



YOUTH ADVOCACY CENTRE ^{INC} a community legal & welfare service for young people

UNDER 17? | LEGAL HASSLES? | GENERAL HASSLES? | PROBLEMS AT SCHOOL OR HOME? > www.yac.net.au

196 Newmarket Rd, Wilston QLD 4051 ph 07 3356 1002 fax 07 3356 3002

19 September 2011

LAPCSESC
Police Powers
Submission 003

Research Director
Legal Affairs, Police, Corrective Services and Emergency Services Committee
Parliament House
George Street
BRISBANE QLD 4000

By email only: lapcsesc@parliament.qld.gov.au

Dear Sir or Madam

**RE POLICE POWERS AND RESPONSIBILITIES AND OTHER LEGISLATION
AMENDMENT BILL 2011**

I am writing to submit comments on the Bill currently before the Committee for consideration. I enclose a copy of our earlier submission, for inclusion in your deliberations. I welcome this opportunity for further community feedback, as we understand that this Bill was not widely consulted upon in the initial stages of drafting.

Our organisation has commented only on the proposed insertion of section 53C: pat-down search of a minor.

The Youth Advocacy Centre supports a health promotion-based rather than a police-based response to underage drinking. Section 53C is likely to increase adverse interactions between young people and the police but fear that this increased power in the hands of the police will not in fact decrease underage drinking.

Further, the proposed amendment is bound to be difficult for police officers to interpret and the 'reasonable suspicion' element is liable to be interpreted very differently by different officers, leading to uncertainty for young people.

I would welcome any opportunity to engage with the committee further on these issues and can be contacted on 07 3356 1002 or at cristy@yac.net.au.

Yours faithfully

Cristy Dieckmann
Director

Youth Advocacy Centre

Submission on proposed amendments to the *Police Powers and Responsibilities Act*



YOUTH ADVOCACY CENTRE INC

May 2011

Youth Advocacy Centre

Youth Advocacy Centre (YAC) is a community legal and welfare centre which offers legal and welfare assistance to young people between the ages of 10 and 17. The Centre's services are largely provided within Brisbane, with occasional assistance to young people in other areas of the state. The nature of the Centre's work ranges from legal advice and representation, to education, counselling, family mediation, and support for young people around issues such as accommodation, education and income. The Centre also participates in law and policy reform activities.

YAC strongly supports the need for greater community consultation when amendments such as these are being proposed. It would be particularly worthwhile to involve young people in this consultation process so as to make it more likely that any changes to police powers are supported by the community intended to be protected by the changes.

Structure of this submission

This submission deals only with the proposed section 53C: *Power to conduct pat-down search of minor.*

This submission will include comments on the following:

- preliminary comments on alcohol use by young people;
 - the importance of bodily integrity, as it relates to young people;
 - the likelihood of increased adverse interaction between police and young people as a result of the proposed amendments.
- This comment also highlights the lack of public interest in having increased cause for police interaction with young people;
- the lack of clarity of the proposed amendment and the likelihood of it being misunderstood or misused by General Duties officers; and
 - The application to young people 17 years of age.

Preliminary: alcohol use by young people

Current statistics show that around 75% of people have drunk alcohol by the time they turn 18.ⁱ YAC does not support underage drinking, but recognises its widespread existence. There are a number of public policy strategies aimed at reducing underage drinking,ⁱⁱ and YAC's view is that the proposed amendment is not likely to significantly contribute to that aim. The proposed amendment would increase interaction between police and a broad range of youth, many of whom would never otherwise have adverse

contact with police. The amendment is directed towards a punitive rather than preventative strategy for reducing underage drinking.

YAC supports a health promotion frameworkⁱⁱⁱ in relation to underage drinking, rather than a policing framework. The NSW Government took this approach in its Youth Alcohol Plan (2001-2005) and noted that "Proactive involvement of police in addressing these problems and educating the community about the issues will help reduce inappropriate demands on police to respond to these matters." YAC subscribes to that view and advocates for an increase in awareness-raising rather than punitive measures.

Importance of bodily integrity

Young people should be protected from unnecessary physical intrusion. Adolescence is a vulnerable stage of development during which young people experience significant physiological changes specifically related to sexuality. This results in an increased sensitivity to invasions of their bodily integrity. Any perceived threat to their bodily integrity may create anxiety beyond what an adult might feel during a pat down search. A young person being searched by police could certainly perceive the action as intrusive and threatening, and so this should only occur with a compelling

reason. We note that there are already certain powers under section 29 *PPRA*.

YAC suggests that the proposed amendment is not in keeping with the Charter of Youth Justice Principles under the *Youth Justice Act 1992* and while the *PPRA* is a separate piece of legislation, it is submitted that when dealing with youth-specific provisions, the Charter should be taken into account no matter where the provision may be inserted.

Increased police interaction with young people

Convention obligations

The *UN Convention on the Rights of the Child (the Convention)*, to which Australia is a signatory, says at Article 16:

“No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attack on his or her honour and reputation.”

The addition of the phrase ‘reasonably suspects’ does not necessarily prevent a search from being arbitrary, and as such, the proposed section 53C is inconsistent with Australia’s obligations under the Convention.

Antrum points out that “police historically have a poor record on exercising discretion on the street and anywhere a young person comes into contact with an officer in the absence of an independent, knowledgeable adult.”^{iv} He also notes that searches are not harmless and frequently lead to other charges such as obstruct/assault police or offensive language. This has also been written about by Dr Tamara Walsh in her report *No Vagrancy*, where she reports that individuals experiencing poverty are often searched unnecessarily and sometimes unlawfully.^v

As has been established above, a young person who is searched under the proposed amendments may have a heightened sense of anxiety, which increases the chances that they will react in a way that risks them being charged with other public space offences, which of course would not be in the public interest.

There is no clear definition or guidance on what may amount to a ‘reasonable suspicion’ of an offence under section 157(2) *Liquor Act 1992*. There is a very real risk that youthful exuberance will be misinterpreted as intoxication. In addition to the physiological changes a young person experiences during adolescence, they are at a critical period of brain development. At the ages targeted, neurobiological brain imaging studies have demonstrated that

young people have a reduced ability to inhibit their behaviour.^{vi} Therefore while a lack of inhibitions in a public space may be an indication of intoxication in an adult, it is an expected aspect of adolescent behaviour. Such behaviour should not be enough to instil a 'reasonable suspicion', however it is unrealistic to expect or believe that police will receive adequate training around this issue. Therefore there is a high likelihood that this power will be over-used, intentionally or unintentionally.

Adolescent brain development and increased risk of adverse contact

During adolescence, a young person's Pre-Frontal Cortex (a part of the brain) has yet to fully develop, which results in a reduced ability to inhibit impulses and logically think through consequences of actions. In addition to this, there is an increased reliance on and utilisation of the Limbic Lobe and the Amalgydala. This area of the brain is responsible for processing emotions and activating flight or fight behaviour in response to anxiety and fear.^{vii}

In a situation where a young person is subjected to a pat-down search, they will experience a heightened sense of anxiety and potentially fear. An adult in this situation would engage their Pre-Frontal Cortex to manage their anxiety, inhibit any fight or flight behaviours and be aware of what actions may led to negative consequences. However a young person does not have the cognitive capacity to respond as an adult, and in this situation their

capacity may be further impaired by alcohol. Therefore there is a heightened risk that the young person will respond with a fight or flight response. This may result in several additional charges such as obstruct or hinder police or assault of a police officer.

As stated above, a majority of young people under the age of 18 consume liquor. The use of pat down searches to enforce the *Liquor Act* could act as a gateway into more serious offences and potentially result in a broad range of young people being involved in the youth justice system. While underage drinking is a valid community concern, increasing the potential for contact of young people with the youth justice system is not in the best interests of Queensland youth. In addition to this, it would result in an increased drain on police resources and the courts for the enforcement of a minor offence.

Public interest

The offence under section 157(2) *Liquor Act 1992* is of an extremely minor nature, as evidenced by the maximum penalty being only 25 penalty units. The potential consequences of allowing the search of juveniles in relation to such a minor charge is out of proportion to the seriousness of the potential offences which may be revealed as a result of the search, and as such is not in the public interest.

As mentioned above, it is also not in the public interest to have young people who would otherwise not be having adverse interaction with the police to be exposed to that interaction.

Practical difficulties/uncertainties

YAC questions the difference between the search allowed under the proposed section 53C and a 'frisk search' as defined in Schedule 6 of the *PPRA*. While it is not clear, it seems on a plain English reading of the provision that the proposed search under section 53C is broader than a 'frisk' search because it allows for the search of *any personal property in the minor's possession* (emphasis added). YAC questions why a different definition is needed and indeed, why a broader search is required for a minor charge such as this, as compared with the prescribed circumstances for searching persons (both adults and juveniles) under section 30 *PPRA*.

Police officers already have the power under section 53A to seize alcohol which they find. YAC submits that this section is adequate in the circumstances.

Young people who are 17 years of age

While the amendments to the *PPRA* are extending police powers to enforce pre-existing legislation, we highlight the absurdity of the application of the proposed amendments to 17 year olds. Currently these young people are defined for the purposes of the *Liquor Act* as minors and can therefore be subjected to the pat-down search as outlined in the *PPRA*. However in the event that such a search leads to a criminal charge, the young people will be charged and sentenced as an adult. It is unreasonable that in the state of Queensland, the law restricts 17 year olds from consuming alcohol under the *Liquor Act* as they are not yet an 'adult,' however they will be held to have the same criminal responsibility as an 'adult' within the criminal justice system.

Conclusion

The proposed addition of section 53C is ill-conceived and does not achieve the end which it purports to i.e. a reduction in underage drinking. Its potential consequences are far-reaching and while YAC does not support the addition of such a power, more community consultation is certainly required to ensure the impacts of any such proposal are not unduly negative. It is vital that we continue to treat any searching of juveniles as a serious infringement of their

rights. In the words of Michael Antrum, "...if you want to instil civic responsibility and an understanding of tolerance and respect, you must first demonstrate the same attitude."^{viii}

ⁱ Youth Action and Policy Association: Alcohol and Drug Fact Sheet -

<http://www.yapa.org.au/youthwork/aod/howmanypyp.php>, downloaded 12 May 2011

ⁱⁱ Office of Liquor and Gaming Regulation (2010) "Don't Kid Yourself" Campaign. Information can be found at

http://www.olgr.qld.gov.au/consumers/responsible_drinking/dont_kid_yourself/index.shtml. See also Department of Health and Ageing (2009) "Alcohol and Your Kids: A Guide for Parents and Carers."

Can be found at <http://www.alcohol.gov.au/internet/alcohol/publishing.nsf/Content/guide-parent>

ⁱⁱⁱ Health promotion framework is discussed in the NSW Youth Alcohol Plan, which can be found at http://www.health.nsw.gov.au/pubs/2002/pdf/yth_alcohol_plan.pdf downloaded 11 May 2011

^{iv} Antrum, M., (1998). "Frisky Business – Police, Search Powers and Young People", *Current Issues in Criminal Justice* 10(2): 197 at 198

^v Walsh, T., (2007). *No Vagrancy*, University of Queensland: 36

^{vi} Gogtay, et al. (2004). "Dynamic mapping of human cortical development during childhood through early adulthood", *Proc Natl Acad Sci* May 25, 101(21):8174-9. Epub 2004 May 17

^{vii} Professor Ian Hickie, (2011) Brain & Mind Institute, University of Sydney. *A Capacity for crime: adolescent brain development, mental health and youth crime*.

^{viii} Antrum, op cit, at 200