

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

Friday November 20th, 2009

Dear Committee Members

Summary Offences and Control of Weapons Acts Amendment Bill

The Youth Affairs Council of Victoria (YACVic) holds very serious concerns regarding the introduction of the *Summary Offences and Control of Weapons Acts amendment Bill 2009* (the Bill). While YACVic recognises and shares the concern of Government and the broader community regarding violence, we believe that the Bill is inconsistent with human rights in the *Charter of Human Rights and Responsibilities Act 2006* (the Charter).

YACVic notes that the Government has issued a Statement of Compatibility acknowledging that some of the limitations on human rights are neither 'reasonable' nor 'demonstrably justifiable' but seeks to pass the law despite this assessment. It is clear that this legislation is incompatible with human rights and that should it be accepted as law will contain provisions that breach rights protected by the Charter.

YACVic would like to highlight the following ways in which the Bill is incompatible with human rights and the Charter:

Police being able to search any person in designated areas:

Police will be able to search *any* person in designated areas, when the police officer has not formed a reasonable suspicion that the person is carrying a weapon.¹ The Government admits that this provision is incompatible with the rights not to have privacy unlawfully and arbitrarily interfered with.²

Powers to search children:

Police powers to search will include searching children of any age, which the Government admits is inconsistency with the rights of the child, without discrimination, to such protection as is in his or her best interests.³ Surely we

¹ See proposed section 10G of the Bill.

² Section 13(a) of the Charter.

³ Section 17(2) of the Charter. See also Statement of Compatibility in Hansard, Thursday 12 November 2009, pp 69-70.

are able to make legislation in Victoria to curb violence without infringing on children's rights.

Move on powers:

Move on powers in Item 3 of the Bill may be applied in a discriminatory way. They deliver unjustifiable broad powers to police to 'move on' members of the committee who are deemed 'likely to breach the peace' or 'is likely to endanger the safety of other persons' but who have not necessarily engaged in any dangerous or criminal behaviour. Police discretion in these cases is likely to reflect community based prejudice relating to people 'deemed likely to breach the peace', thereby targeting population groups such as young people, Indigenous people or people who are homeless.

Research on 'move-on' powers in NSW illustrate the way in which these powers are targeted. The NSW Ombudsman reviewed the powers granted to police in the NSW Summary Offences Act 1988, to give direction to a person or persons to move on. The review found that the powers were overwhelmingly utilised to direct young people and Indigenous people to move on. The report of the review stated that almost half (48%) of the people issued with directions to 'move on' were under the age of 17.⁴ It also noted that a high proportion (22%) of people given directions to 'move on' were Aboriginal or Torres Strait Islander. If those Aboriginal or Torres Strait Islander people given directions, over half (51%) were under the age of 17.⁵ It is of great concern to YACVic that move on powers would essentially criminalise behaviour that that may not be conducted in order to deliberately breach the peace or endanger others.

No exemption for peaceful protest:

There is no exemption for peaceful protests applying to the random search powers. Accordingly, these powers breach the rights of freedom of association and freedom of expression in the Charter.⁶

It is also of serious concern to YACVic that, given the potential for the introduction of such broad police powers, there has been no community consultation conducted in the development of this Bill. Community Consultation may have highlighted to Government what are likely to be unintended consequences of the introduction of this law in the discriminatory way in which these powers may be applied.

It will be very difficult for the community to have confidence in the Governments' intention to meaningfully consider human rights and its obligations under the Charter in the development of policy if this legislation is passed as it currently reads. It requires substantial review and redrafting in order to meet standards set out in the Charter and expected by the community.

Further, we believe passing this Bill when it so clearly contravenes the Charter devalues the role of the Charter in Victoria and calls into question why the Government requires a Compatibility Statement if they ignore the results of such a test where it is politically expedient.

⁴ NSW Ombudsman, (1999). *Policing public safety: Report under S.6 of the Crimes Legislation Amendment (Policy and Public Safety) Act 1998*. p.229.

⁵ NSW Ombudsman, (1999). *op.cit.* p.230.

⁶ Sections 15 and 16 of the Charter.

YACVic does not support this Bill, however we make the following suggestions in terms of changes that can be made to the Bill to minimise the negative impact that it may have. The Bill may be improved by:

- Inserting a minimum age to protect children below that minimum age from being subject to random police search powers.
- Requiring any 'designated areas' in the Bill to be within the vicinity of a licensed premises to ensure that the Bill does not unduly target homeless people sleeping rough or other vulnerable cohorts of the community in their use of public space.
- Require move on orders to be put in writing and/or subject to review.
- Removing the references to powers granted to police to give a direction to a person or persons 'likely to breach the peace'; 'likely to endanger' or 'likely to cause injury'. This will assist to ensure that the legislation does not have the effect of criminalising behaviour that is not intended to be detrimental to the peace or safety of others.
- Providing that data collected in relation to the giving of directions by police be detailed to enable effective analysis of how the powers are being used and who they are being used on, for example, data should record the age, background, area in which the direction was made, amongst other details.

Further, we suggest that if the Victorian Government is serious about reducing alcohol related violence it focussed its attention on policing the responsible service of alcohol and on preventative measures such as anger management, behaviour modification programs and drug and alcohol programs for young people.

YACVic would be very happy to discuss with you in more detail our very serious concerns regarding this Bill. Please contact Jen Rose, Manager of Policy and Projects on 9267 3722 should that be of assistance.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Georgie Ferrari', with a horizontal line underneath the name.

Georgie Ferrari
CEO