



18 June 2010

Dear Member of the Legislative Assembly

Youthlaw concerns about the Control of Weapons Amendment Bill 2010

Youthlaw is a specialist community law and advocacy centre for young people under 25 years.

We would like to raise with you our concerns about the Control of Weapons Amendment Bill 2010 to be debated by the Legislative Assembly shortly. We are also available to discuss the Bill with you or your staff personally.

This Bill follows earlier amendments to the Summary Offences and Control of Weapons Act in late 2009. The 2009 amendments provided police with new powers to search anyone, 16 years or over, in a gazetted designated area. This was a significant departure from existing law that required police to have a reasonable suspicion of possession of a weapon. It also introduced mass searches of persons in public domains. These amendments did provide some protections by requiring that searches of children, young people and those with impaired intellectual functioning be conducted in the presence of a parent, guardian or independent person. The new laws also required written records of all searches

The current bill proposes additional changes to the *Control of Weapons Act* that effectively removes these essential monitoring and accountability mechanisms. In our view the bill prioritises operational law enforcement considerations over important basic rights of vulnerable persons and accountability of law enforcement bodies. It is our view that these 'operational considerations' have been overstated.

The bill allows for 'planned' searches. These require the searching including trip searching of children, young people or persons with impaired intellectual functioning to be in the presence of a parent, guardian or independent person. We understand the government is proposing to hold a limited number of these events at which independent persons will be present.

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The bill allows for 'unplanned' searches that allow the searching including strip searches of children, young people or persons with impaired intellectual functioning without a parent, guardian or independent person being present. These so called 'unplanned' searches are far from spontaneous. They must be declared by the Chief Commissioner, be in writing, designate an area and operate for a period of time not exceeding 12 hours.

Less protection for searched children

Minister Cameron has admitted that the proposed changes to weapon searches in this bill 'exacerbate incompatibility with Charter rights such as the right of every child to such protection as is in his or her best interests and is needed by him or her by reason of being a child'.

The amendments will shift responsibility to children, young people and those with impaired mental functioning, to monitor and advocate to police in regard to the appropriateness of searches of them.

They will also not benefit from the additional comfort, protection and information that a parent, guardian or independent person provides in recognition of their lack of capacity, developmental immaturity and vulnerability.

Youthlaw strongly urges amendment to the bill to require independent persons be present during 'unplanned' and 'planned' designated searches.

No written search records required

The current bill reduces accountability to the public by no longer requiring a written record of weapons searches conducted in a designated area (including of children) except in relation to strip searches.

Over the past 6 months Victorian police have searched more than 1300 people. 35 weapons were found and 9 charges laid. There has been much public debate about searches to date and significantly different information about the outcomes were reported by independent persons observing the searches as compared to media reportage.

Media coverage suggested large caches of frightening weapons found, however independent persons present observed that most knives were pocket and key chain type knives. Those that received the greatest media coverage included a machete that was taken off a man who also had a tent and backpack and clearly had been camping and a large knife was taken off a man who claimed to be a chef.

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There is on-going debate and considerable difference of opinion in the community about the extent of knife carrying and usage.

It is extremely important that searches undertaken by police are documented in sufficient detail for the public and government to be properly informed about this important issue.

Youthlaw strongly urges amendment to the bill to require detailed records be kept of all searches including all weapons found and the age of the person searched.

Harsher fines for children and young people who cannot afford to pay them

Under 18 year olds will be banned from buying *prohibited* weapons e.g. flick knives, daggers and swords (maximum penalty of \$2986.25) or controlled weapons (including kitchen and pocket knives) (maximum penalty of \$1433.40). Police will be able to issue an on-the-spot fine of \$1000 to those aged 16 years and above caught unlawful carrying controlled weapons and \$2000 for those caught in or near a licensed venue.

These fines are excessive. The fine for carriage is equivalent to the maximum penalty the courts can impose on a young person. They do not reflect the income or lack of income of young people and or their families. Where young people or their families cannot pay these fines and the young person attends court to have them reduced this will result in an addition of a conviction record, further penalising those who cannot afford these excessive fines.

These penalties also do not reflect the evidence available about knife carriage and knife usage. Research commissioned in 2000 by the government and Victoria Police (Bondy and others, *Living on Edge: Understanding the social context of knife carriage among young people* 2005) found strong evidence that young adolescents carry knives but rarely use them.

Youthlaw strongly urges the government to table commissioned research on knife carriage and usage so that members of both houses can be properly informed as to the effectiveness of introducing this bill including this fine regime.

That fines for buying and carriage of knives by young people be substantially reduced or means tested for under 18 year olds.

The evidence about knife violence

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Putting aside media report and anecdotes, there is little evidence suggesting that knife usage is increasing. In relation to knife violence Victoria Police crime statistics for 2008-9 show that adults, not children are overwhelmingly responsible for drunken violence and knife crimes with a 7% increase in adult violent crime, and a 3.3% decrease youth violent crime.

The Government's strategy is ineffective

It is assumed that that these powers and offences will reduce knife-related offending. All the evidence and research suggests otherwise. The Victorian based research commissioned by the government and Victoria Police found that young people do carry knives but grow out of the habit (peaking at age 14) and it is overwhelmingly adults involved in drug related crime that use knives.

The research suggests key factors associated with young adolescents carrying knives are personal safety and transient behaviour. It is most prevalent among young men who have a history of victimisation and exposure to violence, are fearful and/or engage in risky behaviours. Lack of educational and employment opportunities are important risk factors. Approaches that focus on the underlying motivations and risk factors that influence young people in the first place have the greatest potential. Aggressive policing is not recommended as it has the potential to intensify the problem through deterioration in police-youth relations.

Research on similar powers in the UK question the effectiveness of the powers in reducing knife carrying and knife violence. There is evidence that such powers are counterproductive as they disproportionately affect young people, straining relations with police and leading to greater insecurity – a major motivation for young people to carry knives.

In our opinion as long as young people feel unsafe or marginalised in their communities, weapon carrying will continue. We need community responses designed to create safer more inclusive communities which value and involve young people as part of the solution.

Yours Sincerely
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