



LAPCSESC
Police Powers
Submission 014

**Submission to the
Legal Affairs, Police, Corrective
Services and Emergency Services
Committee
on Police Powers and Other
Legislation Amendment Bill 2011**

September 2011

EXECUTIVE SUMMARY

The Police Powers and Other Legislation Amendment Bill 2011 seeks to introduce new provisions that provide Queensland police with additional powers to search minors in relation to s157(2) *Liquor Act 1992* (Qld). The legislative change is intended to reduce alcohol-related harm to minors.

The impact of the proposed changes can have a negative impact on young people and the criminal justice system. The impact on young people is that it does not adequately reduce alcohol-related harm, without integrating brief interventions such as the effective drug diversion programs.

DRUG ARM Australasia as an alcohol and other drug agency supports the need for young people to have access to alcohol and other drug education, assessment and treatment support to reduce harm and divert from the criminal justice system.

RECOMMENDATIONS

- A. To reduce harms to young people consuming alcohol it is recommended that any changes to police powers should incorporate the need for brief intervention programs such as drug diversion initiatives to prevent young people from reoffending. The PPRA should be amended to enable police officers to divert minors to diversion initiatives such as the Queensland Early Intervention Pilot Project (QEIPP).
- B. For the Queensland Government to invest funding in brief intervention programs that divert young people from the criminal justice system in relation to their alcohol related offences to QEIPP and other agencies equipped to deliver effective alcohol and other drug diversion.
- C. Expand funding to include liquor in the illicit drug diversion programs that are already in existence such as the Queensland Illicit Drug Diversion Initiative delivered by agencies including DRUG ARM Australasia to support minors who enter the criminal justice system as a result of liquor offences.

1. BACKGROUND

In Queensland it is an offence for a minor to consume liquor or be in possession of it in a public place or licenced premises which attracts up to 25 penalty units or equivalent to \$2,500 (s 157(2) *Liquor Act 1992*).¹ The Police Powers and Responsibilities and Other Legislation Amendment Bill 2011 (the Bill) contains clause 8 which relates to the insertion of new provisions, sections 53C and 53D to the *Police Powers and Responsibilities Act 2000* (QLD) (PPRA), to provide police with the power to stop and detain and to conduct pat-down searches of a minor where there is reasonable suspicion that the minor has committed or is likely to commit the offence of possessing or consuming alcohol in a public place or licenced premises. It should be noted there are exemptions to the offence for example where the minor is accompanied by a responsible adult who is responsibly supervising the minor (see ss 157(3)-(4) and 155(4)(b) *Liquor Act 1992*). In effect, where a minor is consuming or is in possession of alcohol in a public place and is responsibly supervised by a responsible adult, the minor has not committed an offence (however this does not negate the adult's potential criminal liability).

Sections 53 and 53A PPRA provides police with the power to seize liquor (inclusive of methylated spirits) but not to search.² Additionally, the PPRA in its current form and the *Police Powers and Responsibilities Regulation 2000* do not explicitly provide for "pat-down" searches (the frisk provisions relate to searches where police may ask for clothing to be removed or examining anything worn or carried as part of a search authorised by PPRA or relating to entering an event where a frisk search is lawful).³ It is apparent that the proposed amendment is attempting to provide police with greater powers where there is currently a shortfall in their authorised power to seize liquor that is not visible or potentially hidden in the minor's possession.

It is clear that there is a harm minimisation approach to the Bill. Harm minimisation refers to "policies and programs aimed at reducing drug-related harm"⁴. It was stated that the additional power to search a minor in relation to the liquor offence is a "preventative measure that is likely to decrease the number of intoxicated minors who are taken into police custody for their safety"⁵. In addition the intent of the amendment is to potentially "allow an earlier detection of liquor in the possession of minors in a public place, interrupt their consumption of the liquor and prevent further alcohol related offences"⁶. The intent of the amendment is consistent with a harm minimisation approach. However, the proposed provisions do not adequately address the intent to minimise harm to young people.

2. DRUG ARM AUSTRALASIA

DRUG ARM Australasia is a not-for-profit organisation that is committed to reducing harms associated with alcohol and other drug use. Harm minimisation is a core focus of DRUG ARM's operations through delivering alcohol and other drug and mental health services across Queensland including prevention and education programs, treatment including brief

¹ *Penalties and Sentences Act 1992* (Qld) s 5.

² *Police Powers and Responsibilities Act 2000* ss 53 and 53A.

³ *Police Powers and Responsibilities Act 2000* (Qld) ss569, 629.

⁴ Parliament of Australia, <<http://www.aph.gov.au/library/intguide/sp/illicitdrugs.htm>> accessed 22 September 2011.

⁵ Explanatory Memorandum, Police Powers and Responsibilities and Other Legislation Amendment Bill 2011 Explanatory Notes, p 3.

⁶ Police Powers and Responsibilities and Other Legislation Amendment Bill 2011 Explanatory Notes, p 3.

intervention through Community and Family Support Service (CAFSS), Street Outreach Service (SOS) and Queensland Illicit Drug Diversion Initiative (QIDDI). DRUG ARM supports both young people and adults through referrals from other agencies and the criminal justice system, interaction on the streets, requests from community organisations including schools and the corporate sector to deliver alcohol and other drug education programs and other services as needed.

DRUG ARM's submission is that the proposed new police power to search minors does not adequately address the need to minimise harm to young people consuming alcohol. Recommendations are provided with a focus on effective harm minimisation strategies that can address the issues associated with alcohol consumption amongst young people and divert them from potentially clogging up the criminal justice system.

3. LIQUOR OFFENCE AND HARM MINIMISATION

While the intent for the proposed change is to reduce alcohol-related harm to young people consuming or possessing alcohol in public places (including licenced premises), the new police powers to search and seize alcohol is not sufficient on its own to effectively reduce harm. The offence of a minor consuming or possessing liquor in a public place (which attracts a penalty of up to \$2,500)⁷ is punitive. The effect of the offence on a young person is a socio-economic one. The punitive nature of the liquor offence coupled with increased police powers to search minors is likely to negatively impact on already marginalised youth. The National Youth Commission identified that an estimated \$100 million is needed to adequately meet the existing need of homeless youth to provide access to necessary alcohol and other drug services.⁸ This means that there is a significant alcohol and other drug problem amongst marginalised youth who are more likely to be found in public places. Charging marginalised youth, without adequate support through appropriate harm minimisation strategies, is not likely to prevent them from re-offending, thereby potentially increasing the number of young people who enter the criminal justice system and defeating the intent to minimise alcohol related harm to young people.

While section 378 PPRA enables police to take persons to a place of safety to recover safely from the effects of being drunk, has an element of harm minimisation, it is not enough to prevent the young person from reoffending. In addition minors who are charged for the unlawful possession of liquor, while they are not caught consuming, have the potential to place a greater burden in the existing criminal justice system. These minors may also reoffend.

The impact of greater police powers to charge minors in contravention of the liquor offence is detrimental to the criminal justice system in that there is likely to be more young offenders entering the system, rather than reducing alcohol-related harm.

⁷ *Liquor Act 1992* (Qld) s 157 (2). *Penalties and Sentences Act 1992* (Qld) s 5.

⁸ National Youth Commission (2008), 'A Report of the National Youth Commission Inquiry into Youth Homelessness', p 4. Accessed 23 September 2011 <http://www.nyc.net.au/files/Australias_Homeless_Youth.pdf>

4. DIVERSION PROGRAMS

While alcohol can be confiscated in one incident and the minor charged with the offence, the minor is likely to re-offend without appropriate diversion from the criminal justice system to receive support for their alcohol consumption. As a comparison the *Police Drug Diversion: a study of criminal offending outcomes* report revealed that “the majority of people who were referred to police-based IDDI [illicit drug diversion initiatives] programs did not reoffend in the 12 to 18-month period after their diversion”.⁹ Although alcohol is not an illicit drug, there is strong evidence to suggest that brief interventions such as drug diversion programs are effective. If illicit drug offenders are supported through diversion programs to prevent reoffending, then a minor who has been charged for the liquor offence could also benefit from similar diversion programs.

On 20 November, 2009, Police Ministers agreed to adopt principles of best practice to reduce unsafe behaviours by young people. These principles were incorporated in the National Youth Policing Model which “advocates police participation in prevention and diversion strategies such as education and awareness programs, and through collaboration with the broader community and other sectors”¹⁰. This principle was then given voice in the fourth national strategy outlined in the model that emphasis be given to diversion and early intervention to prevent young people from entering the criminal justice system.

The increased support for diversion as an integral part of the criminal justice system is exemplified in Queensland’s move to divert young people to alcohol education programs. The Queensland Police Service has aligned with the harm minimisation strategy by implementing the Queensland Early Intervention Pilot Project (QEIPP) for young people under 17 years of age to attend a free alcohol education and awareness session with qualified health professionals. The PPRA does not currently provide for police officers to divert minors to this program. A solution which would be more aligned to reducing alcohol-related harm to minors is to require offending minors to be diverted to the program or a similar diversion program.

Therefore if PPRA intends to increase police powers to potentially charge more young people for alcohol related offences, then it would need to be integrated with effective diversion programs that aim to prevent young people from reoffending. Legislative changes need to be supported with increased investment in effective alcohol diversion programs or expand existing illicit drug diversion to include alcohol. Agencies such as DRUG ARM who are already delivering the Queensland Illicit Drug Diversion Initiative are experienced to deliver brief interventions to support young people and reduce alcohol related harm.

⁹ Payne, J., Kwiatkowski, M., Wundersitz, J. (2008), Australian Institute of Criminology, “Police drug diversion: a study of offending outcomes”, p x. Accessed 23 September 2011, Accessed 23 September 2011 <<http://www.aic.gov.au/documents/D/3/8/%7BD38D861B-B2C3-4D93-A877-A8EA3E5B4F10%7Drpp97.pdf>> .

¹⁰ Australian Attorney-General's Department ,2010. *National Youth Policing Mode*, p 3. Accessed 21 September 2011 <http://www.ag.gov.au/www/agd/agd.nsf/Page/Crimeprevention_NationalYouthPolicingModel>.