



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: HRC/IIC/PWvk:1390079

9 August 2017

The Hon. Paul Toole MP
Minister for Lands and Forestry
GPO Box 5341
SYDNEY NSW 2001

Dear Minister,

Sydney Public Reserves (Public Safety) Bill 2017

The Law Society of NSW writes in respect of the Sydney Public Reserves (Public Safety) Bill 2017 ("Bill"). From a rule of law perspective, we are unable to support this Bill. The Law Society has long-held concerns about legislative encroachment on personal rights and liberties, and this Bill appears to follow that trend. We also query also the efficacy of the Bill in addressing the fundamental underlying issues leading to the current situation in Martin Place.

The Law Society's views are provided below. We do not comment on the facts of the particular events leading to the introduction of the Bill.

1. Context

The Law Society understands that there are over 400 rough sleepers in Sydney's CBD, and this Bill may affect all of them.¹ The Bill will also potentially bring more homeless people into negative contact with the justice system.

We understand that Martin Place has become a flashpoint because it makes the presence of rough sleepers visible. Moving people on might solve the immediate issue of visibility, but it will not address the problems, such as sufficient crisis accommodation and long term housing options.

We are advised by our members that emergency homelessness services are severely stretched every winter and there is simply not enough crisis accommodation in the area for everyone who needs a bed. People might be required to travel a significant distance to access temporary accommodation (which is generally offered for a maximum of three days at a time, up to a total maximum of 28 days per year). Unless there is a significant increase in the provision of accessible crisis accommodation in the city, there are always going to be some people who end up sleeping on the streets. In respect of permanent accommodation, we understand that it can take years for individuals to be housed in public housing if they are on the priority waiting list; realistically anyone who is not on the priority list is unlikely to ever be housed.

¹ See <http://www.cityofsydney.nsw.gov.au/community/community-support/homelessness/street-count>

The proposed legislation fails to address the underlying problem, but will make life harder for already vulnerable individuals. The Bill is also likely to increase negative interactions with police and with the criminal justice system,² and further reduce well-being for those who are homeless.

In the Law Society's view, the focus should be on the needs of the significant numbers of people in the community who have nowhere to sleep on a given night, and the major gaps in service provision that create this situation.

1. Right to an adequate standard of living

The Bill does not address the underlying issue of the Government's obligation to fulfil individuals' right to adequate and suitable housing (Article 11, *International Covenant on Social, Economic and Cultural Rights* (ICESCR)). We attach a previous submission made by the Law Society to the 2014 Inquiry into Social, Public and Affordable Housing, drawing your attention to the information provided on a successful model addressing homelessness used in a comparable jurisdiction.

We are of the view that the Bill is inappropriate in that it seeks to dismantle the 'camp site' without a durable solution with respect to adequate housing, and the associated necessary health and other support services, for those involved. The Law Society supports the Government working with the City of Sydney to offer durable housing options that are adequate and appropriate for the needs of the individuals (to be considered on a case by case basis).

Further, imposing a financial penalty for refusing/failing to comply (clauses 7, 8 and 13) may also impact on individuals' ability to access adequate food and clothing (Article 11, ICESCR). We note that the maximum penalty that may be applied under clause 8(3) is significant in this context, amounting to \$2200.

2. Expansion of police powers

The Law Society notes that that the Bill may be applied to other public reserves in the City of Sydney (clause 5). We are concerned about potential overreach as the Government has not demonstrated the need for these powers to be extended, nor has the Government demonstrated the need to lower the threshold for the use of police powers. We note in particular that the powers afforded to police to seize or remove any tent, goods or other thing includes if the police officer reasonably believes such seizure is "expedient" for the relevant purposes. In our view, such a police action is an interference with property, and requires a higher bar.

3. Amendments to the Bill

The Law Society opposes the Bill in its entirety. However, if the Bill is to be passed, we submit that the following amendments should be made to the Bill:

- Remove or at least reduce the penalty that applies to people who may resist having their belongings taken by police;
- Specify that personal belongings "must" be returned, rather than may be returned;
- Create a two year sunset clause on these powers;

² In the experience of our members, increased interactions between homeless people and police is likely to have further and more serious consequences leading to public offences charges.

- Include the s 200 LEPRA limitations on the exercise of powers under this Act that would make it clear that police cannot give a direction in relation to (a) an apparently genuine demonstration or protest, or (b) a procession, or (c) an organised assembly. This amendment would make clear that genuine peaceful assembly is not affected.

4. Lack of opportunity for public scrutiny and debate

The Law Society notes that there has been no consultation in respect of the Bill, which the Government has indicated it wishes to pass urgently.³ The Law Society has had long-standing concerns about this approach to the legislative process as it restricts debate, transparency, scrutiny and accountability, particularly where individual rights and liberties are affected.

Further, the Bill provides that regulations may be made (clause 16), and that the regulations may prescribe a code of practice relating to the exercise of powers by police officers under this Act and the rights of persons to whom directions are given under the Act (clause 12). The Law Society notes its concerns again that individual rights may be adversely impacted by subordinate legislation and other instruments that are not available for public scrutiny.

Thank you for your attention to these matters. Please contact Vicky Kuek, Principal Policy Lawyer, on victoria.kuek@lawsociety.com.au or 9926 0354 if you have any questions.

Yours sincerely,



Pauline Wright
President

CC:

The Premier
The Hon. Pru Goward MP, Minister for FACS and Social Housing
Mr Luke Foley MP, Leader of the Opposition
Mr David Shoebridge, MLC

³ Visetin, Lisa, "Martin Place tent city: Premier Gladys Berejiklian announces change to legislation on Sydney Crown land," *Sydney Morning Herald*, 8 August 2017, available online: <http://www.smh.com.au/nsw/martin-place-tent-city-premier-gladys-berejiklian-announces-change-to-legislation-on-sydney-crown-land-20170808-gxrm1h.html>



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: HumanRights:REvk819977

24 February 2014

The Director
Select Committee on Social, Public and Affordable Housing
Parliament House
Macquarie St
Sydney NSW 2000

By email: socialhousing@parliament.nsw.gov.au

Dear Sir/Madam,

NSW Parliamentary Inquiry into Social, Public and Affordable Housing

I am writing to you on behalf of the Human Rights Committee of the Law Society of NSW ("Committee"), which has the responsibility to consider and monitor Australia's obligations under international law in respect of human rights; to consider reform proposals and draft legislation with respect to issues of human rights; and to advise the Law Society on any proposed changes.

The Committee thanks you for the invitation to comment.

Given the evidence that there are 105,000 homeless people in Australia,¹ in the Committee's view this issue is one that requires urgent attention. The Committee commends the referral of this matter to inquiry.

The Committee's comments, relevant to question 1(g) of the Inquiry's terms of reference, are set out below.

1. Right to adequate housing and inter-related rights

As a signatory to the *International Covenant on Economic, Social and Cultural Rights* 1966 (ICESCR)² the Australian Government is obliged to respect, protect and fulfill the right to adequate housing.³ The Committee echoes the United Nations Committee on Economic, Social and Cultural Rights in noting that: "The human right to adequate housing, which is thus derived from the right to an

¹ 105,000 is the figure given on Census night 2006. In NSW the number was 27,374. The figure has not changed in other literature found at www.homelessnessnsw.org.au, and appears to have remained constant through to the present time.

² Dec. 16, 1966, 993 U.N.T.S. 3; S. Exec. Doc. D, 95-2 (1978); S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967)

³ Article 11(1) of the ICESCR.

adequate standard of living, is of central importance for the enjoyment of all economic, social and cultural rights.”⁴

The right to adequate housing should not be interpreted narrowly; rather, it is a right to live in peace, security and dignity.⁵ The UN Committee on Economic, Social and Cultural Rights stated in General Comment 4 on the Right to Adequate Housing that:

As both the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000 have stated: “Adequate shelter means ... adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities - all at a reasonable cost”.⁶

The Committee notes that homelessness undermines the ability of individuals to enjoy other rights, such as the right to the highest attainable standard of health. Homelessness may also affect individuals’ abilities to exercise a range of civil and political rights, such as the right to vote.

Given the centrality of this obligation, the Committee respectfully submits that in its efforts to address homelessness, the Government should be seeking to create a legally enforceable right to adequate housing. The Committee notes that State parties are required to progressively realise the rights set out in the ICESCR by all appropriate means, including the adoption of legislative measures, to the maximum of available resources (Art 2(1)).

Further, the right to adequate housing should not only relate to the provision of new housing but also the protection of housing that already exists through the appropriate regulation of eviction and other similar processes.

2. Homelessness as a symptom of disadvantage and social isolation

The Committee’s view is that homelessness and the risk of homelessness is a particular symptom of a more general problem of marginalisation and disadvantage experienced by homeless people along with Aboriginal and Torres Strait Islander peoples, refugees, the mentally ill and those fleeing family violence.

The Committee submits that the issue of homelessness may be alleviated by ensuring that socially isolated and marginalised people have proper access to services and to people who can assist in articulating their needs to policy makers and frontline providers.

Attached is a factsheet on homelessness prepared by the Committee that provides detail in relation to the statistics, and to the relevant social and economic factors.

⁴ “CESCR General Comment 4: The Right to Adequate Housing” UN OHCHR, Article 11(1) of the ICESCR, Sixth Session, 1991 contained in document E/1992/23 online from here: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/469f4d91a9378221c12563ed0053547e?Opendocument#*%20Contain%20i](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/469f4d91a9378221c12563ed0053547e?Opendocument#*%20Contain%20i) (accessed 15 October 2012).

⁵ Ibid.

⁶ Ibid at [7]

3. Case study: Utah

While the Committee notes that there are differences in the policy environment between NSW and the State of Utah, USA, the Committee brings to the attention of the Select Committee the success that the Utah State Government has had with eliminating chronic homelessness by way of example of a state government moving towards using the maximum resources available to address homelessness.

The Utah Government's "Housing First" initiative, a 10 year plan, was launched in 2005 and the rate of chronic homelessness in Utah has since been reduced by 74%.⁷ It is projected that Utah will eradicate homelessness by 2015.⁸ The Committee notes a 2011 news report that the program has been so successful that a homeless shelter was able to close and to redirect its annual budget of \$1 million to other homelessness services.⁹

The Housing First policy focuses on the prevention of homelessness as well as mitigation of those already experiencing homelessness. At the mitigation end of the spectrum, the policy response to chronic homelessness is summarised as follows:

For those who have been homeless for extended periods, and have a disabling condition, re-housing interventions provide safe, stable housing options. The State of Utah has adopted the Housing First approach which provides permanent supportive housing to chronically homeless individuals so they can focus on stabilizing their disabling condition in a safe and supportive environment. Here, housing is not contingent on participation in supportive treatment programs or an expectation of abstinence from drugs or alcohol, but on the basics of good tenancy. Residents are guaranteed stable housing as long they are good stewards of their personal and shared housing areas and maintain good relations with other tenants, case managers, and property managers.¹⁰

The Committee notes that this policy initiative appears to be underpinned by fiscal considerations. In the 10 year plan, Utah State's Homeless Coordinating Committee's reported that the Housing First initiative, which was first trialled in New York City, concluded that:

Housing is more than a basic need. It's also the least costly and most effective way to end homelessness.

Economists were among the first to chart the financial and human costs of the nation's chronically homeless. It was a group of homeless providers in New York City, under the leadership of Sam Tsemberis, who dared to try something new. Their approach, dubbed "Housing First," is being adopted by cities and counties nationwide. The strategy hinges on moving the homeless of the streets and into permanent housing, where they can establish community roots. Tenants pay rent,

⁷ Jenny Shank, "Utah is on track to end homelessness by 2015 with this one simple idea" *NationSwell* (19 December 2013) online at <http://www.nationswell.com/one-state-track-become-first-end-homelessness-2015/#> (accessed 11 February 2014)

⁸ *Ibid*

⁹ Anna Bahr, "How Utah will soon end chronic homelessness" *Huffington Post* (30 September 2011) online at http://www.huffingtonpost.com/2011/09/30/utah-homelessness-rate-plummets_n_987695.html (accessed 11 February 2014)

¹⁰ Utah Government, Housing and Community Development Division, Housing Works online at <http://housingworks.utah.gov/solution/index.html> (accessed 11 February 2014)

not to exceed 30% of their income, and must abide by the same lease agreement required by any other person that would lease that unit.

Housing First tenants agree to regular on site visits by a case manager who helps them navigate their new environment and tap into social programs like Medicaid and Social Security Disability. Other services, such as mental health and addiction treatment, are available for those who want them. People are more likely to chart new paths if they have stable housing and meaningfully [sic] choices from which to start.

Studies show it works! New York, Denver, San Francisco and Utah have found that even the most chronically homeless are able to stay housed with the Housing First model.

The mode also has proven to save money. A San Francisco study found that placing homeless people in permanent supportive housing reduced their emergency room visits by more than half. In 2006, the Denver Housing First Collaborative published a study of chronically homeless individuals, comparing costs of services for two years before and after placement in permanent supportive housing. The group found a 34% reduction in ER costs and inpatient nights declined 80%. Incarceration days and costs plunged 76%. The total average cost savings per individual was \$31,545. After deducting the cost for providing permanent supportive housing, Denver realized a net cost savings of \$4,745 per person. [Footnotes omitted.]¹¹

The Committee notes the comment of Utah State's Homeless Coordinating Committee that social services (for physical and mental disabilities, addictions, and other factors linked to extreme poverty) are most effective when people are secure in their own homes.¹² In the Committee's view this is consistent with observation underscores the centrality of the right to adequate housing in the realisation of other social and economic, as well as civil and political rights.

Once again, thank you for the opportunity to comment. Questions may be directed at Vicky Kuek, policy lawyer for the Committee, available on (02) 9926 0354 or at victoria.kuek@lawsociety.com.au

Yours sincerely,



Ros Everett
President

¹¹ Utah's Homeless Coordinating Committee, *Utah's Plan to End Chronic Homelessness And Reduce Overall Homelessness by 2014* (May 2008), p6 online at <http://housingworks.utah.gov/documents/TEN-YEARPLAN.pdf> (accessed 11 February 2014)

¹² Note 11 at p1.

FACTS ABOUT HOMELESSNESS

Compiled by the Human Rights Committee of the Law Society of NSW

- Approximately 105 000 Australians are homeless (from 2011 Census data).
See: <http://www.abc.net.au/unleashed/4369724.html>
- One in every 50 Australian children under five years of age will access a homelessness assistance service this year; of these children 20% are Aboriginal people and Torres Strait Islanders.
See: <http://www.homelessissues.com.au/australian-homelessness-facts-and-figures/>
- One in every 50 young women aged 18–19 will stay in a homelessness assistance service this year.
See: <http://www.homelessissues.com.au/australian-homelessness-facts-and-figures/>
- 1.1 million adults (7% of adults living in private dwellings in Australia) had experienced homelessness at some time in the previous 10 years.
See:
http://www.homelessnessnsw.org.au/uploads/50463/ufiles/Counting_the_homeless/Homelessness_Data_July_2012.pdf
- Adults who were homeless were twice as likely to report their main source of personal income as being from government pension or allowance than those who had never been homeless.
See: <http://www.probonoaustralia.com.au/news/2012/03/report-paints-depressing-picture-homelessness'-impact#>
- Domestic violence is the single biggest cause of homelessness, involving one in every two homeless women with children.
See:
<http://www.homelessnessaustralia.org.au/UserFiles/File/Fact%20sheets/Homelessness%20in%20Australia%20for%20web.pdf>
- Family breakdown is the primary reason why young men and women seek support from homelessness assistance services.
See:
[http://www.homelessnessaustralia.org.au/UserFiles/File/Fact%20sheets/Fact%20Sheets%202011-12/Homelessness%20General%202011-12\(1\).pdf](http://www.homelessnessaustralia.org.au/UserFiles/File/Fact%20sheets/Fact%20Sheets%202011-12/Homelessness%20General%202011-12(1).pdf)
- Families with children form the largest group of people who are homeless.
See: <http://nationalhomeless.org/publications/facts/families.pdf>
- Two out of three children accompanying adults are turned away from homelessness assistance services every day.
See: <http://www.aihw.gov.au/media-release-detail/?id=6442464628>
- One in five young people living out of their family home are living in poverty. People live in poverty when they do not have enough resources to meet their basic needs, including food, housing, heating and health care. Single parent families have the highest poverty rates
See: <http://www.homelessissues.com.au/>
- Just over 40% of the estimated homeless population are women.
See:
[http://www.homelessnessaustralia.org.au/UserFiles/File/Fact%20sheets/Fact%20Sheets%202011-12/Homelessness%20&%20Women%202011-12\(8\).pdf](http://www.homelessnessaustralia.org.au/UserFiles/File/Fact%20sheets/Fact%20Sheets%202011-12/Homelessness%20&%20Women%202011-12(8).pdf)

- Housing stress occurs when 30% of income is spent on housing costs. Acute housing stress occurs when 50% of income is spent on housing. More and more families are experiencing housing stress.
See: <http://www.homelessissues.com.au/>
- They were three times more likely to have been unemployed, more than twice as likely to be in a one parent family, much more likely to be living alone and nearly 4 times as likely to be unable to pay their electricity, gas or telephone bills on time.
See:
http://www.homelessnessnsw.org.au/uploads/50463/ufiles/Counting_the_homeless/Homelessness_Data_July_2012.pdf
- Homelessness can be caused by poverty, unemployment, lack of affordable housing, domestic violence, family breakdown, and alcohol and other drug use, financial difficulty, gambling and/or social isolation.
See: <http://www.homelessissues.com.au/>