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**A Community Legal Centre**

## **The End of an Era – Basic Freedoms Give Way to An Entrenched Police State**

The imminent introduction of the Summary Offences and Control of Weapons Acts Amendment Bill 2009 ('the Bill') should be of grave concern to lawyers, advocates, and the community at large.

These draconian new laws will enable:

- (a) enforceable move on directions on a pre-emptive basis and in the absence of identified misconduct (for example, on the basis that a member has a reasonable belief a person is likely to cause a breach of the peace or endanger the safety of other persons)
- (b) powers to search any persons (including children) in designated areas without the need for police to form reasonable suspicion of grounds for the search
- (c) processing of drunk in a public place offences by way of infringement notices with significantly increased penalties
- (d) prosecution of a new offence of disorderly conduct\*

These enhanced powers and new offences/ penalties have been legitimized on the basis of practice in other jurisdictions, and as a response to increased offending and 'anti-social behavior' in inner city entertainment precincts.

The absence of meaningful discussion, debate and community consultation about changes that will have significant impacts on ordinary people going about their business is extremely concerning.

We acknowledge community alarm around high levels of alcohol consumption, concentration of licensed premises, and associated offending and/ or failures of regulation, infrastructure and planning.

We submit that evidence based approaches targeting the causes of alcohol related violence, and respecting the human rights of community members to use public spaces peacefully (i.e. non-violently and without committing criminal offences) should prevail in any legal responses.

Any other approach will have deleterious effects on the character of our culture, community, tourism industry, and send a poor message by the government as regards respect for human rights, health, community, tolerance and diversity.

That these changes are acknowledged to breach obligations under the Victorian Charter of Human Rights and Responsibilities is indicative that serious concern and attention to these laws is warranted.

### **Evidence that should be considered**

A relatively recent expert roundtable for Victoria Police linked observed trends in relation to violence, alcohol consumption, and entertainment precincts to a range of factors including changes in drug use (from cannabis and heroin to amphetamines and ice), binge drinking by young people, social and cultural change, and the deregulation of the night time economy.<sup>1</sup> The report cited criticism of 'primarily symbolic' strategies for management of violence and disorder that are not "intended to affect industry or profitability or to disturb... the slumber of ineffectual regulatory institutions".<sup>2</sup>

It is our submission the proposed laws continue to privilege economic imperatives, fail to engage with the health imperatives and regulation concerns, and will do little if anything to address excessive alcohol consumption in licensed premises as the primary cause of alcohol related violence in entertainment precincts.

Whilst the operation of move on powers in other jurisdictions has been cited as grounds for their introduction in Victoria, research reviewing their operation has provided evidence that should be very concerning to decision-makers.

For example, the NSW Ombudsman findings indicate move-on powers were used by police to target unintended behaviours, behaviours associated with homelessness and poverty, indicated significant over-representation of indigenous people and young people, and showed that the frequency of use of move on powers actually corresponded with increases in the number of charges for public space offences.<sup>3</sup> This runs contrary to the justification of pre-emptive public order offences and police powers as an alternative to arrest through enhanced capacity to diffuse situations prior to charges being laid, and as being necessary to enable the peaceful enjoyment of public spaces by everyone. Empirical research conducted in Queensland in 2006 on impacts of move on powers on homeless communities should also be given consideration in this context.<sup>4</sup>

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<sup>1</sup> Eckersley, R & Reeder, L *Australia 21 Shaping the Future: Violence in Public Places – Explanations & Solutions*, (December 2008)

<sup>2</sup> *Ibid*, p 12

Prevailing strategies for management of violence and disorder in Australia are primarily symbolic and they're not actually intended to affect industry or profitability or to disturb... the slumber of ineffectual regulatory institutions... Why are we surprised that, if we've handed alcohol over into a night time economy and made the economic imperative so strong, our health imperative has suffered?

<sup>3</sup> NSW Ombudsman Policing Public Safety Report (November 1999)

[http://www.ombo.nsw.gov.au/publication/PDF/other%20reports/PolicingPublicSafety\\_Nov1999.pdf](http://www.ombo.nsw.gov.au/publication/PDF/other%20reports/PolicingPublicSafety_Nov1999.pdf)

<sup>4</sup> See also Monica Taylor & Tamara Walsh 'Nowhere to Go: The Impact of Police Move On Powers on Homeless People in Queensland', The University of Queensland, (November 2006)

Considering the apparent failure to engage with these evidence bases, there is no reason whatsoever to think the Victorian experience will run contrary to the experiences of other jurisdictions in Australia. Any tacit assumption that the police will use discretion to deal with 'undesirables' only is completely unacceptable, and reinforces the importance of protecting human rights of minority groups as the mark of the human rights compliant society.

It is our further submission that the terms of the powers are so broad as to encourage arbitrariness and do not place community members in the position of being able to obey the law and avoid punitive interference from the police. This is not a healthy approach for police members to develop accountability in their own methodology and approach, and carries a very serious danger of creating innumerable unnecessary sites of antagonism, long-term breakdown in community relationships with police, and a generally decreased sense of safety in public places.

Many complaints by community members of what they regard to be excessive use of police and inappropriate exercises of discretion relate to precisely this kind of context. For example, the charge of drunk in a public place is a charge that is of necessity applied in a discretionary fashion: that is, there is no specific amount of alcohol that need be consumed, the determination of drunkenness is based on the perception of the relevant member only (and very difficult to refute), and there are no peripheral disorderly conduct requirements that need be shown. Conceivably any person exiting a licensed premises could be charged with this offence provided they had consumed alcohol and the relevant determination is made.

Persons charged on a discretionary basis who do not have an awareness they are engaging in criminal conduct are more likely to be affronted by police approach and react in a manner that is not compliant. Further charges of resist police, use offensive language, assault police often accompany this relatively innocuous charge. Additionally the operational safety of members is put at risk where there are not clear guidelines about the appropriate manner to engage and exercise discretion.

Successive government inquiries have recommended that public drunkenness offences be taken off the books as archaic, arbitrary, class based, discriminatory, irrational and racist in operation. Health approaches such as sobering up centres and associated police powers and protocols have been recommended in their place.

Central and still valid today are criticisms and data indicating public order breaches of the law lead to the most examples of poor engagement between police and community members. We reiterate, many of these cases will include high levels of risk and use of force, and will engage ordinary people in criminal justice processes for conduct that should not rationally be regarded as criminal.

Considering alternative approaches to enhancing community safety should be a priority in light of existing evidence.

We cite in this regard the OPI report into Use of Force July 2009 citing urgent concerns in relation to the failure by senior management in Victoria Police to adopt safe de-escalation strategies as opposed to forceful responses in policing activity.<sup>5</sup> A failure to engage with communication based responses where success may be measured by avoiding or minimising the use of force is also clearly identified. These trends will in our view be reinforced by the new powers, which entrench and endow with legal authority the 'might is right' approach.

We submit that community safety should be balanced against these extensively evidenced observations and concerns. Symbolic handovers of power to police are an entirely inadequate display of commitment to addressing excessive alcohol consumption and violence, and have counterproductive impacts in terms of accountability in policing, community safety and perceptions of safety, and human rights.

### **Protecting human rights and improving perceptions of safety**

These laws are described as precipitated by a crisis in community safety. This crisis is not clearly evidenced by any means, and the media has played a significant role in generating perceptions. What does the evidence show? Marginal increase in violence offences in the entertainment precincts, radical increase in lodgings for drunk, and overall crime drop. What can this tell us? As stated above, drunk in a public place is a discretionary offence that may be prosecuted as little or as much as is deemed necessary. Planning and regulation failures are partly responsible for increased prosecutions in the ICEPS. Cynicism might suggest a funding push from Victoria Police would not be out of the question either.

What responses should responsible government be involved in? We submit government should be involved in responses that maximise the safety of the community. These laws fail dismally. Failure to comply with basic human rights obligations is clear evidence of this. More appropriate approaches would involve better policing of licensed premises, and more appropriate planning around concentration, operating hours and alcohol service approaches. Whilst we acknowledge that these matters are being addressed in part, we submit that they should be the focus of increased funding and changes to the law. Additionally, a

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<sup>5</sup> Office of Police Integrity *Review of the Use of Force by and Against Victoria Police* (July 2009)

<http://www.opi.vic.gov.au/index.php?i=16&m=8&t=1>

Report responded to lack of commitment at a senior management level to building "a culture based on safety first and measuring success by avoiding or minimizing the use of force. Operational Safety Tactics training continues to rely heavily on operational safety equipment or hands on tactics rather than communication skills. While there are systems in place for monitoring or evaluating use of force, they are not currently being used properly... Under reporting of use of force is largely unchallenged." P 10

See also Office of Police Integrity *Review of Fatal Shootings by Victoria Police* (November 2005)

government concerned for the people would ensure their safe passage home, or into a sobering up facility where appropriate, and on a variety of measures to develop a responsible culture of alcohol consumption.

The commitment to the rule of law in a democratic state is fundamental to all of us maintaining basic freedoms and rights. Of grave concern is the increasingly entrenched acceptance of the validity of policing approaches designed to improve perceptions of safety; i.e. not to improve safety by reducing crime, but to improve perceptions of safety by eliminating perceived threats (including young people, homeless people, people of colour, people having too much fun, or the wrong kind of fun). Policing for perceptions of safety represents a fundamental breakdown in understanding the appropriate interaction between criminal justice processes and individual human rights, and a failure to learn from history as to the appropriate amount of trust that should be reposed by a community in state intervention.

It is one of the most fundamental rights that the same laws should apply to all peoples, and that a person's presence or thought is not criminalised on arbitrary bases. Freedom of movement, right to bodily integrity, freedom of speech, freedom of association – these freedoms are abstractions only until they are lost, when their political importance and central place in a democratic society become apparent. It sets an extremely dangerous precedent where recognised inconsistency with human rights is ignored in the political process of vying for law and order votes. Alcohol consumption and violence is a problem that cannot be solved by increased police powers. It requires complex approaches based on evidence, education, community involvement and some brave decisions requiring meaningful economic and social investment.