

23 September 2011

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LAPCSESC
Police Powers
Submission 007

Research Director
Legal Affairs, Police, Corrective Services and
Emergency Services Committee
Parliament House
George Street
Brisbane Qld 4001

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

Dear Sir/Madame

RE: Police Powers and Responsibilities and Other Legislation Amendment Bill 2011

Thank you for the opportunity to provide feedback on the Police Powers and Responsibilities and Other Legislation Amendment Bill 2011 ('the Bill').

The Aboriginal and Torres Strait Islander Women's Legal and Advocacy Service Incorporated ("ATSIWLAS") is a community legal centre that provides free legal advice, information, assistance, referrals and support to Aboriginal and Torres Strait Islander women in Queensland.

Following are our submissions in relation to the Bill:

1. Proposed Section 52A - Power to conduct pat-down searches when a person is detained for breaches of the peace and other related offences

The proposed widening of police search powers engages the right to privacy. Because public order offences are minor in nature the engagement with the right to privacy cannot be justified.

2. Proposed Section 53C – Power to conduct pat-down searches of minors

The Bill's Explanatory Notes justify the inclusion of Section 53C as a 'preventative measure that is likely to decrease the number of intoxicated minors who are taken into police custody'. There is no evidence that the introduction of this power will reduce the number of young people that are drinking alcohol.

Rather than expanding police powers, resources should be invested developing programs that aim to educate young people to make informed decisions about alcohol use. These programs should be informed by the views of young people – including Aboriginal and Torres Strait Islanders.

In all actions concerning children the child's best interest should be a primary consideration. Stopping, detaining and searching a child because a police officer suspects them of being in possession of alcohol will not usually be in the child's best interest.

No child should be subjected to arbitrary or unlawful interference with his or her privacy. Stopping, detaining and searching a child because a police officer suspects

them of being in possession of alcohol results in arbitrary interference with a child's right to privacy.

3. Proposed Section 420A – Responsibility relating to questioning of Aboriginal people and Torres Strait Islanders

ATSIWLAS supports the recognition that Aboriginal and Torres Strait Islander people are often disadvantaged when compared to the general Australian community. However, the language of proposed section 420A is patronising and paternalistic.

People should be able to self-identify as Aboriginal or Torres Strait Islander rather than be identified by a police officer's 'reasonable suspicion'. All people that the police intend to question should be asked by the police officer whether they identify as Aboriginal or Torres Strait Islander. The person should then be asked whether they would like a support person and/or lawyer to attend the interview. The person should be also asked whether they would like to have an Aboriginal or Torres Strait Islander police liaison officer present.

Police officers should be required to determine whether any person that they are questioning is able to comprehend the questions that they are being asked. This section appears to make a discriminatory assumption that Indigenous people are less intelligent than other people in the community.

ATSIWLAS submits that the word "Aborigine" should not be used. "Aborigine" is considered by Aboriginal people to be a derogatory and offensive term.

4. Proposed Section 488G – Making a DNA Sample Order

ATSIWLAS supports the requirement that the Childrens Court magistrate give consideration to whether taking a DNA sample from a child is in the best interests of the child. However, it is submitted that the child's interests should not be balanced against the public interest.

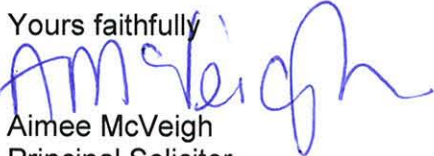
It is submitted that section 488G(1) should be amended to include a provision that a Childrens Court magistrate may make a DNA sample order in relation to the child only if it is satisfied on reasonable grounds that taking the sample is in the child's best interest.


When determining the child's best interest (rather than when balancing the child's interests with the public interest) the magistrate should have regard to the child's views and wishes.

In summary, our submission is that in some instances the proposed Bill does not, as claimed in the Bill's Explanatory Notes, ensure the protection of the rights of persons against whom police officers exercise their powers.

Once more, thank you for providing us with the opportunity to give feedback on the Bill.

Yours faithfully


Aimee McVeigh
Principal Solicitor


Colleen Wall
Executive Officer