

Submission to the Scrutiny of Acts and Regulations Committee – Summary Offences and Control of Weapons Acts Amendment Bill 2009

Fitzroy Legal Service (November 2009)

About Fitzroy Legal Service

Fitzroy Legal Service (“FLS”) is a community legal service dedicated to serving community members with limited financial resources or other vulnerability in the legal system. We operate a free legal advice service five nights per week, a busy criminal law practice, and advocacy comprising community legal education, policy/ law reform work and community development activities. FLS has a longstanding commitment to work around police accountability issues, community access to public spaces, and impacts of discriminatory policing and laws on vulnerable communities.

Background to passing of Summary Offences and Control of Weapons Acts Amendment Bill 2009 (‘the Bill’)

As you will be aware, the introduction of this Bill has been legitimised as ‘a pre-emptive tool designed to diffuse a situation and to ensure that members of the public can peacefully enjoy public places’.¹ More specifically, the need for the Bill has been linked to increased public spaces offences in the central business district and other entertainment precincts, as well as the existence of similar police powers in other jurisdictions.²

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 note the most significant increase (against an overall decrease in crime rates in Victoria, including crimes against the person) is in the Behaviour in Public offence category, with an increase of almost 400% in the central business district region.³ We note also the increase in lodgings into police custody for drunk in a public place.⁴

Nevertheless, it is our unequivocal submission that the terms of the powers and offences proposed are so broad as to vest discretions in police members that will tend to arbitrary application. As you will be aware, this encourages discriminatory profiling, facilitates

¹Explanatory Memorandum to Bill, 10 November 2009, p 2

² Ibid.

³ Crime Statistics 2008/2009, Victoria Police, 9 August 2009, p 4. Recording of public behaviour offences has increased by 92%, with a 394.6% increase in Region 1, linked by Victoria Police to the introduction of the Safe Street Task Force and the introduction of Penalty Infringement Notices offences ‘Behaves in a riotous indecent offensive or insulting manner’ and ‘Uses profane indecent or obscene language or insulting words’ as of July 2008.

⁴ Ibid.

unjust impacts, and further, does not place community members in the position of the able to obey the law and avoid punitive interference from the police.

This is a significant community safety concern, particularly where people (including children) may be subjected to: strip searches in the absence of any reasonable suspicion; move on powers in the absence of any ostensible misconduct or intention to engage in misconduct; disorderly conduct offences in the absence of any ostensibly harmful intention or action.

We believe passage of this Bill would have deleterious effects on as regards respect for human rights, health, community, tolerance and diversity.

We further submit that this Bill does not involve an appropriate delegation of power to police members in improving accountability in their own methodology and approach, and will result in the creating innumerable unnecessary sites of antagonism, long-term breakdown in community relationships with police, and a generally decreased sense of safety and security in public places.

Non-compliance with Charter obligations sounds clear alarms regarding the objective failure to reach an appropriate balance through the terms of this Bill between law and order objectives and the fundamental rights and freedoms of ordinary Victorian citizens.

Additionally we submit that, in our experience, most community complaints and concerns regarding inappropriate or excessive use of force by Victoria police members relate to precisely the public order/ perception of safety context.

For example, the charge of drunk in a public place is by its nature an offence prosecuted pursuant to exercise of police discretion: that is, no specific amount of alcohol 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.

An increase or decrease in prosecutions alone is not evidence of changing public behaviour. Additionally persons charged on a discretionary basis often do not believe they are doing anything wrong, and as a result 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, and de-escalate situations where alcohol has been consumed. Further to concerns that these 'minor' offences often involve high levels of risk and use of force is the concern that these processes will engage ordinary people in criminal justice processes for conduct that should not ordinarily 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.⁵ 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.

It is our submission that 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.

In relation to the use of move on powers in other jurisdictions 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.⁶ 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. It is consistent with patterns evident in Victorian crime statistics cited above also. Empirical research conducted in Queensland in 2006 on impacts of move on powers on homeless communities should also be given consideration in this context.⁷

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

⁵ 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)

⁶ NSW Ombudsman Policing Public Safety Report (November 1999)

http://www.ombo.nsw.gov.au/publication/PDF/other%20reports/PolicingPublicSafety_Nov1999.pdf

⁷ 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)

protecting human rights of minority groups as the mark of the human rights compliant society.

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. 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. Government failure to engage in meaningful consultation with community around laws that may affect that thousands of ordinary Victorians is unacceptable, and the passing of this Bill should be delayed to permit such processes to occur and appropriate safeguards to be canvassed.

We are grateful for the opportunity to address the Committee Members on the matter of this Bill.

Sincerely,
Fitzroy Legal Service