

Tamara Walsh (2011)

### ***Homelessness and the Law***

Annandale New South Wales: The Federation Press, 291pp. AUS\$45.00 (€35.56).

This is essential reading for all those with an interest in law, policy and homelessness. The breadth of legal and policy issues addressed offers a model for assessing these influences and dynamics as they impact on homelessness (albeit in common law countries only). The author is obviously experienced in homelessness advocacy, but clearly and objectively analyses the myriad of law and policy developments in Australia over the past 20 years. Dr. Walsh provides that valuable but rare knowledge of law, policy and practice, often described as socio-legal studies in the UK, but here displaying a more profound and in-depth approach. Although based on an examination of law, policy and homelessness across the Australian States, the issues are indeed international and the lessons applicable across the developed world. Dr. Walsh has succeeded in demonstrating how federal and state laws and policies operate to cause or perpetuate homelessness, but also how the law could be used to address the causes and consequences of homelessness.

The book begins with an examination of the legal concepts of 'home' and 'homelessness'. A detailed consideration of the extent of homelessness reveals that 1% of Australians receive support from homelessness services every year, including one in every 63 children. Aboriginal or Indigenous persons account for 9% of the homeless population. Homelessness legislation since 1994, although enabling state provision and funding for supported housing, falls short of creating a housing right. One interesting aspect of the analysis relates citizenship and social exclusion to homelessness, with half of the homeless population responding negatively to the question "Are you an Australian citizen?", even though in legal terms all were such citizens. Food for thought for EU research here.

Chapter 2 assesses legal responses to homelessness, with the Labor Government in 2007 developing a national affordable housing strategy. Public programmes have created public (social) housing, NGO-provided housing, crisis accommodation and rent assistance, but there is insufficient supply to meet demand. Walsh highlights the dynamic between evictions from social housing (increasingly reserved for those

with complex needs) and increasing levels of homelessness. Distinctive Australian housing arrangements, such as 'rooming houses' and 'boarding houses' for single men are in decline, leaving lodgers thereof in a precarious situation.

Another unique feature of the book is its examination of the 'blacklisting' of private sector tenants by estate and letting agents that deny them access to housing. One database holds over 1.5 million individual tenant files. Gaining access to or rectifying this information under data protection laws can be prohibitively expensive. Although consent is required from tenants for the storage of this personal data, this is usually secured through a standard condition in tenancy agreements.

Chapter 3 deals with the criminalization of homeless through vagrancy and other summary offences legislation and ordinances that regulate behaviour and access to public space. Chapter 4 examines the linkages between homelessness and social welfare law, where recipients have obligations to undertake certain tasks and this conditional support is regulated through 'activity test agreements'. Penalties include eight-week periods of non-payment of assistance, and 30 000 penalties are imposed every year. A distinctive arrangement known as 'income management' combines child protection (a state competence) and social security (a federal competence). Here, a quarantined amount (between 50% and 100% of benefits) can be spent only on 'priority needs' such as housing, clothing, transport, school or medical expenses; this is facilitated by selected providers and regulated through PIN numbers. Chapter 5 examines disability, decision-making and homelessness, showing that persons with impaired capacity are overrepresented among the homeless population, and some studies demonstrate that those with mental illness account for 20% to 75% of homeless people.

Access to justice for homeless people, set out in chapter 5, reveals that there is no guarantee of equal treatment or equality before the law in Australia, a central tenet of most liberal legal systems. Although anti-discrimination laws exist, homelessness is not a protected category and there is no right to legal representation. However, like other English speaking common law states, some local schemes exist, alongside *pro bono* and NGO schemes that try to fill the gap. 'Special circumstance lists' or diversionary court arrangements exist in Melbourne and Brisbane for disadvantaged persons (including homeless people). These deal only with minor offences and attempt to create practical solutions using a multi-agency approach. Significantly, the court acts as a case manager. Walsh suggests that this model should be developed further, to involve "therapeutic jurisprudence, restorative justice and preventative justice".

The chapter which treats homelessness as a violation of human rights draws on classical civil and political rights and socio-economic rights arguments, using international human rights instruments as well as Australian law. Clearly, the author views the housing rights approach as offering a valuable source of law and policy-making. Walsh posits that “[t]he overseas experience suggests that it is possible to create social and economic rights that are legally enforceable without seriously compromising the role of the courts or placing excessive burden on the public purse.” There is an interesting examination of housing cases in other English speaking common law jurisdictions, although the author could perhaps be a little more critical of the impact of these decisions on homelessness.

The book concludes with an excellent set of tables, which summarize the housing laws, legislatively backed programmes, legally defined housing application processes, legally defined eligibility criteria, mental health laws and legally defined policies and procedures, as well as an excellent bibliography. The book was clearly written by a lawyer, and the clarity of the analysis, especially in tracing policies and procedures back to their legal bases, offers a valuable model for housing and homelessness research. Perhaps the prevalence in European states of ‘soft law’ concepts and discretionary policies and practices can sometimes hinder a clear analysis of the role and obligations of the state. Here, that clarity is evident. This is an insightful, comprehensive and rigorous examination of the contested connection between homelessness and Australian law, based on many years of research. It is a realistic assessment of the impact of various legal and policy measures concerning homelessness over the past 20 years. Most of all, it demonstrates that law is more likely to be used by modern states to advance neo-liberal economic new public management policies than to advance housing rights for homeless people.

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