who_are_we_3)).

<sup>257</sup> See Hungary 2013 Letter of Allegation, above n 31, 2.

<sup>258</sup> Press release: 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 and the Special Rapporteur on extreme poverty and human rights, *UN experts urge Hungary to uphold Constitutional Court decision to decriminalize homelessness* (11 December 2012) (available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12881&LangID=E>).

<sup>259</sup> *Ibid.*

<sup>260</sup> See Hungary 2013 Letter of Allegation, above n 31.

<sup>261</sup> *Ibid.*



The Hungarian Government responded on 19 April 2013 indicating that:

The Amendment, in accordance with the international obligations of Hungary, neither aims at criminalizing homeless people nor does it contain a general prohibition regarding homelessness. The Amendment provides the State and local governments with a constitutional possibility of regulation: the Amendment entitles them to prohibit permanent living in specific areas (but only in certain and not all areas) of public spaces, when necessary in the interest of protecting public order, public safety, public health and cultural values.<sup>262</sup>

While not successful in bringing about the repeal of the problematic laws, there is an indication from local advocates that the spotlight of international human rights mechanisms and local community organisers has led to increased accountability of law enforcement officers and potentially to more restrained enforcement of the laws than was feared. Missetics states:

As far as the criminalisation of street homelessness ... there seems to be an apparent inconsistency between government rhetoric and the actual practice of law enforcement. Besides the operational and financial constraints of law enforcement agencies, this may also be due to the widespread public criticism of punitive measures in general and, in particular, to powerful grassroots mobilisation of homeless people and their allies.<sup>263</sup>

The spotlight and scrutiny of international human rights experts, combined with the attention of local advocates, can be powerful tools for increasing government accountability in relation to the enforcement of laws regulating public space. We need to keep these mechanisms in mind as part of our advocacy strategies for reducing the existence and impact of enforcement-based approaches to homelessness in our communities.

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<sup>262</sup> Government of Hungary Response to Joint Urgent Appeal 2013, above n 136.

<sup>263</sup> Balint Missetics, 'The Criminalisation of Homelessness in Hungary' in Evangelista and Jones, above n 65, 109.

# 6. NEW IDEAS – WHAT’S WORKING?

In addition to expanding the way we think about these complex issues, the purpose of an opportunity like this fellowship is to get new ideas, develop constructive recommendations, broaden insights and renew motivation for improving the way we address issues of homelessness and public space regulation.

There is no single jurisdiction that is managing public space and homelessness perfectly – it is a complex social, economic and legal issue and one that requires careful balancing of competing needs, interests and priorities. There are, however, a number of innovative, thoughtful, effective measures being taken throughout the world, which can be shared and learned from.

This section sets out these insights and ideas in the following categories:

- effective research, planning and evaluation;
- new partnerships and working with ‘non-traditional allies’;
- non-justice based responses – focussing on health, housing and practical solutions;
- strong, effective relationships with police; and
- the role for the courts – innovative justice models.

## 6.1. Effective research, planning and evaluation

In the same way that this report encourages advocates to consider the motivations behind enforcement-based approaches to homelessness, it is essential that decision-makers base laws and policies on research and evidence about the causes of problematic conduct in public spaces.

Given the general trend toward enforcement-based approaches to homelessness, you might expect that there is a solid body of evidence supporting this approach as an effective way of addressing ‘public space offending’. Troublingly, however, research about people experiencing homelessness and the causes of their activities, including public drunkenness, sleeping rough and begging, is relatively scarce. Certainly, this insight or evidence-base has not been a prerequisite or sometimes even a consideration in developing enforcement-based approaches to homelessness.

By way of example, there are a number of common assumptions that inform enforcement-based approaches to begging in local areas – including that people who beg are not homeless, are addicted to drugs or alcohol, are ‘professional’ or part of an organised initiative and/or earn more money than people engaged in standard employment<sup>264</sup> – but there is often an absence of robust research and evidence supporting these assumptions.

In Melbourne, for example, anecdotal evidence informed the begging strategy, Operation Minta. There was an indication that there had been an increase in ‘aggressive’ begging and a suggestion that not all of the people

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<sup>264</sup> See, eg, Angus Erskine and Ian McIntosh, ‘Why begging offends: historical perspectives and continuities’ in Dean, *Begging Questions*, above n 159, 27, 28–9, which refers to media reports that ‘consistently portray people who beg as dishonest and undeserving of sympathy or generosity of the passer-by’, and identifying two key features of these stories: ‘that those who beg may not be what they seem, and questions about the amount of money that they make’.

begging in the CBD were experiencing homelessness.<sup>265</sup> However, it wasn't clear that research had been done about people begging in the CBD, including their circumstances, why they were begging or what might need to change for them to stop begging. Some impressive research has since been carried out by the City of Melbourne in relation to the circumstances of people sleeping rough in the City,<sup>266</sup> but at this stage no link has been made between these insights and the enforcement-based response to begging.

The City of London Police's Operation Fennel, also an enforcement-based approach to begging, is collecting data, including information about why people are begging, but it is being collected as part of the active enforcement operation rather than as part of the planning phase. It is preferable, this report suggests, for this research to be undertaken prior to the development of programs aimed at dealing with homelessness and public space.

In the absence of understanding why people are engaging in the conduct that is the subject of concern, it is difficult if not impossible to develop sensible, effective, sustainable solutions to the perceived problem.

With this in mind, this section showcases some examples of research that examines the causes of problematic conduct in public places by people experiencing homelessness and the impact of enforcement-based approaches to addressing this conduct. It is recommended that research takes place at each of the following phases of designing and implementing strategies for managing the use of public space by people experiencing homelessness:

- in designing responses – considering causes and appropriate responses;
- during and after implementation – assessing the impacts and outcomes (including assessment of the impact of enforcement-based approaches on people experiencing homelessness); and
- before, during and after implementation – undertaking transparent, accountable cost assessments.

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

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

1. What are we trying to do? For example, to clean up the streets, reduce homelessness, link people with services, stop people begging or reduce public drunkenness.
2. Why are we trying to do it? For example, in response to public concern about disorder or safety, pressure from businesses regarding commercial impacts, to improve the wellbeing of people experiencing homelessness or as part of a strategy to reduce homelessness.
3. Balancing the competing needs and interests – if we are trying to clean up the streets or respond to public pressure about disorder, for example, these concerns need to be balanced against other needs and interests, including those of individuals experiencing homelessness, service providers, the police and the courts.
4. Assess the proposed methods and what their impacts might be – consider the potential impact of the proposed method, for example, a 'crackdown' or 'blitz' on people begging will require significant police

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<sup>265</sup> See, eg. John Masanauskas, 'Police appeal to public to refuse aggressive begging' *The Australian* (19 April 2013), which quotes the responsible Victoria Police commander: 'We went out with the Salvos because they know who a lot of the beggars are. We categorised those who are genuinely homeless and needy, and those who are just looking for extra money ... some beggars are quite aggressive and people hand over money because they are in fear'.

<sup>266</sup> City of Melbourne, *Living Rough in Melbourne*, above n 26.

resources, court intervention and service involvement. It will impact on people who are begging, including potentially through breaking links with services, prompting other more dangerous activities and damaging relationships with police.

5. Are there alternative ways of dealing with this problem? Consider interventions by services other than law enforcement, including housing, health, drug and alcohol or mental health services. Comparative research is important in this respect. It is a local problem, but it is not unique and we can look further afield for ideas about what is working. Consult with services and people with a direct experience of homelessness in considering alternatives.
6. What will this cost and how much would alternatives cost? Consider the costs of police and court resources, involvement of legal services, any jail time or administration costs and assess these costs against the cost of alternatives, including provision of housing with support or targeted health-based support.
7. Is this working? During the implementation of an enforcement-based approach to homelessness, assess the impacts on individuals, community, crime rates, courts, police and services.
8. What were the impacts and outcomes? Publicly discuss the impacts and re-evaluate the program.

The examples of research in this section show the types of information that should be gathered and the methods of collecting and analysing this evidence when developing, implementing and evaluating responses to homelessness and related conduct in public places.

### *In designing responses – considering causes and appropriate responses*

The following are examples of the kinds of research that needs to be undertaken in developing responses to homelessness and public space. The case studies below highlight the method of research, some of the key findings and the implications for policy.

## Multiple Exclusion Homelessness – a quantitative study of the causes of acutely visible hardship in the UK

### **Background on the research**

A 2012 paper by Fitzpatrick, Bramley and Johnsen presented: ‘the first statistically robust analysis of pathways into homelessness and associated forms of severe and multiple disadvantage in the UK’ with the aim of ‘deepen[ing] understanding of the causation of one of the most extreme, and visible, forms of social exclusion found in the UK and elsewhere in the developed world’.<sup>267</sup>

It was a quantitative analysis of routes into homelessness and multiple exclusion, as opposed to previous research on these pathways which was primarily qualitative: ‘While qualitative research is well suited to providing in-depth, nuanced information about the nature of individual experiences and perceptions, it is not designed to address research questions that require quantification—such as the frequency with which particular combinations or sequences of experiences are found in the homeless population’.<sup>268</sup>

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<sup>267</sup> Suzanne Fitzpatrick, Glen Bramley and Sarah Johnsen, ‘Pathways into Multiple Exclusion Homelessness in Seven UK Cities’ (2013) 50(1) *Urban Studies* 148, 162.

<sup>268</sup> *Ibid* 150.

The study defined a person as having experienced multiple exclusion homelessness (**MEH**) if they have, 'been "homeless" (including experience of temporary/unsuitable accommodation as well as sleeping rough) and have also experienced one or more of the following other "domains" of deep social exclusion: "institutional care" (prison, local authority care, mental health hospitals or wards); "substance misuse" (drug, alcohol, solvent or gas misuse); or participation in "street culture activities" (begging, street drinking, "survival" shoplifting or sex work)'.<sup>269</sup>

### Research methodology

Research was carried out in seven cities where people experiencing MEH were concentrated between February and May 2010: Belfast; Birmingham; Bristol; Cardiff; Glasgow; and Westminster (London).

- **Agency selection** – agencies offering low threshold support services to people experiencing deep social exclusion were identified (such as street outreach, drop-in services, day centres, direct access accommodation, church-based soup runs, etc) as they make relatively few 'demands' on service users and might therefore be expected to reach the most excluded groups. From this sample frame, six services were randomly selected in each location (39 low threshold services in total).
- **Questionnaire** – a questionnaire survey was undertaken with the users of these low threshold services over a two-week time window. The questionnaire asked 14 yes/no questions to capture experience of the four domains of deep exclusion specified in the MEH definition (i.e. homelessness, substance misuse, institutional care and street culture activities). The questionnaire was designed for self-completion, but interviewers from the research team and staff from the relevant service were on hand to provide assistance and the questionnaire was translated into four other languages. In total, 1286 census survey questionnaires were returned, representing a response rate of 52%.
- **Extended face-to-face interviews** – interviews were conducted with users of low threshold services who had experienced MEH. A structured questionnaire was designed to generate detailed information on the characteristics and life experiences of these service users. Interviews were recorded via computer-assisted personal interviewing technology, and lasted 46 minutes on average. Particularly sensitive questions were asked in a self-completion section. Interpreting services were made available for those whose first language was not English. In total, 452 extended interviews were achieved, with a response rate of 51%.
- **Feedback seminars and a launch event** – these were conducted in all seven case study locations (attended by approximately 120 local policy-makers and practitioners) in addition to a national launch event (attended by almost 100 policy-makers, practitioners and service users).

### Findings and policy implications

The findings are complex, but a summary is:

[T]he relationship between childhood deprivations and trauma and the more complex end of the MEH spectrum is striking. Sequencing analysis revealed that substance misuse and mental health issues tended to arise early in MEH pathways, consistent with the argument that childhood trauma can undermine coping mechanisms in young adulthood, with potentially long-term consequences for health, wellbeing and social functioning. Homelessness, street lifestyles and adverse life events typically occur later in these pathways, strongly implying that these experiences are more likely to be consequences than originating generative causes of deep exclusion.<sup>270</sup>

The authors consider the policy and practice implications, including:

- the need to co-ordinate responses across all aspects of people's lives, rather than view them through a series of separate professional lenses (for example, 'criminal justice', 'homelessness' and 'substance misuse');

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<sup>269</sup> Ibid 149.

<sup>270</sup> Ibid 164.

- there is a ‘forgotten middle’ of men in their 30s who often face the most extreme forms of MEH, usually associated with hard drug use whose service needs were not being met; and
- the need to focus on homelessness prevention (applying for public housing or staying in homeless shelters are ‘typically rather late signs of MEH’ and instead ‘preventative interventions should focus on earlier signs of distress wherever possible, with schools, drugs and alcohol services, and the criminal justice system, likely to come into contact with people vulnerable to MEH well before housing and homelessness agencies do, thus having a crucial role to play in prevention efforts’).<sup>271</sup>

While obviously specific to the context in which this research took place, the rigorous methodology (including the partnership with carefully selected direct service providers and the use of feedback sessions with practitioners and policy-makers) provides helpful guidance in terms of the kind of research that goes into understanding the pathways into rough sleeping. If we develop strategies for working with people experiencing this acute form of homelessness and social exclusion in the absence of an understanding of the causes of their circumstances, our strategies will inevitably be ineffective and will risk inflicting further hardship on intensely vulnerable people.

The case study below summarises research undertaken about people begging in the London. It deals with:

- the methodology of the research (including collaboration with a range of services, selection of appropriate interviewers and consultation with people with a direct experience of homelessness in survey design); and
- its key findings, which – contrary to a number of pre-existing assumptions about people who beg – paint a picture of acute vulnerability, homelessness, low yields and hopes for housing and a stable future.

## We are Human Too: A Study of People Who Beg

In 1993 the Director of the UK’s national charity for single homeless people, Crisis, said: ‘When we reflected on the media coverage of some beggars, the impression left in a few quarters was of skilful con-artists feigning hardship and homelessness to beg money, aggressively, from a caring, guilty or scared public’.<sup>272</sup> Despite this, Crisis noted that ‘hard facts about begging didn’t exist’<sup>273</sup> and set out to assess whether people begging ‘actually need our help’.<sup>274</sup>

### Research methodology

Between October and December 1993, 145 people were interviewed who had an experience of begging (either current or past) in central London. The interviews took place on the streets (30), in day centres and advice centres (82) and in hostels (33). No names were asked.

A structured questionnaire was developed with the help of a group of people experiencing homelessness ‘so that it would be as user friendly as possible’. The survey was divided into two parts, one straightforward and one more

<sup>271</sup> Ibid 163.

<sup>272</sup> Alison Murdoch with Liz Connell, Jean Davis and Joanne Maher, *We are human too: a study of people who beg* (Crisis, London, 1994) vii (available at: <http://www.crisis.org.uk/data/files/publications/WeAreHumansToo.pdf>).

<sup>273</sup> Ibid viii.

<sup>274</sup> Ibid vii.



in-depth. The interviews took an average of 45 minutes each.

'All except one of the 16 interviewers were volunteers, from all different walks of life, chosen for their friendly manner and experience of working with homeless people. This made a major contribution to the success of the fieldwork, which took over 200 hours, spread over a mixture of mornings, afternoons, evenings and weekends'.<sup>275</sup>

A total of 29 agencies and organisations (predominantly housing, homelessness and support services, but also including the Metropolitan Police) were identified as having 'hosted the interviews or contributed ideas and support'.<sup>276</sup>

### **Key findings**

Some of the key findings of the Crisis research were:

- People begging were of all ages and ethnic groups; most were men.
- There was a very clear link between begging and homelessness – almost 80% were homeless the previous night (30% slept rough and the remainder stayed in temporary accommodation such as a hostel). Sixteen per cent had accommodation of their own but just under half were in contact with social workers and most had been homeless previously. For almost all homeless people begging, homelessness was not a chosen way of life – four in five previously had a home (the loss of a partner was the most common reason for losing that home). All but two people who were homeless wanted a home.
- Most people found it very difficult to start begging – shortage of money (including delayed or stolen benefits) was the most common reason for doing so. Over three quarters found it extremely difficult and humiliating to start.
- Nearly half the people begging had been in care; one quarter slept rough before the age of 16. Almost one in two had no family contact whatsoever.
- One third of people had a history of mental health problems. Seventeen per cent had been in a psychiatric hospital.
- One third of people begging had a recognisable substance abuse problem, most commonly alcohol. The most common reason for using alcohol or drugs was to counter depression.
- The most common single wish of people begging was for housing, followed by work.
- The majority of people begging had been abused by the public. One in three had been physically assaulted. Over one third had been sexually harassed. Two thirds had received verbal abuse.
- Begging income was varied and fluctuated as most people beg sporadically – it is generally used to 'top-up' inadequate benefits to buy items to meet immediate needs. Average takings in a day were £10–£20. Food was the item most commonly bought with begging money.
- Four in five had been in contact with the police while begging. Seventy eight per cent had been moved on. One in two had been arrested. Almost three quarters of people begging thought the police were reasonable.

### **Recommendations**

The paper presents recommendations for: government; the police; local authorities; not-for-profit sector agencies; and the general public. The recommendations highlight five urgent areas for action:

- Changes to the benefits system – in terms of levels, eligibility and delivery.

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<sup>275</sup> Ibid viii.

<sup>276</sup> Ibid 34–5.

- Improved access to both emergency and long-term housing – for all ages and special needs groups, along with practical support to help people stay housed.
- Regional strategies to tackle homelessness – led by local authorities, but encouraging co-working between different departments, agencies and the police, and with the maximum involvement of the local community.
- Extended daytime and evening services for homeless people – offering practical help, access to specialised services and opportunities to get back into employment (noting this would need Government funding).
- Repeal of the *Vagrancy Act 1824* – ‘a costly and impractical piece of legislation designed in 1824 to criminalise people who are homeless and destitute’.<sup>277</sup>

Despite being 20 years old, the method of consultation (including involvement of people with a direct experience of homelessness in the survey design), careful research and analysis of the policy implications of the research findings is a model that should be emulated in other jurisdictions trying to develop effective responses to homelessness and related activities in public places, including begging, sleeping rough or drinking in public. This kind of informed consideration of the diverse and complex factors that push people into homelessness and begging is critical to the formulation and implementation of policy solutions.

### ***During and after implementation – the impacts and outcomes***

As has been discussed throughout this report, enforcement-based mechanisms are often introduced in response to public pressure to address visible homelessness in local areas. After their introduction, however, there is often little evaluation of the effectiveness or otherwise of these measures.

While local councils or police departments may report on reduced rates of rough sleeping or begging in their local area or the number of arrests under the relevant laws, it is rare that broader research is conducted on the impact of these initiatives on people experiencing homelessness. In this way, it is not clear whether enforcement, or the risk of it, has just altered or moved homeless people’s conduct to make it less visible and has simply moved the problem – in potentially exacerbated form – elsewhere.

Throughout my travels, I came across a number of impressive research projects, which involved academics partnering or working with homelessness agencies and speaking directly with people experiencing homelessness about the impact of enforcement on them. These projects are profiled below. Importantly, each of these projects has been conducted independently of the agency that introduced the enforcement measures. While the independence of the evaluation is important, impact evaluation should be built into enforcement-based initiatives and should be the responsibility of the government agency who introduced the particular enforcement-based program.

### **Surveying 512 homeless people about Denver’s urban camping ban**

As discussed above (part 4.1), in May 2012 Denver introduced a ban on ‘urban camping’.

Local council representatives suggested that the ordinance would help link people experiencing homelessness with services and also that police were using their discretion in enforcing the ban so that people are linked with services rather than arrested.<sup>278</sup>

Local advocacy organisation, Denver Homeless Out Loud, and the University of Colorado undertook a survey of

<sup>277</sup> Ibid x.

<sup>278</sup> See, eg, Albus Brooks, ‘Denver’s camping ordinance helps us address needs of homeless’ *The Denver Post* (19 July 2013).

512 members of the homeless community to determine the impact of the ban on their day-to-day lives. The survey assessed:

- frequency and nature of police contacts with homeless individuals;
- result of those police contacts;
- patterns of shelter use or non-use;
- nature of services being offered to homeless individuals;
- whether homeless survey respondents have changed their behaviour following the ban, such as by changing sleeping arrangements, daily routines, service-access, or areas of town frequented;
- whether homeless people feel more or less safe since the ban, and why; and
- personal stories regarding experiences on the street that might shed light on the implementation of this new law.<sup>279</sup>

The survey results showed that the ban was not working as intended (for example, 83% of people approached by the police about violations of the camping ban, were asked to move on and were not offered alternative services).<sup>280</sup>

In summary, the respondents indicated that they: found it increasingly difficult to access overcrowded shelters; avoided well-lit and safe downtown areas for hidden locations; and felt less safe.<sup>281</sup>

## 37 in-depth interviews with UK 'street users' about the impact of enforcement on their wellbeing

As discussed above, the research of Dr Johnsen and Professor Fitzpatrick assesses the impact of enforcement on the welfare of 'street users' in England.<sup>282</sup> As part of their study of five local areas that had introduced 'enforcement interventions' in response to 'problematic street culture', particularly begging and street drinking, Johnsen and Fitzpatrick:

- collected data on the use of enforcement interventions in the case study areas (for example, the number of ASBOs granted and breached and the number of prison sentences for breach);
- conducted interviews (either one-on-one or through focus groups) with a total of 82 frontline workers from a range of services and enforcement agents (including police officers, magistrates, city centre managers);
- conducted 37 in-depth interviews and held focus groups with 29 current or former 'street users' to assess the impact of enforcement on their wellbeing;
- undertook focus groups or one-on-one conversations with 27 local residents and business proprietors;
- attended multiagency anti-social behaviour operational forums and/or accompanied street outreach workers

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<sup>279</sup> See Denver Homeless Out Loud, *Denver Camping Ban Survey (2012)* (available at: <http://denverhomelessoutloud.files.wordpress.com/2012/10/camping-ban-survey-final.pdf>).

<sup>280</sup> Denver Homeless Out Loud, *Report from the Street*, above n 29, 8–9.

<sup>281</sup> See Tony Robinson, 'Denver's camping ban is counterproductive' *The Denver Post* (19 July 2013).

<sup>282</sup> Johnsen and Fitzpatrick, *The Impact of Enforcement*, above n 7.

or community police officers on their 'rounds'; and

- conducted 'feedback seminars' on the final draft of the report to confirm the factual content of each case study, test the recommendations against experience and 'give something back' to those who had assisted with the research.<sup>283</sup>

This comprehensive qualitative study provides insights into 'what works, for whom, in what circumstances'.<sup>284</sup> In doing this, it is able to highlight the risks and benefits associated with enforcement-based approaches and to make suggestions about ways to reduce the risks that enforcement will have a damaging impact on 'street users'. The essential features of enforcement-based approaches (including immediately available, tailored services, warning stages and a policy not to use enforcement against people with a mental illness) that the research identified are discussed in part 4.1 above. Importantly, Johnsen and Fitzpatrick note that, although these features are essential to any potentially beneficial impact of enforcement on street users, the features do not guarantee success and nor do they eliminate the risk that enforcement will have a damaging impact on individuals experiencing homelessness.<sup>285</sup>

Even the most comprehensive research will not deliver clear-cut solutions to complex problems. It will, however, increase our understanding of the causes of the problems, identify necessary features of successful initiatives to address the problems and highlight any consequences that might otherwise be unanticipated (for example, increased isolation and risk for people experiencing homelessness). This information is essential to weighing up the proposed enforcement-based approach to homelessness against alternatives. It is also critical to reassessing whether an existing enforcement-based approach should be modified or discontinued because the risk of harmful impacts are unable to be effectively managed or are deemed to be too high for the approach to be justified.

### ***Transparent, accountable cost assessments***

The development and implementation of enforcement-based approaches to homelessness is never free. Accurate, open, accountable assessments of the financial costs are, however, less common than you would hope.

As governments are under pressure to cut spending, including on public housing, health and support services, it is important that we consider whether increased spending on enforcement-based mechanisms is the most efficient, effective way to deal with visible homelessness and poverty in our cities.

The costs of enforcement-based approaches are discussed in part 4.5, which sets out three studies that analyse the costs of enforcement-based approaches to homelessness, including by calculating:

- the prevalence of homelessness amongst a city's 'chronic offenders' (41% of those who were arrested at least five times in the prior year were homeless);<sup>286</sup>
- the average annual number of arrests and nights in jail for 33 people experiencing homelessness (and the annual cost of this of \$9,266.20 per offender or approximately \$306,000 in total);<sup>287</sup>
- the interactions with the justice system of 37 people experiencing homelessness over a three year period (they were arrested 1,271 times) and the cost of this (the jail cost alone was \$278,000);<sup>288</sup>

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<sup>283</sup> Ibid 4–6.

<sup>284</sup> Ibid 7 citing R Pawson and N Tilley, *Realistic Evaluation* (1997) 85.

<sup>285</sup> Johnsen and Fitzpatrick, *The Impact of Enforcement*, above n 7, 52: 'If taken into account within enforcement strategies, these considerations will minimise, although not eliminate, the risk of harm to vulnerable street users by enforcement action'.

<sup>286</sup> NLCHP 2011, *Criminalizing Crisis*, above n 32, 40 citing Charlotte-Mecklenburg County, *More Than Shelter! Charlotte-Mecklenburg's Ten-Year Implementation Plan to End and Prevent Homelessness – One Person / One Family at a Time* (October 2006) 5 (available at: <http://charmeck.org/city/charlotte/nbs/housing/documents/10yearplantoendandpreventhomeslessness.pdf>).

<sup>287</sup> Ibid.

- the police time spent issuing tickets for begging and squeegeeing and the associated financial cost of this over an 11 year period (67,388 tickets were issued at a cost of \$936,019 and 16,847 hours of police time).<sup>289</sup>

It is strongly recommended that decision-makers proposing new enforcement-measures or evaluating existing programs consider the cost of:

- increased numbers of law enforcement officers;
- the time of enforcement officers issuing tickets or arresting people;
- jail time;
- administration costs, including issuing tickets, reminders, warrants, processing waiver applications; and
- court resources.

Governments should consider these costs against alternative mechanisms for dealing with conduct in public places by people experiencing homelessness (including the service-based approaches discussed in part 6.3 below).

In addition to the financial costs of enforcement-based approaches, decision-makers should consider the resource burden on related services, including legal services. The use of citations, tickets and warrants has resource implications for services that provide legal and non-legal assistance to people experiencing homelessness. These services are often required to assist vulnerable clients to navigate the legal system and to link them with the services they need to help address the underlying causes of the offending conduct.<sup>290</sup> Importantly, the resources used by legal and non-legal services to assist clients to avoid prison or overwhelming debts are resources that are diverted from other areas of need, including homelessness prevention.

Currently this balancing of competing resource pressures and sensible assessment of the costs of alternative measures seems to be uncommon; the result can be costly, ineffective measures for regulating the use of public space by people experiencing homelessness.

## 6.2. New partnerships and working with ‘non-traditional allies’

As discussed throughout this report, the commercial considerations of the business sector can motivate enforcement-based approaches to homelessness in local communities. Concerns about the impact of visible homelessness on local businesses can motivate local decision-makers to initiate ‘crackdowns’ or other measures to reduce the visibility of homelessness in the local area.

It is short sighted, however, to assume that the interests of local businesses and homelessness advocates are necessarily at odds. The role of the Business Improvement Districts in the US are an example of the way in which the interests of these different parties can be compatible and conducive to a collaborative, solution-focused approach.

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<sup>288</sup> NLCHP 2011, *Criminalizing Crisis*, above n 32, 40 citing Asheville and Buncombe County, North Carolina, *Looking Homeward: The 10-Year Plan to End Homelessness* (2005) 8 (available at: <http://www.ashevilenc.gov/Portals/0/city-documents/CommunityDevelopment/Homeless/10yearplan.pdf>).

<sup>289</sup> O’Grady, Gaetz and Buccieri, *Can I See your ID?*, above n 10.

<sup>290</sup> See, eg, Justice Connect Homeless Law, *What’s the Cost?*, above n 3: an analysis by an independent consultant of 13 infringements files run by Homeless Law found that cases took 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. One matter required an investment equivalent to \$54,000 in fees to resolve.





Washington DC: Downtown DC Business Improvement District

## Working with business – US Business Improvement Districts and homelessness

A relatively recent but now well established phenomenon across the US are local ‘business improvement districts’ (**BIDs**). There are approximately 1200 BIDs in the US. They are generally established by local legislation and funded by a levy paid by local businesses.

Businesses within a defined area contribute to a common fund for the ‘improvement’ of their shared business district. Their aim is to improve the commerciality of local areas and, accordingly, BIDs add another dimension to regulation of public space and homelessness, which can be positive or negative, depending on the predisposition of the particular BID and its members. On the one hand, BIDs are a strong lobby group and can be a source of pressure for ‘crackdowns’ on homeless people in public places motivated by commercial concerns. On the other, they can be an unconventional ally (and potential source of financial support) for initiatives that facilitate homeless people to move out of public places.

In their most positive form, BIDs have provided funding for outreach workers and drop-in clinics to link rough sleepers with support services.<sup>291</sup>

Assistant Chief Diane Groomes of the District of Columbia Metropolitan Police Department said that three of DC’s eight BIDs had hired outreach workers with a mental health background and that this had played a significant role in reducing some of the need for police intervention.

The Downtown DC BID ‘has the only non-governmental, clinically-based outreach team for individuals experiencing homelessness in Washington, DC’. The BID’s website states:

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<sup>291</sup> See, eg, US Interagency Council on Homelessness, *Searching Out Solutions*, above n 192, 25 which refers to the Downtown Homeless Outreach Team in Washington DC, a multi-disciplinary team of outreach workers who engage people experiencing homelessness on the streets of downtown DC. The outreach team is fully funded by downtown property owners through the Downtown Business Improvement District and managed by the non-profit Pathways to Housing DC.



The BID's philosophy is that homeless individuals are part of the city's fabric, too. And like every other citizen -- Downtown workers, residents and visitors -- we need to serve this segment of the population. We're about finding solutions to people living on the streets. Our goal is not to maintain those who are homeless, but to provide a hand-up.<sup>292</sup>

The Downtown DC BID has partnered with the city government and 20 local service providers to 'facilitate overall best practices to end homelessness'. It partners with Pathways to Housing DC to employ the Downtown Homeless Services Team: 'a four-person, clinically-based outreach team that provides street-level intervention to move individuals beyond homelessness to independence'.<sup>293</sup>

Amy Horton-Newell, Director of the American Bar Association Commission on Homelessness and Poverty, provided helpful insights into working collaboratively with the business community in relation to addressing homelessness. She said, 'for the most part, the business community and advocates are on the same page - no one wants people drinking, begging or sleeping on the street, so the community should work collaboratively to address the problem by providing housing and supportive services.' Ms Horton-Newell said, from experience, a good starting point is to get a range of different parties around the table (business, elected officials, police, providers, advocates and consumers) and facilitate a constructive dialogue on moving people off the streets and into housing. She said, perhaps start from the point of: 'we understand what prompts criminalisation efforts, but it won't get the result you want; instead, we need to focus on ensuring sufficient housing and supportive services are available and accessible'.

Ms Horton-Newell explained that models that have been successful in the US proactively engage people experiencing homelessness through outreach and collaborative approaches. As an example, some BIDs collaborate with homeless outreach workers and service providers and encourage business owners with concerns to call outreach workers rather than the police, but 'the trick is to have a housing option for the homeless person sitting on the sidewalk ... and the reality in most communities in the US is that we don't have sufficient housing options'.

Barbara Poppe, Executive Director of the US Interagency Council on Homelessness, also encouraged collaboration between different sectors. She said the starting point for 'community solutions' is to get people with a mix of perspectives round the table 'and agree what the problem is and make a start on some of the solutions'.

## Searching for Balance – federal legislation and a summit of interested parties

The US Interagency Council on Homelessness has strongly recommended engaging broad sectors of the community to develop 'solutions that both help people who are homeless and address the concerns of the broader community'.<sup>294</sup>

The US Federal *Homeless Emergency Assistance and Rapid Transition to Housing Act 2009* required the US Interagency Council on Homelessness to 'develop alternatives to laws and policies that prohibit sleeping, eating, sitting, resting, or lying in public spaces when there are no suitable alternatives, result in destruction of property belonging to people experiencing homelessness without due process, or are selectively enforced against people experiencing homelessness'. As part of this, the US Interagency Council on Homelessness joined with the Access to Justice Initiative of the US Department of Justice and the Department of Housing and Urban Development to hold a summit on the 'development of constructive alternatives to the criminalization of homelessness' called

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<sup>292</sup> Downtown DC Business Improvement District, *Homeless Services* (available at: <http://www.downtowndc.org/programs/homeless-services>).

<sup>293</sup> Ibid.

<sup>294</sup> Ibid 10.

*Searching for Balance: Civic Engagement in Communities Responding to Homelessness.*

The summit was a full day forum that brought together city and county government officials, police officers, business improvement district leaders, court officials, health providers, national advocates, federal partners, and men and women who had experienced homelessness. Based on the solutions proposed at the summit, the US Interagency Council on Homelessness prepared its ground-breaking report *Searching out Solutions: Constructive Alternatives to Criminalization*. *Searching Out Solutions* states:

Some of these solutions involved partnerships among sectors that have not previously worked together, some involve new programs and services funded all or in part by business and community associations, and some involve the donation of volunteer time and expertise by members of the community as leaders of coalitions or providers of needed skills or services. All involve communitywide collaboration, openness to innovation, and a commitment to real solutions to underlying problems rather than to short-term fixes.<sup>295</sup>

Often we assume that government, police, business, homeless advocates and people experiencing homelessness have incompatible interests in relation to homelessness and public space. Homelessness is a problem for the entire community and it requires us to work together to address it. It is important that we are cognisant of, and open to, the significant potential for these groups to work together to provide the expertise, insights and resources needed to develop and implement effective solutions to homelessness and associated conduct in public places.

### **6.3. Non-justice based models – focussing on health, housing and practical solutions**

In most jurisdictions I visited we are in the disappointing position where law enforcement and the justice system have become the default mechanism for dealing with visible homelessness and associated activity in public places.

Whether or not police are the best equipped agency and individuals to carry out this role has received inadequate consideration. Berk and MacDonald reached positive conclusions about crime reduction under the Safer Cities Initiative in Los Angeles, but articulated the reminder: 'law enforcement actions do not address the roots of homelessness nor most of its consequences. Getting tough on the homeless should not be confused with policies or programs that respond fundamentally to the social and personal problems that homelessness presents'.<sup>296</sup>

Barbara Poppe, Executive Director of the US Interagency Council on Homelessness, noted that thought also needs to go into who makes the offer of assistance and asked: 'how welcome is it if a police officer makes it?' While recognising that there are officers with homelessness expertise, Ms Poppe noted the risk that: 'links with services are less likely to be successful if they're coming from the arresting officer'.

With this in mind, we need to move to a position where law enforcement and the justice system are not the first resort for dealing with homelessness in our communities. As discussed in part 3.1 above, this often happens because of a lack of awareness of viable alternatives.

This section sets out a number of alternatives to enforcement-based responses to homelessness and related conduct in public places. It highlights examples of:

- dealing effectively with alcohol dependence and homelessness;

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<sup>295</sup> See, eg, US Interagency Council on Homelessness, *Searching Out Solutions*, above n 192, 10.

<sup>296</sup> Berk and MacDonald, *Policing the homeless*, above n 97.

- housing-based solutions to public space offending; and
- practical alternatives to fines and tickets for jaywalking, public urination and illegal street vending.

## *Dealing effectively with alcohol dependence and homelessness*

The motivation for this fellowship was my client Scott who had an acquired brain injury, anxiety and depression and who cycled in and out of homelessness. He also battled chronic alcohol dependence and had done for over 20 years. During periods of homelessness, Scott would be arrested for being drunk in a public place, taken to the cells for about four hours, released and issued with an infringement for approximately \$600. Sometimes this would happen multiple times in one day and Scott incurred about \$15,000 in infringements for being drunk in a public place in a five year period.

Scott's example – one of many – gives rise to questions about whether this is the most effective way of dealing with alcohol dependence and homelessness in our communities. It is a question other jurisdictions have given thought to and some insights are below.

### Frank Paul's death – sobering centres recommended in Vancouver

Frank Paul was a 48-year-old Mi'kmaq who died of exposure and hypothermia in a Vancouver alley on 5 or 6 December 1998, after he was left there by police while severely intoxicated and wet. Mr Paul experienced homelessness, alcohol dependence and mental illness.

The Government of British Columbia appointed an independent commission of inquiry to examine the circumstances surrounding the death of Mr Paul. The Commissioner was former Supreme Court Justice William Davies QC.<sup>297</sup> The Terms of Reference included inquiry into the:

- circumstances surrounding Mr Paul's death;
- response of five public bodies to his death;
- rules, policies and procedures of those bodies in their interaction with people incapacitated by alcohol or drug use, or when an individual dies in similar circumstances; and
- health care and social services programs and facilities available in Vancouver for people experiencing chronic alcohol dependence and homelessness.

The Commission held 60 days of evidentiary hearings at which 68 people testified. It also convened nine days of informal roundtable discussions of policy issues, and considered submissions from participants and members of the public.<sup>298</sup>

Commissioner Davies concluded: 'The evidence requires me to conclude that despite the service of many fine and diligent professionals, our systems of justice and social service ultimately failed Frank Paul'.

Commissioner Davies set out Vancouver's process for dealing with persons intoxicated in public:

[They] are transported to the sobering unit of the Detox Centre (operated by the Vancouver Coastal Health Authority) or, if they have a history of violence, to the Jail (which includes a separate holding facility for intoxicated people). Jail staff members are required to replace wet clothing and check on intoxicated prisoners every 15 minutes. Nursing

<sup>297</sup> British Columbia Ministry of Justice, Independent Reports, *Davies Commission of Inquiry into the Death of Frank Paul (2009 and 2010)* (available at: <http://www.pssg.gov.bc.ca/policeservices/reports/independent.htm#davies>).

<sup>298</sup> William H Davies QC, Commissioner, *Alone and Cold: The Davies Commission Inquiry into the Death of Frank Paul* (12 February 2009) (see: <http://frankpaulinquiryca.nationprotect.net/>) (**Davies, Alone and Cold**). The Criminal Justice Branch of the Ministry of Attorney General challenged the commission's jurisdiction to inquire into its response to Mr Paul's death (i.e. the decision of whether or not to charge the police officers involved) and this decision was subject to an application for judicial review and appeal. The 2009 interim report dealt with all issues other than this question.

staff must visually assess prisoners on admission, and every hour thereafter. Before release, Jail staff must ensure that prisoners are able to care for themselves, are dressed appropriately for the weather, and have a place to go and a means to get there. Chronic alcoholics are released with few or no community supports, and the cycle of release and re-arrest repeats itself with alarming regularity.<sup>299</sup>

The Commissioner found:

In spite of universal recognition that chronic alcoholism is a medical condition deserving of a medical or harm reduction response, Vancouver's continued reliance on police officers to enforce the "state of intoxication in a public place" legislation is a drain on scarce police resources, a punitive revolving-door policy that ignores the underlying housing, medical and social needs of chronic alcoholics. Many jurisdictions have successfully converted to an entirely civilian-based response ... It is time for Vancouver to move toward a similar type of civilian response.<sup>300</sup>

His first recommendation was 'that the City of Vancouver, the Vancouver Coastal Health Authority, the provincial Ministry of Housing and Social Development, and the Aboriginal community jointly develop a comprehensive response to the needs of homeless chronic alcoholics within the city of Vancouver. This would include (but not be limited to) the following components:

- a civilian-operated program for attending to chronic alcoholics who are incapacitated in a public place;
- a civilian-operated sobering centre;
- an enhanced civilian-based detoxification program;
- the provision of permanent low-barrier housing designed for the specific needs of chronic alcoholics, which would offer (if needed) palatable alcohol substitution and managed alcohol programs; and
- the provision of community-based, multidisciplinary assertive community treatment services'.<sup>301</sup>

The Commissioner recommended that a third party be appointed to lead the development of the response and that it be overseen by the Ombudsman.

Pivot Legal Society notes that this recommendation has not been followed yet. Pivot reports having two active cases where harms could have been avoided if the individuals involved had been taken to a sobering centre instead of to jail. They state: 'These cases are far too common, and we are using legal action and engagement with government to ensure that this important and potentially life-saving recommendation is followed'.<sup>302</sup>

Assistant Chief Groomes of the District of Columbia Metropolitan Police Department spoke about the value of detox centres for police. She said 'a lot of people want us to deal with public drunkenness, but we're not looking to arrest people. We try to take them to a detox centre ... We don't want to criminalise someone for a sickness. I don't believe in that'.

Two models where these centres are in place and working effectively are set out below.

## A health-based response and Sobering Station in Portland, Oregon

In his recommendations in the inquiry into the social and justice systems for dealing with people experiencing chronic alcohol dependence and homelessness in Vancouver, Commissioner Davies said: 'Many jurisdictions have

<sup>299</sup> Ibid.

<sup>300</sup> Ibid. Commissioner Davies noted: 'I do not mean to suggest that the VPD favours retention of the current punitive approach. For more than a decade, the department has been advocating a civilian-based harm reduction response to public inebriation'.

<sup>301</sup> Ibid.

<sup>302</sup> Pivot Legal, *Accountable Policing*, above n 176.

successfully converted to an entirely civilian-based response. Portland, Oregon, for example, has developed expertise in providing assistance to homeless chronic alcoholics – even sometimes violent ones – in which their Hooper Center is an entry point to a continuum of care. It is time for Vancouver to move toward a similar type of civilian response'.<sup>303</sup>

Portland's sobering station is run by Central City Concern. The introductory statement of its sister centre, the Hooper Detoxification Stabilization Center, is telling: 'It began here – His name was David P. Hooper. He was an eccentric, intelligent young man; a talented track star, aspiring politician and an alcoholic. He was also the last person to die of alcoholism in the Portland city jail. In 1971, Oregon made the momentous shift to define alcoholism as a disease, not a crime. That act also shifted the focus away from the legal system to the social service system to search for a better way to handle public drug and alcohol abuse'.<sup>304</sup>

The Portland Police Department does not arrest people for being intoxicated in a public place. The model does, however, recognise that 'severely intoxicated people, or those suffering from an acute reaction to drugs, are a potential risk to themselves and others. Public safety and personal health risks make it critical to get these individuals off the street quickly, and into a safe environment'.<sup>305</sup> Rather than take intoxicated people to jail, Central City Concern staff and the police bring them to the sobering station where they can get sober in a safe, appropriate environment.

Central City Concern operates a roving van throughout the inner city to transport inebriated individuals to the sobering station. The van is staffed by Emergency Medical Technicians trained to work with people experiencing severe substance dependence and mental illness, 'thus providing significant assistance to the police'.<sup>306</sup>

People generally spend 3 – 5 hours getting sober. They are provided with information about treatment and recovery upon release.

Central City Concern reports that the sobering station was 'a safe place to sober up for more than 8,400 admissions; the Central City Concern van brought 2,200 admissions to the program'<sup>307</sup> (i.e. about 75% are brought by police).

Central City Concern operates an emergency response phone line from 1:45 pm to 11:45 pm seven days per week. Outside these hours people need to contact the Portland Police Bureau's non-emergency line. Central City Concern has a range of other programs that it can link people to, including treatment programs, low barrier housing, employment and peer support.<sup>308</sup>

The van is funded by the Portland Police Bureau and the sobering station's annual budget is split between Portland City (which also funds the police) and Multnomah County.

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<sup>303</sup> Davies, *Alone and Cold*, above n 298.

<sup>304</sup> Central City Concern, *Hooper Detoxification Stabilization Center* (available at: <http://www.centralcityconcern.org/services/health-recovery/hooper-detoxification-center/index.html>). The *Oregon Revised Statutes* (the codified laws of the State of Oregon) § 430.315 states: 'the Legislative Assembly finds alcoholism or drug dependence is an illness. The alcoholic or drug-dependent person is ill and should be afforded treatment for that illness'. Oregon has no law against public intoxication and treats public intoxication as a public health problem, not a crime. Under the *Oregon Revised Statutes* § 430.399 a police officer is required to take a person who is intoxicated in public to a treatment facility if: the person is incapacitated (unable to make rational decisions about the person's need for treatment); the person's health appears to be in danger; or the officer has reason to believe the person is dangerous to him or herself or others. If taken to a treatment centre, the person must be released from protective custody within 48 hours unless the person seeks voluntary admission to the centre. If no treatment centre is available, a person who is drunk or under the influence of drugs may be taken to jail until the person is no longer intoxicated, incapacitated, or under the influence. However, if an intoxicated person needs medical attention, police must take the person to the nearest medical facility. The *Oregon Revised Statutes* § 430.402 provides that local governments in Oregon are prohibited from adopting or enforcing local laws or regulation criminalising or penalising: public intoxication; public drinking (except that local governments may prohibit public drinking in places where any consumption of alcohol is forbidden); being drunk and disorderly; '[v]agrancy or other behavior that includes as one of its elements either drinking alcoholic beverages or using controlled substances in public, being an alcoholic or a drug-dependent person, or being found in specified places under the influence of alcohol or controlled substances'; or using or being under the influence of a controlled substance.

<sup>305</sup> Central City Concern, *Sobering Station/CHIERS* (available at: <http://www.centralcityconcern.org/services/health-recovery/sobering-station-chiers/index.html>).

<sup>306</sup> *Ibid.*

<sup>307</sup> *Ibid.*

<sup>308</sup> See Central City Concern, *Services* (available at: <http://www.centralcityconcern.org/services/>).

## Maryhaven Engagement Center in Columbus, Ohio

Maryhaven is a provider of 'integrated behavioral healthcare services, with a specialization in addiction recovery care, to help men, women, and adolescents restore their lives from addictive and mental illness'.<sup>309</sup>

Maryhaven runs a range of health services, one of which is the Maryhaven Engagement Center, which 'is designed to provide a refuge for public[ly] inebriated homeless men and women and to offer them the opportunities to begin making changes to rebuild their lives'.<sup>310</sup> When people experiencing homelessness are found drunk in public by outreach workers or safety officers, they are taken to a specialist centre where they can sleep and have a shower.

Individuals must meet the following criteria for admission: 18 years of age or older; transported by Reach Out Workers or Safety Officers; permanently or temporarily without a home; and publicly under the influence of alcohol and/or drugs.

The centre shelters 42 men and eight women per night. There is 24 hour medical care, and the centre is open 365 days a year. People are offered access to services when sober. The services are not compulsory or an ultimatum. Importantly, the centre is a medical facility, not a justice one.

Maryhaven Engagement Center staff also work with the Community Shelter Board's Rebuilding Lives Initiative, which provides transitional and permanent housing for individuals and families brought into the Maryhaven program.<sup>311</sup>

The reality is that these services are not inexpensive to operate and there would need to be discussion about the funding arrangements for such a centre, including the breakdown of local and state government contributions, as well as any potential partnerships with the private or not-for-profit sectors.

As discussed above, however, the current system of putting people in lock up, fining them and releasing them into a cycle of homelessness, hospitalisation and repeat offending is by no means inexpensive. In addition, the current system does nothing to assist the person to address the underlying causes of offending and therefore carries both a human and financial cost.

Barbara Poppe, Executive Director of the US Interagency Council on Homelessness, touched on this when she referred to the sobering or engagement centres. She said: 'It's not an inexpensive service to provide but it's highly valued by police, businesses and health services'.

In addition to cost, another barrier that is sometimes raised about civilian-based responses to public drunkenness is the inability of civilian staff to cope with severely substance affected individuals, whose behaviour may be aggressive. The Central City Concern sobering station has a number of solitary rooms for people to be taken to if they present a risk. Further, both the van and the station are staffed by medical professionals with specific expertise in dealing with people experiencing substance dependence and mental illness – it is strongly arguable that these professionals are better equipped to deal with the health-based symptoms of these conditions than most police officers.

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<sup>309</sup> Maryhaven, *Annual Report 2012 (2013)* (available at: [https://www.maryhaven.com/annual\\_report.asp](https://www.maryhaven.com/annual_report.asp)).

<sup>310</sup> Maryhaven, *Homeless Services* (available at: [http://www.maryhaven.com/homeless\\_services.asp](http://www.maryhaven.com/homeless_services.asp)).

<sup>311</sup> See also US Interagency Council on Homelessness, *Searching Out Solutions*, above n 192, 17.





National Coalition for the Homeless: Everyone Deserves a Home campaign

A clear and obvious message coming out of my fellowship is that the ultimate solution to problematic conduct in public space is access to permanent supported housing. Patty Mullahy Fugere, co-founder and Executive Director of the Washington Legal Clinic for the Homeless summarised it well: 'we need to have a community where the reliance on public space to live private lives is minimised by having access to affordable housing ... public space issues arise because people don't have private space to do the things that we should all be able to do in private'.

Importantly, advocates remind us that housing alone is not enough. Amy Horton-Newell, Director of the American Bar Association Commission on Homelessness and Poverty said clearly: 'it's slightly misleading to say that housing alone is the ultimate solution'. For people who've experienced chronic homelessness, four walls and a roof is just the beginning – built-in support programs are critical.

Discussing effective models of tenancy sustainment is beyond the scope of this report,<sup>312</sup> but they are worth keeping in mind when thinking about solutions to public space offences. To that end, here are two examples of models for helping people to access and then sustain housing that I had the benefit of hearing about.

### Addressing chronic homelessness through personalised budgets

The personalised budget program has been run by City of London and Broadway since May 2009.<sup>313</sup> The program

<sup>312</sup> For a comprehensive, insightful analysis on this topic, see Chris Povey, Churchill Fellowship Report, *Investigating tenancy sustainment programs and approaches in relation to clients at risk of homelessness* (2010) (available at: [http://www.churchilltrust.com.au/media/fellows/2010\\_Povey\\_Christopher.pdf](http://www.churchilltrust.com.au/media/fellows/2010_Povey_Christopher.pdf)). See also US Interagency Council on Homelessness, *Searching Out Solutions*, above n 192, 14–18 for a range of practical examples of US programs that combine housing with health and social service supports to prevent and end homelessness. One example is the Chicago Housing for Health Partnership (CHHP), a 'hospital-to-housing' program that identifies chronically ill individuals who are homeless at hospitals, places them in permanent supportive housing, and provides intensive case management services so that they can maintain their health and secure long-term housing stability. The program recognises that it is too common for people to be discharged from hospital into homelessness. A 2011 evaluation of CHHP showed that the costs of providing housing and case management are more than offset by the reduced costs of hospital and nursing home services, prison or jail, and other services. See US Interagency Council on Homelessness, *Chicago Housing for Health Partnership* (available at: [http://usich.gov/usich\\_resources/solutions/explore/chicago\\_housing\\_for\\_health\\_partnership#CHHP\\_3](http://usich.gov/usich_resources/solutions/explore/chicago_housing_for_health_partnership#CHHP_3)) citing A Basu, R Kee, D Buchanan and L Sadowski, 'Comparative Cost Analysis of Housing and Case Management Program for Chronically Ill Homeless Adults Compared to Usual Care' *Health Services Research* (2011).

is described as 'new way of working to get the most entrenched long-term rough sleepers off the streets by giving back choice and control to the individual'.<sup>314</sup>

Liz Blackender, Team Leader City Outreach and Pan London Personalised Budgets at Broadway Homelessness and Support explained: 'the key is that they have one dedicated worker who gets to know them, who is very flexible and adaptable and who understands that different people want different things. There are no pressures to make decisions'.

The personalised budget allocates up to £3,000 to the individual and supports them to make decisions about what they need to exit homelessness: 'it gives them a feeling of control over their life', Ms Blackender said. An action plan is developed, but there is no set time limit. The kinds of things people budget for are mobile phones, clothing to improve their self-esteem, acquiring their birth certificate, passport or ID and accommodation costs.

Once people are in accommodation, small amounts are spent on things that will help them to sustain their tenancy and reintegrate into the community, including courses, furniture, bikes, fishing rods or lap tops. An evaluation in 2010 found: 'Fifteen people who had been sleeping rough for between four and 45 years were offered a personalised budget. By the time of the evaluation, the majority were in accommodation (seven) or making plans to move into accommodation (two)'.<sup>315</sup>

The evaluation also recognised: 'Many people experienced high levels of anxiety around moving into accommodation. Long-term personalised support after resettlement, provided by one dedicated worker, was seen as essential to maintaining tenancies'.<sup>316</sup>

Approximately 80 chronic rough sleepers have now been referred to the program.

## Social enterprises and sustaining housing

Tom Laviolette, Director of Project Development at PHS Community Services Society (PHS), said they were well aware that housing alone isn't enough for many people, particularly those who've experienced long-term homelessness and the hardship and isolation that come with it. Mr Laviolette spoke about a resident in PHS's community housing who disclosed: 'If I'm alone in a room at night, I start to panic'.

One approach PHS takes to addressing this is to create employment or community engagement opportunities for their residents through social enterprises. Examples include working in local cafes,<sup>317</sup> staffing and making items for retail stores<sup>318</sup> and working in community gardens.<sup>319</sup>

Mr Laviolette spoke about the way these kinds of options can 'help people reintegrate into their community, build confidence and create further opportunities down the track'.

The effective integration of social enterprises, and the opportunities they create, into the operation of a housing provider is an interesting model for helping tenants to sustain their housing after periods of homelessness and accompanying hardship and social exclusion.

<sup>313</sup> Broadway Homelessness and Support, *Personalised Budgets for rough sleepers in the City of London wins Andy Ludlow Homelessness Awards* (available at: <http://www.broadwaylondon.org/aboutus/LatestNews/PersonalisedBudgetsProjectWinsAndyLudlowAward.html>) (**Broadway Homelessness and Support**). See also Homeless Link, *City of London – Personalisation Pilot working with entrenched rough sleepers in partnership with Broadway* (available at: <http://homeless.org.uk/london-broadway-personalisation-pilot#.Ux6tqjNWFd9>).

<sup>314</sup> Broadway Homelessness and Support, above n 313.

<sup>315</sup> Juliette Hough and Becky Rice, *Providing personalised support to rough sleepers: An evaluation of the City of London pilot* (Joseph Rowntree Foundation, October 2010) 5 (available at: <http://www.jrf.org.uk/sites/files/jrf/supporting-rough-sleepers-full.pdf>).

<sup>316</sup> Ibid 5.

<sup>317</sup> See: <http://scoutmagazine.ca/tag/portland-hotel-society/>.

<sup>318</sup> See: <http://www.thewindowartshop.com/>.

<sup>319</sup> David P Ball, 'Hastings Urban Farm offers food security and connection to land' *Vancouver Observer* (21 May 2012) (available at: <http://www.vancouverobserver.com/city/2012/05/21/hastings-urban-farm-offers-food-security-and-connection-land>).

The two examples in this section focus on using empowering, supportive, creative models for assisting people to access and sustain housing after periods of homelessness and acute hardship. They are programs that recognise that four walls and a roof will not be enough to successfully end a person's homelessness, particularly if that person has experienced long-term homelessness and any of the accompanying hardships, including mental illness or substance dependence, that can be both a cause and a consequence of protracted homelessness.

### *Practical alternatives to fines and tickets*

A key theme throughout this report has been the tendency to turn to law enforcement because of a lack of awareness of other solutions to problems of homelessness and related conduct in public places. In many cases, what is required is careful consideration of the problem at hand and identification of potentially workable solutions. When I met with Aiyanas Ormond, Community Organiser from the Vancouver Area Network of Drug Users (VANDU) he spoke to me about the way in which the VANDU members had thought about the kinds of things that would help them and community members in the Downtown Eastside to avoid the conduct that they were being so heavily ticketed for.

#### Downtown Eastside – speed limits, public toilets and a market

The three offences that local residents are most frequently ticketed for in Vancouver's Downtown Eastside are jaywalking, public urination and illegal street vending.

In each case advocates and residents have proposed constructive, practical strategies that aim to prevent the 'offending' conduct and reduce the number of tickets issued.

- **Jaywalking** – over a tragic period there were numerous VANDU members and other Hastings Street residents killed or injured by cars as they crossed local streets. There was no evidence to suggest that issuing tickets for jaywalking increased pedestrian safety, so instead advocates successfully pushed for a 30km/hour zone to be introduced in recognition of the significant difference speed makes to a driver's ability to stop or at least to minimising impact.<sup>320</sup> The numbers of injuries and fatalities have apparently significantly reduced since this change.
- **Public urination** – advocates called for more public toilets, noting that both people sleeping rough and people living in overcrowded, poorly equipped single room occupancies (SROs) lack access to toilets and are left with no alternative to public urination.<sup>321</sup>
- **Illegal street vending** – steps are currently being taken to formalise the ad hoc markets that had previously been the subject of a ticketing blitz for street vendors. The more structured market currently operates once a week and there are hopes to expand it. On the issue of street vending and why he does it, a Downtown Eastside resident who has received multiple tickets, Dave Hamm, said: 'We don't have front yards because we live in SROs so in order for us to have a yard sale we need to set up on the sidewalk. We can't survive on the current welfare and disability rates, but we are allowed to make at least \$200 under the new rules – we shouldn't be criminalized for just trying to survive.'<sup>322</sup>

<sup>320</sup> VANDU, 'Executive Summary' of 'We're all pedestrians': Final Report of the Downtown Eastside Pedestrian Project (2010) (available at: [http://www.vandu.org/documents/WereAllPedestrians\\_EXECUTIVE\\_SUMMARY.pdf](http://www.vandu.org/documents/WereAllPedestrians_EXECUTIVE_SUMMARY.pdf)).

<sup>321</sup> City of Vancouver, *Toilet accessibility in the Downtown Eastside* (available at: <http://vancouver.ca/people-programs/toilet-accessibility-in-the-dtes.aspx>).

<sup>322</sup> King, *VANDU and Pivot Allege Discrimination*, above n 41.

This kind of advocacy is what we should all be trying to do. It recognises the concerns of decision-makers, considers mechanisms for addressing the underlying causes and presents constructive, workable solutions. Central to these examples was the guidance of people with an experience of homelessness as well as the recognition that fines and tickets were doing nothing to prevent the conduct or effectively address the concerns of government, police and other members of the community.

## 6.4. Strong, effective relationships with police

As has been discussed throughout the report, when considering enforcement-based approaches to homelessness the following factors are relevant:

- what the laws are;
- how the laws are enforced by decision-makers and enforcement officers (including police and ticket inspectors and encompassing collaborative relationships with homeless services as part of ‘assertive outreach’); and
- how the justice system deals with people once they have entered it (including through tickets, fines, prison, anti-social behaviour orders or tailored community orders).

The second limb – the point at which a decision is made about the appropriate way to deal with a person experiencing homelessness in a public place – is an area where there is enormous potential for a significant, positive change to occur. It is at this point, the front end, where police, advocates, decision-makers and people with an experience of homelessness need to work together to improve the options available to police and the knowledge that informs their exercise of discretion.

This section discusses key elements of policing and homelessness:

- building relationships with police and the need for leadership;
- training and education – Homelessness 101;
- a protocol – guidance for dealing with homeless people in public places (including supporting police in their interaction with, and exercise of discretion in relation to, people experiencing homelessness); and
- examples of best practice policing (including creating options other than tickets and charges for police to use in their interactions with people experiencing homelessness).

At the outset, a reminder that a key message from this research is that despite the potential for the police to play a positive role in dealing with people experiencing homelessness in their communities (particularly if equipped with a better understanding of other options for dealing with problematic conduct in public places), they should not be the automatic go-to agency for tackling visible homelessness.

This position is consistent with the views of police representatives I spoke with. By way of example, Assistant Chief Diane Groomes of the District of Columbia Metropolitan Police Department said:

A lot of what we deal with now is not crime ... a lot of investment should go into services instead of using police to solve these problems: we’re not psychologists. Social workers and social services need to be 24 hours a day. My officers are frustrated – they want to help out but the resources aren’t there. There aren’t enough services to get people into. We need a redirection of resources. At the moment it’s so easy to find police, but people need services.

On the question of whether police are the agents best placed to undertake outreach work for people who are homeless or begging in the City of London, Sergeant Montgomery said: ‘probably not ... it makes it conflictual straight away, but we’re the ones people turn to’.

With these considerations in mind, this section presents constructive recommendations for working with police to reduce the negative impact of laws regulating public space on people experiencing homelessness in their communities.

## ***Building relationships with police and the need for leadership***

One of the impacts of enforcement-based approaches discussed in part 4.3 is that they can damage the relationship between police and people experiencing homelessness in the community, with the consequence that already vulnerable individuals can become further marginalised and subject to greater risk.

Both police and advocates spoke about the importance of maintaining relationships between police and homeless people. Tom Laviolette, Director of Project Development at PHS Community Services Society has worked on the Downtown Eastside for approximately 20 years. He said that throughout that time, relationships with police have ‘ebbed and flowed’. Douglas King, Barrister and Solicitor with Vancouver’s Pivot Legal Society said a ‘ticketing blitz’ in 2008 before the Olympics was a dramatic failure; it ‘created havoc’, damaged the relationship between the police and the Downtown Eastside community and drowned prosecutors and courts to the point that most of the tickets weren’t prosecuted. Mr Laviolette said: ‘The best times are when we’ve got a police contact person who sticks around long enough ... police sometimes move too much and then you have to start from scratch with building understanding’.

Constable Jodyne Keller, Homeless Outreach & SRO Liaison with Vancouver Police Department explained that her position has existed for approximately five years and, in that time, the VPD has ‘changed how we offer services to the homeless and have bridged gaps which were originally faced by the homeless and the police’. In her role, she works closely ‘with all levels of government as well as directly with the homeless on the street’.

Ultimately, leadership within the force is critical to improving approaches to people experiencing homelessness. Some of the suggested ways in which relationships can be improved include senior police officers attending regular meetings with community organisations, including peer representatives. Mr Laviolette said: ‘Problems arise when you have less experienced, less acclimatised officers policing the streets ... We need officers attuned to the needs of the community to progress within the force’.

Assistant Chief Groomes from the District of Columbia Metropolitan Police Department said:

We need our officers to understand that we need really good relationships with the community. We can’t just jump out and search people. It takes a very frank discussion and supervision is key. You must have supervision out there.

There is nothing wrong with initiating a conversation, but it’s how you do it. That is the biggest gap – how we talk to people ... Intense training is needed. I’m worried for the future, because the new recruits who are coming through are used to emails and phones. You need to be able to talk to people. That’s how things escalate if you don’t talk to people well. There should always be verbal interactive components of training ... We need empathy.

Assistant Chief Groomes also explained that she plays a role in communicating to residents and business that ‘it’s not a crime to be homeless; just being homeless itself is not a crime and we cannot arbitrarily arrest or harass homeless people’.

In addition to leadership, supervision and encouragement from the top, police officers need training and education to assist them to understand and engage effectively with people experiencing homelessness. Formal training and guidance, as well as identification of alternative mechanisms for dealing with people experiencing homelessness (including access to services and referral pathways), are crucial to supporting police to exercise their discretion to choose options other than ticketing or arresting people experiencing homelessness on their beat.

## ***Training and education – Homelessness 101***

The causes of homelessness and its impacts on people’s lives and conduct are complex and difficult to understand without well-designed, targeted training. New recruits and existing officers require training to assist them to better understand homelessness and deal appropriately with people experiencing homelessness. As Lucy Fitzpatrick, Supervising Senior Staff Attorney with the Homelessness Prevention Law Project at Public Counsel in Los Angeles phrased it: ‘training is needed to help officers understand when a person’s behaviour is caused by something other than defiance’.



Patty Mullahy Fugere, co-founder and Executive Director of the Washington Legal Clinic for the Homeless (**WLCH**) talked to me about the training the WLCH provides for the new recruits of the District of Columbia Metropolitan Police Department and the role it has played in developing a constructive relationship with the police in DC.<sup>323</sup>

## Homelessness 101 and working with law enforcement officers in Washington DC

The WLCH runs regular training for new recruits to the District of Columbia Metropolitan Police Department (**MPD**) called 'Homelessness 101'. One of their expert lawyers runs the training in partnership with a person who has previously experienced homelessness and they aim to 'blow away some of the myths and stereotypes about homeless folks'.

The training has become a permanent component of MPD's training curriculum for new recruits. It includes key facts about homelessness that 'attempt to get to the heart of both the causes and the face of homelessness in the District': Who is homeless? Why are so many people homeless? Is there enough shelter? Is there enough housing?<sup>324</sup>

The training builds awareness about homelessness and its causes, as well as resources and services that are available to people experiencing homelessness. Ms Mullahy Fugere said the training has been 'helpful in getting people to understand and respond more appropriately to homelessness'.

In addition to its openness to training and education about homelessness, the MPD also nominates Assistant Chief Groomes as a representative on the District of Columbia Interagency Council on Homelessness (**ICH**). Assistant Chief Groomes spoke highly of the ICH, particularly because it gives people experiencing homelessness a chance to have their voices heard. Assistant Chief Groomes also spoke about the 'crisis intervention' training provided to MPD officers. She said that while the MPD does not have specialist homeless outreach officers, they have approximately 520 officers with 'crisis intervention' skills who are trained to respond to mental illness.

All new and existing issuing officers should be given training about the complex circumstances that may affect the people they're dealing with, including homelessness, mental illness and substance dependence.<sup>325</sup> This training should involve people with a direct experience of these circumstances, who can play an effective role in improving understanding and addressing any pre-existing stereotypes or assumptions that officers may have.

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<sup>323</sup> See also See, eg, US Interagency Council on Homelessness, *Searching Out Solutions*, above n 192, 26 which refers to the Homelessness 101 'police sensitivity training project' in Broward County, Florida which aims to 'raise police officers' awareness to the reality and causes of homelessness, address the most effective intervention techniques, and decrease the number of trespassing arrests for individuals experiencing homelessness in the county'. It reports that since the training commenced, the total number of trespassing arrests in Fort Lauderdale has decreased 26%.

<sup>324</sup> See Washington Legal Clinic for the Homeless, *WLCH's Fact Sheet on Homelessness and Poverty* (12 January 2012) (available at: <http://www.legalclinic.org/?p=533>).

<sup>325</sup> See, eg, US Interagency Council on Homelessness, *Searching Out Solutions*, above n 192, 25 regarding the way in which 'cross-training' of police officers and service providers assists police officers to engage with people experiencing homelessness, identify and respond to mental health issues and make referrals to housing and service providers. It also notes that these training programs facilitate improved communication and trust between parties.



## A protocol – guidance for dealing with homeless people in public places



Washington DC: Supreme Court of the United States

Police officers are required to make difficult on-the-spot decisions in the face of competing obligations and they need to be supported to balance competing priorities, consider people's individual circumstances, deal appropriately with vulnerable people and weigh up alternatives to tickets and arrests.

In recognition of the complexity of this role, the District of Columbia Metropolitan Police Department has a General Order, *Interactions with Homeless Persons (Order)*, which was introduced in 2011. Assistant Chief Diane Groomes of the MPD talked to me about the introduction of the Order. She said that the need for it arose because: 'one of the issues in DC is the shelter system is just for overnight, not a 24-hour shelter, again because of resources. People are pushed out, unless it's too cold, and there is no place for them to go but the public space'. She said there was some initial resistance to the Order, with people asking 'why are you treating the homeless differently?' Her response was: 'special populations need a little more detail. It's important to be clear so there's no doubt'.

### District of Columbia Metropolitan Police Department – General Order: Interacting with Homeless Persons

#### Purpose

The stated purpose of the MPD General Order, *Interacting with Homeless Persons* is:

to ensure that members of the Metropolitan Police Department (MPD) understand and are sensitive to the needs and rights of homeless persons in the District of Columbia, and to set forth procedures for members to follow during

contacts with homeless persons. This policy recognizes that all persons, including people experiencing homelessness, have the right to be peacefully in any public place of the District of Columbia as long as their activities are lawful. It also explicitly affirms that homelessness is not a crime.<sup>326</sup>

## Policy

The policy underpinning the Order is:

The policy of the Metropolitan Police Department is to treat homeless persons in a manner that protects their needs, rights and dignity, while providing appropriate law enforcement services to the entire community. The Department recognizes that in law enforcement situations involving homeless individuals, it is preferable to make referrals to organizations that provide services to them, and to refrain from initiating contacts that interrupt innocent activity and may violate an individual's constitutional rights.<sup>327</sup>

## Key provisions

Some key elements of the guidance provided by the Order are:

- 'Members shall not detain arrest, interrogate, or initiate any other criminal law enforcement interaction with any persons based solely upon their "status" of being or appearing to be homeless, as long as they are not engaged in unlawful activities'.<sup>328</sup>
- 'Members shall not communicate in any way to persons who are or appear to be homeless that they are not allowed to be in a particular public space in the District because of their homeless status'.<sup>329</sup>
- 'Members shall not order any person to move to another location when that person has a legal right to be present where he or she is, absent safety, security, or other constitutionally permissible reasons'.<sup>330</sup>
- 'At no time shall members request or demand identification in order to harass, intimidate, threaten or make any other unwarranted show of authority toward a person who is or appears to be homeless'.<sup>331</sup>
- 'Members shall refrain from instituting any search, frisk, or other such investigation where the elements of reasonable suspicion or probable cause are not met. A person's status of being or appearing to be homeless, without more, does not constitute reasonable suspicion for such a search'.<sup>332</sup>
- 'Nothing in this order is intended to preclude a member from arresting an individual, including a person who is or appears to be homeless, when the member has probable cause to believe the person has committed a crime'.<sup>333</sup>

New South Wales also has a protocol that guides police and agency interactions with people experiencing homelessness in public places.

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<sup>326</sup> District of Columbia Metropolitan Police Department, *General Order: Interactions with Homeless Persons* (31 October 2011) GO-OPS-308.14 (available at: <https://go.mpdonline.com/GO/GO-OPS-308-14.pdf>).

<sup>327</sup> Ibid.

<sup>328</sup> Ibid 2.

<sup>329</sup> Ibid.

<sup>330</sup> Ibid.

<sup>331</sup> Ibid 3.

<sup>332</sup> Ibid.

<sup>333</sup> Ibid 4.

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

## Aims and signatories

The NSW Protocol aims to ‘help ensure that homeless people are treated respectfully and appropriately and are not discriminated against on the basis of their homeless status’ and to ‘provide a framework for interactions between officials and homeless people in public places’.<sup>334</sup>

Signatories to the NSW Protocol are: Housing NSW, NSW Police Force, Community Services, Department of Premier and Cabinet, Office of Environment and Heritage, NSW Health, RailCorp, State Transit Authority of NSW, Sydney Harbour Foreshore Authority, Sydney Olympic Park Authority, Aboriginal Affairs and Ambulance Service of NSW.<sup>335</sup>

## Guidance on appropriate responses

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

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

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

The Protocol is an agreement by government organisations to respond appropriately to homeless people who are in public places and acting lawfully. It doesn’t prevent agencies from acting where health or safety is at risk or a breach of the peace or unlawful behaviour has occurred. It encourages officials to consider the individual’s circumstances when enforcing laws and to use discretion which takes account of ‘the complex needs of homeless people, including mental health issues, drug and alcohol misuse and cognitive impairment’.<sup>336</sup>

## Implementation and evaluation

‘Guidelines for Implementation’ have been published and it is recommended that the NSW Protocol is addressed

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<sup>334</sup> Family and Community Services Housing NSW, *Protocol for Homeless People in Public Places: Guidelines for Implementation* (May 2013) 4, 5.

<sup>335</sup> *Ibid* 4.

<sup>336</sup> *Ibid* 6.

in induction training for all new staff and in development training for existing staff. Housing NSW developed a 'Protocol Training Package' to support organisations to adopt and implement the protocol.

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

This kind of practical, clear guidance provides police with support and resources to engage appropriately and effectively with people experiencing homelessness.<sup>337</sup> On their own these orders or protocols are not necessarily powerful documents (they are not prescriptive and they leave room for the discretion of the individual officer), but with appropriate training and leadership, they are a strong statement about expectations when dealing with people experiencing homelessness, as well as a source of direction or support for officers making difficult decisions in complex situations.

These documents – and the negotiation, education and leadership that accompany their development and implementation – have the potential to play a significant role in reducing the negative impact of laws regulating public space on people experiencing homelessness through improving the understanding of police and providing them with direction and guidance about when and how to interact with people experiencing homelessness.

They also support officers to exercise their discretion in a way that prevents homeless people entering the justice system when their needs could be more appropriately dealt with by health, housing and support services.<sup>338</sup>

## *Examples of best practice policing*

Throughout the fellowship I experienced directly, and heard about, initiatives where police played a key role in addressing homelessness and related conduct in public places, in co-operation with a range of local service providers.

This section features two examples of carefully planned, well thought out roles for police as one part of a broader strategy to address homelessness in the community. It was clear that the jurisdictions where police played a positive, collaborative, constructive role in the response to homelessness had strong leaders within the police force. In a Canadian context, Professor Gaetz said: 'None of these initiatives would have happened without a particular person ... it takes that person'. In both North America and the UK, these initiatives were happening in communities that have robust, coordinated responses to homelessness where addressing homelessness isn't just seen as the role of the homeless sector, but also health, child protection, education and police services.

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<sup>337</sup> See also NLCHP 2011, *Criminalizing Crisis*, above n 32, Advocacy Manual 31, which includes 'model policies and procedures that cities can adopt to ensure their homeless residents are treated with respect and that their rights are respected', including a Model General Police Order. This model order is substantially the same as the MPD Order, except it contains the following helpful provision which is not included in the MPD Order: 'When encountering a homeless person who has allegedly committed a nonviolent misdemeanor, where the continued freedom of the individual would not result in a breach of the peace or a more serious crime, Members are encouraged to utilize referral to an appropriate social service provider in lieu of physical arrest, such referral being contingent on the voluntary treatment of the individual'.

<sup>338</sup> See, eg, US Interagency Council on Homelessness, *Searching Out Solutions*, above n 192, 27 which identifies the benefits of improved collaboration between police, social service providers and mental health providers as including: diversion from the criminal justice system and reduced costs associated with incidents of arrest; more appropriate use of jail and prison space and police time; increased knowledge and awareness by law enforcement about available services for people who are homeless; increased referrals to mental health systems and permanent supportive housing; enhanced communication and coordination between law enforcement and service providers to enable more efficient interventions; stronger focus on addressing the underlying causes of homelessness; and improved officer morale and job satisfaction with more effective use of police time.

## Calgary, Canada – Police and Crisis Team: homelessness is not a criminal justice issue

The Calgary Police Service (**CPS**) website says: '[h]omelessness and poverty in itself are not criminal justice issues; they are societal issues that require a community response as a whole. The Calgary Police Service works closely with community members, partners and stakeholders to assist those experiencing homelessness'.<sup>339</sup>

The Police and Crisis Team (**PACT**) is a partnership between Alberta Health Services (**AHS**) and the CPS that was established in 2010 in response to an identified need for a joint mental health and police response:

AHS clinicians and CPS officers comprise two-person outreach teams that are intended to provide a joint response to incidents involving individuals/families experiencing a mental health, addiction, or psychosocial crisis, when homelessness and/or danger to the public are present. PACT teams assess and manage clients, conducting street level intervention where possible, with the aim of connecting clients to community resources and diverting service delivery away from the hospital Emergency Department and justice system when appropriate.<sup>340</sup>

It is a three year pilot project funded through the Safe Communities Initiative with the Government of Alberta. Meaghan Bell, Manager of Research and Policy at the Calgary Homeless Foundation said: 'It has been hugely successful in reducing the use of emergency response services for people experiencing homelessness as well as those who are recently rehoused. There was an evaluation done on the program ... that demonstrated tremendously positive outcomes and cost savings'.<sup>341</sup>

She noted though: '[o]ne of the challenges with PACT is that it is a pilot project and it does not operate 24/7 – so there remains a gap in our services in the community'.

A second initiative was launched in Calgary in late 2013. The Safe Communities Opportunity and Resource Centre (**SORCe**), is a centralised location where people who are homeless (or at risk) can access programs and services. SORCe offers information; provides an initial assessment to determine a person's need; will offer counselling as required; facilitates referrals for individuals to a range of programs and services that respond to their unique circumstances; and transports people to agencies when appropriate.<sup>342</sup>

Ms Bell explained that: 'The intention of SORCe was to provide a physical location for people to go to access the multitude of services available in Calgary without having people knocking on doors throughout the city just to learn they do not qualify or there is a waitlist'. Furthermore, she said that SORCe

was also championed in the community as a new opportunity for police officers to connect vulnerable people with services rather than arresting or ticketing. There was a sense of frustration from officers that they were seeing the same guys out on the streets and, as police officers, they did not have the knowledge or awareness of resources in the community, so the idea (and expectation from our Police Chief), was the officers would be able to physically bring vulnerable people to the SORCe to get them connected.

The examples in Calgary show that once decision-makers and service providers begin to consider options other than ticketing or arresting people experiencing homelessness, there is room for new ideas about how to effectively deal with use of public space by people experiencing homelessness, which focus on addressing the underlying

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<sup>339</sup> Calgary Police Service, *Vulnerable persons – Services and resources* (available at: <http://www.calgary.ca/cps/Pages/Community-programs-and-resources/Vulnerable-persons/Vulnerable-persons.aspx>).

<sup>340</sup> *Police and Crisis Team Charter* (2010). See also Alberta Justice and Solicitor General, *Success Story: Police and Crisis Team (PACT)* (available at: [https://justice.alberta.ca/programs\\_services/safe/Pages/PACT.aspx](https://justice.alberta.ca/programs_services/safe/Pages/PACT.aspx)).

<sup>341</sup> See, eg, Alberta Health Service and Calgary Police Service, *PACT Facts* (3 March 2010 – 30 June 2011) (available at: [http://www.calgary.ca/\\_layouts/cocis/DirectDownload.aspx?target=http%3a%2f%2fwww.calgary.ca%2fcps%2fDocuments%2fPACT-facts.pdf&noredirect=1&sf=1](http://www.calgary.ca/_layouts/cocis/DirectDownload.aspx?target=http%3a%2f%2fwww.calgary.ca%2fcps%2fDocuments%2fPACT-facts.pdf&noredirect=1&sf=1)).

<sup>342</sup> See Safe Communities Opportunity and Resource Centre (SORCe), *About SORCe* (available at: <http://www.sorce.ca/about-sorce>).



causes of the person's homelessness and public space offending rather than the symptoms. In both cases, the police themselves sought an alternative to ticketing or arresting people experiencing homelessness and mental illness.

The motivation within the police to find better ways of dealing with people begging in public places in the City of London was also the motivation for Operation Fennel.

## Operation Fennel – City of London Police begging initiative

### Background on Operation Fennel – targeting the causes of offending

Operation Fennel is the City of London Police initiative to combat begging in the City of London that has been running since June 2013.

In the early months of 2013 the City of London Police undertook a blitz on people begging in the City (an area of one square mile with a resident population of approximately 7,400 but a daily influx of approximately 300,000 commuters and business people per day).<sup>343</sup> Police Sergeant Mark Montgomery from the City of London Police Street Intervention Team explained that after arresting 48 people and seeing the same faces 'again and again' they thought: 'this is ridiculous, surely there's got to be a better way of dealing with this'. Sergeant Montgomery said the motivation to implement a program that addressed the causes of offending behaviour led to Operation Fennel.

The first stated intention of the City of London Police for Operation Fennel is 'to provide help, guidance and assistance to persons suspected of begging with a view to preventing further offences'.<sup>344</sup> In contrast to a number of other enforcement-based approaches to conduct in public places, which aim to clean up streets or remove visible homelessness, addressing the underlying causes of the person's offending conduct appear to be at the forefront of this program.

### How Operation Fennel works – service hubs

Under Operation Fennel a person suspected of begging is given a 'Street Awareness Initiative' ticket, which requires them to attend an 'educational and welfare appointment' at a set time and place i.e. a 'hub' hosted every 4 – 5 weeks with a wide range of services, including Broadway Homelessness and Support, drug and alcohol workers, veterans' charities and 'people to discuss issues with in a completely private and confidential manner'.<sup>345</sup>

If people attend on this day it negates the summons for that offence and no prosecution will take place (there is no ongoing obligation to engage), but if they re-offend they will be given a summons (i.e. it's a 'one shot only' opportunity). The ticket contains the warning: 'If you do not attend the event, any offences will be logged by City of London Police and proceedings will take place in order to prosecute you for those offences'.<sup>346</sup>

The tickets allow for two warnings before arrest or summons, but in practice the police decide case by case whether more warnings should be given. Sergeant Montgomery pointed out that they do have to take action: 'if there's no action for non-compliance, there's no deterrent and it won't work'. The police documentation explains: 'as always our priority is to determine who is offending and how often, [to put] these people in touch with the services, charities and people best suited to combat their problems with them and get them off the streets and

<sup>343</sup> Department of the Built Environment 2011, *City of London Census*, above n 49.

<sup>344</sup> Operation Fennel, *City of London Policing Plan*, above n 100.

<sup>345</sup> City of London Police, *Street Awareness Initiative Ticket* (copy provided by City of London Police on 2 December 2013).

<sup>346</sup> *Ibid.*



into some sort of safety and rehabilitation programme. However, if these people continue to offend and not accept the help offered then actions will be taken to prosecute them and remove them from the City of London.<sup>347</sup>

The harsher enforcement-based aspect of Operation Fennel is discussed below.

### **Interim outcomes of Operation Fennel**

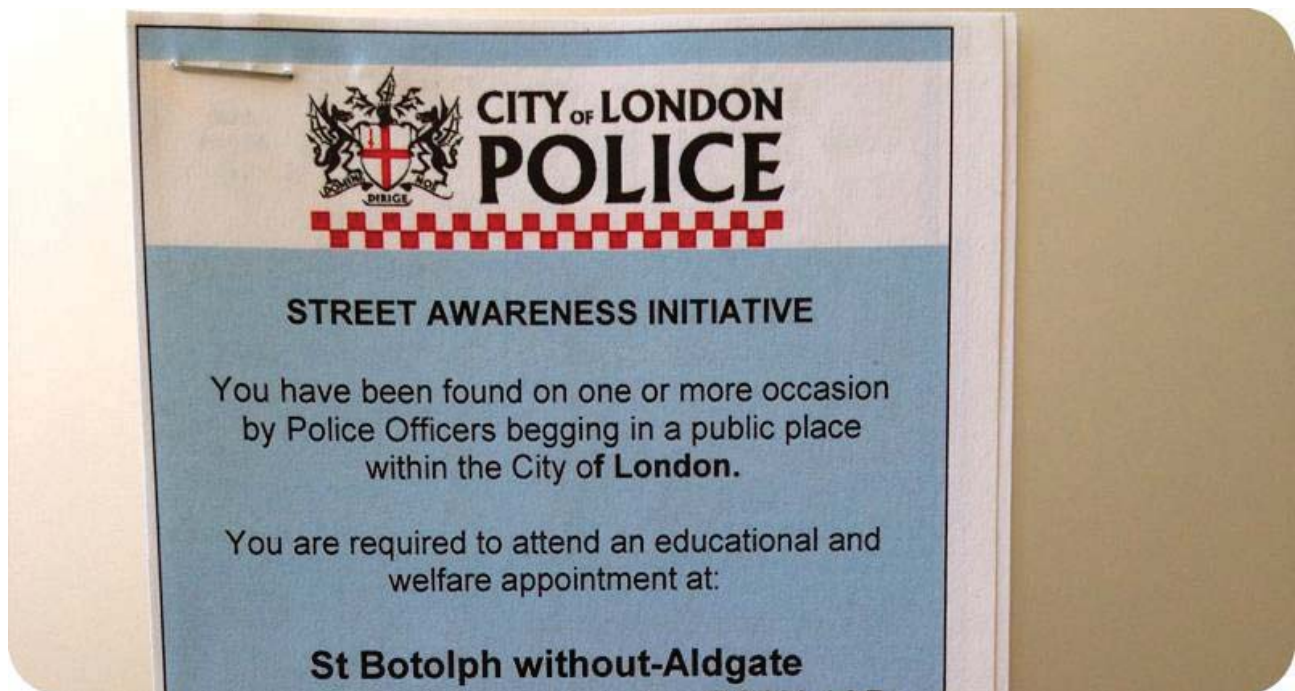
The first 12 months of Operation Fennel will be the subject of a formal evaluation in mid-2014. The City of London Police are, however, keeping track of the outcomes of Operation Fennel in relation to the 180 tickets for begging issued to 94 people between July – November 2013. They report the following 10 outcomes:

1. 'Offenders put in touch with "The Big Issue" programme.
2. Links made between homeless individuals and housing charities.
3. Fifteen people currently engaging with drug workers through Operation Fennel.
4. Relocation assistance to homeless people who want to go home to other parts of the country.
5. Assistance on 'emergency housing' over the winter period given.
6. Three prolific and problem beggars have left the City area.
7. The business community has praised Operation Fennel for its success in dealing with their begging issues.
8. Public houses having far less trouble with anti-social behaviour.
9. Good relationships built between [City of London Police] and the begging community.
10. 15 beggars failing to engage and who still offend due in court in January where an ASBO ... will be applied for'.<sup>348</sup>

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<sup>347</sup> Operation Fennel, *City of London Policing Plan*, above n 100.

<sup>348</sup> Ibid.



Many aspects of Operation Fennel can be classified as best practice, including the collaboration with services, genuine focus on addressing the underlying reasons for a person's begging, provision of a range of different service options, attempts to divert vulnerable people away from the criminal justice system, provision of warnings before harsher enforcement is pursued and the monitoring and evaluation of the impact of Operation Fennel.

As part of Operation Fennel, if people don't show up to the 'educational and welfare appointment' multiple times and continue to beg in the City of London, the police prosecute the begging offence and, if the person is convicted, the police request an anti-social behaviour order (ASBO): 'Prolific offenders who still fail to engage and continue to offend will be taken to court where an ASBO will be applied for'. At the time of my visit, there were 15 summonses for people to attend court and, if convicted, the police will be seeking an ASBO. The aim is that one court date will be allocated and all cases listed on that day. The police try to tailor the ASBOs to the defendant's particular conduct or circumstance and understand that the judge will strike them out if the terms are overly broad or if the requisite element of 'harassment, alarm or distress' cannot be made out.<sup>349</sup>

As has been discussed throughout this report, the high risk nature of anti-social behaviour orders (ASBOs) (including their potential to divert people into more damaging activities, exacerbate social isolation, disrupt engagement with services and lead to imprisonment) mean that they have not been identified as a best practice element of policing in this report.

Ultimately, Operation Fennel operates within an enforcement-based framework and it is arguable that civilian services, including homelessness and health-based outreach, could play a similar role with less cost to the police, the courts and the individuals targeted by the operation.

This is not to detract from the well-thought out best practice aspects of Operation Fennel and many of our cities still have much to learn from this program.

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<sup>349</sup> See UK Crown Prosecution Service, 'Guiding Principles' in *Guide to Anti-Social Behaviour Orders on Conviction (ASBOs)* (available at: [http://www.cps.gov.uk/legal/a\\_to\\_c/anti\\_social\\_behaviour\\_guidance/](http://www.cps.gov.uk/legal/a_to_c/anti_social_behaviour_guidance/)) (ASBO Guide).

## 6.5. The role for the courts – innovative justice models

This report has considered enforcement-based approaches to homelessness in terms of the following factors:

- what the laws are;
- how the laws are enforced by decision-makers and enforcement officers; and
- how the justice system deals with people once they have entered it (including through tickets, fines, prison, anti-social behaviour orders or tailored community orders).

This section focuses on the third tier of this system, being the courts and their role in dealing with people brought before them for offences directly related to homelessness.

People experiencing homelessness can find themselves in court via a number of avenues, including warrants for unpaid fines or tickets, warrants for failure to appear at a previous court hearing, as a result of charges or as the subject of applications for court orders, including anti-social behaviour orders. The transience and chaos of homelessness and the circumstances that can accompany it, including poverty, mental illness or substance dependence, present significant barriers to the ability of people experiencing homelessness to engage with the court system.

Traditional court processes and sentencing options present a risk that people experiencing homelessness will ‘cycle between the criminal justice and homeless worlds, seemingly without any means to stabilize their lives’.<sup>350</sup>

Through alternative justice models, however, the courts can play a different role in the trajectory of people experiencing homelessness and this section discusses examples of innovative court-based models aimed at addressing underlying causes of offending.

It also discusses the need for legal representation as part of these court-based programs and the importance of tailored, immediately available services.

At the same time as commending these innovative justice models, this section suggests that even for the most carefully designed, well-implemented court-based responses to homelessness, we need to consider whether the justice system is the best-equipped system to deal with homelessness and its symptoms in our communities.

### *Problem solving courts and innovative justice*

Danielle Malangone, Associate Director, Training and Technical Assistance with the Center for Court Innovation, summarised the role of community courts or justice centres as: ‘harnessing the power of the justice system to connect defendants to services’.

The understanding is that people will be more likely to engage with services to help address the underlying causes of their offending if there is court involvement.<sup>351</sup> Importantly, this is not solely based on ideas about the motivating power of potential criminal sanctions, but also on the concept of ‘procedural justice’. Procedural justice is identified as being present ‘when people perceive they have experiencing a decision-maker or decision-

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<sup>350</sup> US Interagency Council on Homelessness, *Searching Out Solutions*, above n 192, 29.

<sup>351</sup> See, eg, Glen Berman, Center for Court Innovation, *Principles of Community Justice: A Guide for Community Court Planners* (2010) (Berman, *Principles of Community Justice*) 9: ‘The crisis of arrest may prompt a defendant to seek help. A court can use its coercive power and knowledge of available resources to reinforce that impulse’.

making institution that accords them respect, is neutral, offers an opportunity to participate, and has trustworthy motives'.<sup>352</sup>

This section sets out examples of justice models that have been set up, at least in part, with the intentions of assisting defendants to access the services and supports they need, building confidence and trust in the justice system and addressing the underlying causes of a person's offending conduct.

## Community courts in New York City and beyond

New York City is home to the Center for Court Innovation and two of its trailblazing projects, the Midtown Community Court and the Red Hook Community Justice Center, both of which are credited with contributing to lower levels of re-offending by defendants, improved levels of trust in the justice system amongst defendants and increased perceptions of safety within their communities.<sup>353</sup>

The Center for Court Innovation and its court projects are well known by the international justice community. Midtown Community Court was established in 1993 to deal with low-level criminality in and around Times Square, including prostitution, vandalism and minor drug possession. The Red Hook Community Justice Center started in 2000 in the Brooklyn community of the same name that was struggling with drug problems and high crime levels.<sup>354</sup> The Center for Court Innovation notes: 'the Red Hook Community Justice Center shares the same basic DNA as the Midtown Community Court; each is a neighbourhood-based court that seeks to improve the local quality of life and re-engineer the relationship between the justice system and local residents'.<sup>355</sup>

Nearly two decades since Midtown Community Court was established, there are now at least 70 community courts worldwide,<sup>356</sup> including our own Neighbourhood Justice Centre in Collingwood, Victoria.<sup>357</sup> Community courts 'seek to address crime, public safety, and quality of life problems at the neighborhood level'. They are often multi-jurisdictional in that they cover a range of legal issues arising in the community, including some or all of family law, criminal matters and housing and tenancy, and a range of different support services are co-located at the court site, including job training, education, youth programs, mental health services, drug and alcohol programs, parenting courses and housing services.

Core characteristics of community courts are:

- they are focussed on problem solving in that they look at underlying reasons for offending and try to stop the defendant 'revolving through the justice system';<sup>358</sup>
- they focus on alternative sanctions and the process is 'as individualised as you can make it, rather than a

<sup>352</sup> Lee et al, *A Community Court Grown in Brooklyn*, above n 51. See Center for Court Innovation, *Red Hook Community Justice Center – Overview* (available at: <http://www.courtinnovation.org/project/red-hook-community-justice-center>): 'More than 85 percent of criminal defendants report that their cases were handled fairly by the Justice Center—results that were consistent regardless of defendant background (e.g. race, sex, education) or case outcome'. See also Lucy Kennedy, 'At Midtown Community Court, Justice with a Difference' *Chelsea Clinton News* (8 November 2007), which refers to 51 year old Wayne Manning who had spent 30 years in and out of New York prisons for petty larceny directly related to his drug dependence. Instead of sentencing him to prison again, Judge Weinberg at the Midtown Community Court gave Mr Manning an opportunity to enrol in a drug program. The article cites Mr Manning saying that Judge Weinberg's decision and the programs offered by the court gave him the confidence and structure to change his life.

<sup>353</sup> See, eg, *ibid*; Center for Court Innovation, *Dispensing Justice Locally: The Implementation and Effects of Midtown Community Court* (2000) (Center for Court Innovation, *Dispensing Justice Locally*).

<sup>354</sup> See Glen Berman, *Principles of Community Justice*, above n 351, 9.

<sup>355</sup> *Ibid* 4.

<sup>356</sup> Lee et al, *A Community Court Grown in Brooklyn*, above n 51, 1. See also Center for Court Innovation, *Community Courts Around the World* (available at: <http://www.courtinnovation.org/research/community-courts-around-world?mode=4&url=research%2F4%2Farticle>) for a list of community courts.

<sup>357</sup> See *Evaluating the Neighborhood Justice Centre in Yarra 2007 – 2009*, which covered the pilot period March 2007 – 30 June 2009 and found: reduced reoffending (in comparison to offenders with the same profile from other courts, NJC offenders were 14% less likely to reoffend); increased compliance with court ordered community work (75% of people completed their court ordered community work, compared with a statewide average of 65%); for every \$1 invested in the NJC, the expected return would range between \$1.09 and \$2.23; NJC clients reported very high levels of satisfaction with their experience of the NJC, compared to other courts and showed greater confidence in the justice system than at other courts; and since the establishment of the NJC, the crime rate in Yarra has reduced by 12% (residential burglaries are down 26% and motor vehicle theft is down 38%).

<sup>358</sup> Quote from Judge Calabrese at the Red Hook Community Justice Center on 20 November 2013.



cookie cutter approach’;<sup>359</sup> and

- the courts are integrated into the local community through ongoing consultation, consideration of the community’s needs and developing opportunities for people in the community (‘[t]o establish such close ties to the community, a court must do much more than establish an advisory council of local residents or send offenders sentenced to community service out to paint over graffiti’).<sup>360</sup>



New York City: Transform mural at the Red Hook Community Justice Center

## Procedural justice in action in the Red Hook Community Justice Center

In the 1980s and 1990s Red Hook in Brooklyn was hit hard by drug use and gang related violence. In 1992 a school principal, Patrick Daly, was caught in gang cross-fire and killed. After discussion between Brooklyn judges and prosecutors about how to reduce the area’s drug crimes, and consultation to understand the needs of the community, the Center for Court Innovation designed the Red Hook Community Justice Center to hear misdemeanour matters from three police precincts.<sup>361</sup>

An underpinning concept of the Red Hook Community Justice Center is the understanding that the presence of procedural justice (i.e. the defendant’s perception that the decision-maker has given them respect, has genuine motives and has acted neutrally) will strengthen their ‘commitment to obey the law’.<sup>362</sup>

I had the privilege of speaking with and observing Judge Calabrese, the sole judge at Red Hook Community Justice Center since its inception, as he presided over the court. He reflected on a number of people who had been through his court, using their first names, and showed his photos of defendants graduating from the GED high school equivalency program. He spoke to people in his court with genuine respect and expressed confidence in

<sup>359</sup> Ibid.

<sup>360</sup> Lee et al, *A Community Court Grown in Brooklyn*, above n 51.

<sup>361</sup> See Tom Perrotta, ‘Seen as Successful Model, Innovative Brooklyn Court Remains Work in Progress’ *New York Law Journal* (17 March 2005) (Perrotta, *Innovative Brooklyn Court*).

<sup>362</sup> Lee et al, *A Community Court Grown in Brooklyn*, above n 51, 3.

their ability to make progress toward their goals of education, rehabilitation and employment.

Judge Calabrese explained what happens if people do not comply with the court's order (for example, they do not attend their drug and alcohol treatment or appointments with a psychologist): 'we're not looking for a chance to send people to jail, if things don't work, if they don't comply, we ask why and try to make changes'.

Sonia Chowdhury, Program Associate, Technical Assistance with the Center for Court Innovation explained it as 'a common sense theory, if you treat someone fairly, like Judge Calabrese does, they will be more satisfied with how the system is treating them and more likely to comply with the orders'.

In the short session I observed, the overwhelming number of defendants had complied with the court orders in relation to their engagement with services. This is confirmed by the evidence, which shows 75% of respondents in the Red Hook Community Justice Center comply with their orders, which is 50% higher than in comparable ordinary courts.<sup>363</sup>

Judge Calabrese described it as 'the blend of services and the power of the court'.

A comprehensive evaluation of the Red Hook Community Justice Center in 2013 found (amongst other things):

- **increased use of alternative sanctions** – 78% of offenders received community service or social service sanctions, compared to 22% in comparable cases at the regular criminal court in Brooklyn;<sup>364</sup>
- **reduced recidivism** – adult defendants handled at Red Hook were 10% less likely to commit new offences than offenders processed in a traditional court (this figure was 20% for juvenile defendants); and
- **cost efficiency** – after factoring in the upfront costs of operating the Justice Center, total resource savings in 2008 were \$6,852,477; savings outweighed program costs by a factor of nearly 2 to 1.<sup>365</sup>

Part 4.4 of this report discusses the strain placed on the court system by enforcement-based approaches to homelessness. It also discusses the Homeless Court Program in the US as a judicial response to the inefficiency and ineffectiveness of the traditional court system when dealing with people experiencing homelessness in relation to offences directly related to their homelessness.

In addition to being a judicial response to the overwhelming number of homeless people being brought through the court system in relation to minor offences, the Homeless Court Program is an innovative justice model that aims to deliver positive outcomes for participants and to 'resolve the problems that homelessness represents with practical and effective solutions'.<sup>366</sup>

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<sup>363</sup> Center for Court Innovation, *Red Hook Community Justice Center – Overview* (available at: <http://www.courtinnovation.org/project/red-hook-community-justice-center>).

<sup>364</sup> Lee et al, *A Community Court Grown in Brooklyn*, above n 51, 5. Note that although the Red Hook Community Justice Center only used jail as a primary sentence in 1% of cases, when secondary sanctions were included (i.e. sanctions imposed when the defendant fails to fulfil a social or community service mandate), Red Hook ultimately sentenced 7% of its defendants to jail compared to 17% in the downtown court. Jail sentences at Red Hook were, on average, much longer than in the downtown court (64 days versus 15 days).

<sup>365</sup> Lee et al, *A Community Court Grown in Brooklyn*, above n 51, 168–9. This was based on the cost-benefit analysis comparing the costs of running the Red Hook Community Justice Center (including rent, wages for staff, costs for partner services) compared to the benefits or costs avoided (including the value of community service and the costs avoided due to lower rates of reoffending). The total estimated costs for the Red Hook Community Justice Center and its community partners amounted to \$7,500,000 during FY 2010, including \$ 6,693,915 in fixed costs and an estimated \$806,085 in variable costs. 'We are able to estimate the costs avoided related to victimization resulting from reoffending. Offenders processed by the RHCJC demonstrated significantly lower recidivism for both property and violent offenses than their Downtown counterparts ... [T]hese differences in recidivism produced more cost-avoidance of victimization costs for the RHCJC relative to the downtown court for both property re-arrests and violent re-offending. The costs of typical property and violent crimes are based on estimates made by Waller et. al (2012). When victimization costs for property and violent offenses are combined, 3,210 offenders processed in the RHCJC will generate \$15,266,760 in avoided victimization costs relative to a similar number of offenders processed at the downtown court'.

<sup>366</sup> See Binder and Merriam, *San Diego Service Provider Toolkit*, above n 178, 3.



## Specialist homeless courts

The foundation of the Homeless Court Program is ‘a collaborative effort to promote trust and confidence in the court while addressing community safety issues and removing legal barriers to self-sufficiency’.<sup>367</sup> The courts are usually held at a shelter or community-based location which is familiar and accessible to people experiencing homelessness, rather than in the ordinary court room. The courts build partnerships between the court, the prosecutor, the public defender (or non-profit or pro bono legal service providers), local shelters, service agencies and participants experiencing homelessness.

In talking about the Homeless Court Program, San Diego County Judge, Hon Robert Trentacosta said:

Any judge who is being honest feels, at some point or another, a sense of “revolving door justice” when dealing with the kinds of cases associated with homeless people. Many homeless individuals have serious long-term problems, they are punished by the criminal justice system ... and their problems don’t go away. Most of the time, those problems remain unaddressed. Homeless Court changes the model so that individuals who are interested in changing their lives can get assistance. From the court’s perspective, that works because we are able to address the real issues behind their individual situation or behaviours.<sup>368</sup>

...

If we keep doing the same thing and it isn’t working, isn’t it time to get realistic about solving the problem? That’s what the Homeless Court does ... We’ve tried a “one-size-fits-all” approach with this population, and we’ve learned that one size doesn’t fit all. The Homeless Court takes extra effort from a lot of people, but if you can get a community member sober, working, educated, and law-abiding, that’s what the essence of justice is all about.<sup>369</sup>

The Deputy District Attorney in San Diego articulates the ‘fundamental difference between the traditional court and Homeless Court’ as being ‘Homeless Court deals with people who have already changed their behaviour. In traditional court, we ask defendants to promise to change their behaviour with the threat of custody and fines – often getting mixed results. The people appearing before Homeless Court have overcome enormous obstacles ... prior to the hearing’.<sup>370</sup>

### **Safeguards or cautions**

Innovative justice models allow the courts to play a role in contributing to a person’s reintegration into the community, recovery and/or rehabilitation rather than impeding this progress through ordering fines or prison sentences. At the end of the day, however, these mechanisms still involve the individual entering the criminal justice system. The section below considers the safeguards that need to be in place to make sure people experiencing homelessness are able to: engage with the legal process, including understanding their rights, obligations and options; access appropriate services that will have a meaningful impact on their circumstances; and avoid entering the justice system when they would be more effectively and efficiently dealt with by agencies other than the courts.

### **Available, appropriate services**

Danielle Malangone, Associate Director, Training and Technical Assistance with the Center for Court Innovation said ‘a key philosophy is immediacy – people are linked with services the same day or the next day’. At the Red

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<sup>367</sup> Ibid x referring to the American Bar Association Homeless Court Program Guidelines (2006).

<sup>368</sup> Ibid 50.

<sup>369</sup> Ibid 51.

<sup>370</sup> Ibid 54.

Hook Community Justice Center and Midtown Community Court, service providers are co-located at the court and people are generally linked immediately after their court hearing.

This immediate access to services was identified by experts as a key component of the success of innovative justice models. One expert noted: ‘the existence of collaborative courts is premised on access to services. It’s critical that these services are in fact available and effective ... referring people to a waiting list isn’t doing them any favours’. He said: ‘We feel good if we “connect” people with services, but if that service isn’t genuinely available, we’re wasting people’s time’.

These comments highlight two critical aspects of court-based programs for people experiencing homelessness (1) the services need to be immediately available (in the current climate of cuts to social services this is not guaranteed); and (2) they need to be appropriate to the individual and their circumstances. Referring people with varied, complex circumstances to general supports is unlikely to play any meaningful role in addressing the factors contributing to their homelessness and related conduct.

## Access to legal representation

Without legal advice and representation, it is incredibly difficult for people experiencing homelessness to engage with the complex legal system, to understand their rights, options and obligations and to have their circumstances put before the court. Access to free legal advice and representation is an essential component of court-based models for dealing with homelessness and associated conduct.<sup>371</sup>

The role of legal representatives is sometimes raised in relation to problem solving courts, including concerns that the courts undermine the role of defence lawyers as strong advocates and pressure defendants into making guilty pleas in exchange for treatment.<sup>372</sup> Judge Calabrese has identified the importance of robust legal representation in problem solving courts:

The first thing that any problem solving court has to remember is that the Constitution comes first and problem-solving comes second ... I’ve seen other courts in the country that get roll-over defense lawyers. In Red Hook, our defense lawyers are not part of the team. What I love about Red Hook is that it is a really healthy court. The lawyers still go at it in court.<sup>373</sup>

Even therapeutic jurisdictions that aim to make orders that will assist the defendant in their recovery or reintegration into the community require access to legal advice and representation for people experiencing homelessness.

Legal representation is sometimes overlooked in the design of court-based models for dealing with homelessness for a variety of reasons, including: lack of resources to fund access to lawyers; and/or a sense that best efforts are being made by the court and/or the prosecutors to ensure a fair process with alternative sentencing, so legal defence is not necessary.

By way of example, when it commenced in 2013, Operation Minta (the operation targeting people begging in Melbourne) did not link the individuals with legal services to help them understand and navigate the court process. Similarly, access to legal representation has not been built into Operation Fennel, the City of London Police operation targeting begging in London, which involves an application for an anti-social behaviour order (ASBO) in the event that the individual does not engage with the services on offer and continues to beg in the city. The terms of the ASBOs can be very broad, including, for example, that the person must not enter the City of London for three years, and the consequences of non-compliance are significant (i.e. prison). Subject to merit

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<sup>371</sup> Sepúlveda, *Report of the Special Rapporteur*, above n 65, [82]. The Special Rapporteur concludes: ‘Access to legal representation is of utmost importance and underpins all forms of penalization of persons living in poverty. States shall ensure quality legal aid for the poorest segments of society, not only for criminal proceedings but also with respect to issues which are particularly relevant for persons living in poverty, such as social benefit appeals, eviction and child protection procedures’.

<sup>372</sup> Perrotta, *Innovative Brooklyn Court*, above n 361.

<sup>373</sup> *Ibid.*

(and the client's instructions), the lawyer may try to have the application for the ASBO dismissed, but alternatively, they may request that its scope or timeframe is narrowed so that the respondent isn't 'set up to fail'. The legal representative may also be able to communicate to the police and the court any concerns about the operation of the ASBO, for example, that it excludes the respondent from an area that they need to enter to access health, familial or social supports that are vital to their recovery.

Legal representatives have an important role to play in conveying the respondent's information to the court and the prosecutor, assisting the respondent to understand what they need to do to comply with court orders and what the consequences of non-compliance will be. For these reasons, even the best intentioned processes are likely to be flawed if the respondent doesn't have access to a legal representative who can assist them to engage with the legal path they are taken down.

## Avoiding unnecessary entry into the criminal justice system

A key aim of innovative justice models is to prevent recidivism through assisting the individual to address the underlying causes of offending, including homelessness, substance dependence or mental illness. In many cases, the courts play a role in linking people with health, housing or drug and alcohol services (or ordering that they be linked with these services), to help them address these circumstances. The Center for Court Innovation identifies that 'in many respects, community courts seek to use a court appearance as a gateway to treatment'.<sup>374</sup>

The Center for Court Innovation is also open about the enforcement-based component of the community court, noting that one of the objectives is to 'encourage the enforcement of low-level offenses [and to produce] an approach to low-level crime that was designed to "pay back" the victimized community, while addressing the underlying problems of defendants'.<sup>375</sup> The recent evaluation of Red Hook Community Justice Center identified its success in motivating compliance through:

the increased use of alternative sanctions; a decrease in the probability of a "walk" without meaningful consequences; a reduced likelihood of a jail sentence; increased use of secondary jail sentences for initial noncompliance; stricter monitoring and enforcement of the court mandate; and an emphasis on procedural justice in the judge-defendant interaction.<sup>376</sup>

While considered court orders can undeniably play a role in shaping the conduct or engagement of defendants, we need to be mindful of the nature of many of the offences that have brought people before the court – they are by their nature largely focussed on 'low level offences'.

One person before the Red Hook Community Justice Center when I attended was a 16 year old boy who had been arrested for jumping a turnstile at a train station. Although he was unquestionably treated with respect and provided with a tailored program which linked him in with education, he had appeared multiple times in a courtroom for this offence. Arguably, this young man was experiencing what Nahal Zamani, Advocacy Program Manager, Government Misconduct and Racial Justice with the Center for Constitutional Rights described as: 'a forced introduction to the criminal justice system via tickets and arrests for minor offences'.

For other people, for example our client Scott who motivated this project, even tailored services mandated by a court with risk of harsher sanctions were not the best mechanism to address the underlying causes of offending. As discussed above in part 4.2, Scott's public intoxication was a result of addiction, mental illness and homelessness and his interaction with the justice system – although via the specialist list set up to deal with people experiencing homelessness, mental illness and/or substance dependence – did not support his recovery.

These risks were identified when San Francisco first pushed for a community court based on the Midtown Community Court model. There was resistance to the proposal that quality-of-life crimes such as camping on

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<sup>374</sup> Berman, *Principles of Community Justice*, above n 351, 9.

<sup>375</sup> *Ibid.*

<sup>376</sup> Lee et al, *A Community Court Grown in Brooklyn*, above n 51, 9.

sidewalks, public urination and public drunkenness would be included in the court's mandate because of the fear that people experiencing homelessness would be criminalised.<sup>377</sup> The San Francisco Community Justice Center instead opted to focus the court on 'more serious crimes such as drug dealing, shop lifting and car break-ins'.<sup>378</sup>

As discussed throughout this part 6, there are a number of intervention points prior to a person being brought before the court at which they can be linked with services to address the underlying causes of their offending (in particular the point at which the person is identified engaging in problematic conduct in a public space and a decision is made about what action to take, including linking with outreach workers, delivering to a health-based service, arresting them or issuing them with a ticket or citation). When designing laws and systems to regulate the use of public space, we need to take a step back and consider whether the justice system is the system best equipped to deal with health and social problems. It is costly in terms of police and court time and it necessarily generates increased demand for free legal services. It can impose further strain on vulnerable people and it also provides an entry-point to the criminal justice system. For these reasons, we must consider whether even the most targeted, innovative, integrated court-based approaches are always the right mechanism for dealing with visible homelessness and its symptoms in our communities. While respectfully made, individualised court orders can have a positive impact on people, in many cases using earlier intervention points could prevent people entering the criminal justice system for conduct directly related to homelessness while still facilitating access to the services and supports needed to address the underlying causes of the conduct.

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<sup>377</sup> See, eg, Heather Knight '5 years in, verdict is positive for S.F. community court' *SF Gate* (5 March 2014); Bernice Yeung, 'A court where solutions rule' *San Francisco Chronicle* (12 August 2007).

<sup>378</sup> Knight, above n 377.

# ANNEXURE – TABLE OF CONSULTATIONS

City	Organisation	Expert(s)	Date of consultation	Type of consultation
LOS ANGELES, UNITED STATES	Public Counsel	Lucy Fitzpatrick Senior Staff Attorney Homelessness Prevention Law Project	4 November 2013	Meetings
		Eric Post Staff Attorney Homelessness Prevention Law Project		
	UCLA School of Law	Gary Blasi Professor of Law Emeritus	6 November 2013	Meeting
	Skid Row Housing Trust	LaCheryl Porter Housing Operations Director	5 November 2013	Meeting
	Inner City Law Center	Javier Beltran Directing Attorney Homelessness Prevention Project	5 November 2013	Meeting
WASHINGTON DC, UNITED STATES	National Law Centre on Homelessness and Poverty	Brett Terrell Director of Advocacy	14 November 2013	Roundtable, meeting and attendance at premiere of youth homelessness film, Sugar
		Harry Batt Director of Development Maria Foscarinis Executive Director Jeremy Rosen Policy Director Eric Tars Director of Human Rights & Children's Rights Programs Tristia Bauman Housing Director Janelle Fernandez Law & Policy Program Associate		

City	Organisation	Expert(s)	Date of consultation	Type of consultation
NEW YORK CITY, UNITED STATES		Cheryl Cortemeglia Volunteer Attorney		
		Kirsten Blume Human Rights and the Global Economy Fellow		
	National Alliance to End Homelessness	Nan Roman President and CEO	15 November 2013	Meeting
		Steve Berg Head of Policy		
	National Coalition for the Homeless	Jerry Jones Executive Director	8 November 2013	Meeting
	Washington Legal Clinic for the Homeless	Patty Mullahy Fugere Executive Director	12 November 2013	Meeting
	American Bar Association Commission on Homelessness and Poverty	Amy Horton-Newell Director	13 November 2013	Meeting
	United States Interagency Council on Homelessness	Barbara Poppe Executive Director	14 November 2013	Meeting and contribution to the <i>I Believe in Human Rights</i> blog
		Liz Osborn Management and Program Analyst		
	District of Columbia Metropolitan Police Department	Diane Groomes Assistant Chief	25 November 2013	Teleconference
	Center for Court Innovation	Danielle Malangone Associate Director, Training and Technical Assistance	19 and 20 November 2013	Meetings (as part of attendance at Red Hook Community Justice Center and Midtown Community Court)
	Red Hook Community Justice Center	Sonia Chowdhury Program Associate, Technical Assistance		
		Sonia Chowdhury Program Associate, Technical Assistance	20 November 2013	Meetings and court attendance
	Midtown Community Court	Judge Alex Calabrese Danielle Malangone Associate Director, Training and Technical Assistance	19 November 2013	Meetings and court attendance
Center for Constitutional Rights	Nahal Zamani Advocacy Program Manager, Government Misconduct and Racial Justice	18 November 2013	Meeting	



City	Organisation	Expert(s)	Date of consultation	Type of consultation
VANCOUVER, CANADA	Department of Homeless Services	Danielle Minelli Pagnotta Director, Street Homelessness Solutions  Echo Bonner Program Analyst	18 November 2013	Meeting (including representatives from the New York Police Department Homeless Outreach Unit and the New York City Department of Parks & Recreation)
	Picture the Homeless	Shaun Lin Community Organiser  Numerous members	21 November 2013	Attendance at fundraising event
	Urban Justice Center	Robert Gangi Director, Police Reform Organizing Project  Libby Mathewson Advocate, Safety Net Project	22 November 2013	Meeting
	Pivot Legal Society	Douglas King Barrister and Solicitor  DJ Larkin Barrister and Solicitor	27 and 28 November 2013	Meeting and attendance at homeless encampment.
	University of York and Canadian Homelessness Research Network	Stephen Gaetz Associate Professor, Faculty of Education Director, Homeless Hub (Canadian Homelessness Research Network)	25 November 2013	Teleconference
	Vancouver Area Network of Drug Users	Aiyana Ormond Community Organizer	26 November 2013	Meeting
	Vancouver Police Department	Jodyne Keller Constable Homeless Outreach & SRO Liaison	27 November 2013	Email
	PHS Community Services Society	Tom Laviolette Director of Project Development	26 November 2013	Meeting and visit to InSite, supervised safe injecting site
	Calgary Homeless Foundation	Meaghan Bell Manager, Research and Policy	20 February 2014	Email
	Joseph Rowntree Foundation	Kathleen Kelly Policy and Research Manager – Homelessness	3 December 2013	Meeting
LONDON & EDINBURGH, UNITED KINGDOM	Heriot-Watt University	Suzanne Fitzpatrick Professor/Director of Research Institute School of the Built Environment	4 December 2013	Meeting and attendance at seminar on UK Annual Homelessness Monitors
		Dr Sarah Johnsen Senior Research Fellow School of the Built Environment		

City	Organisation	Expert(s)	Date of consultation	Type of consultation
GENEVA, SWITZERLAND	St Mungo's	Peter Cockersell Director of Health & Recovery	5 and 10 December 2013	Teleconference
	Broadway Homelessness and Support	Liz Blackender Team Leader City Outreach and Pan London Personalised Budgets	5 December 2013	Meeting
	City of London Police	Mark Montgomery Police Sergeant Street Intervention Team	2 December 2013	Meeting and attendance at City of London Anti-Social Behaviour Interagency Working Group
	Crisis	Katharine Sacks-Jones Head of Policy and Campaigns	6 December 2013	Meeting
	UN Special Rapporteur on Extreme Poverty and Human Rights	Magdalena Sepúlveda Carmona Special Rapporteur on Extreme Poverty and Human Rights (2010 – 2014)	10 December 2013	Meeting
	Office of the United Nations High Commissioner for Human Rights	Caroline Avanzo Human Rights Officer Asia-Pacific Section Field Operations and Technical Cooperation Division	9 December 2013	Meeting
	Office of the United Nations High Commissioner for Human Rights	Benjamin Schachter Associate Human Rights Officer Human Rights and Economic and Social Issues Section Research and Right to Development Division Professor Walter Kaelin Member of the Human Rights Committee	10 December 2013	Meeting
	UN Human Rights Committee	Patricia Schulz Member of the Committee on the Elimination of Discrimination against Women	13 December 2013	Meeting
	Geneva Housing Court	Florian Irminger Civilian Judge	11 December 2013	Meeting
	Fondation Abbe Pierre Alpil	Marc Uhry Julie Clauzier Advocate	11 December 2013 11 December 2013	Meeting Meeting
BRUSSELS, BELGIUM	FEANTSA, the European Federation of National Organisations working with the Homeless	Samara Jones Human Rights Policy Officer Freek Spinnewijn Director Cory Potts	16 December 2013	Meeting
	Criminologist		17 December 2013	Meeting

7 February 2017

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

Dear Lord Mayor and Councillors

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

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

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

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

This brief submission:

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

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

### **Justice Connect Homeless Law**

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

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

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

In 2015–16, Homeless Law:

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

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

## The Amending Law

Key aspects of the Amending Law are:

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

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

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

## Existing relevant laws

As the City of Melbourne's website notes:

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

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

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

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

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

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

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

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

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

An authorised officer may:

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

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

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

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

## Concerns about the Amending Law

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

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<sup>3</sup> *Summary Offences Act 1966 (Vic)* s 13.

<sup>4</sup> *Summary Offences Act 1966 (Vic)* s 17.

<sup>5</sup> *Summary Offences Act 1966 (Vic)* s 49A.

<sup>6</sup> *Summary Offences Act 1966 (Vic)* s 6.

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

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

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

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

## Addressing challenges

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

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<sup>7</sup> See, eg, Churchill Report, above n 1, 38 – 43.

<sup>8</sup> United States Interagency Council on Homelessness, *Searching Out Solutions: Constructive Alternatives to the Criminalization of Homelessness* (2012) 2 (available at: [https://www.usich.gov/resources/uploads/asset\\_library/RPT\\_SoS\\_March2012.pdf](https://www.usich.gov/resources/uploads/asset_library/RPT_SoS_March2012.pdf)).

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



housing.<sup>10</sup> There has been a 74% increase in Melbourne's rough sleeping population since 2014, with 247 people sleeping rough in 2016.<sup>11</sup>

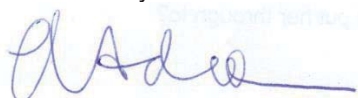
We understand that contacts to the Council in relation to amenity have significantly increased and the heavy negative media coverage throughout January has also placed pressure on the Council to take action.

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

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

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

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Lucy Adams', is written over a light blue rectangular stamp.

**Lucy Adams**

Manager and Principal Lawyer

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

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

**Name: \*** Homeless Persons Union Victoria

**Email address:** [hpuvic@gmail.com](mailto:hpuvic@gmail.com)

\*

**Contact phone** 0450730252  
**number**  
**(optional):**

**Please indicate** Future Melbourne Committee meeting  
**which meeting**  
**you would like**  
**to make a**  
**submission to**  
**by selecting**  
**the**  
**appropriate**  
**button: \***

**Date of** Tuesday 7 February 2017  
**meeting: \***

**Agenda item** 5 Public Questions/6.2 Homelessness and Public Amenity  
**title: \***

**Please write** The Homeless Persons Union Victoria worked with Fitzroy Legal Service on this  
**your** submission to the Royal Commission into Family Violence. We interviewed rough  
**submission in** sleepers in the CBD with a history of family violence. We believe the council has a duty  
**the space** to respect the most vulnerable members of our society and council must refrain from  
**provided** criminalising those who have experienced extreme trauma.  
**below and**  
**submit by no**  
**later than**  
**noon on the**  
**day of the** demonise the worst trauma unaccep way of governing  
**scheduled**  
**meeting.** We  
**encourage you**  
**to make your**  
**submission as**  
**early as**  
**possible.**

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Alternatively

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attach your

written

submission by

uploading

your file here:



[2015\\_homeless\\_persons\\_union\\_of\\_victoria\\_inc\\_submission\\_to\\_the\\_royal\\_comission\\_in\\_to\\_family\\_violence.pdf](#) 581.74 KB · PDF

Please indicate Yes

whether you

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address the

Future

Melbourne

Committee in

support of

your

submission:

*(No*

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*Council*

*meetings.) \**

Privacy

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I have read and acknowledge how Council will use and disclose my personal information.

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## Submission of the Homeless Persons Union, into the Royal Commission into Family Violence

*Below are transcripts of audio interviews with people currently experiencing homelessness or with lived experience of homelessness, save for interviews 4# and 5#, which were conducted with a young mother and mental health worker, respectively. The interviews have been conducted by members of Homeless Person's Union, also currently experiencing homelessness or with lived experience of homelessness.*

### Interview One

- Interviewer:** We are looking at the relationship between violence and safe housing and I wondered what your observations were just from your experiences on what the government could do better and what the problems you see around are?
- Interviewee:** Yeah I see a lot of domestic violence you know, and I see the need for some safe, supportive accommodation and there has got to be some government buildings that would be easy to convert you know, for women and their kids you know. And have a laundry and that set up where they can go without bloody husbands trying to barge in and bash them. I think too many men think it's alright to hit women you know, and it's not alright, you know they might have a lot of faults but they don't deserve back handers. The government can do more about education and money for funding to stop this sort of shit from happening, like they did with AIDS and that and making people aware of safe sex as well as clean IVs, clean needles and that. It's almost like the government doesn't care, they don't consider them taxpayers and that sort of thing, and they are just a burden on the State and they just get swept under the mat. Unfortunately there's just going to be women getting killed and kids getting abused, you know violent spouses and that. Hockey got criticised in the government and the budget for not putting more toward domestic violence issues, you know, and they were saying virtually two women a week are getting murdered by their exes, de-factos, husbands or whatever. But I see a lot of kids on the street because it's probably safer for them being on the street than at home. I remember when I used to be in the country the old blokes considered you a man if you drank two gallons of beer a week and went home and beat the crap out of the mrs and kids but if you had a joint you were a dirty rotten hippy. So I don't know where they get off with that sort of attitude. It needs a whole range of people, both genders, from all walks of life, all nationalities, standing up and saying alright enough's enough. And keep bombarding the politician's offices with complaints and requests for them to do more. And as I said there's gotta be a heap of government buildings and old schools that could easily be converted to make a safe area for women and their kids to go to get away from a violent abusive relationship. But the government doesn't seem to care about homeless people because they just see them as a burden and as not being able to contribute to the economy and that. It takes a while for people to get out of that sort of situation with DV and that, it takes them a little while to heal and then a little while to get back into the work force. You can't just expect them to go from leaving an abusive relationship and then walking straight into a stable job, you know, it's just not going to happen. I think they've got their head in the sand over this issue and the people who are advising them have got their heads up their asses. The things they've been trying for the last three or four years just haven't been working and they've got to



admit that, you know, “the stuff we’ve tried hasn’t been working so we’ve got to try other ways to get the message across”. Whoever’s setting the policy and that should be sacked, instead of being in a 200,000 dollar a year job, they should really be sacked.

**Interviewer:** Can I ask you a particular question? For kids who can’t find a safe space what would you think would help them? And also the streets are obviously not safe for kids, what would you suggest would be their basic right?

**Interviewee:** I would like to see a mentoring system, both males and females working together mentoring, the males working with the males, and the females working with the females. Mentors being a positive influence in their life, instead of the negative, destructiveness that surrounded them. Like their dad and his violence and that sort of thing. But there also, again, needs to be some sort of building set aside where the kids can go and there is supervision there and that. So they can be housed and they can be safe and somewhere they can have classrooms and that where they can get tutoring in the subjects they are not real strong at. You know, and give them a bit of confidence as they’re going forward in life. I heard one bloke say on, a trial psychologist on sunrise one morning; they were talking about Ritalin oversubscription. He reckons that “diagnose instead of ADHD it should be ADS, and of course she said to him “what’s that” and he said “absent dad syndrome”. He said that mum’s left to be both mum and dad and the kids take advantage of that. But yeah, they’ve got no positive male role model to show them that it’s not alright to hit women and that there are other ways to deal with anger, like you can be assertive without being aggressive. Like I moved over from Adelaide in January and I was couch surfing at a friend’s place for a little while and then I’d been homeless for a few months and then I’m in Flagstaff for the moment. But you know there’s not a whole range of crisis accommodation around. A couple times they’ve been like “We’ll put you up at the Gatwick,” and I’ve been like “Fuck off. I have a lesser chance of getting stabbed on the street than I have down there.” They can’t go placing people out of the frying pan and into the fire, you know, like sending them away from an abusive home and then sending them to a shelter like the Gatwick. It’s only going to make more problems, not solve them. I just don’t understand why they can’t allocate more taxes in a better way, to help solve the problem.

**Interviewer:** If you had to rate on a scale of one to ten the problem of family violence in our communities where would you put it?

**Interviewee:** You know it’d have to be a seven or eight. And different communities seem to be more susceptible, like the indigenous community, there are big problems there. But also the Anglo-Saxon community there is a slide of problems there. There’s a whole bunch of having kids that have you know, poor parenting skills. I wish they could get these blokes that have been done for repeatedly for domestic violence and make them have a vasectomy, so they can’t bloody reproduce anymore and then hopefully there is a banning order on them for going near any kids. You know, because they can’t control their temper and they can’t control their fists.



## Interview Two

**Interviewer:** If someone was to ask you if there's a connection between family violence and homelessness in Australia what would you say?

**Interviewee:** Yeah, there is a connection because when that violence happens, you can end up on the street, and then you got that violence out on the street as well, and we've got to put up with that. Either you can go home and put up with it, or you can come out here and put up with it, or there's places you could go to. But it's hard to speak about, people don't speak about it because it's family and because it's family you know. We have a lot to talk about.

**Interviewer:** Would you say it's one of the main reasons people become homeless?

**Interviewee:** Yep, violence, yep, domestic violence, family violence, sexual abuse, all of it. All of those backwards habits, all of it wrapped up in the one.

**Interviewer:** So when you do find yourself homeless what support is there from services that deal with these issues?

**Interviewee:** There is no support. I don't reckon there is any support. There's none for family violence because people think that you're bullshitting you know, you've gotta have scars and bruises to prove it. It doesn't have to be physical it can be mental abuse as well. Violence no matter how you put it.

**Interviewer:** How many people that you've known have had that experience where they've gone to a service and told them about it and they haven't been believed?

**Interviewee:** Yeah I've been through that. I have to have a police report or a doctor's report for that stuff you know. I don't like going to see the police or going to the doctors or those things you know.

**Interviewer:** Can you tell us a bit more about that?

**Interviewee:** It's hard to bring it out and talk about it because still to this day it's hard to bring it up you know.

**Interviewer:** How much of a difference do you think it would make if you could get safe housing? Sometimes you go into all these services and there are all these rules and the environment doesn't feel that safe anyway, but if you could get safe housing how much easier do you reckon it would be to start the journey getting better and being alright?

**Interviewee:** Safe housing goes a long way for the people that are in a domestic violence because it makes them feel safe and secure. To me that's a big thing to feel safe, that's the main thing.

**Interviewer:** What do you think about ladies that have experienced family violence and also have drug habits, do you think there is a difficulty there in accessing services?

**Interviewee:** Yeah there is because of the drugs. It's hard going in there looking forward to being safe and then on top of it you are an addict or whatever. And then they'll look down upon you and judge you.

**Interviewer:** If you could nominate your top three priorities for the government for change what would you say they were?





**Interviewee:** Safe houses.

**Interviewer:** And what do you reckon the second most important thing would be?

**Interviewee:** Just housing really.

**Interviewer:** One thing I'm going to ask is with kids and young ones, do you reckon you see kids on the street as a result of family violence?

**Interviewee:** Yeah because they have problems at home, could be anything really.

**Interviewer:** What do you reckon would help them?

**Interviewee:** They need someone to talk to. The kids need someone to talk to so they can get it off their chest you know. It might not help, but it might help them inside and a little bit out. They need someone to talk to.

### Interview Three

**Interviewer:** What are your views on damning the epidemic of family violence that we are seeing right now?

**Interviewee:** Yes, there is definitely an increase, a rise in family violence. Um, it's a problem for our community. I don't think we have the resources at the moment that's giving the opportunities for families to come for help. The Australian government, even the police force is not implementing enough with restraining orders, it all needs to change. I think we need to make sure that there's halfway houses maybe, that there is somewhere for women to go to, even men in some cases. That there is somewhere that they feel safe, maybe for a few days. Somewhere to go, even if they have children, I think that their educating needs to start maybe from the school. You know, we need to start educating our children about rights and wrongs. There needs to be somewhere that people can go for help, and they know they are going to get the help. And that maybe the Australian needs to start looking into and to start putting more resources into making sure that there is somewhere safe. And rehabilitation programs maybe for the abusive partners to learn and to help with.

**Interviewer:** Do you think we need to look at prevention, like do you think this needs to start in primary schools for example, like teaching respect for women and like a culture of non-violence. Do you think we need to start as early as then?

**Interviewee:** Yeah I do, I think a lot comes from the home and then from there I think a lot of it needs to be implemented in schools. You know maybe from high school, not so much primary schools. But you know the kids are becoming teenagers and young adolescents, there needs to be more education on respect for women, it's just as important as sex education. You know, we make sure that's all safe and we say the right things and everything, but hitting people and mental and physical abuse is not part of everyday living and it's not normal to treat somebody that way.

**Interviewer:** Do you think that when police rock up to a house because they've had a call that someone's in trouble - do you think that this whole notion to prove that they've been hurt - that we should just believe the victim?



**Interviewee:** That's a tough call because there's always two sides of a story and there's always, and you know, it's hard to comment I suppose, you don't always know what really goes on. But you know, the jails are full now, we can't just go arresting people every day I suppose, and I guess that's where their hands are tied. They don't really get involved in family disputes as I've heard before but my personal opinion is yes, it's not on. People shouldn't be allowed in today's society, I feel like we are all smart enough to realise what's right and what's wrong, we are not in the caveman era anymore. It's just not how we treat people.

**Interviewer:** I'm just interested like - not everyone's experienced family violence in the home but I mean, stuff as in casual sort of sexism, as in the wolf whistle, a lot of our streets are plastered with billboards of women that are scantily clad - do you think that that send the wrong message to men in our community?

**Interviewee:** No I don't think so. I mean you can view it as art if you really need to. I mean we've been doing it for hundreds and thousands of years. I think it's just getting the right message across - on what is right and what is wrong, how we view things and you know, our bodies are our own entities and we need to treat them with respect and everybody needs to do that.

**Interviewer:** What would you like to tell politicians that are listening to this submission, how do you think we are letting people who are victims down right now?

**Interviewee:** I just don't think there's enough reinforcement for repeat offenders. I think definitely repeat offenders need to be - they need to have proper rehabilitation programs, they need jail time - if that's the answer - I'm not sure. But there needs to be proper places for women to be able to go to and feel safe and men need to be re-educated and you know, you can't just have people walk in on the streets and constantly think it's alright to rape women. Jill Meagher is a perfect example.

**Interviewer:** What would that re-education look like, would it be like counselling sessions?

**Interviewee:** Counselling, community work, you know they need to give back. There needs to be some sort of - I'm not sure what the word is - re-educating I guess, people need to realise. I know drugs are a big part of it and they take it to a whole new level. I don't know.

**Interviewer:** Do you think that the State and the Federal government work well enough - like for example every State has its own jurisdiction and each state has its own laws on apprehended violence orders, because of the way the Commonwealth is set up, do you think that we work well enough to impose these sorts of punishments - for want of a better way of putting it - on offenders?

**Interviewee:** No, I think it should be one law, one way, the whole, that's Australia, that's what we abide by that's what we say is right or wrong. Violence isn't any different in any other state, one thing isn't all right to do in one state compared to another so we should all have the same thing, same laws same punishments.

**Interviewer:** So it should be a federal law, rather than...?

**Interviewee:** Federal, definitely federal.



#### **Interview Four**

- Interviewer:** Have you experienced family violence?
- Interviewee:** No, nothing that I can recall, no.
- Interviewer:** No arguments between your folks?
- Interviewee:** Arguments, yes, nothing physical. Nothing that's gotten out of control though.
- Interviewer:** How did that make you feel?
- Interviewee:** A bit upsetting but they always managed to work it out
- Interviewer:** Have you heard any of the recent statistics on family violence? Like, 35 women have died in the hands of their violent partners in the last year. What are your thoughts on that type of stuff?
- Interviewee:** Yeah I have heard that actually, and it is very concerning especially being a woman myself as well but I'm not quite sure what is the resolution to that?
- Interviewer:** As a young woman, do you feel safe in the community?
- Interviewee:** Well I go to Uni and I catch the train home in the dark quite often and no, I don't really feel safe to be honest.
- Interviewer:** So what examples would you present of feeling insecure?
- Interviewee:** Like when I'm walking in the dark by myself and there's no people, no one around really.
- Interviewer:** What would make you feel more safe?
- Interviewee:** Probably more security around or the public service officers on the train lines.
- Interviewer:** So you think more people in uniform and more visible?
- Interviewee:** Yep.
- Interviewer:** Do you think that there needs to be more of a community awareness or education around the safety of women in the community?
- Interviewee:** No I think there's already quite a bit and I think it's unfair to kind of say that women more education because they have a right to feel safe in their community so they shouldn't need to know how to protect themselves because that's just unfair. They should feel safe.
- Interviewer:** Do you think that men or the community in general needs to understand that it's not right for men to treat women in a way that they wouldn't treat another man for example?
- Interviewee:** Oh yeah, absolutely, definitely.
- Interviewer:** So you would support... do you think there's a need for education programs or awareness raising around the way men treat women?
- Interviewee:** Yeah, I do, yep.
- Interviewer:** Do you think that women who are victims of violence are believed, for example do you think there is an undue burden for them to prove that they've been a victim of violence? Or do you think that, from your own experience, do you think that people are believed?



- Interviewee:** Yeah, I think that these days it's an issue that people take pretty seriously so if someone makes a claim like that people usually tend to take it seriously, they don't just brush it off or think they're lying or anything like that.
- Interviewer:** I don't know if you've heard of Rosy Batty? And her experience with her son, she lost her son?
- Interviewee:** Yep.
- Interviewer:** Do you think the States and Government could work better to prevent violence against women?
- Interviewee:** Maybe, yeah, but I really don't know what else can be done. I think it's more about just the person in general and more of a personal thing, I don't think it's an attitude in my generation and I don't know many boys that think it's okay to hit a woman. So, yeah, I'm not sure.
- Interviewer:** Do you think that younger people now understand that, I'm interested to hear what your thoughts are, that you think that younger people have a better understanding that it's not on to treat women in a violent manner?
- Interviewee:** Just speaking from personal experience, all the males that I know around my age, they would never treat a woman like that unless maybe some people might do it, but like out of anger, or if they're under the influence of drugs or alcohol, but I don't know any people, like, I don't have any friends who would treat women like that. But then I guess I wouldn't befriend someone who was like that as well. I'm not really sure, I haven't really been exposed to it.
- Interviewer:** Do you think that drugs and substance abuse are a big contributor to issues such as family violence?
- Interviewee:** Yeah definitely, and also mental health issues and anger issues, for sure, and family history of violence.
- Interviewer:** So if you were talking to a politician right now, what would you suggest to them would be one of the major things that they could do to ensure that a if woman's safety is in danger, what do you think decision makers, what differences could they make right now that could make their ability to access support easier?
- Interviewee:** I honestly don't know. I'm not sure of a resolution, I don't know. Sorry.
- Interviewer:** That's okay. Last one, do you think that because we live in a Commonwealth and every state has it's own laws on family violence and AVOs and all that kind of stuff, do you think there needs to be better coordination; do you think it needs to be a federal law, rather than each state having it's own law?
- Interviewee:** I don't really know the laws around family violence, but I think it would definitely be beneficial to have more of a universal understanding. So, yeah.





### Interview Five

**Interviewer:** You're aware of the huge spike in violence against women in the last... from 2009 to 2013 there was an increase of 83% in family violence. Were you aware of these figures?

**Interviewee:** Not of those specific figures, but I am starting to see more about it in the media, so yes and no. I think only in recent times since the have the media started to pick it up, was I aware. Previous to that it hasn't been in the media so much, so no I wasn't aware of those figures specifically.

**Interviewer:** So how big do you think the role of the media is in cases like this? Do you think that it plays a big enough role in educating the community about what happens on the ground?

**Interviewee:** No I don't think it plays a big enough role in educating just by itself. But I do think that, like it or not, the media has an important role to play in policy change in the government, so unfortunately when the only sort of way that issues get attention in the parliament is that they are in the media, so I think the media does have a responsibility in that sense, when there's a big issue out in the community to bring it to the attention to those in power to do something about it. But it's not enough, not by itself I don't think, no.

**Interviewer:** What are your views on, for example, women being forced, like if they've called a crisis number, now we know the crisis line got 60,000 calls in the last year - I don't know how many that works out to a day, like 50 odd a day, I'm not sure – do you think that there is enough, that the onus is placed too much on the women to prove that, you know, to be believed?

**Interviewee:** Absolutely. I work as a mental health worker so that's definitely been my experience with people that I work with. I think the police have changed, their response has changed in recent years and it's gotten much better I think. So, in respect to taking out violence orders on people's behalf, rather than the onus being on the woman to take them out themselves and to prove, but that onus is still there, the idea that a woman is responsible to do all of this by herself and she's the one who has to prove that that's what's happened and she has to go out and seek the help. I think it's not tenable, obviously it doesn't work because all these women are dying.

**Interviewer:** So what do you think would be one of the first steps to take to prevent this type of violence? What do you think would be a good first step?

**Interviewee:** I think - there's so many different ways - but I think that a big thing that isn't being done is education in schools. Because it's young teenagers that are going to be the next generation of people that are in these types of relationships and teaching them what a healthy relationship is and what it isn't. And I've been out of school for about ten years now and that definitely didn't happen when I was at school and I don't know if it does now, and that's really the key to long term change. And then of course, funding for services for women and men who need to escape because while we spend money on awareness campaigns, we cut funding to homelessness services and other types of support services and make it harder for people to access centrelink support if they need it, so if more people are aware of it then we need to have more support services because it would make sense that more people would be leaving those types of relationships and need support.



**Interviewer:** Do you think there's enough understanding about family violence that it's not just physical violence, that it can be verbal, it can be psychological, the control of money, it can be abusive. Do you think people have that understanding? Or do you think they're really fixed on people getting beaten up?

**Interviewee:** I definitely think that that's an element. I think that in a way people who don't understand it are lucky because they haven't experienced it. But so many people do experience family violence as that psychological, it's not always just physical or always physical at all, but it can be just as damaging or just as frightening and it goes back to what we were saying before, you can't prove that, you can show a bruise but how can you prove that someone was speaking to you in a nasty way or manipulating you or demeaning you? And there's enough studies and there's enough information on what effect that kind of psychological abuse has on people and how the point of it is so that they don't leave, so that that focus needs to be on that, so no, I don't think that people do know a lot about it, because it is hidden.

**Interviewer:** Do you think that people that decision makers and the community in general understand why women don't leave? You know, you constantly hear the question 'Why didn't she leave after the first time?' Do you think people understand how difficult it is to leave a relationship with children, which could potentially make you homeless? Do you think people understand that?

**Interviewee:** Absolutely not. I don't think... the only way you could say 'Why didn't you leave?' is because you haven't had an experience or had an experience of someone you know or care about having this experience. If you don't understand. You would never say that if you had been through it yourself, because you know how difficult – it is so difficult, it's so difficult to leave and it's about your sense of self and it's about your psychological wellbeing, like who are you without this other person, and also the abuse is them telling you constantly that you are nothing without them, that you won't survive without them. There's that, and coupled with – especially with kids – the financial burden. If you haven't lived on benefits you don't understand that it's not living, it's surviving, and sometimes it's not even survival. You know the rental market. If you've never had a bill in your name, or never had a lease in your name, the government could give you a million dollars, you can't get a rental anywhere, it doesn't matter how much money you've got, so there's so many multifaceted elements and the community services sector do so well, they do really well, but more funding's needed for them to continue their good work.

**Interviewer:** So what do you see - you said that you worked in mental health - what are the types of situations that you see?

**Interviewee:** Well, every situation you could imagine really. It's all tied in together; homelessness and mental health issues and family violence are all so closely linked in together, so I personally have seen women who are in dangerous situations both for their physical and their mental health and they may have opportunity to leave – a physical opportunity to leave – but their emotional wellbeing is so tied up with this person who is abusing them. I've worked with





people who have the threat of, 'You'll never see your kids again if you leave, I'll take them away,' and if you have kids or you know anyone who has kids, or if you have nieces or nephews, you know what kind of threat that is, that's more powerful than anything, more powerful than the police. So I see lots of different lives touched in totally different ways, I see people who have family violence in their growing up time, and how damaged they are now as adults because their parents weren't able to receive that help and they weren't able to get away, and now as adults they're trying to live their lives but they've got this massive

roadblock in them, with this violence affecting their mental health. So you see lots of different things.

**Interviewer:** So do you think that there is enough resources going into supporting victims?

**Interviewee:** No, I don't, and I think particularly with the budget and the federal government, they don't understand, they seem to not ask the services providing the support what they need, so they come out and they say oh they're going to do X amount of millions of dollars for this service and you've got all these services saying that that is not what we need, we need this instead. So the money seems to be there, but it's not being spent on the right things and they're not asking the right people what they should be spending it on. Of course there can always be more; homelessness support services and social workers for people, helping them get in touch with the right services is so important and it's chronically underfunded and then recently the money there is has been directed into things that aren't very helpful for the people working on the ground, I think the politicians in Canberra don't know, and they assume to know from the outside, from reading things or from advisors, but they're not actually talking to people who are living these experiences everyday and the people that help them, and asking them what they need.

**Interviewer:** Do you think that conceptually we've got it wrong in terms of breaking things up into family violence, homelessness, mental health, when a lot of these issues are interrelated?

**Interviewee:** Absolutely, and that's a struggle I find working within the services, it's difficult to refer someone to drug and alcohol services if they have unresolved mental health issues because the service will say 'we only do drug and alcohol' and vice versa if you're referring someone into a mental health service and they have a drug and alcohol issue, they have to resolve that first, so if a person has both they're kind of stuck in the middle. Same as with homelessness services tied in with drug and alcohol and mental health. It all – in my experience, it's all interrelated. If a person has been experiencing family violence for a sustained period of time, chances are they're going to have some type of mental health issue, because that's how it works, it breaks down your mind as well as your body. If a person's homeless, for whatever reason, chances are there is some kind of issue that's helped them get to that point, so I think definitely, there's a huge focus on categorising people and when people don't fit into those categories, which is most people ironically, then they miss out and they fall through the cracks, so I think a more holistic approach is definitely needed. I understand the need for guidelines but they are too rigid and these people don't get the help they need.



- Interviewer:** So what are your thoughts on developing – in the terms of reference here they discuss developing a culture of non-violence – how do you think we can go about doing that?
- Interviewee:** That's where I definitely think that education again is really a key and starting in schools, I think that's really important. Like, for example, smoking; when my parents first started work, they smoked in offices, you would go into your office job and have your cigarette and your ashtray next to your computer, and now that's completely unacceptable because there's been a cultural change through lots of education. I think that that is key for future generations. For our current generation, I think that education campaigns are still important and community education, but it comes down to individuals, men particularly, not saying 'oh that's not my business' or 'that's not my problem' and turning the other way. I think it's pretty powerful when a man says to another man, 'hey that's not ok' that's what I think is – and community education is part of that, but the community education will shine a light onto the problems and then we need the support there to fix those problems as well. So to support people who need to get out of these situations.
- Interviewer:** So can you think of any other strategies that may be effective apart from just the developing a culture or community awareness? What other ways can we support victims while at the same time holding perpetrators accountable without just throwing the baby out with the bathwater and locking him up, because a lot of the time that isn't the answer, they probably come out worse, so have you got any thoughts on what we can do to make sure that things don't continue?
- Interviewee:** Yep, I think that funding for services that support victims is extremely important and with the increase in family violence that you were talking about before, there needs to be an equal amount in funding for services, appropriate services – that's for the victims, definitely, that needs to continue. I think the trend that we're seeing inside the police force in supporting victims and having different things open to them needs to continue, and continue to grow, so education inside the police force. When it comes to perpetrators, I suppose, and breaking that cycle, that's hard. That's a really hard one. I think, I don't know. I think that empowering victims is a massive thing and I think empowering them means that they have the ability to change their own life with a bit of help, but again, I agree with you that locking people away doesn't always fix the problem and I think we have a real focus in this country on pretending that prison is a deterrent, when it isn't. The purpose of prison is to protect the community, that's it, but both sides of the government like to say 'it's going to deter people' – it won't, it doesn't. Obviously. There's all these statistics that these types of crime are growing so I would say that community education programs for offenders. Having said that, there are situations where victims do need to be protected, and that prison might be appropriate in certain circumstances but if people are being locked away and not being taught why what they did was wrong and how they can change that then you're right, they just come out worse than when they went in.



**Interviewer:** Just a final one, do you think that states, you know how we have a commonwealth and each state has a different law around – you know they're not exact laws, New South Wales, Victoria, Queensland, around family violence and perpetrators can move between states and basically start new lives. Do you think we do that well enough in this country, do you think we are effective and we work collaboratively enough?

**Interviewee:** No I don't think so. Right from driving offences through to the very top offences, if you're charged in one state often that information isn't shared between the states, so you can be pulled over by the police car and they don't know that you've been charged with drink driving in another state, and that's right through the whole gamut, so I think this focus on keeping the states separate really does disadvantage people that need to be protected. I think we don't work together well enough in the states and people fall through the gaps again and because we're so focused on categorising people and having everyone into their neat little box, that when people move around, that stuff gets missed. So I think that that's something that definitely can be focused on.

**Interviewer:** One more, and look, I don't know if you've experienced family violence or any type of family violence whether it be physical, but how do you think, I think you touched on it briefly earlier, but how do you think it would impact someone short-term, medium-term, long-term – how does it impact on the individual?

**Interviewee:** I've definitely seen in my experience that it affects people in the long-term very significantly. Particularly children, when they become adults, they may turn to perpetrators themselves, or they also have lots of very significant mental health issues, because really it's a significant trauma and it's terrorising and that changes a person's personality, it changes their mental health and so it's not just the person that is in that situation, it's everybody around them that also is affected. If you've ever seen someone who has post-traumatic stress or severe anxiety, particularly post-traumatic stress, the terror and the fear constantly, constantly checking, every time you go out for a coffee, checking that you know you can get away if you need to and things like that, it really affects a person's ability to feel safe and that impacts on every aspect of their life. This government and previous governments are very focused on people being bludgers and getting them off Centrelink benefits but they're not looking at the causes of why people need to be on these benefits, like can you imagine trying to go to work if you're afraid to leave your house? It just doesn't make sense. And it affects every single part of someone's life. And again, we're compartmentalising, so we're looking at Centrelink as a separate issue from family violence, when actually it's all tied together, it's all one thing and it's all just facets of the same type of problem.

**Interviewer:** What would you like to tell the Commissioners on this family violence – the people who are going to be standing and listening to this – what do you want to tell them and where do you think that we're letting people down?

**Interviewee:** I think the main way we're letting people down is funding wise, I think that there are people out there, men, women, children who want to escape situations who aren't able to because they're not financially able and they're not psychologically able and the services they need to support them aren't available to them. My experience is working in Melbourne and we're quite lucky really, they're still gaps, but people living in rural areas there's no hope, there's no chance because the services just don't exist out there, or they're very minimal, or they're



very overstretched. So people don't just experience mental health issues and family violence issues in the cities, they experience it everywhere and I think we're letting them down in inappropriate funding and underfunding. And inappropriate funding is really a slap in the face; ask the services providing the support what they need, ask the people who are experiencing the violence what they need, rather than assuming that you know better. If you've never experienced it how will you know what these people need without asking them? That's what I would want to say.

### Interview Six

**Interviewee:** Okay, so family violence – I think something that isn't really spoken about in the dominant narrative about family violence is the effect that systemic violence, the causal role that it plays in family violence, so when you think about Jeff Kennett giving out licences so that casinos could start up here in Melbourne and the effect that gambling addiction has had on the family unit, that's not really spoken about. It's generally a hetero-normative dialect that blames men for beating up women, and then again, when you think about family violence, men are also victims of violence, and children, so I'd like to sort of see a shift. I appreciate that our sisters are experiencing family violence but so are our brothers and so are our children and so are our aunties and uncles and our grandparents. It's a whole, you know, when you think about family violence – family violence encompasses us all, we're all being really affected by this. The way I sort of see family violence, family is the basic ground level unit of society, and the state and corporations, and the role that they play in violence when companies are hiring private armies like Monsanto with Blackwater to decimate our food security and make us totally reliant on them for our food, or Hilfinger (or whatever their name is) that sell me undies to make me feel like a man or perfumes to women that they need to feel beautiful, the way that corporations invade and impact on us as people and disconnect us from each other and from reality, that plays a role in family violence. With all of these factors at play, you've got it coming at you from all angles external to family, and then within the family unit you've got it coming down at us, and you've got it coming up from the family, and eventually those two elements are going to meet in the middle somewhere, and I think that's going to be catastrophic, a lot more catastrophic than what's occurring at the moment on our social cohesiveness and our social fabric. So there's people in the Royal Commission that want to look outside the box and want to consider all aspects of causal factors and effects about what's happening in the broader society and the role it plays in family violence then you really need to sort of address the causal factors outside of the family unit, you really need to reign in the elitist position that the government's taken because I can come out here on the streets as a person with my enshrined rights to exercise my freedom of speech and the police will come out and ride horses over me, what are you saying? That I haven't got a human right to exercise freedom of speech? What message are you trying to send to the people? And taking that position against the people, what's your problem? What are you saying, that the state is allowed to use violence against people exercising their rights? Are you trying to make us scared of you? Why are you trying to make us scared of you? Are you worried that we will hold you accountable? Well guess what? At some point it's going to reach a tipping point and the role that you're playing in it is leading to violence begetting violence and no one wins out of that but it's the reality.





**Interviewer:** What impact does this have on the individual? You're talking earlier how the police running over you when you're trying to speak your piece, that it closes opinion, it closes discussion or any dialogue. Isn't that sort of what the perpetrator is doing to the victim in the home, in terms of family violence?

**Interviewee:** I think that's a perfect example; when the truth isn't allowed to be spoken, when you're silencing the truth, basically you're living in delusion land, there will be no progressive outcomes to it, there will be no change, all you've got is people really psychologically damaged and going off into consumer land where they think that perfume will make them a whole person and ending up debt wage slaves just trying to block out the effects of what's going on, that's decimating us as people, as a community. Having real enriched relationships with each other that engage us with our humanity and dignity, when we can't do that, there's something in our brains that says, 'Well I need to block this out,' because at the moment I think we're really like battery hens who can't stand up on our legs, and we can't conceive free land because we're stuck inside this cage, we don't know what it is like to fly, we don't know what it is like to stand up, and that becomes our norm, but really it's a really dysfunctional norm.

**Interviewer:** So how do we best support people who are going through this? How do we get people back on their feet?

**Interviewee:** I think encouraging people to speak their truth and to be supported with the fear that comes out of that, and not just there and then – you've got people that were abused as children by priests, who carry those scars for the rest of their lives and we can re-traumatise them and get them to make a case against the priest and then he goes to court and then he ends up in jail for two years and there's really no justice. I guess the point I'm trying to make is that support can't be right there and then in the moment, it needs to be long term and we need to be mindful that the damage done is going to take generations to really see any healing.

**Interviewer:** So, it's a trauma yeah? Would you agree that it's a trauma inflicted on the victim?

**Interviewee:** It's a trauma, not just on a person, but then it limits their capacity to interact with other people in meaningful ways, to have trust, to have empathy, to have love in their heart with other people, and that ripples through the social fabric, it doesn't just affect the individual, it affects us all, and that is sort of a generational scar on our social fabric.

#### **Interview Seven:**

**Interviewee:** Family violence was something that was always part of our family because I had an alcoholic mother, so she would become pretty violent and she would become suicidal and she had a mental illness, she was a person with bi-polar. So as far as I can remember in the family it was standard procedure that we would have things like the Sunday roast would end up on the ceiling, and when mum was good she was our mum and we all loved her and it was a really happy joyful family, but when mum was drinking that's when she became pretty offline and pretty violent. So dad got frequently stabbed with the carving knife and my sister and I, we got stabbed a few times and we always had an exit route, which was the little window through the laundry, that was our escape route when mum was completely offline.



So it was regular feature of our family that we had an ongoing session of visitations of police and psychiatrists and GPs and mental health workers. I remember when I was quite young coming home from school, I was probably in year 8, I remember coming home and I found mum had attempted to strangle herself on the hills hoist clothes line using the garden hose, so that was a pretty devastating experience to go through. And I remember clearly another

time when dad and I went out searching for mum - she'd gone off at 3AM in the morning and we found her lying across the railway tracks at Huntingdale railway station, she was waiting for the train to come and we eventually found her there. So, that was sort of an ongoing ... it was difficult because we sort of oscillated wildly between a lot of happy times and family cohesion and a lot of love and joyful family spirit, but when mum was drinking she was offline, it became really violent, so there was that weird sort of dichotomy and the effect that it had on me was that I became really insular. As I got older it meant that it was impossible to invite friends to come around, so I kind of bypassed my adolescence in a way, so I was never able to have friends over, I was never able to go through the normal adolescent boyfriend- girlfriend kind of stage because the whole violence thing permeated everything and I think it effected me. I became insular, I became bookish, I became pretty much a bit of a loner and it's a miracle really that I managed to get through school in one piece and go to college and end up working. But I think it was only perhaps as I got older I realised the impact that had on me, and I often wonder whether my significant mental health issues, whether that was connected to the dramas that we had ongoing like thirty years or so, and whether that was related, and whether that's still being expressed today. And I'm really still dealing with that. And it was only in recent months a psychologist said to me that in his view he felt that I was having some sort of ongoing post-traumatic stress thing and it never occurred to me, because I got through it seemingly relatively unscathed, but on reflection I realised that a lot of what makes up me today, a lot of that was filtered and permeated by all the dramas that we had with mum when she was offline and the violence. That's the other thing too, I think that if you're talking about family violence, even though it's a really small percentage, you've gotta be aware that it's not always a hundred percent directed from the male to the female, it could be the other way around. My dad was very cool and very calm and very placid, and as my sisters and I were, but we copped the full brunt of pretty savage violence directed from the woman, i.e. my mum. That was an ongoing nightmare and it's a difficult one.

**Interviewer:** Can I ask you, a) how did you survive it? and b) what could have been in place to have supported you through that and supported your mum so that she would have got some help?

**Interviewee:** Probably nowadays there would have been more support, I mean she's passed away now, but probably today there would have been more targeted support for someone like mum. But in those days, particularly in the 60s and 70s there didn't appear to be a lot. Mum was in and out of mental health facilities like Larundle and like Montpark and I remember it was always with a pretty heavy heart and a lot of sadness where the kids and dad, you know we'd drop mum off and she'd go into these facilities for three or four weeks to try and get her act together and get medication. I have really powerful memories of us walking through the





door and mum sort of saying to us 'You are taking us home now, aren't you? Like I'm coming home with you now aren't I?' and we sort of, I remember dad having to say 'Look we're going to have to leave you here because you need help and look we can't take you with us yet.' And I remember a wistful forlorn image of us waving goodbye almost through the back window of the car and me looking at a place like Montpark or Laurundel and sort of waving goodbye but with a tear in my eye, and also the experience of being in a place like that where there were big dudes and white jackets – it sounds like a bit of a cliché but it was actually pretty accurate, this is the 70s - and lock and key. It's funny how the music that they were playing often resonates because of that event, when I was saying goodbye to mum. I remember there were a couple of rock songs, one in particular they were playing "Goodbye Yellow Brick Road" by Elton John and now whenever I hear that song it kind of sends a shiver because it just floods back a whole lot of memories. So I don't know what could have been done then but I know that it's left me...if the question is what could have been done, probably more earlier intervention could have been one thing and maybe less purely drug therapy for mum, you know if she had been in some kind of group therapy or some sort of counselling that could have assisted. But in the 60s and 70s mental health wasn't necessarily the best and even today it's pretty heavily flawed but it's probably better today than it was in those days, but I mean I'm still struggling with a lot of – you gotta be careful that you don't blame the circumstances on where I am today, though it does make you wonder that mum did have bipolar and I have bipolar and the theory is that there might be a genetic predisposition so it makes you wonder about that, but for me, every day is a real drama. I've got really high suicidal ideation problems and I've got full on bipolar and I've been through the griller, in and out of psych wards, here at St Vs and so everyday I wake up and it's a real battle for me cos I have to find a reason as to why I should live today, so I've got all the ropes and I've got the freight train timetable and I've got a huge bowie knife and the razor blades and it's just a question of why don't I do it today, and here we are in 2015 and I've been through the mental health system ad nauseum and had multiple overdoses last year and one earlier this year and I've been in triage at St Vs and I've been in the acute psych wards a couple of weeks at a time and the system hasn't really hasn't done me that much, you know, the system's kind of failed me. So everyday it's a real battle to think why should I live today? I'm just going to leave because I just don't want to live anymore, so it's a real personal struggle for me everyday to find a really good reason when I get up why I shouldn't just cut the carotid artery with my knife and just let it go. And so it's a big issue but it's a difficult question to answer Spike because it's hard to unravel how you unscramble the egg in terms of all that family violence and how that sort of affected me and to what extent and whether it's really my lack of strength and lack of will, my lack of resilience, cause I tend to just go with the flow, I don't feel very strong at all, I'm like super fragile and I've got this incredible anxiety disorder which means it's incredibly difficult to get out of the flat, so it actually can get out and access food and go to a group and go to a meeting whether it's HPU or whatever, that's a monumental achievement for me.

**Interviewer:** So what you're suggesting is that community people having other people that will treat you as an equal, treat you with respect, is helpful and I'm wondering whether that would have been helpful to you as someone who lived through it and also for your mum?



- Interviewee:** It might have been helpful for my mum, that's a difficult one cos we'll never know, that's a hard one to know whether it would have been helpful. My guess is that it might have been helpful if she'd had more resources and more support, that probably would have been helpful particularly with mental illness support, and support for her alcoholism, but for me, I suppose the main point is that I've been through residential care, I've been through the acute psych wards, I've had a huge range of support networks and mental health staff assisting me out, of personal care workers and all that and it hasn't helped me much at all, so I'm still back at square one. The system's failed me.
- Interviewer:** Why do you think you – did you ever attempt to runaway from home while this was going on? Why do you think you stayed?
- Interviewee:** Probably because I was pretty young and naïve and there was really nowhere else to go. I mean the idea of homelessness probably never crossed my mind, at that time I was pretty young. And you gotta remember that the family wasn't constantly being torn apart, it came in waves, so there'd be periods of time we'd go for months and months where she wouldn't touch a drink, it'd all be okay, but then it would flare up and it would be a nightmare for a couple of months and then it would settle, so it went in sort of cyclic periods almost. But I suppose I'm a – I guess one of the points I'd make is that it's really difficult to get a handle on exactly how and why and what is the extent and what is the process that family violence impacts on you. Sometimes you don't understand yourself fully how it's permeated, it's like it gets you at the cellular level, and it's very hard to sort of unravel that, and distance yourself and be clinical and outside, and look inside yourself to try and work out, but it definitely shaped me, and for the worst by a mile.
- Interviewer:** I mean the Royal Commission needs to hear these sorts of things, as much as they would like to find solutions to these problems, they also need to hear what people have been through, what their thoughts are. What do you think about this idea of developing a culture of non-violence, you know, to counter our current culture where we resolve issues through conflict? Do you believe there is merit in trying to develop this culture of non-violence?
- Interviewee:** Yeah, I think that there's always merit in trying to develop a culture of non-violence, but I suppose in a broader – if I was to try and be a bit of a smarty-pants – in a broader sociological societal viewpoint, violence is very much part of our cultural DNA, and violence in many forms on many different levels is promoted and almost rewarded. I mean, we have massive extreme violence and that's honourable and we call that war, but when we engage in private violence from one individual to another we incarcerate and punish, but there's all that institutional violence, there's corporate violence, and that's all condoned. It's almost like we have a very superficial violence-free veneer, but the hard-core reality of the way that society is structured and the way society functions, it's almost like it's a requirement of society functioning to have violence. It's almost like at a societal level we need a high level of violence in order to justify all the forces of oppression and all the legalities of it all and all the social control stuff.
- Interviewer:** So perhaps we're not being honest with ourselves when we're looking at violence and when we're looking at family violence there's too narrow a focus and we need to be looking at violence as a whole throughout the community – is that what you're suggesting?



**Interviewee:** Yeah, I think family violence is just one tip of the iceberg, it's just one reflector of the much deeper malaise of broad societal and social violence on a huge scale in many different forms and many different ways, and I think just one expression of that is through family violence. So family violence maybe is almost like a meter or an indicator level of the kind of violence that we really have in terms of society as a whole. You know, it makes you wonder of the devastating personal cost of family violence, but also there's the economic devastating cost of family violence in terms of drug and alcohol requirement and mental health issues, and just the personal devastation and the loss of personal potential and personal creativity, and lives lost and what lives could have been, but what was lost because of family violence. But look, I consider myself lucky, very much I consider myself lucky because there are issues out there where the violence is way more extreme and way more devastating than what I experienced, so my heart goes out for those people and for those families, so I consider myself one of the incredible lucky ones that I've kind of survived to some extent.

**Interviewer:** What would you like to leave? If you had a chance to speak to one of those Commissioners right now what would be three things that you think might need to happen so that people aren't going through this by themselves, whether they be victims or perpetrators or members of family? What are three things that should be in place?

**Interviewee:** I don't know, I don't have answers; that's a hard one, but probably just in general terms I'd say – it sounds like a bit of a cliché – but there needs to be ongoing continual awareness raising of the issue of domestic violence, there needs to be a lot more funding towards domestic violence and there needs to be recognition that perhaps family violence is an indicator of a much more deep rooted and deep seated idea about violence in general in terms of society at large, like corporate and institutional violence. But also, I think that domestic violence in the normal setting goes to the heart of the general relationship between men and women, so I think it's almost like a core central DNA component of patriarchy, and all that that means and all that flows from that. I think that patriarchy has a lot to answer for, and I think we've come a long way, but there's a long way to go. But certainly, in terms of the reality of helping and assisting, there needs to be constantly more funding, I think, to try and provide more resources for victims of domestic violence or survivors of domestic violence, primarily I guess it's mainly for women, but it really goes to the heart of the nature of the relationship between men and women in our society, and why it is that domestic violence cuts across all different societies at all different levels. There's something about patriarchy that's pretty rotten at the core.

**Interviewer:** Do you think we need to have a look at the family structure as well? Like the nuclear family, they call it the bedrock, some other people I've spoken to today have said that it's the founding institution of our society, now do you think that we need to examine that whole institution?

**Interviewee:** Yeah I think that we do, I think we need to acknowledge that there are all sorts of valuable and viable alternatives to the so-called family structure and we see a bit of that now in society, but I think we do need to call into question whether the so-called idea of mum, dad and 2.4 kids, whether that's really a healthy, viable structure in the long run. And the other thing is, it's a bit of a cliché but you'd have to say that a lot of other family structures and



other family systems are pretty shocking, but the way that the system we've got now – the sort of nuclear family - it's sort of the best of the horrific bunch, so it's deeply flawed, but it's less deeply flawed than the alternatives, but in terms of yes, I would agree that we really need to examine and promote alternative ways and alternative structures for the family; have an educative process that families don't have to be that power thing between a man and a woman and 2.4 kids, that there are viable options that can work.

**Interviewer:** Thanks very much, man.

### Interview Seven

**Interviewee:** I've been homeless now for about 25 years off on and on. I've been in and out of refuges, hostels, boarding homes, on the street, motels, tents, laneways.

**Interviewer:** And do you think there's a strong connection to family violence, domestic violence and homelessness?

**Interviewee:** Yeah, I do. I know lots of people that have been in violent situations where they have been either bashed or have been molested by their family members or partners or whatever.

**Interviewer:** What would have needed to be in place to stop them entering the streets from those situations?

**Interviewee:** I reckon there should be more police patrolling around and basically more support out there. These days there are just too many young children you know, on the streets and that, and there's so much crime and deaths and everything, it's just terrible these days.

### Interview Eight

**Interviewee:** I've been homeless for five years and I've been getting off and on with a house and I've been staying in hotels. I just walk around everywhere, sometimes I get in cars with men and sometimes I don't. I start cursing trams and I make money, people give me money and then I calm down. I look for a drink, I'm a bad alcoholic and that's about it. It's alright being on the street but you have to keep up with food and people give you food.

**Interviewer:** How's your day been today?

**Interviewee:** I trooped down the Yarra, sometimes if I'm not down at the Yarra I'm over at St Kilda. I go out to my foster mum out in Dandenong. I'd go see her but she's not home, she's with her boyfriend. I try to make mum support me but she won't support me. Me and my mum, we don't get along because we argue all the time. So I go to my sister's place and me and her argue. So I don't have much luck with my family, so they worry about me and they come look for me. I go and they have a drink with me, talk. They come and stay with me for a while. We walk around ... I go to my nephew's place he's alright with me, he has too much smoke, then I go back to the street.





### **Interview Nine**

**Interviewer:** Would you say that there is a big connection between family violence and homelessness?

**Interviewee:** We are seeing a lot more of it, a lot more women on the street particularly, that have had to flee their situations and they are left with no options. Refuges particularly, if they've got drug and alcohol problems aren't keen to take them in.

**Interviewer:** If you could make two or three recommendations to the government what would they be?

**Interviewee:** Well, mental health issues are a big thing - people with mental health issues. Women with kids it seems, in that situation the women come to the attention of children's services because they are putting children at risk, but they never look at the male partner in the relationship that may be committing the violence. So it seems that the fault lies with the women for not leaving the home. Particularly if she's going out trying to access services, she's between a rock and a hard place because she has got to take the children with her. And some of the services may not be the best place for children, if they are trying to access a lot of services like community health services, where there may be other people attending that have mental illnesses or drug and alcohol issues, they don't want children there. And if they leave the kids at home they are criticised for leaving the kids at home. There needs to be more support I think for women with children definitely. I guess my main advice to the government is pull your finger out, you've made lots of promises and Robert Doyle is continuously in the press saying he's going to do this that and the other for homeless, but I am yet to see any of it come to.

**Interviewer:** And what do you reckon are the main barriers with people accessing housing who have experienced family violence?

**Interviewee:** The places that they want to send people, if you go into crisis accommodation services they want to send people to boarding houses that aren't necessarily safe for women and children. Like they are trying to leave non violent situation and they are forced into another. We see clients all the time who are kind of saying I'd rather be on the street than be in a boarding house.

### **Interview Ten**

**Interviewee:** The way I think about it is that it's an opportunity and that it's quite a painful time for a lot of people, because a lot of stuff that we haven't spoken about as a community for a long time, that was happening, we are speaking about. It's quite painful for a lot of people who have been touched in different ways, but I think also that it's a time for some optimism in a way, because we are talking about it and it's an opportunity for us a community to think, and think really deeply, about problems of violence and the way that impacts different people. And try and address it in some way. And I don't think it's a simple issue at all. And I think for anybody who has been involved in those situations as a primary or secondary, I don't like the word victim, but as a person who has experienced this stuff, it's never particularly straightforward. But I think it's an opportunity, a painful opportunity. I think it's really important for us to be courageous about actually facing some of that complexity and the different causes and also the breadth we have as a community and how that impacts people. And how we need to not only call it out, but also we need to support people, and



understand the way that that can produce trauma and traumatic responses, and aggression and isolation, and a whole lot of avoidance type stuff. I think it's a very, very complicated thing and I think it's an opportunity for us to heal ourselves and heal other people and engage in – it sounds hippie-ish, but I don't mean it in that way because it is a complicated problem, and it's causes are to do with, of course, gender stereotyping, patriarchy, law. You know, it's only so recently that women even had rights, I think sometimes people talk about domestic violence as if it's a moral thing everybody should know, but the reality is that it's a changing culture that we're in as well, and it's not so long ago that women didn't have the vote, were earning half wages, all that type of thing. We're in a transition and I think it represents a big opportunity for change and evolution potentially. I think a lot of the big institutions have been greatly discredited through the Royal Commissions into Sexual Abuse and also this Royal Commission into Family Violence is another opportunity to look at the way our society is structured and the way it supports violence, it punishes victims, it criminalises victims and really, I guess, one of my big hopes is that we try to think about building community as a response, you know really building a community that doesn't marginalise people who have had traumatic experiences but actually helps them to heal and gives them opportunities and gives them a leg-up, instead of saying 'you're a hopeless loser'. You know, there's all these labels that people ...

**Interviewer:** You mention something, just in that answer, that I find interesting in that you're optimistic that this is happening, that the Royal Commission is happening. But what do you think the impact is on people that are survivors when they hear politicians say, "we recognise that there is an epidemic," but at the same time they bring down a budget and there's no money for family violence? How do you think that impacts – that issue of a mixed message – do you think it impacts someone who has been a survivor?

**Interviewee:** I think it definitely does, I tend to err on optimism, just as a person, it's been part of my survival, always seeing opportunities and always being hopeful, of course it's not particularly meaningful, but I think that this commission has an opportunity to look at – I mean I think one of the big issues has been around where are we prepared to put money? How much does something matter to us? Does it matter enough to talk about it, or does it matter enough to house people? Does it matter enough to put money into programs, does it matter enough to – I mean one of the issues I feel is that a lot of people who've experienced – well one of the reasons I really felt that I wanted to make a submission is because a number of very close friends and family of mine have died. And I feel that through this Royal Commission it really made me reflect on the fact that family violence had put them at such a huge struggle, disadvantage from such a young age, like 14 or so, on the streets, and there were programs that were trying to engage, maybe, some of them, I'm not saying that nothing was available, but nothing that could understand where they were at, and their anger and their frustration and hurt, and trying to figure out what came into that as always tends to, you know there was drug use and those sorts of things. And I really feel like society was constantly saying to them 'You're a loser, you're not really someone that's worthy of dignity,' and was not supporting them in any way to recover. And they were homeless, and I was homeless myself, and I feel that that struggle of getting back your dignity as a person when you've experienced violence is such a struggle, and I think the question is what do we as a community feel is our collective responsibility to do for people who've been treated that way,





or who have had those experiences. And I think one of the issues that comes up a lot is how do we stop - say for me, I've had a number of experiences that have given me some sort of PTSD and I've got a strong commitment inside to being a non-violent person and to trying to do what I can for other people in that way, because violence replicates, and I think for me one of the things that is really important to understand is that the concept of victims and perpetrators is very complicated and sometimes people say things like 'Well why did she stay?' and all of that nonsense which is just really irritating, but the reality is that there's many reasons and some of the reasons are that your mind gets affected heavily, your self-esteem gets affected heavily, your functionality gets affected heavily, you might become substance dependent which makes you a criminal in the normal community, you don't have money because you're criminalised cos of your drug dependence, you have to spend money to feel okay. But the other thing is I think that a lot of people who are perpetrating violence are various sorts of very weak people who are very, very broken, and I guess that part of it is not necessarily understood very well. Like a lot of times people are worried, they're worried, like "If I leave, he'll die for sure," and that sort of thing, and it does happen you know. And I think a lot of times that's not recognised that sometimes people are trying to care by themselves for people who probably need a whole community to care for them. And also, there's - I mean it's a very complicated issue - but also a lot of women are conditioned to care and to try to meet people's needs and to look after them a bit; I don't know it's very complicated, but I think that breaking down, learning again what it means to be a person as opposed to being a woman or a man, what it means to relate respectfully and lovingly and non-violently to other people, they're very important things that young people need to be learning and I think also as a society. If we're serious about it, then we need to reflect that through what we do with people, the way we treat them, the way we support them or don't support them. You can't expect a grassroots movement that's not reflected in what - the government also has a strong responsibility to fund services, to fund housing, I mean the whole idea that you've got young people who've been victims of violence wandering around the streets in unsafe conditions in a wealthy country, it's just really pretty offensive, you know it offends me greatly. And the idea that there's something wrong with them because they might be using drugs to survive that particular lifestyle is pretty offensive too. I really challenge anyone to try it for three months and see how they go - it makes me angry. And you have this layering of trauma that happens to people, and it's just astonishing that people survive it, really. What I'd really love the Commission to think about is the role that - for example you know that we put a lot of money into prisons and a lot of people are dealt with through that particular system which is extremely expensive and I wonder how many people, if they had a safe space, and weren't - if their mental health issues and their drug dependence was actually dealt with as health issues instead of criminal issues, which I really think - it shouldn't be controversial, and I think you would be surprised at how uncontroversial that is in the community because most people know someone or they understand that situation. You know if you had a safe space, if you weren't criminalised and broke, and you also didn't have this really strong message that you weren't worth anything and you weren't worthy, you might see a lot faster changes in the way people evolve, the opportunities they're able to take up, the way they're able to heal and build self esteem. I actually think the entire system militates against it, I really do. And I think the other thing is that if you're vulnerable as a woman, and weak and vulnerable - there's so many people



wandering around searching for that, and I have to say another thing that's been very significant for me is that through this Commission, and through, even say for example the Herald Sun reporting on this type of stuff, it's actually made me have to accept that some things that I thought were okay weren't, cos I've had that survivor mindset, of like "I'm alright, nah, I've always been fine, everything's been fine," and you shut a lot of things out because you want to be strong, because you want to survive, you have to decondition yourself to all the things that society's telling you all the time about yourself, but yeah I think that that's a good thing, even though it's painful of saying 'Yeah well that was actually a really violent situation where I was being exploited and I would never do that to another person.' But that's helped me think of the kind of person I do want to be and the kind of thing I think is acceptable and not acceptable in human behaviour. So when I see that kind of process happening in me I think that maybe that process is happening in other people as well and that's really a good thing. So that's one of the things that I'm feeling optimistic of breaking down, and that's difficult, but sometimes it's a chance for change.

**Interviewer:** So how does that happen systemically?

**Interviewee:** I think my view is that you can have resources. That's one thing. But I think you have to change the thinking, you know when the thinking changes, like we still live in a democracy of sorts, and when you build an understanding and a discourse and it becomes common knowledge for example that a lot of women are homeless because of family violence. I mean one of the big issues that comes up often is deserving and undeserving victims, and I think it's a really sad situation that there's a lot of women who have experienced terrible, terrible harms – and men – who aren't really recognised as legitimate victims because of mainly drug dependence or because of they just don't fit a particular stereotype or whatever. And I don't like the word 'victims' of course, but I think just that respect of, 'So you've been through some heavy shit, you might need a bit of understanding, a bit of compassion, a bit of acceptance, someone to really focus on your positive attributes and capabilities.' To me that's pretty basic stuff, and I think if we can build a bit more understanding of how people end up where they are, and the fact that they probably – and I feel this very strongly – because I feel like there should be a big mural, or a big statue in the city to people who died because of a lack of compassion, a lack of understanding, a lack of recognition that they were harmed and fucking brutalised by other human beings who had no concept, and you know a lot of it was, if I look back, a lot of the stuff I've seen was patriarchal violence, it's violence that is born of a particular system of gender relations, that we've been conditioned into and the whole thing - I think the whole construct of madness and then you look at for example the Royal commission into Sexual Violence and you know a lot of what people were talking about was always true, and of course they were messed up, of course they couldn't adapt, so it's this thing of trying to really start to be accountable for what we're responsible for, what we can lend a hand with, how we can educate ourselves and each other in the community, and then demanding of the government to reflect those values that we decide as a community actually matter. And I think there's not many people in the community who would see a sixteen year old kid and say 'I don't think they deserve housing.' I don't understand that, I don't believe it. I think if you gave people the complexity of that person's situation they'd say, 'They need care, they need acceptance, they don't need arbitrary kind of - they need to be understood, that they're traumatised, they're going to act out, they're going to probably not want to be completely sober all the time because



probably it's a bit painful.' And I think our society is quite happy for – I mean a lot of people are on community treatment orders and that sort of thing – I think we need to break down some of those ideas, people are often self medicating and I guess one of the things I've noticed as well is there are bad people out there who are criminals, there are very bad people, and I have no problem with people like that being put in prison and all of that; I'm quite heartless about it in fact, but there's a whole of people who are wrapped up in the criminal justice system and in poverty, and they're just victims of circumstances and they're really nice people you know, they're really kind, compassionate, and it would be good if they were able to do something better with their lives.

**Interviewer:** Do you think that we need to re-examine the whole notion of the family? You know, a lot of Tory politicians say that the family's the cornerstone of society, do you think that – as you talked about earlier, patriarchy, sex role stereotyping is something that's really damaging and we need to see each other as human beings first – do you think we need to re-examine the family and the family structure?

**Interviewee:** Well I do think that the more, even across a few generations, not many generations, it's become a lot more one unit, and if that unit is not working it's all secret, you know what I mean? The reality is that even in my own community, I'm a mother, I have other friends who are mothers who are sometimes not coping, and the fact that we can be honest and help each other and say, 'I've got this issue, and I'm not the perfect mother at the moment, I'm kind of freaking out,' or whatever. You know that thing about how a child needs a village? I really believe that, you know? And also that it takes – and I'm not saying that there aren't bad people, because there is and I know that there's bad people and I don't really care about them, but I think that there's a lot of families that are just struggling, they've got their own trauma, and the more that our communities can become actual communities that take collective responsibility for each other and our children - children should always be sacred to everybody who knows them, not just to the parents. I feel that there's a lot of pressures that that puts that are also problematic and are also not helpful for the kids, it's not helpful if the kids are in a difficult situation and there's no where else for them to go. So yeah, I do think that's a problem. And then also, it's a funny thing, but I also think that a lot of that stuff is falling apart at the moment in my opinion, and it's a difficult time for women and men, because it's becoming very fluid and I think it's also very confusing, the certainties are gone. Like me for example, I raised my child by myself, I was widowed at a very young age and I've never been in a nuclear family, but I don't, I'm really glad about that - I really feel that that's given me a whole community, I was able to reach out to so many more people, and my brothers and extended family to raise my child, and I was able to acknowledge that I don't have everything she needs - I don't have it - and in a way that gave me the opportunity to see that there's a better way to do it.

**Interviewer:** Are you talking physical things, emotionally?

**Interviewee:** I think a lot of it is emotionally, definitely I came up against – look I'm going to say this one thing, which is that single mother's pension is not much and if you live with a man at all there's an assumption that you're being supported, I want to say that's a joke. I've never had that situation of being supported. I've cared for people, but I haven't been supported. And the other thing is that caring for children is one of the worst paid jobs in this culture, and





that says very clearly to me what we think about something that is classified as women's work.

**Interviewer:** We don't value it.

**Interviewee:** We don't value it at all, and one woman to four children, and if you work, if you're a poor person, you're paying most of your wages to pay for childcare. That put me in a very structurally disadvantaged situation, and I remember thinking very clearly, I've got two options: I can sell drugs or I can do sex work, and I think well if that's a progressive society, I don't know. And also, I was at university, I was going to school at the time and they said, 'Oh people have assumed that we want to make beds and that we want to do women's work,' there was that kind of feminist discussion and I was really offended and said so. For me that was sacred duty, you know, like looking after children is the most important thing that I do with my time and that's your trip, and that's a capitalist trip, and it's because you don't make money out of that work and I think that if the Commission's serious, it is very important that they think about the way we value work and value community because I think the State is becoming more discredited, the church is more discredited, and the thing that will end up taking it's place is capitalism - and people will think that that sounds very fruity, but no, it's completely rational and completely true, and if we want to think about the way we want to structure communities so that they're safe, we actually need to add that into our analysis, the way in which we treat women's work and what value we give to it. I personally think that raising children is the most important thing that happens.

**Interviewer:** It seems that social media, TV, it seems to be bringing up kids and we're allowing that to happen, yeah? Is that the impression that you get, or is that what you're seeing?

**Interviewee:** I don't know what I'm seeing really, the main thing that I think is that if you're not of the upper class, so if you don't have a very big money earning job, working is not necessarily going to help you with money, because just the way the financial system works and I think that while your children need fulltime care, from 0-5, that's a major structural disadvantage for a woman who's not able to rely on a man to support her - and I think the reality is those certainties are changing, as we shift and try to be more, it's kind of like we've lost one expectation but haven't been able to replace it with anything else, so I've never had any expectation that someone will support me, but at the same time, the structural capacity to support myself has been limited if I wanted to care for my child appropriately. So I think as things change, we need to evolve with them.

**Interviewer:** So if men aren't going to step up to the plate and women are forced to deal with these issues of bringing up families by themselves, how do you see community stepping in to assist?

**Interviewee:** I think that there's still a lot of, I guess one of the issues is around - I'm going to go off topic cos I don't really have an answer to that - I think it's an organic thing, where if we actually begin to value those maternal, childrearing community-based values, then it happens. And it happens in some communities more than in others, where there's more of a collective responsibility for raising children, but I don't know, I guess we build it in our own communities and hope that that translates. For me, I've always insisted on it, if anyone wants to be involved with me, but you know just community wise, this person has the top



seat at the table, so if you want to sit at the table you need to accept that that's the situation. But I do think that the consequences of violence and trauma, women are still – and men I'm sure, but I'm not a man so I can't talk to that – but the stigma remains. That somehow it was your fault, and why were you in that situation to begin with and it's very hard not to internalise that and I think also people end up in these patterns. For me, I've decided not to be in relationships, but I think that I also feel unhappy that that's the call I've had to make, but there's a stigma around – if a man needs my help and is feeling emotional, I can be supportive; if I need help and am feeling emotional I'm needy – and these sorts of thing affect our fundamental relationships; I'm clingy, I'm whatever, we have these kind of weird concepts about the way we interpret -

**Interviewer:** How do we change those cultural – what would you call them -?

**Interviewee:** Conditioning, for me it's conditioning. I think we have to have a – for me I have a zero-tolerance and I try to speak to it every time it happens, but I think we're in a difficult painful time because the other thing that is very clear to me is how many men have been impacted by the same sorts of things, the classic scenario is a step family, a man comes in and wants to own the wife and is excluding or harsh on the children because he's playing out that masculine role and I know many men who have left home at twelve because of that sort of thing and that's classic patriarchal weirdness. It's like, this twelve year old boy is a threat to me because he has his mother's love, well I've seen that played out a million times and I guess the main thing is breaking down those gender roles and saying, 'You know what? Someone's bits don't define them, we're human first, we have a lot in common as humans, most of it.' And any conditioning that is shifting that is probably not productive, probably we should be treating people with equality and respect whatever their gender is, and sometimes it goes into this overarching anti-man thing - I don't accept that either, we're all part of this conditioning, we all have to work ourselves out of it and learn to have respect for non-violent relationships. And I do want to say that there's one other thing that happens inside, is that a lot of people generally - and a lot of people who've experienced trauma - have a fear of loss and they try to express that through controlling behaviours. I think we all need to have a deeper understanding of the way that works and how we can get a hold on it, because I see that playing out in a lot of violent situations is fear, loss, not being able to know that you'll be okay, that you're a self-sustaining person, that you've got a whole community that loves you, that sort of thing, but that's a deeper thing that affects all of us and I think any proper analysis needs to look at those three things: one is patriarchal hegemony, and the conditioning it's left us with which is inherently disrespectful, structural, it's not a conducive space to protecting children and giving them nurturing and so on. And I think the second thing is our society - particularly through the way we allocate money and resources and what work we value clearly indicates where our values sit, so we need to be responsible for that. And the third thing I think we need to be understanding is that people have inside of them, this struggle often between fear of loss and a fear of being left alone and learning the basic tools of respectful relationships which are a lot about letting go and giving people autonomy and freedom and not trying to control people because you're afraid. They're the only things I know, or feel that I know, but I would really love it if the Commission thought about those things.



### Interview Eleven

**Interviewee:** My story is a day in the life of myself whereon this particular afternoon I entered into a healthcare centre and with obvious wounds, bleeding from my head, I was turned away. I believe that that is not only physically harmful, but possibly fatal for some, and also has a psychological repercussion that has never left me. I think that the lack of community support, in not having anywhere to turn to in that crisis, is a failing there. I also think that healthcare professionals should have a duty of care to give people first aid to a person in obvious need. If someone is bleeding from their head, you should treat that wound. If someone is having a heart attack, you should help them, if you can't you should take them to a hospital, get an ambulance for them, anything. Anything but turn them away, because turning people away like I said, is physically harmful and can be possibly fatal, and like I said can have psychological repercussions.

**Interviewer:** Do you think that it needs to be the responsibility of all of the community or just the services that have been charged with that responsibility?

**Interviewee:** I think that it's the duty of care of the services charged with that responsibility but I also believe that there is an extreme lack of community support for these issues.

**Interviewer:** How do you think we can best make perpetrators responsible for their actions?

**Interviewee:** Harsher penalties - actually have a penalty, not just some four hour 'lock you up for a warning', but a real severe penalty. It should be treated as first hand crime, you are not allowed to walk up and knock somebody down in the middle of the street, you are not allowed to open your car door and knock somebody off their bicycle, if somebody has hurt another person and assaulted that person they should be held accountable for that crime. It shouldn't just be considered insignificant.

**Interviewer:** What strategies do you think would be effective?

**Interviewee:** I think having health care representatives, health care professionals should be able to do what they are supposed to be doing, providing a health care service, and if they are to administer first aid they should. If it's as simple as making a phone call to check somebody's identity, check their Medicare number they should do that and they shouldn't be turning people away.

**Interviewer:** Do we need to be doing more than just treating a wound?

**Interviewee:** Definitely, that's where community support is valid - having outreach programs, having places people can go to before a situation gets too volatile is crucial. Including having counselling services for people who are very aggressive and have so much anger, they've often grown up in it and have no other way of expressing their anger, and when they have nowhere to turn to and no counselling, no support for them. You've got people calling up phone numbers that are non-existent and not getting answered, therefore they don't have anybody to talk to them down or learn how to use other coping strategies for their anger. Therefore they take it out on everybody else and cause grievous bodily harm to people. I think with community support in that area specifically that would help somehow or another for people to have opportunities. If there is a support service there for them to access it, and having that there gives them a chance to help them take responsibility and accountability for





their own actions and without that there, the system is failing and everything is falling apart. And cutting funding to outreach services that are already underfunded to me sounds ridiculous.

**Interviewer:** Do you think there is enough community awareness or do you think that there needs to be some investment in a community education campaign in and around family violence?

**Interviewee:** I think that it's been indoctrinated into society this sense of normalcy about violence, and people are very complacent and accepting of violence as an everyday day-to-day thing. So I do think there needs to be more community awareness and it's an issue and a topic people should be talking about at every chance they can. It is also a very difficult and sensitive topic for people to talk about which makes it really hard for people to be able to do that. So yes I would say there needs to be more community support and more awareness and a lot of factors in there, but we can't all be held accountable for what other people's actions are, people need to be accountable for their own actions, but we also need to help people before they get to this breaking point and do something wrong with their lives that changes and messes up everybody's life as a ripple effect.

**Interviewer:** What do you think could be some strategies for early prevention of family violence, what would you suggest to someone that has been through it?

**Interviewee:** I would say harsher penalties for perpetrators. I'd also say more counselling options available, for both a perpetrator and a victim, having real places there, real outreach programs there and having them there and accessible I think.

**Interviewer:** What about stuff in schools like education programs in schools? Before it comes to the point where people are actually just beating each other up.

**Interviewee:** Yeah I'd agree to that. I'd say that's a good idea.

**Interviewer:** Do you have any ideas about early intervention to identify and protect those at risk of family violence?

**Interviewee:** Like I said before, having counselling services in place to help people when they first need to reach out and having them accessible and having them available, like a toll free phone number that's actually staffed, that's actually manned, that will actually be able to take calls.

**Interviewer:** And support for victims of family violence? It seem like the government has put no extra money into family violence in the last budget that came down. What kinds of things would you like to see money put into to support women who have gone through or are experiencing family violence?

**Interviewee:** I'd say outreach resource, outreach services, outreach programs, there's a lot of domestic violence outreach programs at the moment that are crucially underfunded, that are understaffed, and the people who are working there are completely pushed to the maximum which makes it really hard for them to work with people in such a delicate situation. But we need these to be in place, not axed and chopped away, we need these to be supported, and if there is funding, funding should go to these programs to help people.



- Interviewer:** Would you say that there needs to be simple things put in place where police believe victims? Is something as simple as that that we don't have to prove that I've been a victim, the onus is on the perpetrator to prove their innocence?
- Interviewee:** Yep, I'd agree with that, and also what I said about the harsher penalties, so someone's not just going to get a slap on the wrist and a warning because they've beaten someone up. If you actually had a harsher penalty for that and then people were put off from doing that in the first place, if it was treated like a real crime, if it was treated as severe as a car theft, you know people have their car stolen, that gets a lot more attention and that gets a lot more of a headline than what's actually going on in our homes and in the streets.
- Interviewer:** So what do you think we can do, cos these things happen to individuals and it happens to them by themselves in their houses, what would be a better more systemic response to this, apart from the additional workers and resources, can you think of anything else that might be of use in a systemic sort of way?
- Interviewee:** Maybe to protect the families, and to protect the family. For a lot of people it's really hard, when you've got kids, to leave a family home and walk away from everything and leave it all behind. And the fear of having your kids taken off you because you're leaving the family home, the fear of being ex-communicated from your peer groups, and possibly your religious circles, the fear of that excommunication because you want to leave the family home is so genuinely heavy that there's nothing in place at the moment genuinely supporting people to be able to leave and to get out, and we've got to stop as a culture, to stop blaming victims for staying, and saying, 'Oh well you should have left him ages ago before he broke your nose.' That whole sentiment needs to be thrown out the window and we need to look at this as what it is, and it is violence, and it's violence occurring everywhere, and if we take it seriously, as individuals and then if there's other things in place including more resources and programs but also with harsher penalties, if it's taken seriously and then a person can be protected in their homes then it would be safe to not have to leave the family home but to kick the perpetrator out and have them leave the family home and not allowed to come back, without the fear of having them come back and throw a brick through the window, to actually have some real protection there would be key and would be crucial in my opinion.
- Interviewer:** Do you think there would be merit in trying to establish a culture of non-violence to counter that – well you mentioned earlier that we've been indoctrinated with the idea that violence is a way to solve conflict – do you think we need to actively develop a culture of non-violence?
- Interviewee:** I do, I also see the difficulty in that. I do, but I see that as a long-term goal. I do, but I see how it can't happen overnight. I see that it takes discussing it - it takes people really working on effective strategies and solutions, rather than to just look the other way. It's something that, I can see it happening - I've got a positive hope in me that I can see that change being made, but it's going to be something that takes time.
- Interviewer:** That's really interesting. What would be in your mind an effective way of getting that dialogue happening between victims and decision makers?
- Interviewee:** That's a hard one. I'd like to believe that there's some transparency there and we could, and that even my words now could somehow help somebody open up their eyes to it, but that's me hoping for change.



- Interviewer:** What are your thoughts about people from culturally and linguistically diverse backgrounds, maybe Aboriginal Torres Strait Islander communities where there may be different cultural understandings of violence in the home? Do you think we've done enough work in those sorts of areas as a community?
- Interviewee:** I think in general violence is violence, and there can never be enough work done.
- Interviewer:** You spoke earlier about long term, the idea about establishing a culture of non-violence being a long-term goal - what would be a short term or medium term goal?
- Interviewee:** Something quick right now that could help right now – the stuff I said before; not axing the outreach services that are in place but supporting them and continuing to fund them rather than axing them and getting rid of them; and as a second point, increasing the penalty, making it a harsher penalty so that if somebody hurt somebody they're accountable for that violent act, rather than it being just considered a domestic situation and it being considered not important. I think we need harsher penalties on that, that is my opinion and also, not axing the outreach program – domestic violence outreach programs at the moment are being axed, it's ridiculous and backwards and I don't understand how anybody can sleep at night letting that happen.
- Interviewer:** What about stuff like refuges and having to prove that you're down and out to be entitled to have a place in a refuge?
- Interviewee:** I think that just makes things worse. It makes people have to live through what they are already going through worse, it also takes away some dignity, it makes the whole situation more uncomfortable and if we could scrap some of that bureaucratic red tape and help somebody when they need help and not hassle them about why they're broken and bruised, I think that would be key, also crucial.
- Interviewer:** So, just to accept people at face value, 'I need some assistance' rather than going into the rights and wrongs of it?
- Interviewee:** Yeah, because for some people - I mean for me and my situation, and I was obviously injured – but for some people the psychological scars hurt more and last a lot longer, and for those people it might not look visible but the fact that somebody's turned up to a place saying they need help should just be taken for what it is rather than the questioning and asking them why.
- Interviewer:** Just in your own individual case, what would have helped, do you think? Looking back in 20/20 hindsight, what was the first sign – you don't have to tell me that but in your own mind you can identify that – and what do you think might have helped?
- Interviewee:** I think, as an example, on that day if I had have been treated with first aid that day, if somebody had have sat with me, helped clean up my wounds and said, 'I'll help you today, let's do this, let's get you away from this, you don't deserve to be beaten like this, you shouldn't be beaten like that.' If someone had have sat there with me and said that to me then I might not have walked away feeling like nobody gave a shit, and that there was some hope for me, and I was worth it as a human being to receive medical help. I walked away that day feeling insignificant and unwanted by society in general, I felt rejected by healthcare professionals and I felt like my wounds were nothing to them, I felt... on that day in



particular, I went back. I went back to the relationship, I had nowhere else in my mind that I could go to and I thought where I was in my state of mind at the time is that nobody else cared about me anyway, nobody else cared about me and I really did believe that he loved me, and that he was going through a lot of problems and that he couldn't help it. There was no help for him either, there was no place for him to go to, there was no counselling number he could call, there was nothing in place to help him when his anger got so much the better of him that he didn't know what do with it or how to control it, and for me that day, that's where I went back to.

**Interviewer:** Explain to people why, in your own mind, you went back, because a lot of people, as you said earlier, don't understand why a woman stays or why she would go back. Can you educate people as to why you felt you needed to go back?

**Interviewee:** Yeah, and for me personally, I think this is a good example for that, that I walked away that day from that healthcare provider feeling like well no one cares anyway, I may as well just go back. And I was afraid of walking away from the tiny few possessions that I had. I was afraid of still walking up the street and people staring at me the way they were because I was bleeding from my head, I was afraid of the way I was being treated, I didn't want to just sit in the gutter and die, so I went back and, you know, spent eight hours in a bathroom trying to clear my wounds myself.

**Interviewer:** So another problem we have is that we have in Australia different states and each state has its own jurisdiction and its own laws; do we need to look at this nationally rather than state by state?

**Interviewee:** Yes, I think it should be a federal thing. This is something that should be looked at as a country. A violent crime is a violent crime and knocking people unconscious - that is a crime. You're not allowed to go around beating people up just because you're angry. These things need to be taken seriously and it shouldn't just be considered as nothing. And for all the people who say, oh well you should have just left, you see what happens to people like myself who try to leave – you go into a healthcare centre, and be turned away. That is detrimental to the cause and nobody really understands that unless they're going through that, and so it is really hard to get everyone to open their eyes, but there is a big failure there in our health care system of people who shouldn't be turning people away when they're in distress.

**Interviewer:** When you hear things on the news or read things in the newspaper that the federal governments and state governments are working together on stuff like ice and terrorism and national security, what does it tell you, what does it imply to you that they don't work together on things like family violence?

**Interviewee:** It does, it implies that they don't work together, but it also implies that they don't care. I also feel very left out and fallen through the cracks of the system and I feel that nobody cares, I still feel today like nobody cares.

**Interviewer:** I saw an interview this week with Fiona McCormack (I think) from Domestic Violence Victoria, and one thing that she said that really stood out in my mind was that there's no money from the budget that's gone into family violence, and most of the money that does go in comes from homelessness. What do you think we need to get people's attention?





**Interviewee:**

Well I guess I could go really out there and say something really radical like well if they were in that position, if Tony Abbott was going home for dinner tonight and he's made dinner for his wife and the peas touched the mashed potato and she got really cross and gave him a backhander across the face maybe then he would say, 'Oh well maybe this is a serious issue and maybe I shouldn't be treated like that'. I'm trying to smile and trying to put it out there, but the truth is that there is a failing in the system to recognise that it is a serious crime and I think that it's backwards and absolutely ridiculous that the funding is being scrapped from places like domestic violence outreach service. These places barely have enough as it is and are running on an empty can of gas and to axe them is just saying, 'Well, go back home'. It's another turning me away, to me; the whole government is just being the health care centre turning men and women away, who are turning up bloodied and bruised and needing medical assistance. And if I had been able to have my purse on me that day, I would have calmly gotten my medicare card out and all of that jazz, but it was impossible that day, I had no chance, it was taken from me, physically ripped from my hands and if they had just shown me some little bit of care that maybe I was worth to be treated and I was worth enough of a human being to look at my wounds, maybe I would have gotten some help maybe I would have left that relationship that day. Instead it took another year before I chose to walk away and for some people they don't make it that far. It's sometimes only that blow to the head that is fatal, or chocking someone until they're unconscious so many times until they don't come back to. It's terrible what's going on and it's terrible how many lives are lost while all this other money is getting thrown out on terrorism and all this extra metadata stuff when more women and children are being killed than we're going to have through any terrorism in the city. That's just my opinion.

Fin,

**HOMELESS PERSONS UNION of VICTORIA**  
P.O. Box 99 Victorian Trades Hall  
54 Victoria St, Carlton. 3053



**NO LONGER  
THE UNHEARD VOICE**





Name: \* ti snotear

Email address: \* [sparklyfrockwarrior@gmail.com](mailto:sparklyfrockwarrior@gmail.com)

Please indicate which meeting you would like to make a submission to by selecting the appropriate button: \*

Date of meeting: \* Tuesday 7 February 2017

Agenda item title: re: amendments to bylaws concerning homeless people in melbourne

\*

**Please write your submission in the space provided below and submit by no later than noon on the day of the scheduled meeting. We encourage you to make your submission as early as possible.**

to whom it may concern,,,,,and the councillors of the city of melbourne,and the future melbourne commitee.

my name is ty, i first ran away from home when i was 10 yer  
ars old,i have been living on and off the streets of melbourne since i was 14 years old, im now 42;i  
now live in commision housing , this has only been for a few months, however i still have to access  
homelessness services as the transition from that life to this one is extremely difficult,. that said, heres  
what i have to say... a few years back i was sleeping in the vacinity of flinders st station ,as a homeless  
person,i was stuck in town awaiting access to a drug and alcohol rehabillitation program, i was dying  
and starving and ny mental health was smashed. i was told that there was a community soup kitchen  
in th town square,so i attended. before i could eat my breakfast,it was 6am, the police aproached and  
said it was evicted because it was untidy and a local business[starbucks],had complaighned it was  
affecting their business. a cage was built around me while my ptsd was triggered, i had nowhere to  
go,i was homeless and the streets of melbourne are my only real home. i had everyth ing i owned  
stolen and thrown in the tip by the police and the council,at the request of robert doyle. i was punched  
and kicked unconcious 3 times that day and dumped unconcious in a paddock in altona after having  
my medication my phone my money,my bedding and my personal journal that i have to keep for my  
counciler stolen off of me. i had nowhere to go except where i was removed from i.e. the melbourne  
streets. i urge you to reconsider your plans to build new laws that negativly affect t6he homeless of  
melbourne. i beg you ,do not pass this law today.there are other opyions. the salvation army are the  
ones responsible for all the sighns and openly homeless people as they openly requested us to

personalise ourselves with signs

Please indicate  Yes  
whether you  
would like to  
address the Future  
Melbourne  
Committee in  
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submission:

*(No opportunity is  
provided for  
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\*

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**Name: \*** Kate Browne

**Email address: \*** [kbrowne@liv.asn.au](mailto:kbrowne@liv.asn.au)

**Contact phone number (optional):** 03 9607 9489

**Please indicate which meeting you would like to make a submission to by selecting the appropriate button:**

\*

**Date of meeting: \*** Tuesday 7 February 2017

**Agenda item title: \*** Agenda Item 6.2 – Homelessness and Public Amenity

**Please write your submission in the space provided below and submit by no later than noon on the day of the scheduled meeting. We encourage you to make your submission as early as possible.**

Dear Lord Mayor and Councillors,

I attach a letter from the President of the Law Institute of Victoria expressing the LIV's concerns regarding the proposed by-law amendments that will be voted on tonight.

Please contact me on (03) 9607 9489 or [kbrowne@liv.asn.au](mailto:kbrowne@liv.asn.au) if you have any questions about this letter.

Kind regards,  
Kate Browne | Lawyer, Administrative Law and Human Rights Section  
Law Institute of Victoria

Alternatively you may attach your written submission by uploading your file here:



[20170207\\_let\\_lordmajormelbourne\\_letterregardinghomelessnessbylaws\\_final.pdf](#)

254.10 KB [.PDF](#)

**Please indicate** Yes

whether you would like to address the Future Melbourne Committee in support of your submission:

*(No opportunity is provided for submitters to be heard at Council meetings.) \**

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\*

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**The Hon. Robert Doyle**

Lord Mayor  
The City of Melbourne  
Melbourne Town Hall – Administration Building  
120 Swanston Street  
Melbourne, VIC

*By email:* lordmayor@melbourne.vic.gov.au

*Copied to:* michael.caiafa@melbourne.vic.gov.au  
rohan.leppert@melbourne.vic.gov.au  
philip.leliu@melbourne.vic.gov.au  
kevin.louey@melbourne.vic.gov.au  
cathy.oke@melbourne.vic.gov.au  
nicholas.reece@melbourne.vic.gov.au  
tessa.sullivan@melbourne.vic.gov.au  
jackie.watts@melbourne.vic.gov.au

Dear Lord Mayor,

**Proposed changes to by-laws regarding homeless people in Melbourne's CBD**

The Law Institute of Victoria (LIV) is concerned by the introduction of proposed by-law amendments which broaden the restriction on public camping in the Melbourne CBD and provide expanded powers to move on rough sleepers.

Currently camping is only banned in Melbourne if campers use a 'vehicle, tent, caravan or any type of temporary or provisional form of accommodation'. However, the proposed change would expand this to prohibit all camping in a public place. The proposed by-law would also make it illegal for people to leave any unattended item in a public place, and allow for those items to be impounded and released on the payment of a fee.

While the LIV acknowledges that public spaces should be regulated to promote community health and safety, this should not be achieved through increased penalties or move-on laws that victimise some of the most vulnerable members in our community. Police and council employees already have extensive powers to address issues such as aggressive behaviour or public drunkenness.

Moving homeless individuals away from the Melbourne CBD will not solve the problems that are creating homelessness and will merely move people elsewhere. People may be pushed out to areas that do not have adequate services, limiting their opportunity to access the support they need. Moving homeless people out of the CBD may also expose them to a greater risk of violence.

The right not to have one's home and privacy interfered with is protected by the Victorian *Charter of Human Rights and Responsibilities*. The criminalisation of people living on the street for every-day activities can also raise other human rights concerns under international law such as discrimination or cruel, inhuman or degrading treatment. Criminalising street camping will not solve current issues of housing affordability and other factors leading to increased homelessness.

Relying on move-on and infringement powers to address issues of homelessness and poverty is ineffective and counter-productive. This approach imposes a significant burden on the courts and police, and results in highly vulnerable people becoming caught up in the justice system and exacerbating the difficulties that come with homelessness and poverty.

The LIV welcomes the Victorian Government's recent announcement of a new emergency response package to provide housing and support for rough sleepers in the Melbourne CBD, and emphasises the importance of the City of Melbourne and Victorian Government continuing to work together with support services and agencies to come up with a long term strategy and service-based solution to homelessness in Victoria.

If you have any questions regarding this letter please contact Kate Browne, Legal Policy, on (03) 9607 9489 or [kbrowne@liv.asn.au](mailto:kbrowne@liv.asn.au).

Yours sincerely,



Belinda Wilson

**President**

Law Institute of Victoria



Name: \* Heather Moody

Email address: \* [hmoody@gmail.com](mailto:hmoody@gmail.com)

Please indicate which meeting you would like to make a submission to by selecting the appropriate button: \*

Date of meeting: \* Tuesday 7 February 2017

Agenda item title: Homelessness and Public Amenity

\*

**Please write your submission in the space provided below and submit by no later than noon on the day of the scheduled meeting. We encourage you to make your submission as early as possible.**

How will these laws not further disadvantage those sleeping rough?

The crisis accommodation offered to rough sleepers can anecdotally be more dangerous than a CCTV covered street. The crisis accommodation is very short term, people are only able to access the services for a short period of time.

How is criminalising homelessness helping? How is seizing all their belongings going to help them get back on their feet? How will pushing them out of the public eye and into the dark parks, alleys and industrial sites improve their safety and reduce the risk for further trauma? What of those with mental health issues, with PTSD, with disabilities? What of the children kicked out of home for their gender or sexuality?

The police commissioner claimed that there are more than enough beds. How is that possible when not-for-profits and advocacy groups are still yelling out for more accommodation?

StreetCount last year found 247 homeless in the CBD. Only 40 places were proposed by the

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government for the Flinders St camp with 70 names on a list and outreach workers barely had access according to the Homeless Persons Union.

Bendigo Street was supposed to be allocated as housing and yet sat empty for a very long time.

Hiding the homeless is not a valid answer for a city claiming to be the most liveable while having a housing affordability crisis. Seizing all their belongings and changing laws as we enter winter is not good enough.

Will the council be providing secure storage lockers for rough sleepers? That's an answer to belongings blocking the footpath.

Will the council be providing the blankets to ensure no one becomes hypothermic during winter with collections the next day? Will council be opening the town hall to allow a safe space off the street to sleep? Will the council enable the set-up of a secure camp that's council approved? Will the government start to look at the vacant properties in Melbourne that make housing even more inaccessible?

Please indicate  No  
whether you  
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address the Future  
Melbourne  
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meetings.) \**

Privacy  I have read and acknowledge how Council will use and disclose my personal  
acknowledgement: information.

\*

Name: \* Tony Penna

Email address: \* [president@soutbankresidents.com.au](mailto:president@soutbankresidents.com.au)

Please indicate which meeting you would like to make a submission to by selecting the appropriate button: \* Future Melbourne Committee meeting

Date of meeting: \* Tuesday 7 February 2017

Agenda item title: \* 6.3 Ministerial referral: TPM-2016-4, 51-65 Clarke Street, Southbank

Please write your submission in the space provided below and submit by no later than noon on the day of the scheduled meeting. We encourage you to make your submission as early as possible. I would like to speak to this agenda item.

Please indicate whether you would like to address the Future Melbourne Committee in support of your submission: Yes

*(No opportunity is provided for submitters to be heard at Council meetings.) \**

Privacy acknowledgement: \* I have read and acknowledge how Council will use and disclose my personal information.

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Name: \* Carolyn Sebastian

Email address: \* [phoenix\\_545@hotmail.com](mailto:phoenix_545@hotmail.com)

Please indicate which meeting you would like to make a submission to by selecting the appropriate button: \* Council meeting

Date of meeting: \* Tuesday 7 February 2017

Agenda item title: \* Planning permit application TP-2016-225

Please write your submission in the space provided below and submit by no later than noon on the day of the scheduled meeting. We encourage you to make your submission as early as possible.

I would like to strongly oppose the erection of a 5 storey building in 69 hardiman st, kensington. Other than being an eyesore, it will increase congestion and reduce the availability of street parking.

Privacy acknowledgement: \* I have read and acknowledge how Council will use and disclose my personal information.

Name: \* John Glossop

Email address: \* [john@glossopco.com.au](mailto:john@glossopco.com.au)

Contact phone number (optional): 9329 2288

Please indicate which meeting you would like to make a submission to by selecting the appropriate button: \* Future Melbourne Committee meeting

Date of meeting: \* Tuesday 7 February 2017

Agenda item title: \* Planning Permit Application TP-2016-225, 69 Hardiman Street, Kensington

Please write your submission in the space provided below and submit by no later than noon on the day of the scheduled meeting. We encourage you to make your submission as early as possible. We want to speak in support of the application at the meeting and do not have any written submissions

Please indicate whether you would like to address the Future Melbourne Committee in support of your submission: Yes

*(No opportunity is provided for submitters to be heard at Council meetings.) \**

Privacy acknowledgement: \* I have read and acknowledge how Council will use and disclose my personal information.

**Name: \*** Peter Sweeney

**Email address: \*** [psweeney101@bigpond.com](mailto:psweeney101@bigpond.com)

**Please indicate which meeting you would like to make a submission to by selecting the appropriate button: \*** Council meeting

**Date of meeting: \*** Tuesday 7 February 2017

**Agenda item title: \*** planning permit application TP-2016-225 Hardiman St

**Alternatively you may attach your written submission by uploading your file here:**



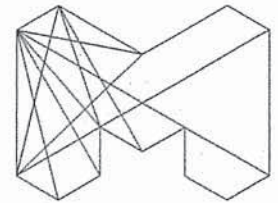
[planning\\_permit\\_application.pdf](#) 84.32 KB .PDF

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30 January 2017

Mr Paul McAlpine  
49 Albermarle St  
KENSINGTON VIC 3031



**CITY OF MELBOURNE**

Melbourne VIC 3001  
Phone (03) 9658 9658  
DX210487  
ABN 55 370 219 287

Dear Sir/Madam

**PLANNING PERMIT APPLICATION: TP-2016-225  
69 HARDIMAN STREET, KENSINGTON VIC 3031  
DEVELOP A 5 STOREY BUILDING COMPRISING 8 DWELLINGS AND A REDUCTION IN THE  
CAR PARKING REQUIREMENT**

Please be advised that the above planning permit application will be considered at a meeting of Council's Future Melbourne Committee (Planning portfolio). The details of the meeting are as follows:

**Date: Tuesday, 7 Feb 2017**

**Time: 5.30pm**

**Venue: Council Meeting Room, 2nd Floor, Melbourne Town Hall**

The agenda papers for this meeting can be viewed at [www.melbourne.vic.gov.au/committees](http://www.melbourne.vic.gov.au/committees) and are available from 2pm, five days prior to the meeting. Please refer to the enclosed Fact Sheet for instructions on how to obtain a copy of these papers.

You are invited to attend the committee meeting to listen to the discussion. You may also choose to make a written submission or a request to address the committee in person at the meeting. Details regarding how to do this are outlined in the included Fact Sheet.

Verbal presentations are strictly limited to three minutes and any written submissions for the committee's consideration, must be provided to Council Business by noon on the day of the meeting. Please note that submissions form part of the public record in which your personal details such as your name may be identifiable unless the submitter specifies otherwise. These records will be made available for inspections in Council's offices for an indefinite period.

To make an online submission, please use the following link:

<https://comdigital.wufoo.com/forms/rly4bj60tdagsg/>

Alternatively, you can find the Council and Committee meeting submission form on the following page of Council website:

<http://www.melbourne.vic.gov.au/AboutCouncil/Meetings/Pages/CommunicateWithCouncil.aspx>

If you require any further information, please do not hesitate to contact the responsible officer:

**Colin Charman** Planning Officer (03) 9658 9748

Yours sincerely

Business Support Team

Email [planning@melbourne.vic.gov.au](mailto:planning@melbourne.vic.gov.au)  
CoM reference TP-2016-225