Foreword

Justice Ronald Sackville

Tamara Walsh’s comprehensive, insightful and rigorous examination of the fraught intersection between homelessness and the Australian legal system is, as she says, the culmination of many years of research. Even prior to the publication of this important book, Dr Walsh made a major contribution to our understanding of the impact of the law, for good or ill, on the lives of homeless people in Australia. She combined painstaking empirical studies with wide-ranging legal research in order to expose the hardships inflicted on homeless people and explain how the law can ameliorate the social and economic plight of the most vulnerable members of an otherwise affluent society.¹

Dr Walsh has brought these qualities to her book. Because her analysis has gone well beyond orthodox legal materials – legislation, case law and international conventions – she has succeeded in providing a realistic assessment of the achievements and failures of policies that have been designed to address the problems of homelessness in twenty-first century Australia. Dr Walsh’s careful examination of current laws and policies contains reasons both for optimism and pessimism.

In 1975, the Poverty Commission observed that it was ‘shameful to record that Australian law imposes criminal sanctions on people essentially because they are poor’.² Since that time, much has changed for the better. The offences of public vagrancy and drunkenness, so frequently employed against homeless people, have largely been removed from the statute books. Commonwealth and State Governments have implemented co-operative programs to provide accommodation and support to those who are homeless or at risk of homelessness. The National Affordable Housing Agreement incorporates the laudable goal of providing all Australians with access to affordable, safe and sustainable housing. People living in low-cost or temporary housing have been given greater security of tenure and legal protection. Legal advice has been made available to homeless people through community legal centres and pro bono work by legal practitioners. Human rights discourse has been


² Commission of Inquiry into Poverty, Law and Poverty in Australia (Second Main Report, AGPS; 1975), at 245 (emphasis in original).
employed to draw attention to the social and economic deprivation suffered by homeless people.

And yet … In the 1970s there was no generally accepted definition of homelessness and no reliable census or survey information was available as to the numbers of homeless people in Australia. A 1973 Government Working Party estimated the ‘upper limit’ of homeless people to be 25,000.³ In the second decade of the twenty-first century, as Dr Walsh explains, workable definitions of homelessness have been devised and detailed census information on the extent of homelessness has been compiled. This information suggests that, despite improvements in welfare services and a less punitive approach by the law, over 100,000 Australians are homeless on any given night.

The raw figures are not encouraging. But they do not detract from the work of the legal and social welfare reforms of the last four decades. The statistics do suggest, however, that changes to the legal system, of themselves, cannot resolve the underlying social, economic and health influences that determine the extent and nature of homelessness. For example, as Tamara Walsh points out, a diminution in the supply of public housing stock and the consequent tightening of eligibility criteria for subsidised accommodation can only increase the disadvantages experienced by people at the margins of society.

Dr Walsh’s book Homelessness and the Law powerfully demonstrates the potential for the law to improve one of Australia’s gravest, if largely hidden, social problems. At the same time, it demonstrates the limitations on what can be achieved through the legal system. It is a book worthy of close study not only by lawyers interested in social justice, but by anyone troubled about one of the most serious manifestations of inequality in Australian society.