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City of Darwin By-Laws 2021

Danila Dilba Health Service Submission

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Contents

Executive Summary.....	2
Introduction.....	2
Background	3
Feedback in relation to proposed by-laws	3
Ways forward	6
Conclusion.....	8

Executive Summary

Danila Dilba Health Service (**DDHS**) is grateful for the opportunity to provide feedback to the City of Darwin regarding the By-laws consultation draft.

While DDHS commends the City of Darwin for repealing certain discriminatory laws and for the Acknowledgement of Larrakia, we remain deeply concerned about the discriminatory impact of many of the By-laws contained in the consultation draft. It is clear that while homeless people are not specifically referenced, they are often the clear target of many of these by-laws, which are aimed at addressing and deterring 'public nuisance' behaviour. Many of the by-laws will similarly have a discriminatory effect on people with disabilities, particularly cognitive and mental health issues, who may be more likely to engage in conduct targeted by these by-laws.

Aside from being cruel and inhumane, prohibiting conduct that is not necessarily performed out of choice but rather out of circumstances does not act as an effective deterrent. What is needed instead is a humane response underpinned by evidence that addresses the underlying causes of issues regarding public health, hygiene and safety.

DDHS strongly urges the City of Darwin to repeal or amend the following by-laws:

- 33 – Offence of depositing waste
- 38 – Breaking glass or other material
- 39 – Unsanitary behaviour
- 92 – Structures on public land
- 96 – Abandoned goods
- 99 – Camping or setting up camp on public land
- 124 – Prohibited conduct in a public library

Introduction

DDHS is an Aboriginal Community Controlled Health Service, delivering comprehensive primary health care to Aboriginal and Torres Strait Islander People in the Greater Darwin Region.

The DDHS vision is outlined in our strategic plan 2017-22; 'that the health, well-being and quality of life of Aboriginal and Torres Strait Islander Australians equals that of non-Indigenous Australians.' To achieve this vision, DDHS has adopted a comprehensive and integrated approach to the delivery of primary health care by addressing and improving the social determinants of health that drive inequities in health outcomes through our services and advocacy.

DDHS enjoys a high level of trust and engagement with the local Aboriginal and Torres Strait Islander community of whom 80 per cent are counted as regular clients across our nine clinics. Many of our clients have a range of complex mental and physical health needs, and experience many of the socio-economic factors that contribute to poor health and wellbeing. Our data reveals that we have 2,200 transient clients (those whose address is outside our service area) mainly from remote communities, and 800 clients who are homeless and sleeping rough.

Background

It is well known that the Northern Territory experiences the highest rate of homelessness and rough sleeping (living in improvised dwellings, tents or sleeping out) in Australia, with this issue being particularly pronounced in Darwin City.¹ It is also well documented that these issues disproportionately affect Aboriginal people, who make up 30.3% of the NT's population, yet account for 88% of the NT's homeless population.²

Homelessness and rough sleeping are both a result and cause of serious disadvantage across a range of determinants of well-being and health. Complex issues such as structural disadvantage, socio economic factors, substance use, employment, education, mental health and physical health are all significant contributors to homelessness.

Feedback in relation to proposed by-laws

Acknowledgement of Larrakia

DDHS welcomes the inclusion of the Acknowledgement of Larrakia contained in by-law 5 and the City of Darwin's commitment to a positive and cooperative relationship with the Larrakia people.

Discriminatory operation of proposed By-Laws

DDHS welcomes the amendments made to certain previous by-laws that effectively targeted people experiencing homelessness, including the repeal of by-law 103(1)(c) that criminalised sleeping between sunset and sunrise in public places, as well as by-law 104 that criminalised leaving shopping trolleys in public places. DDHS commends this as a step in the right direction in removing discriminatory laws.

However, DDHS is concerned that many of the remaining by-laws continue to discriminate against vulnerable population groups by targeting activities associated with the state of homelessness or that are more likely to be performed by someone with a disability. To criminalise such behaviour is counter-productive, harsh and unreasonable. Clearly, the capacity of people experiencing homelessness to pay fines is in all likelihood negligible. Similarly, it is unlikely that provisions outlawing these activities would in any way serve to deter people experiencing homelessness from engaging in such conduct as erecting a shelter or camping on public land.

This was a position recently held by the UN Special Rapporteur on the Right to Housing, Leilani Farha, in response to similar by-laws proposed in Melbourne in 2017. Of particular concern were proposed by-laws that prohibited camping in the city and abandoning goods, akin to by-laws 92, 99 and 96 respectively. In a statement to the Attorney-General, Ms Farha stated:

¹ ABS (2018). 2049.0 – Census of Population and Housing: Estimating Homelessness, 2016. Canberra: ABS. Retrieved from: [Census of Population and Housing: Estimating Homelessness, 2016 | Australian Bureau of Statistics \(abs.gov.au\)](https://www.abs.gov.au/ausstats/13500nmain/newpages/2049_0_2016_0101.aspx?ts=6385938)

² Ibid.

“The criminalisation of homelessness is deeply concerning and violates international human rights law. It’s bad enough that homeless people are being swept off the streets by city officials. The proposed law goes further and is discriminatory – stopping people from engaging in life sustaining activities, and penalising them because they are poor and have no place to live.”³

The following table identifies potentially problematic by-laws and details why they may be discriminatory in operation:

<p>92 – Structures on public land</p> <p>(1) A person must not, without an authorisation, erect or install on public land a post, rail, fence, pole, tent, booth, furniture, stand, display, exhibition, decoration or structure, whether permanent or temporary.</p> <p>Maximum penalty: 50 penalty units. The infringement amount is 2 penalty units.</p> <p>99 – Camping or setting up camp on public land</p> <p>(1) A person must not camp or set up camp on public land, without an authorisation or the consent of the owner or occupier of the public land.</p> <p>(2) For this by-law, the following activities are taken to be camping or setting up camp:</p> <ol style="list-style-type: none"> a. occupying, between sunset and sunrise, a vehicle used for sleeping; b. erecting a tent or other shelter used for camping; c. setting up bedding, camping gear or other equipment used for camping. <p>(3) A person commits an offence if:</p> <ol style="list-style-type: none"> a. the person camps or sets up camp on public land; and b. the person does not have an authorisation or the consent of the owner or occupier of the public land. <p>Maximum penalty: 20 penalty units. The infringement amount is 1 penalty unit.</p> <p>(4) An authorised person may direct a person who fails to comply with clause (1) to do any of the following:</p> <ol style="list-style-type: none"> a. leave the public land; b. remove any vehicle, tent, shelter, gear or equipment to a place specified by the authorised person. 	<p>These by-laws prohibit people experiencing homelessness from occupying or constructing shelter (e.g. a tent) on public land. Punishing a person for attempting to fulfill a basic need such as shelter may be in contravention of s 189(1)(d) of the <i>Local Government Act 2008</i> (NT). This provision states that ‘a by-law must not infringe personal rights in an unreasonable way or to an unreasonable extent’.</p> <p>In our views, prohibiting someone from erecting shelter or camping on public land in the context of homelessness would likely constitute an infringement on the right to housing. Similarly, these by-laws may contravene s 189(2)(e), which states that ‘a by-law should be consistent with basic principles of justice and fairness’.</p> <p>In relation to by-law 99(4)(a), directing someone to leave public land may force people experiencing homelessness into more hidden and consequently more unsafe corners of the city. This may expose them to greater risk of assault and make it more difficult for homeless services to locate and engage people and support them into housing.</p> <p>Where a shelter or tent is removed under by-law 99(4)(b), it is degrading and cruel to force a person to live without these basic human amenities. This may therefore contravene Article 7 of the <i>International Covenant on Civil and Political Rights</i> which prohibits cruel, inhuman or degrading treatment or punishment.</p> <p>These by-laws will not be effective in eradicating public camping or rough sleeping; they will simply leave people without shelter or push them into more remote, and therefore more vulnerable, areas.</p> <p>DDHS recommends that special provision be included in by-laws 92 and 99 that make an exception for</p>
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³ Office of the High Commissioner, United Nations Human Rights, ‘Proposed “Homeless Ban” in Australia cause for concern – UN Expert’ (13 March 2017). Retrieved from: < [OHCHR | Proposed “Homeless Ban” in Australia cause for concern – UN Expert](#)>.

	<p>people experiencing homelessness, similar to that made in by-law 96.</p>
<p>39 – Unsanitary behaviour</p> <p>(1) A person commits an offence if the person spits, urinates or defecates on public land, other than in a toilet. Maximum penalty: 20 penalty units. The infringement amount is 1 penalty unit.</p>	<p>Such laws discriminatorily affect homeless people on the grounds of their housing status and the necessary location of their conduct, not on the basis that the behaviour or activities themselves are inherently reprehensible and ought to be criminalised. It effectively prohibits the performance of essential human acts in public, but not within a home. This causes people without homes to rely on the provision of public toilets and facilities by the City of Darwin, which are not always available.</p> <p>In addition, those with complex health needs and disabilities may be less cognisant of accepted public standards of ‘sanitary behaviour’ and the consequences of breaching these standards. They are therefore more likely to be targeted by such laws.</p> <p>It is our view that the effect of these laws may be inconsistent with s 189(2)(e), in the context of a provision which is arguably aimed at a particular demographic within the community.</p> <p>The City of Darwin would better serve the community by increasing the number of public toilets available in the CBD in particular but also in suburban shopping areas and parks. Toilets are frequently closed from early evening, leaving no option other than the street for any homeless person or even people out in the late evening. It is unreasonable to criminalise essential human acts while refusing to provide facilities that allow compliance.</p>
<p>96 – Abandoned goods</p> <p>(1) An authorised person may seize any goods abandoned on public land.</p> <p>(2) The goods of people experiencing homelessness or people sleeping rough must be respected as not abandoned, but may be considered abandoned if left unattended for more than 24 hours.</p> <p>(3) As soon as practicable after seizing the goods, the authorised person must take reasonable steps to give written notice of the seizure to the owner of the goods.</p> <p>(4) The notice must include the following information:</p> <ol style="list-style-type: none"> a. a description of the goods; b. the reason for seizing the goods; c. details of how the goods may be recovered, including any fee for recovery; 	<p>DDHS commends the inclusion of special provision for people experiencing homelessness and sleeping rough through by-law 96(2). However, we still consider the 24-hour time limit to be too inflexible and does not go far enough in providing protection for people experiencing homelessness. We therefore recommend that the 24-hour limit be amended to a 48-hour limit.</p>

<p>d. a warning that the goods may be disposed of if the person fails to recover the goods within 14 days of receiving the notice.</p> <p>(5) If seized goods are not recovered within 14 days:</p> <ol style="list-style-type: none"> a. the goods are forfeit; and b. the goods are to be sold, destroyed or otherwise disposed of as the CEO sees fit. 	
<p>33 – Offence of depositing waste</p> <p>(1) A person commits an offence if the person deposits waste on land or allows waste to remain on land. Note for clause (1)</p> <p>Maximum penalty: 20 penalty units. The infringement amount is 1 penalty unit.</p> <p>38 – Breaking glass or other material</p> <p>(1) A person commits an offence if:</p> <ol style="list-style-type: none"> a. the person breaks glass or other material; and b. the pieces of the glass or other material are on public land; and c. the pieces of the glass or other material are likely to cause injury to a person or animal. <p>Maximum penalty: 50 penalty units. The infringement amount is 1 penalty unit</p>	<p>Where waste disposals, bins or recycling facilities are not available, people experiencing homelessness may have no other option than to have their waste remain on the land that they occupy.</p> <p>They are therefore more likely to be affected by these laws, not due to non-compliance or culpability, but because of a lack of alternative options. A fine in this regard may constitute punishment that is disproportionately severe to the ‘crime’.</p>
<p>124 – Prohibited conduct in libraries</p> <p>(1) A person must not engage in any of the following conduct:</p> <ol style="list-style-type: none"> a. taking library materials or other things without authority from a public library; b. disturbing, interrupting or annoying another person in a public library; c. behaving in a disorderly manner or using violent, abusive or offensive language in a public library; d. entering or remaining in a public library if the person is under the influence of liquor or an intoxicating drug. <p>Maximum penalty: 10 penalty units. The infringement amount is 1 penalty unit.</p>	<p>By-law 124(b) and (c) appear to duplicate s 47(1) of the <i>Summary Offences Act 1923</i> (NT). This provision prohibits ‘any riotous, offensive, disorderly or indecent behaviour [...], or using obscene language, in or within the hearing or view of any person in any road, street, thoroughfare or public place’ (s 47(1)(a)). It also prohibits ‘unreasonably causing substantial annoyance to another person’ (s 47(1)(e)).</p> <p>This is inconsistent with s 189(2)(d) which states that a by-law should avoid duplication of, or overlap with, other legislation.</p>

Ways forward

Homelessness and its associated behaviours and activities cannot be addressed or responded to by legislation alone. Rather than punishing people for acts that they have no choice but to perform in public, it is essential that we as a community develop humane and evidence-based responses. As well as affording people experiencing homelessness and other vulnerable population groups greater dignity and respect, these responses could also address legitimate concerns such as public sanitation and health and safety.

What is needed is robust policy and greater investment in infrastructure and specialist services that address homelessness and rough sleeping. However, DDHS is concerned that despite an increase in rates of homelessness and rough sleeping in Darwin City, Darwin support services and their capacity

to assist are decreasing. In 2019/2020, there were an average of 19 unassisted requests for homelessness services per day, an increase from 15 per day in 2018/2019.⁴

In 2020, DDHS made a submission to the Department of Local Government, Housing and Community Development to take the lead in operating the Better Pathways Centre, which was designed to provide a support hub delivering services to homeless people and those sleeping rough. We were disappointed to see the eventual abandonment of the Darwin City Better Pathways Centres as part of the government's five point plan to tackle 'anti-social behaviour'. We were also disappointed that some elected members of Council spoke against the Better Pathways Centre.

While the City of Darwin and NT government have made some commendable efforts to support vulnerable population groups in Darwin, there is a need for greater investment in community driven initiatives that address the underlying causes of 'public nuisance' behaviour. At the level of local council, practical steps that may be taken to improve public health and hygiene include:

- The creation and implementation of a 'Homelessness Strategy' that provides the council with a blueprint for tackling homelessness and rough sleeping.⁵
- Advocate to the NT Government to proceed with the establishment of the Better Pathways Centre in the CBD and the originally planned Centre and short term accommodation in the Casuarina area.
- Working with and investing in community-driven programs and services that address mental health, housing, disability and income inequality issues. Such notable service providers that exist in the Darwin City region include:
 - Larrakia Nation – provides a range of services to those experiencing homelessness and rough sleeping, including Patrol Services, Healthy Engagement & Assistance in the Long Grass, and Assistance with Care & Housing. They also provide various services to vulnerable population groups, such as the elderly and those experiencing domestic violence, who are more vulnerable to homelessness.
 - Orange Sky Laundry – provides free laundry, showers and conversations to those experiencing homelessness.
 - YWCA – provides housing and accommodation for women and their families.
 - Mission Australia – provides homelessness crisis and prevention services, social and affordable housing, assist struggling families and children, address mental health issues, fight substance dependencies, and support people with disability.
- Utilisation of primary health care services, especially ACCHOs, in responding to people with complex health needs, disabilities and substance use issues. Additional investment in these organisations should be used as both a preventative strategy in regards to public health and hygiene, as well as an immediate response strategy where people are in need of assistance in public spaces.

⁴ AIHW (2020). Specialist Homelessness Services 2019-2020: Northern Territory Fact Sheet. Canberra: AIHW. Retrieved from: [Specialist homelessness services 2018–19: Northern Territory Fact sheet \(Full Publication;29Nov2019Edition\)\(AIHW\)](#); AIHW (2019). Specialist Homelessness Services 2018-19: Northern Territory Fact Sheet. Canberra: AIHW. Retrieved from: <https://www.aihw.gov.au/reports/homelessness-services/shs-annual-report-18-19/fact-sheets-by-state-and-territor>.

⁵ For an example of a recent council 'Homelessness Strategy' document, see the [Salisbury Homelessness Strategy](#).

- Increasing the amount and opening hours of public toilets, ablution facilities, and waste disposals.
- Advocating for increased low cost and affordable housing outcomes that are responsive to current and future needs of the community.

Conclusion

While DDHS commends the City of Darwin for repealing certain discriminatory laws and for the Acknowledgement of Larrakia, we remain deeply concerned about the discriminatory impact of particular by-laws contained in the consultation draft.

Prohibiting activities associated with homelessness and rough sleeping does not act as an effective deterrent; it simply exacerbates the stresses and financial hardships causing homelessness. This prohibitive response fails to acknowledge that it is homelessness itself that needs to be addressed, not the behaviours that result. The prohibition on camping on public land is meaningless when rough sleepers simply have no alternative place to sleep. What is needed instead is a humane response underpinned by evidence through greater investment in specialist services that address the underlying causes of 'public nuisance' behaviour.

For any further enquiries, please contact Policy Officer Talia Slonim: 0430 155 788.