

2/05/2025

Dear City of Port Phillip Councillors

*By online submission*

## **Joint Letter regarding potential amendments to City of Port Phillip Local Laws**

We are community organisations in the human rights, community legal and social services sectors that support and advocate for people experiencing and at risk of homelessness.

We have come together to communicate our deep concern regarding a potential amendment to City of Port Phillip (Council) local laws, following a motion passed unanimously by Port Phillip Council on 19 February 2025.<sup>1</sup>

We understand that an amendment has not been formally proposed within the meaning of the Local Government Act 2020.<sup>2</sup> However, we are so concerned about the direction Council has taken in seeking advice on the steps for doing so, that we have decided to intervene at this stage.

The motion marks a possible stark departure from the Council's proud history of leadership in working pragmatically and compassionately to reduce and ultimately end homelessness in collaboration with frontline services.

This joint letter outlines key objections to the proposed local laws and offers brief recommendations for alternative actions the Council can take. We are keen to continue working collaboratively with the Council to reduce and ultimately end homelessness in Port Phillip.

We oppose the draft amendments because:

1. They are inconsistent with the Council's obligations under the Charter of Human Rights and Responsibilities.
2. They would effectively criminalise rough sleeping, which is cruel, degrading and undermines the dignity and safety of people who are targeted.
3. They would be unproductive and waste community resources that are needed to address homelessness.<sup>3</sup>

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<sup>1</sup> See Table 1 which reproduces the proposed amendments compared to the existing local laws.

<sup>2</sup> Section 73, *Local Government Act 2020*.

<sup>3</sup> Pursuant to section 73(3)(b) of the Local Government Act 2020., the City of Port Phillip will need to publish a notice outlining the *intended effect* of the proposed local law.

## **1. The draft amendments are inconsistent with the Council's obligations under Victoria's Charter of Human Rights and Responsibilities Act 2006**

Port Phillip Council is a "public authority".<sup>4</sup> This means the Council has obligations to act in a way that is not incompatible with the Charter of Human Rights and Responsibilities<sup>5</sup> and also not to fail to give proper consideration to relevant Charter rights.

If the draft amendments were ultimately to be adopted by the Council, then Council would potentially be acting incompatibly with, or potentially failing to give proper consideration to, a range of relevant Charter rights including the:

- Right to recognition and equality before the law<sup>6</sup>
- Right to life<sup>7</sup>
- Protection from torture and cruel, inhuman or degrading treatment<sup>8</sup>
- Right to freedom of movement<sup>9</sup>
- Right to privacy and reputation<sup>10</sup>
- Right to peaceful assembly and freedom of association<sup>11</sup>
- Right to property<sup>12</sup>
- Right to liberty and security of person<sup>13</sup>

Section 7(2) of the Charter provides the circumstances in which these specific human rights can lawfully be limited and states that the interference with or limitation placed on Charter rights must be "demonstrably justified".

The interference with Charter rights must be done for a specific and clear purpose and must "not be arbitrary, unfair or based on irrational considerations".<sup>14</sup>

The measures must be rationally connected to their objective and that objective must be of "sufficient importance"<sup>15</sup> in relation to the human rights to be limited. The onus would rest with the

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<sup>4</sup> Within the meaning of s4(2)(e) of the *Charter of Human Rights and Responsibilities Act* 2006.

<sup>5</sup> S38(1) *Charter of Human Rights and Responsibilities Act* 2006 (the Charter).

<sup>6</sup> Section 8 of the Charter. This could be on the basis of indirect discrimination against people with protected attributes under the *Equal Opportunity Act* 2010. This would depend upon available specific evidence about the nature of the cohort being targeted by amendments, such as significant over-representation of people with a disability or a particular race.

<sup>7</sup> Section 9 of the Charter. See *Victoria (City) v Adams*, 2009 BCCA 563 (9 December 2009). This is a Canadian case but as per s32 of the Charter, the judgments of foreign domestic courts relevant to human rights may be considered when interpreting a statutory provision. This case relates to a city bylaw preventing homeless people from erecting temporary shelter and found the bylaw to be in contravention of the *Canadian Charter of Rights and Freedoms*, specifically the right to life, privacy and home, and to security of person.

<sup>8</sup> Specifically s10(b) of the Charter. Denying people the ability to literally *sleep* because they are homeless and have no other place to do so is on its face cruel and degrading.

<sup>9</sup> Section 12, the Charter.

<sup>10</sup> Section 13, the Charter. See the case referenced in note 5 above.

<sup>11</sup> Section 16, the Charter.

<sup>12</sup> Section 20, the Charter.

<sup>13</sup> Section 21, the Charter.

<sup>14</sup> *R v Oakes* [1986] 1 SCR 103 – a Canadian case on the interpretation of the *Canadian Charter of Rights and Freedoms*, cited repeatedly in relevant Victorian case law.

<sup>15</sup> See above n 14.

Council to establish that the measures proposed are proportionate in accordance with s7(2) of the Charter.

At present, we believe the Council's objectives are lacking sufficient clarity to justify interference with the Charter rights outlined and it is difficult to imagine what legitimate objectives could reasonably be expected be served by the draft amendments.

The draft amendments would achieve nothing other than further immiserating people already experiencing severe hardship, while doing nothing to change any of the underlying drivers causing people to “camp”, “sleep rough” or otherwise spend time in public on council land meeting their most basic human needs.<sup>16</sup>

## **2. Criminalising rough sleeping is cruel, degrading and undermines the dignity and safety of people who are targeted**

People who are surviving in public space (sleeping rough) are in an exceptionally vulnerable position and show extraordinary strength in trying every day to meet their basic needs for shelter, safety, support and connection.

People sleeping rough are at elevated risk of being victims of crime, harassment and violence<sup>17</sup> and of suicide.<sup>18</sup> They have frequently fled family violence<sup>19</sup> or unsafe living conditions<sup>20</sup> and often experience multiple complex needs including physical and psychosocial disability.<sup>21</sup>

First Nations community members are over-represented among people experiencing homelessness more broadly and those sleeping rough<sup>22</sup> due to the compounding effects of dispossession and racism including poverty and health inequality.<sup>23</sup>

People sleeping rough are already at risk of being criminalised under the *Summary Offences Act* 1967 and existing local law provisions for basic daily living activities that, if done in private, would not be an offence.<sup>24</sup> This already contributes to the stigma and hardship people sleeping rough contend with.<sup>25</sup>

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<sup>16</sup> Robinson, T. (2019). No right to rest: Police enforcement patterns and quality of life consequences of the criminalization of homelessness. *Urban affairs review*, 55(1), 41-73.

<sup>17</sup> [Violence, Harassment and Bullying and Homelessness | Australian Human Rights Commission](#)

<sup>18</sup> [Homelessness and suicide - Suicide & self-harm monitoring - AIHW](#). See also [Every four days a young homeless person dies. Advocates are calling for urgent reform - ABC News](#)

<sup>19</sup> [Homelessness and Domestic and Family Violence – Homelessness Australia IWD 2024](#). See also [Housing, homelessness and domestic and family violence | AHURI](#)

<sup>20</sup> See [Crisis accommodation in Australia: now and for the future](#) at p34.

<sup>21</sup> Gutwinski, S., Schreiter, S., Deutscher, K., & Fazel, S. (2021). The prevalence of mental disorders among homeless people in high-income countries: an updated systematic review and meta-regression analysis. *PLoS medicine*, 18(8), e1003750. Vallesi, S., Tuson, M., Davies, A., & Wood, L. (2021). Multimorbidity among people experiencing homelessness—insights from primary care data. *International Journal of Environmental Research and Public Health*, 18(12), 6498.

<sup>22</sup> [Specialist homelessness services client pathways: analysis insights: SHS: Rough sleeping clients in 2016–18 - Australian Institute of Health and Welfare](#). See also [HA 2024 Child Homelessness Snapshot.pdf - Google Drive](#)

<sup>23</sup> [Closing the Gap](#)

<sup>24</sup> Herring, C. (2019). Complaint-oriented policing: Regulating homelessness in public space. *American sociological review*, 84(5), 769-800.

<sup>25</sup> Walsh, T., Anthony, T., Beilby, J., McNamara, L., & Quilter, J. (2025). ‘Back Off! Stop Making US Illegal!’: The Criminalisation of Homelessness in Australia. *Social & Legal Studies*, 34(1), 67-88.

Making rough sleeping itself punishable by fines and seeking to involve police in enforcement activities such as seizing personal belongings<sup>26</sup> effectively directly criminalises<sup>27</sup> rough sleeping.

When conduct is criminalised, it sends a message to the wider community that a person engaging in that conduct is deserving of punishment and shaming, and that their behaviour endangers others.

This is an incredibly dehumanising message to promote about people whose conduct is necessary for their very survival, undermining their essential dignity and worth. This messaging is dangerous<sup>28</sup> because it validates the sentiments of those who may want to blame system failures, such as our escalating national homelessness crisis<sup>29</sup>, on our most vulnerable community members.<sup>30</sup>

Issuing fines and increasing enforcement-based interactions with people sleeping rough will no doubt add further stress and trauma to their already incredibly difficult daily experience<sup>31</sup>, while in no way providing practical help.

### **3. The draft amendments would be unproductive and waste community resources that are needed to address homelessness**

In Victoria, we have long recognised that people who are experiencing significant vulnerability should not have fines enforced against them where those fines are directly linked to the person's vulnerability.<sup>32</sup>

State law currently provides for an Enforcement Review process to have fines cancelled where 'special circumstances' apply. Under this process, where a person can evidence that their actions were caused by homelessness, Fines Victoria will not enforce those fines.

This current state legislation is inconsistent with what is being currently proposed by the Council. It renders unenforceable any fines issued to people experiencing homelessness under the proposed By Laws. Issuing unenforceable fines has three key consequences.

Firstly, it causes significant and avoidable distress to vulnerable fines recipients. The impact of enforcement action on our most vulnerable community members can be severe, exacerbating

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<sup>26</sup> See draft amendment to s43(3) and (4) at Table 1

<sup>27</sup> Rankin, S. K. (2021). Civilly criminalizing homelessness. *Harv. CR-CLL Rev.*, 56, 367.

<sup>28</sup> [Punishing people for not having homes to go to is not only cruel, but dangerous – Homelessness Australia](#)

<sup>29</sup> Pawson, H., Parsell, C., Clarke, A., Moore, J., Hartley, C., Aminpour, F., & Eagles, K. (2024). Australian homelessness monitor 2024.

<sup>30</sup> In the United States, where the criminalisation of homelessness is more common and further progressed than in Australia, significant anti-homelessness vigilante violence, overlapping with racism, is well-documented. See Urbanik, M. M., Maier, K., Tetrault, J. E., & Greene, C. (2024). Hate crime and class vulnerability: A case study of white nationalist violence against unhoused Indigenous people. *The British journal of criminology*, 64(4), 863-880. Rabelo, V. C., Stewart, O. J., Snowden, W. C., & Fathallah, S. (2024). When safety for you means danger for me: the racial politics of carceral public safety discourse. *Frontiers in psychology*, 15, 1347630.

<sup>31</sup> [Adams, L. \(2014\). In the public eye: addressing the negative impact of laws regulating public space on people experiencing homelessness.](#) For more detail on the serious negative health impacts on people experiencing homelessness of being criminalised see Golestaneh, S. (2024). Pushed Into the Shadows: The Criminalization of Homelessness and Its Health Consequences. *Hous. J. Health L. & Pol'y*, 23, 1. See also Olson, N., & Pauly, B. (2023). 'Forced to become a community': Encampment residents' perspectives on systemic failures, precarity, and constrained choice. *International Journal on Homelessness*, 3(2), 124-138.

<sup>32</sup> See *Infringements Act 2006* and *Fines Reform Act 2014*. See also the comments of then Attorney General Rob Hulls regarding the purposes of the *Infringements Act 2006* and the specific intent of avoiding punishing people experiencing homelessness: Victoria, *Parliamentary Debates*, Legislative Assembly, 16 November 2005, p. 2186 (Rob Hulls, Attorney General).

existing hardship. The currently proposed By Laws would impose a fine of two penalty units which is currently approximately \$395. For a person on a Jobseeker payment, that's potentially more than their entire income for the week, leaving them without the ability to pay for rent, food, or essential services.

Secondly, it places unnecessary pressure on community legal and other support services to support distressed clients through the Enforcement Review process. This process often requires extensive work from community legal centres and community health and housing support services in gathering and submitting the required supporting evidence. Our vital community services have other important work to do in preventing homelessness and supporting people escaping family violence. Instead, we often have to allocate significant resources to supporting distressed clients who have been unnecessarily pulled into the fines system.

Thirdly, issuing unenforceable fines places unnecessary resource constraints on government, including the Council, in issuing, processing and pursuing the infringements that will ultimately not be enforced. In the context of a current housing and cost of living crisis, public resources are urgently required elsewhere.

It is precisely for these reasons that the Council has previously made the pragmatic and wise choice to adopt local laws that prevent the issuing of fines for 'camping' in public to people who will ultimately undoubtedly have them withdrawn based on special circumstances.<sup>33</sup>

Retreating from City of Port Phillip's existing best practice approach could only place further strain on all our systems and services as we face increasing community need amid multiple intersecting crises of family violence, housing affordability and economic insecurity.

## **The way forward – what should the Council do?**

- a) Continue and strengthen support for best practice housing first initiatives, like Port Phillip Zero, that are proven to be effective in reducing rough sleeping by helping people access suitable housing with support.
- b) Continue advocating to State and Federal Governments to address the drivers of the housing crisis – particularly underinvestment in social housing including permanent supported housing.
- c) Focus on collaborating and listening to people currently experiencing homelessness and with lived experience and local community support services to help enhance the coordination of local service responses for people in need.
- d) Develop a cultural safety and human rights-based<sup>34</sup> operating protocol for local laws officers on the use of their existing powers, by seeking input from Aboriginal Community Controlled Organisations, people with lived experience of homelessness and psychosocial disability and community support services.

If you have any questions or wish to discuss further, please contact Mel Dye, CEO at Southside Justice, via email at [meldye@southsidejustice.org.au](mailto:meldye@southsidejustice.org.au).

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<sup>33</sup> The legislative definition of special circumstances in the context of fines is at section 3, *Infringements Act (2006)* which includes homelessness, the impacts of mental illness and disability, family violence and serious addiction.

<sup>34</sup> Bell, K., & Allain, J. (2021). 'Homelessness and Human Rights in Australia'. *Paula Gerber and Melissa Castan, Critical Perspectives on Human Rights Law in Australia*, 2.

Yours sincerely



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This letter is endorsed by:

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| Juanita Pope      | Chief Executive Officer                        | Victorian Council of Social Service (VCOSS) |
| Deborah Di Natale | Chief Executive Officer                        | Council to Homeless Persons                 |
| Louisa Gibbs      | Chief Executive Officer                        | Federation of Community Legal Centres       |
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| Caitlin Reiger    | Chief Executive Officer                        | Human Rights Law Centre                     |
| Laura Mahoney     | Acting Chief Executive Officer                 | Launch Housing                              |
| Vicki Sutton      | Chief Executive Officer                        | Melbourne City Mission                      |
| Andrea McLeod     | Chief Executive Officer                        | Better Health Network (BHN)                 |
| Hang Vo           | Chief Executive Officer                        | Sacred Heart Mission                        |
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|------------------------|-------------------------|---|
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| Dr Jennifer Fitzgerald | Chief Executive Officer | St Vincent de Paul Society Victoria                             |
| Karen Fletcher         | Executive Officer       | Flat Out Inc  |
| Nickie Gyomber         | Chief Executive Officer | St Kilda Gatehouse  |



| TABLE 1         |  |   |
|-----------------|--|---|
| Section of CALL | Current content of the CALL  | Key elements of draft amendment and their effect  |
| 17              | <p>Behaviour on Council Land.</p> <p>Section states people must not 'behave in a manner that unreasonably interferes' with another person, including public urinating and defecating, refusing to comply with a reasonable direction of an Authorised Officer.</p> <p>Penalty is not stated which means, penalties apply per s81 in the form of fines.</p>   | <p>Draft amendment would add an additional prohibited behaviour in the following terms:</p> <p>Person must not "behave in a manner which unreasonably interferes with another person <b>including</b> sitting, sleeping or laying on or in the Council land, road or footpath".</p> <p>The wording therefore <i>appears</i> to define "sitting, sleeping or laying on or in" public space as inherently constituting unreasonable interference with another person. However note statutory provisions must be interpreted to the extent possible in a manner consistent obligations under the Charter where there is any ambiguity about the intended meaning, and the meaning more consistent with the Charter must be taken to be that which was intended.</p>  |
| 42              | <p>(1) A person must not camp on any Council land or in any public place in a vehicle, tent, caravan or any other type of temporary or provisional form of accommodation.</p> <p>(2) A <b>person is not guilty of an offence</b> under sub-clause (1) where that person <b>'establishes</b> that they:</p> <p>a) <b>are homeless</b> or in need of secure accommodation; or</p> <p>b) <b>have complex needs</b> or is in the need of additional assistance because of <b>mental or physical disability or illness.</b></p> | <p>Removal of sub-clause (2)</p>  |
| 43              | <p>(1) A person must not on a footpath or access way, place or cause to be placed any furniture that <b>obstructs</b> that footpath or accessway.</p> <p>(2) Council may direct a person to remove any of the items in subclause (1).</p> <p>(3) If a person fails to remove any item after being directed to do so, Council may seize any item and impound it in accordance with clause 78.</p>   | <p>The focus of s43 is to prevent and remove <b>obstructions on council land</b>; the proposal is to completely replace the existing s43 with:</p> <ol style="list-style-type: none"> <li>1. A person must not place or cause to be placed on a footpath, access way, car park, public place or Council land any furniture or good or chattel that obstructs that footpath or accessway or <b>enables a living arrangement or sleep.</b></li> <li>2. An authorised member of Council staff or authorised Police officer may remove the furniture, good, chattel or item that <b>enables a living arrangement or sleep</b> where in the opinion of the Council staff member or authorised officer is in contravention of Section 43 (1).</li> <li>3. An authorised member of Council staff or authorised <b>Police officer</b> may impound, confiscate or dispose of any item or items removed under Section 43 (1).</li> <li>4. An authorised member of Council staff or authorised <b>Police officer</b> may in circumstances arising in contravention of Section 43(1) if in their opinion the furniture, good, chattel or property <b>enabling a living arrangement or sleep</b> where a person or persons deny ownership of the property and or the property in their reasonable belief has been abandoned. The Council staff member or authorised officer may impound, confiscate, or dispose of any item or items removed under Section 43(1).</li> </ol> |