

Submission to the City of Yarra
Regarding the Proposed Introduction of
*Local Law No.8 (2009) – Consumption of
Liquor in Public Places*

Fitzroy Legal Service (September 2009)

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Introduction

Fitzroy Legal Service (FLS) has been delivering free and legally aided legal services in the City of Yarra for over thirty years. Presently FLS relevantly provides ongoing solicitor casework assistance in the areas of criminal law, victims of crime, fines, and police complaints. The work of FLS also encompasses legal education, community development, law reform and advocacy related to trends/ concerns identified by the service and the community it serves. FLS has a long term commitment to the principles of substantive equality and social justice extending to all aspects of service delivery.

FLS supports the decriminalization of public drunkenness, and is opposed to any attempts to further criminalize the same through local government enactment. FLS is supportive of community safety and crime prevention activities that value diversity, equality, human rights and community strengthening above the creation of new offences and expanded policing activity that are not evidence-based and by design are likely to lead to unfair and discriminatory outcomes.

When & why should local governments pass new laws?

The Australian Government Australian Institute of Criminology (AIC) articulates the important role of local government in crime prevention as being connected to localized knowledge and connectedness with communities/ local agencies. Through this positioning local government is identified as having a specific role and capacity in ‘the criminality reduction process.’¹

The AIC sets out as the framework and principles against which to evaluate local government crime prevention activities as follows:

For our crime prevention activities to work, they must be evidence-based and built on knowledge derived from research. Crime prevention activities, wherever they take place, should be accountable, and their impacts subject to rigorous assessment.

¹ Community and Local Government Crime Prevention (last modified 18 June 2009)
http://www.aic.gov.au/crime_community/crimeprevention

In order to reduce crime the following points should be remembered:

- The police alone cannot control crime and disorder
- No single agency can control crime and disorder
- Agencies with a contribution to reducing crime and disorder need to work in partnership
- Evidence-based problem solving approaches promise the most effective approach to reducing crime and disorder
- Problems of crime and disorder are complex, and there are therefore no panaceas
- Crime and disorder problems need to be understood in their local contexts and strategies thus need to be locally tailored.²

We acknowledge that Council is engaged in a broad range of initiatives that are rightly characterized as supporting criminality reduction processes. However, we have some concern that Local Law 8 should not be so characterized.

Given the diverse socio-economic makeup of Yarra, it is of concern that poorer residents will be disadvantaged over wealthier residents in their capacity to partake in the legal activity of consuming alcohol.

Many residents who rely on public spaces for social engagement opportunities have significant issues to contend with already, including mental health stressors, lack of community connectedness, and primary or tertiary homelessness.

The message to the community through the enactment as it stands is not from our perspective anti-alcohol, but rather anti-poverty.

For example, homeless residents within the catchment who consume alcohol will be placed in a situation where their economic/ environmental disadvantage by default causes them to commit offences under the proposed law.

² Ibid

As such, despite good intentions, the law (particularly as presently drafted) will not in our view function to minimize harm. Additionally, the proposed law is likely to have serious isolating and marginalizing impacts by formalizing exclusion through legal processes and policing directives of the some of the most vulnerable and disenfranchised members of our community.

Additionally, the psychological stress caused by infringement notices to members of the community experiencing socio-economic disadvantage should not be underestimated, and in our view should be cross referenced to Council's commitments to the health (including mental health) of the residents of Yarra.

Further, through local knowledge, relationships and engagement, and in particular through the Community Consultation Processes engaged in, Council will be aware that there is a strong impetus from the residents of Yarra to preserve diversity, tolerance, equality, fundamental freedoms and progressive policy approaches.

No relevant evidence base has been put forward, relating either to purported harm minimization impacts, or to purported crime prevention capabilities. It is our strong submission evidence has not been garnered to suggest that it is alcohol consumption in public places that causes the very real community harm through the commission of violence offences, hospitalizations, or driving under the influence. In fact, there is every indication that the bulk of legitimate community safety concerns derive from excessive alcohol consumption in the concentrated number of licensed premises presently located in the City of Yarra.

Regarding 'Public Drunkenness' & Decriminalisation

The Parliament of Victoria *Drugs and Crime Prevention Committee Inquiry into Public Drunkenness Final Report* (June 2001) ("the Final Report") provides a detailed and thorough analysis of issues and competing concerns relevant to Local Law 8. Whilst the

report is now dated, the central concerns dealt with in the scope of that inquiry have not to our view changed dramatically.

Included in the recommendations put forward following the public inquiry and submission process was a set of recommendations relating to decriminalization through repeal of the relevant provisions of the *Summary Offences Act 1966* (Victoria).³

These decriminalization recommendations were reliant on provision of funding for sobering up centres to relate to intoxication broadly, and powers to enable police to detain and deliver affected persons to the same where risks to health safety or property were identified.⁴ Additionally recommendations were put forward regarding: training and education of police members concerning public intoxication and the issues pertaining to public drunkenness;⁵ sobering up centres in the context of major events;⁶ community/school education programs of risks associated with alcohol consumption;⁷ improved public & other transport initiatives.⁸ Further recommendations of specific note in the context of that report are as follows:

Recommendation 7: A new public order offence must not be considered as a replacement for the repeal of public drunkenness offences.

Recommendation 33: Consideration should be given to ensure that municipal by-laws concerning drinking in public places do not have the potential to 're-criminalize' public drunkenness and the potential to further disenfranchise the Indigenous communities.

³ Final Report, Recommendations 3 - 5

⁴ Final Report, Recommendations 8 - 26

⁵ Final Report, Recommendations 27 - 32

⁶ Final Report, Recommendations 35 & 36

⁷ Final Report, Recommendations 37 & 38

⁸ Final Report, Recommendations 44 & 45

Seemingly influential in the context of the inquiry were considerations of discrimination, racism, prejudice, poverty, criminalization, and, broadly stated, injustice. Some of these concerns are articulated as below:

Historically, laws directed against public intoxication have been viewed as laws for the protection of moral and aesthetic values rather than for the protection of the public against any real danger.⁹

This theoretical position appeals to the sensitivities of the white middle class who foremost desire, a safe, clean environment shielded from unsightly reminders of the manifestations of poverty... The moral argument in favour of the imposition of a criminal sanction for this victimless offence on the ground of 'unseemliness' [can be criticized on Milliesian grounds]... Public drunkenness is such an act that is of no risk to others, unless associated with overt violence. Criminalising the act so as not to offend the moral virtue of the middle and upper class, is insufficient justification and somewhat hypocritical in light of the fact that their drunkenness is shielded by the private domain.¹⁰

One key piece of advice that [was given to City of Melbourne] was that it was critical to separate criminal or illegal behaviour from other behaviour that may be perceived to be anti-social. For example, it is not an offence for Indigenous people to meet and gather, but some people perceive it as being anti-social and a threat to their safety, or generalize that all Indigenous people are drunks. The point here is that community attitudes can influence policing so that Indigenous people who are gathering together or meeting in a public place may attract unnecessary police attention. We have attempted to address this issue through a process of legitimizing Indigenous peoples' right to meet and gather in the city.¹¹

⁹ Final Report, p 7

¹⁰ Ibid p 8

¹¹ Final Report, p 151

Included in the analysis of the Final Report are the recommendations of the Royal Commission into Aboriginal Deaths in Custody, and subsequent recommendations relating to decriminalization as being a move that “would greatly assist in reducing Indigenous contact with the criminal justice system.”¹²

In 1989 and 1990 the Law Reform Commission of Victoria Reports into Public Drunkenness also unanimously recommended the decriminalization of public drunkenness crimes.

We strongly support consideration of those matters raised in the scope of these inquiries and the recommendations put forward through them.

Policing of Alcohol Consumption to Prevent Related Harms

Of greatest community concern is the issue violence, and the relationship of violence with excessive alcohol consumption is clearly documented and need not be reiterated in this context. In December 2008 an expert roundtable was held for Victoria Police in relation to this issue, with findings reported in the attached report *Australia 21 Shaping the Future: Violence in Public Places – Explanations & Solutions*.¹³

This report identifies a range of possible 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. Citing from the report:

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

¹² Ibid p 64

¹³ Eckersley, R & Reeder, L – Report Attached

economy and made the economic imperative so strong, our health imperative has suffered?¹⁴

Recommendations deriving from that forum indicate law enforcement activities should be focused on ‘increased randomized policing of premises alongside targeted policing of venues identified as problematic.’¹⁵ It is further identified that –

A new set of indicators for anti-social behaviour should be established to better define what is being sought. Is it a reduction in violence, in severity, the type and number of offences within public places, a lowering in the involvement of young people, etc?

Responses to violence need to be tailored according to better developed typology of violence, the victims, the offenders, the impacts of the backgrounds, and geographical location. The typology should then be related to crime prevention modeling.¹⁶

Amongst the range of recommendations, which covered a broad range of concerns, community engagement in crime prevention is recommended not through the use of new laws.

The Central Business District has been raised on a number of occasions as being the forerunner in relation to Local Law 8. It is worth noting that Yarra is primarily a residential area, despite having an entertainment precinct, and is also an area of significant socio-economic diversity. Hence different considerations should apply.

Additionally the CBD is indicative of the failure of such enactments to have any significant effect on alcohol related violence.

It is our further submission that increasing police powers as set out in Local Law 8 is a panacea with significant associated risks. Risks to police members and the public where

¹⁴ *Shaping the Future*, p 12

¹⁵ *Ibid* p 21

¹⁶ *Ibid* p 21

alcohol is involved are broadly acknowledged across the spectrum of commentators. We have expressed concerns regarding escalation where laws perceived by members of the public to be unjust/ unfair are enforced. We cite most recently in this regard the Office of Police Integrity *Review of the Use of Force by and Against Victoria Police* (July 2009). In this report concern is expressed regarding the 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.”¹⁷ Instead

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.¹⁸

We raise this report as independent evidence bearing our concerns regarding criminalization processes around otherwise benign activity (i.e. not in breach of existing laws relating to violence, property damage, or even drunkenness). It is our view that the concerns raised by OPI regarding Victoria Police members own risk management failures should be balanced against the community risk management concerns Council is attempting to respond to in adopting Local Law 8.

Conclusion

We are concerned that council should rely on accurate evidence bases and take a balanced view in adopting community safety measures. The focus of this submission has been to point to other sources of information that we believe may have credibility in influencing Council beyond the views put forward by FLS alone.

Should a decision be taken to adopt Local Law 8 we are supportive of the distinction between day and night time drinking that Council has previously indicated it would support. It is our recommendation that such differentiation be included in the body of the law itself. The reasoning behind this is so that any change is subject to the appropriately

¹⁷ *Shaping the Future*, p 12

¹⁸ *Ibid* p 12

rigorous review and debate. We also recommend that strong protocols and formal reviews are put in place to ensure the enforcement of the law does not result in discriminatory impacts. However, we remain opposed to the enactment of Local Law 8 for the reasons set out above.

Media representations drawing relationship between Local Law 8 and funding for community based services for local Indigenous community are in our view unfortunate, as the two issues should be treated as conceptually and practically distinct.

Again we express our sincere gratitude for the opportunity to make submission on this important law and order issue.