



Scrutiny of Acts and Regulations Committee
Parliament House
Spring Street
East Melbourne VIC 3002

19th November 2009

By email: andrew.homer@parliament.vic.gov.au

Dear Committee Members,

Summary Offences and Control of Weapons Acts Amendment Bill

Youthlaw is writing to express our grave concerns regarding the introduction of the *Summary Offences and Control of Weapons Acts Amendment Bill 2009 (Bill)*. As you will be aware, the Bill has been introduced into the Victorian Parliament to 'enhance police powers to tackle violence and disorder'.¹ Whilst there may be a legitimate need for the Victorian Government to take legislative or other action to combat violence in our community, Youthlaw is of the view that the proposal to increase police powers is not evidence based, and will not address the underlying causes of violence and offending behaviours in the community.

Youthlaw is extremely concerned that:

1. the Bill is inconsistent with fundamental human rights in the *Charter of Human Rights and Responsibilities Act 2006 (Charter)*, especially the rights of children and young people;
2. the Government has issued a Statement of Compatibility that admits that some of the limitations on human rights are neither 'reasonable' nor 'demonstrably justifiable' but wishes to pass the law anyway; and
3. there has been no consultation with the community during the development of the Bill or prior to its introduction to Parliament, despite it infringing on the rights of many community members.

1. Infringement of Charter rights

Youthlaw is concerned that the Bill is incompatible with human rights in at least the following ways:

- Police will be able to search *any* person in a designated area, even when the police officer has not formed a reasonable suspicion that the person is carrying a weapon.² The Government admits that this provision is incompatible with the right not to have privacy unlawfully and arbitrarily interfered with.³
- Police powers to search *any* person in a designated area, even when the police officer has not formed a reasonable suspicion that the person is carrying a weapon, will include searching children of any age. The Government admits this is inconsistent with the right of the child, without discrimination, to such protection as is in his or her best interests.⁴
- The test for the exercise of proposed move on powers is far too broad, vague and arbitrary and means the powers will be prone to be applied in a discriminatory and disproportionate way against some of our most vulnerable community members, including young people. There is evidence from other states that these powers are overwhelmingly used against very young people and are not effective in preventing and

Young Peoples Legal Rights Centre
Inc No A0041616E
ABN 12 794 935 230
Tel 9611 2412 Fax 9620 3622 Email info@youthlaw.asn.au
At Frontyard, 19 King Street, Melbourne VIC 3000

¹ See Statement of Compatibility in Hansard, Thursday 12 November 2009, p 64.

² See proposed section 10G of the Bill.

³ Section 13(a) of the Charter.

⁴ Section 17(2) of the Charter. See also Statement of Compatibility in Hansard, Thursday, 12 November 2009, pp 69 and 70.

targeting crime. For example, in NSW 79% of all directives and 48% of all directions are issued to people under 17 years.⁵

2. Proceeding with Bill despite it being incompatible with the Charter

The Statement of Compatibility expressly states that parts of the Bill (such as searches of children) are not compatible with human rights. This means that the Government admits that limitations on rights are not necessary, reasonable or demonstrably justified, as required by section 7 of the Charter. This is particularly disturbing when Government has introduced a Bill that is not grounded in researched need or demonstrated evidence base. It is extremely disappointing, contrary to the spirit in which the Charter was enacted, and sets a dangerous precedent for a government to turn its back on providing fundamental protections for its citizens when government finds it politically expedient to do so.

3. No community consultation

It is unacceptable that the Government has not sought to consult at all with the communities affected by a Bill in circumstances where the Bill will unreasonably and unjustifiably infringe fundamental human rights. This is despite requests to Minister Cameron in September 2009.


Recommendations

Youthlaw recommends that the Government should establish a consultative process to consider how to best address valid concerns about rising rates of violence in the community, whilst at the same time protecting the fundamental human rights of citizens affected by the Bill. A consultation process would also provide an opportunity for communities and individuals affected by the Bill to make constructive suggestions to ameliorate the harshest aspects of the Bill. Suggested amendments include:

- Make it unlawful for proposed powers in the Bill to be exercised in a manner that directly or indirectly discriminates against a person on the basis of their race, religion, age, poverty, disability, homelessness, gender, sexual preference etc.
- Move on directions must be in writing and include the reason for the direction, and be subject to review.
- Prevent predicted behaviour being regulated by move on directions by deleting all references to "or likely to" in clause 6(1) of the Bill.
- Omit the offence of disorderly conduct (clause 17A) as it is vague, net widening, and a catch-all offence
- Children below 18 years be made exempt from random police search powers.
- 'Designated areas' in the Bill to be within the vicinity of licensed premises, to ensure that the Bill does not unduly target homeless people or young people in other public spaces.
- That any person stopped, and searched under the Bill to be given a receipt
- Given the extremely invasive nature of a strip search, they should only be conducted post arrest at a police station where there are reasonable grounds to believe the person has committed an offence.
- Inclusion of a sunset clause to ensure the law is reviewed after 2 years.

Please contact Tiffany Overall on 9611 2422 if you have any queries.

Yours sincerely



Ariel Couchman
Director
Youthlaw

⁵ NSW Ombudsman, *Policing public safety: Report under section 6 of the Crimes Legislation Amendment (Police and Public Safety) Act (1999)*.