

**Mandate of the 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**

REFERENCE:  
OL AUS 1/2017

13 February 2017

Excellency,

I have the honour to address you in my capacity as 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, pursuant to Human Rights Council resolution 31/9.

In this connection, I would like to bring to the attention of your Excellency's Government urgent information I have received concerning **the proposed amendment to the Melbourne City Council's existing *Activities Local Law 2009* (Principal Local Law) via the proposed *Activities (Public Amenity and Security) Local Law 2017* (Amending Local Law) which will allegedly target and negatively affect people experiencing homelessness.**

According to the information received:

In Victoria, Australia, there are currently/approximately 22,000 people experiencing homelessness and 33,000 people on the waiting list for public housing. According to the Melbourne City Council, there has been a 74 per cent increase in Melbourne's rough sleeping population over the two-year time period of 2014-2016, with 247 people sleeping rough in 2016.

In a public document, 'Report to the Future Melbourne (Finance and Governance) Committee' (Committee Report), the Council noted:

- Council officers routinely remove an average amount of 100–150 kilograms per week of accumulated belongings to landfill. The situation is exacerbated by donations of goods to people sleeping rough.
- In the past months, there has been an increase of public complaints about amenity, pedestrian flow, the open use of drug and aggressive begging. In particular, 52 complaints were received in 2014, 150 in 2015, 630 in 2016 and 118 complaints only for the month of January 2017.

On 1 February 2017, about a dozen people were forcibly removed from near the Flinders Street Station in Melbourne. Protesters who attended the eviction clashed with police in front of hundreds of bystanders. The police arrested five people and three officers were injured. During previous weeks before the eviction, the City of Melbourne had issued warnings that the camp would be removed so that work could begin to upgrade the railway station and announced homeless people would

have access to accommodation. The Victorian Minister of Housing confirmed that everyone in the camp had been offered these services and announced funding for 40 new transitional housing properties.

Under this mounting pressure, on 2 February 2017, the Melbourne City Council submitted the Committee Report suggesting some amendments to Principal Local Law via the Amending Local Law. The report exposes the rationale and purpose of the Amending Local Law including that it will “broaden the definition of camping and provide a process for responding to items left unattended in public place.”

On 7 February 2017, the City of Melbourne councillors voted 5-4 to open the Amending Local Law to public consultation for a period of 28 days. The outcome of this vote was met with further public protest.

After the conclusion of the consultation period on 17 March 2017, the City of Melbourne councillors will conduct a further vote regarding the introduction of the Amending Local Law, which would amend the Principal Local Law.

#### *Changes proposed to the existing legislation*

The proposed Amending Local Law is made under the provisions of Part 5 of the Local Government Act 1989 (Victoria) (Act). Under section 223 of the Act, any person who makes a written submission about amending the Local Law has a right to be heard by the Council’s Submissions Committee, which has the role of considering any submission received and making a recommendation to the Council. The Committee Report suggests the Council will assess the compatibility of the Amending Local Law with the human rights listed in Part 2 of the Charter of Human Rights and Responsibilities Act 2006 (Victoria).

The proposed amendments to the Principal Local Law are as follows:

- The Amending Local Law requires a permit for camping “in any public place”. Previously, camping was only banned in Melbourne if campers used a vehicle, tent or temporary structures. It is alleged that this amendment will effectively criminalise rough sleeping, although this may not be the intention, because homeless people are carrying out their lives in public spaces and do not have access to long-term affordable accommodation.
- The Amending Local Law also legalises the confiscation of items from public places and attaches a monetary release fee and time limit. It is reported that this has significant potential to disproportionately impact on rough sleepers, including due to the inevitability that items may be temporarily left (for example, when someone goes to get food or use the

bathroom) and the requirement to pay a recovery fee within a strict period of time to retrieve the belongings.

It is alleged that the proposed changes may entail some limitations on the human right to freedom of movement protected under section 12 of the Charter of Human Rights and Responsibilities Act 2006 (Victoria). In addition to the proposed amendments to the Principal Local Law, the Council is also proposing to launch a campaign discouraging people to donate goods to homeless people in an attempt to reduce landfill waste currently removed by the Council's authorised officers.

While I do not wish to prejudge the accuracy of these allegations, I wish to express my deepest concern that the Amending Local Law's broad drafting and discretion would create a significant risk that the changes will target and negatively affect people experiencing homelessness. It is alleged that people sleeping rough will be exposed to further enforcement, entrenched in the criminal justice system and isolated from supports. If approved, the new law will cause homeless people to move-on or they will be fined and caught up in the justice system (part 14 of the Principal Local Law provides for these enforcement powers). Homeless people will be forced from the city to outer areas where they will be more isolated from services, and therefore more vulnerable. The Amending Local Law appears directly contradictory to the simultaneous efforts of addressing the criminalisation of homelessness and the lack of affordable housing carried out by Australia.

I wish to draw the attention of your Excellency's Government to its obligations under article 11.1 of the International Covenant on Economic, Social and Cultural Rights ratified by Australia on 10 December 1975 which states that "[t]he States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right [...]". It is also the obligation of States Parties to guarantee that such rights will be exercised "without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status", pursuant to article 2.2 of the Covenant.

I further recall general comments No. 4 and 7 of the Committee on Economic Social and Cultural Rights, which stress the need to provide adequate legal protection from forced eviction, as well as to guarantee due process, alternative accommodation, and access to an effective remedy of those that may be affected by eviction orders. According to these general comments, Australia must have further explored all feasible alternatives to forced eviction in consultation with the affected persons.

In this context, I call your attention to my reports on several central issues for the situation at hand, including: 1) on the obligations of subnational and local governments in the implementation of the right to adequate housing (A/HRC/28/62); 2) on homelessness and the right to adequate housing (A/HRC/31/54); and 3) on the intimate link between the right to life and the right to adequate housing (A/71/310). I also call your attention to two

instruments developed by my predecessors in the mandate: the Guiding Principles on security of tenure for the urban poor (A/HRC/25/54),; and to the Basic Principles and Guidelines on Development-based Evictions and Displacement.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

In view of the urgency of the matter, I would appreciate a rapid response on the initial steps taken by your Government to safeguard the rights of the persons of the above-mentioned community in compliance with international instruments.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide any updated information about the discussions concerning the Amending Local Law and the assessment carried out regarding its compatibility with the Charter of Human Rights and Responsibilities Act 2006 (Victoria) as well as international human rights standards.
3. Please explain the mechanisms and measures taken at the central level to provide guidance to municipalities and local governments in relation to their international human rights obligations concerning homelessness.
4. Please provide details of the measures taken to provide alternative accommodation to the displaced rough sleepers and to prevent them from continuing to experience homelessness. In this context, could you indicate how many of these homeless people were assisted to access housing units with supports?
5. Please provide details of how it is envisaged the proposed provisions in the Amending Local Law will be enforced at the local government level given the significant shortage of affordable housing in Australia and Victoria. In this context, will people be moved-on, fined or charged?
6. Please clarify what legal and administrative recourse options, in keeping with due process guarantees, that would be available and accessible to homeless people if the Amending Local Law is introduced, including the right to be heard and the right of access to an independent court.

I kindly ask you to provide a response at your earliest convenience. While awaiting a reply, I urge that all necessary interim measures be taken to safeguard the

rights of the approximately 250 rough sleepers in the City of Melbourne and the approximately 22,000 people experiencing homelessness across Victoria.

In light of the serious implications of these allegations and the risk of on-going and irreversible damage to the right to housing and other related human rights, I am considering the possibility of expressing these concerns publicly in the near future. If a press release is issued, it will indicate that I have been in contact with your Excellency's Government's to clarify the issues in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of my highest consideration.

Leilani Farha

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



FROM THE PERMANENT REPRESENTATIVE

AUSTRALIAN PERMANENT MISSION  
GENEVA

18 April 2017

Ms Beatriz Balbin  
Chief  
Special Procedures Branch  
Office of the High Commissioner for Human Rights  
United Nations Office at Geneva  
Palais Des Nations  
1211 Geneva 10  
Switzerland

Dear Madam

**Re: Communication from the 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, concerning the proposed *Activities (Public Amenity and Security) Local Law 2017***

I refer to the communication [OL AUS 1/2017] (**Communication**) concerning the proposed amendment to Melbourne City Council's (**Council**) existing *Activities Local Law 2009* through the proposed *Activities (Public Amenity and Security) Local Law 2017* (**Proposed Local Law**), which accompanied your letter dated 13 February 2017.

As requested, the Communication has been transmitted to the Minister for Foreign Affairs, the Hon Julie Bishop MP. I have been asked to respond on her behalf.

Australia takes its obligations under international human rights law seriously, and is a longstanding party to the International Covenant on Economic, Social and Cultural Rights (**ICESCR**). Australia is committed to upholding its obligations under ICESCR, including the obligation in Article 11.1 to 'recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions' and to 'take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent'.

Australia acknowledges its obligation pursuant to Article 2.2 to guarantee that the rights in ICESCR will be exercised 'without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'.

Australia also acknowledges that its obligations under ICESCR extend to all parts of federal States, including the State of Victoria, without limitation or exception.

Australia notes that under Article 2.1 of ICESCR it is obligated to take steps ‘to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in [ICESCR] by all appropriate means, including particularly the adoption of legislative measures.’ The Committee on Economic, Social and Cultural Rights (**Committee**) has stated in its General Comment No. 3 that the concept of progressive realisation is ‘a recognition of the fact that the full realization of all economic, social and cultural rights will not generally be able to be achieved in a short period of time’.<sup>1</sup>

In relation to the obligation on States Parties to progressively realise the right to an adequate standard of living under ICESCR, the Committee has stated that ‘each State party must decide for itself which means are the most appropriate under the circumstances with respect to each of the rights’, and has referred to States Parties’ ‘margin of appreciation within which to set national economic, social and cultural policies that respect, protect and fulfil the Covenant’.<sup>2</sup> The obligation on Australia to progressively realise the right to an adequate standard of living, including adequate housing, and to the continuous improvement of living conditions, is an obligation to ensure the availability, affordability, adequacy and accessibility of the resources required to ensure the fulfilment of that right.<sup>3</sup>

The concept of adequacy had been considered by the Committee which has stated that this is ‘determined in part by social, economic, cultural, climatic, ecological and other factors’ and in the particular context of housing. This includes matters such as legal security of tenure, availability of services, materials, facilities and infrastructure, affordability, habitability, accessibility, location and cultural adequacy.<sup>4</sup>

Australia notes that its attention has been directed to the Committee’s General Comment No. 4 (to which we refer above) and General Comment No. 7, as well as the Special Rapporteur’s reports on: (1) the obligations of subnational and local governments in the implementation of the right to adequate housing; (2) homelessness and the right to adequate housing; and (3) the intimate link between the right to life and right to adequate housing. Australia’s attention has also been drawn to the Guiding Principles on Security of Tenure for the Urban Poor and to the Basic Principles and Guidelines on Development-based Evictions and Displacement. The Australian Government agrees that these documents contain important principles that can be used by States to guide them in their implementation of their human rights obligations.

### ***Information requested***

The Communication conveys certain information about homelessness in Victoria, as well as allegations concerning the Proposed Local Law, which the Special Rapporteur received from a source not identified in the Communication. The Special Rapporteur has requested Australia’s observations on those allegations and on six matters specified on pages 4-5 of the Communication. In response to those particular questions, and to the Communication more generally, Australia provides the information below, which has been prepared in consultation with the Council and the Victorian State Government.

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<sup>1</sup> UN Committee on Economic, Social and Cultural Rights, *General Comment No. 3: The Nature of States Parties’ Obligations (Art 2, Para. 1, of the Covenant)*, 14 December 1990, UN Doc E/1991/23, paragraph 9.

<sup>2</sup> Ibid., paragraph 4, and Committee on Economic, Social and Cultural Rights, Letter dated 16 May 2012 addressed by the Chairperson to States Parties to the International Covenant on Economic, Social and Cultural Rights.

<sup>3</sup> See, for example, UN Committee on Economic, Social and Cultural Rights, *General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)*, 13 December 1991, E/1992/23.

<sup>4</sup> Ibid., paragraph 8.

### ***Additional information and/or comment(s) on the allegations***

Australia is concerned to assist the Special Rapporteur in her inquiry to the fullest extent possible. In this regard, Australia notes that the Proposed Local Law is subject to a statutory process that is governed by Victorian state laws, specifically the *Local Government Act 1989* (Vic) (**LGA**). The *Charter of Human Rights and Responsibilities Act 2006* (Vic) (**Charter**) is relevant to the policy development and implementation phases, with obligations upon public authorities under section 38 of the Charter. Considering that no final decision has been made as yet regarding enactment of the Proposed Local Law, Australia would be pleased to update the Special Rapporteur on this issue during the course of 2017.

### ***Background to the Proposed Local Law and response to certain allegations (addressing question 1)***

#### ***Background***

The Chief Commissioner of Victoria Police requested the Council to consider making changes to its local laws in response to large camps that were being set up around the central city of Melbourne.

This was indicative of a significant increase in Melbourne's homeless population in the last two years.<sup>5</sup> Also over this time, there has been a shift in locations of homeless people with higher numbers located in prominent pedestrian thoroughfares in the central city.

The Australian Government is informed by the Council that there has been a corresponding rise in the number of concerns from the community—including from disability groups—around amenity, pedestrian access, and aggressive begging. Council officers routinely remove an average of 150kg of abandoned material from across the city each week.

On 23 January 2017, City of Melbourne Lord Mayor, Robert Doyle, met with the Victorian Minister for Housing, Disability and Ageing, the Hon Martin Foley MP, Victoria Police and several support agencies, to work on the current situation regarding homeless camps at Flinders Street Station and other locations around Melbourne.

While recognising the medium to long-term implications of homelessness, the meeting canvassed a number of issues, including the need for further interim accommodation and changes to Council's local laws that had been requested by the Chief Commissioner of Victoria Police.

#### ***Power to make a Local Law***

Part 5 of the LGA authorises Victorian councils to make local laws. In particular, section 111 of the LGA confers on councils very broad power to make local laws.

Section 111(1) of the LGA provides:

A Council may make local laws for or with respect to any act, matter or thing in respect of which the Council has a function or power under this or any other Act.

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<sup>5</sup> Accordingly to Council's 2016 Street Count, this was a 74 per cent increase. See City of Melbourne, *StreetCount 2016 – Final Report* (September 2016) available at <https://www.melbourne.vic.gov.au/SiteCollectionDocuments/streetcount-2016-final-report.pdf>.



The power to make local laws is therefore referable to a council's functions and powers under the LGA and any other Act. In this respect, sections 3E and 3F of the LGA set out councils' functions and powers. Section 3E(1) of the LGA relevantly provides:

(1) The functions of a Council include—

...

- (f) making and enforcing local laws;
- (g) exercising, performing and discharging the duties, functions and powers of Councils under this Act and other Acts;
- (h) any other function relating to the peace, order and good government of the municipal district.

Section 3F of the LGA sets out councils' powers broadly, and provides:

- (1) Subject to any limitations or restrictions imposed by or under this Act or any other Act, a Council has the power to do all things necessary or convenient to be done in connection with the achievement of its objectives and the performance of its functions.
- (2) The generality of this section is not limited by the conferring of specific powers by or under this or any other Act.

#### *Process for making a local law*

The process for making a local law is as follows:<sup>6</sup>

1. A Council officer prepares a proposed local law
2. A Council officer submits a report to Council for its consideration, which contains a recommendation that Council give notice of its intention to make the proposed local law
3. Council considers the report and resolves to give notice of its intention to make the proposed local law
4. Council gives notice<sup>7</sup> of the following matters:
  - The purpose and general purport of the local law
  - That a copy of the proposed local law and any explanatory document can be obtained from the council offices, and
  - That any person affected by the proposed local law may make a submission relating to the proposed local law under section 223 of the LGA
5. Council makes a copy of the proposed local law and explanatory document available for inspection at its offices
6. Council considers any submissions received under section 223 of the LGA
7. A Council officer submits a further report to Council for its Consideration, which contains a recommendation that Council resolve to make the local law (this may also include amendments to the proposed local law)
8. Council considers the report and resolves to make the local law
9. Council gives notice<sup>8</sup> of the following matters:

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<sup>6</sup> See generally section 119 of the LGA.

<sup>7</sup> This notice must appear in the Victorian Government Gazette and in a newspaper generally circulating in the council's municipal district (see section 3(1) of the LGA), as well as on the council's website (see section 82A(2)(a) of the LGA).

- The title of the local law as made
  - The purpose and general purport of the local law as made, and
  - That a copy of the local law may be inspected at the council offices
10. Council sends a copy of the local law as made to the Victorian Minister for Local Government
  11. Council prints a copy of the local law and makes it available for inspection and purchase at its offices<sup>9</sup>
  12. Council makes a copy of every document incorporated by a local law under section 112 of the LGA available for inspection at its offices<sup>10</sup> and
  13. Council makes a copy of the local law available on its internet website.<sup>11</sup>

As part of its consideration of a proposed local law, a council assesses its compatibility with the Charter.

A Charter assessment considers the following issues:

- Does the provision engage a Charter right?
- Does the provision limit a Charter right?
- Is the limitation imposed by the provision reasonable and justified, taking into account the factors in section 7(2) of the Charter?

Part 2 of the Charter sets out a number of human rights. Among them are the rights:

- to move freely within Victoria and choose where to live (section 12);
- not to have a person's privacy or home unlawfully or arbitrarily interfered with (section 13(a));
- to freedom of expression, being the freedom to seek, receive and impart information (section 15);
- of peaceful assembly (section 16); and
- of a person not to be deprived of his or her property other than in accordance with law (section 20).

The Charter acknowledges that these rights may be limited by legislation. According to section 7(2):

(2) A human right may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom, and taking into account all relevant factors including—

- (a) the nature of the right; and
- (b) the importance of the purpose of the limitation; and
- (c) the nature and extent of the limitation; and

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<sup>8</sup> This notice must appear in the Victorian Government Gazette and in a newspaper generally circulating in the council's municipal district (see section 3(1) of the LGA), as well as on the council's website (see section 82A(2)(a) of the LGA).

<sup>9</sup> See section 120(1), (2) of the LGA.

<sup>10</sup> See section 120(3) of the LGA.

<sup>11</sup> See section 82A(2)(b) of the LGA.

- (d) the relationship between the limitation and its purpose; and
- (e) any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.

Section 38 of the Charter makes it unlawful for a council (as a public authority) to:

- act in a way that is incompatible with a Charter right; or
- in making a decision, fail to give proper consideration to a relevant Charter right.

While section 38 of the Charter does not apply to the making of a local law itself, it will apply to conduct in pursuance of a local law.<sup>12</sup>

### *Proposed Local Law*

In the view of the Council, the Proposed Local Law does not prohibit rough sleeping, nor render it illegal to be homeless. It seeks instead to regulate camping in public places and the leaving of items unattended in public.

Council advises that the Proposed Local law aims to protect public amenity and access for persons with disabilities and to increase its ability to remove personal items left unattended in public. This will assist in responding to the impact of materials being brought into public places and obstructing use and access to footpaths and parks including for persons with disabilities.

The Proposed Local Law is currently undergoing the statutory public notice and submission process in accordance with a resolution passed by the Future Melbourne Committee of Council (**Resolution**). The Resolution provides as follows:

1. That the Future Melbourne Committee:
  - 1.1 Pursuant to Part 5 of the Local Government Act 1989, proposes to make the Activities (Public Amenity and Security) Local Law 2017 at Attachment 2 for the purposes of the statutory public notice and submission process
  - 1.2 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
  - 1.3 Notes that a communication campaign will be developed to inform and educate the public about the impact of donating to people sleeping rough
  - 1.4 Notes that the matter of additional resourcing will be referred to 28 February 2017 Council meeting for consideration
  - 1.5 Appoints Mr Bernie Geary to support Council in relation to homelessness initiatives as outlined in the report
  - 1.6 Requests management to draft a policy with the purpose of guiding the work of Local Law enforcement officers when implementing the Local Law in relation to people who are or appear to be homeless, which codifies requirements around enforcement officers being accompanied by homelessness support providers on such occasions, and this policy be considered alongside the Council report considering submissions on the Proposed Local Law.

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<sup>12</sup> *Kerrison v Melbourne City Council* (2014) 228 FCR 87.

As at the date of this letter, the process for consideration of the Proposed Local Law is at step 6 in the list described on pages 4-5 above. The period for making a submission to the Council under section 223 of the LGA concluded on 17 March 2017 and the Council is currently giving careful consideration to the submissions received.

The Council has advised that, in connection with the submission process under section 223 of the LGA, it has actively sought feedback on the Proposed Local Law from homeless people who may be directly affected by the proposed changes. The Council sought this feedback through an online survey on its Participate Melbourne website. The Council also actively sought feedback from people directly experiencing homelessness as well as service providers through meetings with the Council's Homelessness Advisory Committee, the Melbourne Homelessness Service Coordination Project, and the Rough Sleeping Response Task Force. Bodies who attended these consultation meetings included the Salvation Army, Council to Homeless Persons, Brotherhood of St Laurence, Anglicare, VincentCare, Launch Housing and Justice Connect. These measures were in addition to the submission process under section 223 of the LGA.

The next step in the process is for the Council's Submissions Committee to consider submissions received and make a recommendation to Council on whether it should make the Proposed Local Law. A further report will then be prepared for Council to consider. It could be that Council decides not to make the Proposed Local Law or to make amendments to what is currently proposed. At the time of drafting it is not possible to know, and nor would it be appropriate for Australia to speculate, on what the outcome of that process may be.

In the interest of clarifying the Special Rapporteur's understanding of relevant processes, we note that a media release of UN Office of the High Commission on 14 March 2017 concerning this matter incorrectly stated that '[t]he city council is due to vote on the proposed changes on 17 March'. As can be seen from the above description, the process for making a local law allows for multiple stages of consideration by the Council prior to its vote on the Proposed Local Law.

***Discussions concerning the Amending Local Law and compatibility with the Charter and international human rights standards (addressing question 2)***

As noted above, Council's Future Melbourne Committee has resolved that an assessment will be made in respect to the Proposed Local Law and its compatibility with the human rights set out in part 2 of the Charter. These include the right to move freely within Victoria and choose where to live (section 12); the right not to have a person's privacy or home unlawfully or arbitrarily interfered with (section 13(a)); the right to freedom of expression, being the freedom to seek, receive and impart information (section 15(2)); the right to peaceful assembly (section 16); and the right of a person not to be deprived of his or her property other than in accordance with law (section 20).

To the extent that public submissions to Council under section 223 of the LGA address the question of compatibility of the Proposed Local Law with the Charter or international human rights standards, such submissions will be relevant to the Council's assessment in this regard. As noted above, Council's assessment is ongoing.

### ***Guidance to local government in relation to international human rights obligations concerning homelessness (addressing question 3)***

A number of Australia's obligations in international human rights law form the basis for the rights expressed in the Charter. For example, the right to privacy in Article 13 of the Charter is modelled on Article 17 of the International Covenant on Civil and Political Rights.<sup>13</sup> As explained above, the Charter requires that public authorities, including local governments, act consistently with the human rights expressed in the Charter.

The Victorian Government has created resources to guide councils through the processes of preparing for, creating, implementing and reviewing local laws. These resources refer to the importance of the Charter in the making of local laws and the need for Council to fully consider its obligations.<sup>14</sup>

The Victorian Equal Opportunity and Human Rights Commission also provides guidance to local government in relation to human rights obligations, upon request. The Commission describes itself as having two major roles under the Charter. Firstly, the Commission 'help[s] people in Victoria understand the rights and freedoms set out in the Charter and what they can do to make them an everyday reality', and secondly, it 'provide[s] a regular and independent assessment of the steps taken by the Victorian Government, local councils and other public authorities to meet their responsibilities under the Charter' through annual reporting on the operation of the Charter, and through reviews and education conducted upon request of a public authority.<sup>15</sup> Relevantly, the Commission's educational role includes the provision of education and training about the Charter rights and responsibilities to the community, government, local councils and other public authorities.

### ***Measures being taken to assist people experiencing homelessness (addressing question 4)***

The Special Rapporteur has requested Australia to provide 'details of the measures taken to provide alternative accommodation to the displaced rough sleepers in Melbourne and to prevent them from continuing to experience homelessness', including the number of homeless people who were assisted to access housing units with supports. Accordingly, we provide the following information about accommodation and other assistance provided to rough sleepers following the disbanding of the recent encampment at Flinders Street Station, as well as information about the Victorian Government and Council's broader strategies and programs to address homelessness, which are directly relevant to the progressive realisation of the right to an adequate standard of living, including adequate housing, in ICESCR.

#### ***The Australian Government's support to the Victorian State Government***

Consistently with its obligations under ICESCR, during 2016-17 the Australian Government is providing states and territories with AU\$1.3 billion to improve housing affordability and homelessness outcomes through the National Affordable Housing Agreement (NAHA), which includes AU\$336.8 million for the Victorian Government. In addition the Australian Government is providing AU\$115 million per annum through the National Partnership Agreement on Homelessness (NPAH), which includes AU\$22.79 million for the Victorian Government. Under the NAHA and NPAH, States and Territories are responsible for determining where services are

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<sup>13</sup> Explanatory Memorandum, Charter of Human Rights and Responsibilities Bill 2006, p. 13.

<sup>14</sup> See, for example, 'Guidelines for Local Laws Manual', pp. 73-74 and 'Guidelines for Local Laws Resource Book' pp. 22-25, available at <http://www.lgprobetterpractice.com/>.

<sup>15</sup> Victorian Equal Opportunity and Human Rights Commission, 'The Commission's role under the Charter', available at <http://www.humanrightscscommission.vic.gov.au/the-role-of-the-commission-under-the-charter>.

located, which service providers are contracted, and the amount of funding each service provider receives.

#### *Assistance to rough sleepers in February to March 2017*

The Victorian Government has advised that assertive outreach services operating in central Melbourne had identified and assessed 29 individuals experiencing homelessness at an encampment outside Flinders Street station prior to that part of the street being blocked off for scheduled building works on 1 February 2017.

Homelessness Services supported 11 of those people to access emergency accommodation on that day. The remainder declined assistance and dispersed to various other locations around central Melbourne. A person's engagement with support services is entirely voluntary.

People's readiness to accept assistance depends on a multitude of factors, such as readiness to contemplate change, their consideration of the suitability of the service offer and the individual's ability to exercise choice and control over their future. People with complex needs such as substance dependence, mental illness or histories of trauma may be reluctant to engage with services.

Homelessness Services have sought to engage those people who had been at Flinders Street and who are still sleeping rough as part of their ongoing, routine assertive outreach in central Melbourne. The Victorian Government has advised that as at the end of March 2017, a total of 44 rough sleepers have been assisted into either temporary or permanent housing. The Victorian Government has advised that this work is ongoing.

#### *The Victorian Government's 'Towards Home' package*

Consistent with the progressive realisation of the right to an adequate standard of living, the Victorian Government, through its Department of Health and Human Services, is working closely with service providers, and local and state government partners to create supportive and permanent housing opportunities for people who are experiencing or at risk of homelessness, including rough sleepers (the 'Towards Home' package). The Council actively works with the following service providers as part of the Melbourne Homelessness Service Coordination Project: Launch Housing; The Salvation Army; Justice Connect; Youth Projects; Melbourne City Mission; Royal District Nursing; Anglicare Victoria; Council to Homeless Persons and VincentCare Victoria. The project has been in operation for two years and will connect with the Towards Home project.

The Victorian Government has advised that it has provided AU\$9.8 million over two years to address rough sleeping in inner Melbourne and create individualised pathways to permanent supportive housing so that rough sleepers gain stable housing as quickly as possible. This includes:

- Making 40 transitional housing units available to house 40 vulnerable rough sleepers in inner Melbourne and providing them with targeted supports to maintain their housing;
- Providing 30 new modular and relocatable homes on public land to be in place by the end of 2017; and
- Case management and targeted supports immediately for 40 vulnerable rough sleepers for up to two years to help them maintain their housing.

The Hon Martin Foley MP, Victorian Minister for Housing, Disability and Ageing, has appointed Mr Tony Nicholson, Executive Director of the Brotherhood of St Laurence, to oversee the delivery of the Towards Home package. This builds on existing initiatives already in place to target rough sleepers including the Rough Sleeping Response Taskforce established in July 2016, the Rough Sleepers Initiative and Melbourne Street to Home.

### *Rough Sleeping Strategy*

Mr Nicholson is also leading work to develop a long-term strategy to tackle challenges of rough sleeping in Victoria. The Strategy will aim to: increase the supply of dedicated supportive housing for rough sleepers through new partnerships; oversee rapid rehousing efforts; and ensure pathways to permanent supporting housing operate effectively.

Mr Nicholson's appointment ensures that there is coordinated action between the Victorian Government, Council, the Rough Sleeping Response Taskforce and funded agencies to address this community challenge. Mr Nicholson will report directly to Minister Foley.

### *The Victorian Government's 'Homes for Victorians' affordable housing strategy*

The Victorian Government has stated that it considers it vital that vulnerable Victorians receive the support they need to establish safe and secure housing and prevent recurring homelessness. For this reason it has released 'Homes for Victorians', an affordable housing strategy that includes the Victorian Government's biggest ever level of support for homelessness services and social housing, as well as measures that affect tax, planning provisions and rental legislation.

The Towards Home package described above forms part of a AU\$2.7 billion package included in Homes for Victorians to support housing and homelessness initiatives. The Homes for Victorians strategy comprises specific investments to support the most vulnerable in the Victorian community, create new and permanent housing and provide the necessary 'wrap around' support services for people who are experiencing, or are at risk of, homelessness. This includes:

- AU\$2.1 billion in support to increase the capacity of the community housing sector and grow social housing.
- AU\$185 million investment to upgrade public housing estates, the first of which will redevelop nine estates and will deliver more than 1,100 new homes and a 10 per cent increase in social housing stock numbers.
- AU\$152 million Family Violence Housing Blitz to create more crisis accommodation, redevelop refuges and build and buy more housing for women and children escaping family violence.
- AU\$120 million investment to increase the supply of social housing, including upgrading the Flemington estate (a public housing estate in Flemington Victoria), and partnering with housing associations to buy and lease 173 more dwellings for people experiencing homelessness across Victoria.
- AU\$109 million homelessness package to intervene early and provide targeted support to help 19,000 people to get back on their feet. This provides additional assertive outreach and flexible support packages to ensure support is provided where it is needed, including mental health, and alcohol and drug services, recognising the complexity that often underpins homelessness.
- AU\$33 million to extend private rental brokerage to access the private rental market for a further two years.

- AU\$20 million to upgrade rooming houses to provide better accommodation for those exiting homelessness.

As can be seen from the above, the Homes for Victorians initiatives provide a combination of immediate interventions to help people now, while putting in place a system that promotes early intervention, provision of stable housing and prevention.

*The Council's strategies and support in relation to homelessness*

The Council has also adopted a range of strategies and programs to address the issue of homelessness.

It advises that it respects the right of local communities to live in a safe and peaceful environment and acknowledges that all people have a right to be in public places. The Council is a signatory to the *Victorian protocol for people who are homeless in a public place (Protocol)*, which was developed in 2006 to ensure that people are treated appropriately and that their rights are respected. This Protocol guides work that is undertaken in all parts of the Council. A copy of the Protocol is attached to this letter.

The Council advises that addressing homelessness is a priority for the Council. A homelessness unit has operated within the city for many years. The Council's homelessness team works in partnership with people who are experiencing homelessness, support and services agencies, businesses, Victoria Police, and the Victorian and Australian Governments to reduce homelessness in Melbourne.

A commitment to protect the most vulnerable is embedded in the community's *Future Melbourne 2026 Plan*. Supporting the homeless is one of the priorities in that plan and includes a commitment that the city will provide 'accessible, safe and supportive services and spaces for homeless people and effective pathways out of homelessness.'

The Council's homelessness work is guided by the *Pathways: Homelessness Strategy 2014-17 (Strategy)*, a Council-endorsed document. The Strategy states that it 'is underpinned and informed by a human rights based approach, which is... inclusive and respectful of people's rights and treats all people with dignity'.<sup>16</sup> The three main aims of the Strategy are to:

- Work with Council's partners to help provide long-term supportive housing;
- Partner with health, welfare, housing services and outreach to coordinate service delivery for rough sleepers; and
- Support women and children at risk of family violence to secure services and safe accommodation.<sup>17</sup>

We are informed by the Council that to implement the Strategy, it allocates a yearly budget of approximately AU\$1.5 million, used towards a variety of programs and partnerships that assist people experiencing homelessness. These include the Melbourne Homelessness Service Coordination Program, run in collaboration with more than 10 homelessness and health focused organisations which ensure that the most vulnerable rough sleepers in the city are connected with homelessness case workers and services. Within this budget, Council also provides funding for meals, legal assistance and health services.

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<sup>16</sup> City of Melbourne, *Pathways: Homelessness Strategy 2014-17*, p. 3. Available at:

<https://www.melbourne.vic.gov.au/SiteCollectionDocuments/homelessness-strategy-2014-17.pdf>

<sup>17</sup> Ibid., p. 17.



In response to an increase in the number of people sleeping rough in the central city, in 2016-17, the Council more than doubled its homelessness budget and is now spending more than AU\$3.5 million in developing a coordinated approach to homelessness.

Council has also advised that in December 2016 it committed an additional AU\$2 million to help in its response to homelessness. The funds are being used to:

- Work with community housing providers to deliver direct housing;
- Establish a City of Melbourne homelessness daily support team that will work collaboratively with external partner agencies and integrate into Council's current homelessness response programs;
- Continue an overnight safe space program for people who are sleeping rough in the city; and
- Work with businesses to build their understanding of homelessness issues and support their response to homelessness in the city.

More information about the Council's homelessness programs is available at <http://www.melbourne.vic.gov.au/community/health-support-services/social-support/Pages/homelessness-programs.aspx>.

#### ***Enforcement of proposed provisions (addressing question 5)***

As noted above, the Resolution provides for a policy (**Policy**) to be drafted with the purpose of guiding the work of local law enforcement officers, should the Proposed Local Law be made. The Council has stated that it has at various times used policy operating statements as a means of providing guidance to authorised officers on how to enforce specific parts of a local law.

The Council advises that in the present case there is already a stepped procedure (**Procedure**) in place to sensitively manage people who are, or appear to be, homeless. Should there be a change to the local law, then the Procedure may need to be amended to take into account the changes made. This would include the identification of factors to consider in determining if camping is occurring and the way in which the local law would be enforced. In relation to people who are, or appear to be, homeless, it is envisaged that the Policy:

- would seek compliance through a notice to comply being issued to the person (rather than any financial penalty) and if not complied with, authorised officers would remove the offending materials (not the person), and
- would indicate the enforcement is not to be used to 'move on' persons.

The Policy would also address paragraph 1.6 of the Resolution, specifically, codifying requirements around enforcement officers being accompanied by homelessness support providers when implementing the Local Law in relation to people who are, or appear to be, homeless.

This Policy will be considered at the same time as Council considers whether or not to make the Proposed Local Law.

As noted above, the Resolution also appoints Mr Geary, an experienced community advocate, to support Council in relation to homelessness initiatives. The Council has advised that Mr Geary has commenced in his role.

The Council has also advised that in December 2016, it commenced convening a 'Hotspots' weekly meeting which brings together homelessness services, Council compliance officers, the Melbourne Homelessness Service Coordination project, Victoria Police and the Victorian Department of Health

and Human Services. The meeting monitors prominent locations across the city and how best to address issues of public safety, amenity and pathways out of homelessness. To add further strength to this, Mr Geary has been appointed to convene the weekly Hotspots meeting as well as attend Council's Service Coordination Project meetings, which manage issues more broadly across the sector. Council will continue to liaise with stakeholders and service providers through its homelessness Advisory Committee.

***Legal and administrative avenues available to persons affected (addressing question 6)***

As explained above, the Proposed Local Law is currently subject to an ongoing review process and it is not possible at this time to predict whether the Proposed Local Law will be enacted or the precise form of any law enacted. As such, the Australian Government is not in a position to comment on specific legal avenues that may be relevant to any laws that may be enacted in the future.

However, if the local law were to be made in the form currently proposed, and if enforcement action was taken under the local law with respect to a homeless person, there would be a number of legal and administrative recourse options available and accessible to them. This includes legal assistance through community legal centres and Victoria Legal Aid. There are also legal avenues to pursue a challenge to a local law through the courts.

In relation to specific legal avenues available under the Charter, section 39 provides for relief or remedy for breaches of the Charter. However, it does not create an independent cause of action for breaches of the Charter. The availability of a cause of action is conditional on whether a person can seek relief 'in respect of an act or decision of a public authority on the ground that the act or decision was unlawful' independently of the Charter. If so, the person can seek the same relief or remedy on a supplementary Charter ground.<sup>18</sup>

Administrative recourse options include the delivery of the Towards Home package, described above.

Further, as noted above, Australia would be pleased to provide more detail on this matter to the Special Rapporteur during the course of 2017 as required.

We regret the Special Rapporteur's decision to express her concerns publicly prior to receiving clarification and further information from Australia on the issues in question.

We trust the above information will be of assistance to the Special Rapporteur in clarifying the allegations conveyed in the Communication.

Yours sincerely



John Quinn  
Ambassador and Permanent Representative  
Permanent Mission of Australia to the United Nations in Geneva

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<sup>18</sup> (*Director of Housing v Sudi* (2011) 33 VR 559; [2011] VSCA 266 [96] (Maxwell P), citing *PJB v Melbourne Health* (2011) 39 VR; [2011] VSC 327 [296]–[297]).

# Victorian **protocol** for people who are **homeless** in **public** places

The aim of the *Victorian protocol for people who are homeless in public places* (the Protocol) is to provide a framework for relations between officials and people who are homeless in public places.

The Protocol has been developed to ensure that people who are homeless in public places are treated appropriately and that their rights are respected.

Individual agencies are accountable for service delivery of this protocol.

## Underlying Principles

This Protocol is based on the following principles:

- People who are homeless can have complex social, mental and/or physical health needs.
- All 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.
- All people have a right to participate in public activities or events.
- People who work in areas where their responsibilities are likely to bring them into contact with people who are homeless will receive sufficient information to assist with referral to appropriate services if needed.
- In the conduct of their normal statutory obligations, Police and other authorities may need to seek further information or personal details from any member of the public.

**If you encounter a person who is, or appears to be, homeless, you should only respond if:**

- **they request assistance;**
- **they appear distressed or in need of assistance;**
- **they are sheltering in circumstances that threaten the health and safety of themselves and/or others (eg: in derelict buildings);**
- **they are unaccompanied children who appear to be under the age of 15;\***
- **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 to the environment;**
- **their safety is threatened by others.**

\* In the first instance, contact should be attempted with parent/s or guardian, or the Child Protection Crisis Line, tel: 131 278 toll free.

## Homelessness Assistance in inner Melbourne

If people who are homeless require assistance, there are local government and state-funded services to help them. The following assistance is available in inner metropolitan Melbourne:

- **HomeGround** (Transitional Housing and Housing Information & Referral)  
1A/68 Oxford Street Collingwood  
Tel: 9417 2500 or toll free 1800 509 387
- **St Kilda Crisis Centre** (24-hour emergency housing response)  
29 Grey Street St Kilda  
Tel: 9536 7777 or toll free 1800 627 727
- **Melbourne Youth Support Service** (7-days a week service providing information, support and referral for young people aged 15-25 years old)  
19 King Street Melbourne  
Tel: 9614 3688 or toll free 1800 800 531
- **Women's Domestic Violence Crisis Service** (24-hour family violence referral service for women)  
Tel: 9373 0123 or toll free 1800 015 188

Interpreting service assistance is available through VITS LanguageLink, tel: 9280 1955

### You can:

- contact services directly on behalf of the person/s;
- provide advice or information including location of available services;
- provide a contact point that the person who is homeless can either call or go to for further advice or help.

## Endorsing Agencies:

Office of Commonwealth Games Coordination; Department of Human Services; Victoria Police; City of Melbourne; City of Port Phillip; City of Stonnington; City of Yarra; Council to Homeless Persons; Community Housing Federation of Victoria; Domestic Violence Victoria.

