



commission for
children and young people
and child guardian

LAPCSESC
Police Powers
Submission 029

Level 17, 53 Albert Street, Brisbane Qld 4000
PO Box 15217, Brisbane City East Qld 4002
Ph: 07 3211 6700 Fax: 07 3035 5900
www.ccypcg.qld.gov.au

Telephone: 07 3211 6700
Reference: SPRP/DN41259

23 SEP 2011

The Honourable Dean Wells MP
Acting Chair
Legal Affairs, Police, Corrective Services
and Emergency Services Committee
Parliament House George Street
BRISBANE QLD 4000

Via Email: lapcsecs@parliament.qld.gov.au

Dear Mr Wells

Thank you for the opportunity to provide comment on the Police Powers and Responsibilities and Other Legislation Amendment Bill 2011.

Please find attached a submission from the Queensland Commission for Children and Young People and Child Guardian (the Commission).

The Commission would like to place a copy of this submission on its website, as making Commission work publicly available is one way of demonstrating accountability to the children and young people it represents. It would be greatly appreciated if you could advise me if you do not wish for our submission to be placed on the Commission's website.

Should your officers require any further information please contact my Principal Advisor, Susan Dwyer, on (07) 3211 6991 or susan.dwyer@ccypcg.qld.gov.au.

Yours sincerely

Elizabeth Fraser
Commissioner for Children and Young People
and Child Guardian

The Commission for Children and Young People and Child Guardian

promoting and protecting the rights, interests and wellbeing of all Queenslanders under 18

Advice to: Legal Affairs, Police, Corrective Services and Emergency Services Committee
Topic: Feedback on Police Powers and Responsibilities and Other Legislation Amendment Bill 2011
Date due: 23 September 2011

Thank you for providing the Commission for Children and Young People and Child Guardian (the Commission) with the opportunity to provide feedback on the Police Powers and Responsibilities and Other Legislation Amendment Bill 2011 (the Bill). The Commission has focused its feedback on issues specifically relating to or impacting upon children and young people.

Summary of the Commission's recommendations:

The Commission:

1. does not support the proposed extended police powers to conduct pat-down searches of minors suspected to be in possession of alcohol as this may have unintended negative consequences
2. recommends that in the event the proposed pat-down powers are introduced this needs to occur in conjunction with the implementation of additional protections in order to safeguard the rights and wellbeing of young people, and
3. supports the proposal to introduce provisions regarding taking DNA samples from children for the purposes of investigating or prosecuting certain child sexual offences but considers that the definition of 'child DNA sampling offence' requires clarification and should potentially be expanded.

1. Pat-down searches of minors

The Commission acknowledges the need to identify and implement effective preventative measures to reduce intoxication of minors and minimise harm arising from associated risky behaviours. However, the Commission does not support the proposed pat-down powers and is of the strong view that pat-down searches of minors will not be the most effective approach to change the drinking behaviours of young people, and may instead have unintended and negative consequences. The Commission proposes that a public health model focusing on engaging both young people and their parents would be a more effective approach towards addressing adolescent drinking behaviours.

The Commission recognises the significant and increasing community concerns regarding underage drinking (particularly binge drinking) culture in Australia and its consequences. The prevalence of risk-taking behaviours generally increases in adolescence and the likelihood of physical, social and emotional harm increases further when alcohol is also involved. More specifically, alcohol consumption as an adolescent is associated with physical injury, risky sexual behaviour, adverse behavioural patterns

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and academic failure¹. Research evidence also suggests that alcohol can adversely affect brain development in adolescence and young adulthood, and initiating drinking at an early age increases the likelihood of abusive, dependent and risky patterns of alcohol use and adverse physical and mental health conditions later in life². Of greatest concern, drinking has also been found to contribute to some of the leading causes of death among adolescents, including unintentional injuries, homicide and suicide³.

Nevertheless, recent research has also identified that the proportion of 12-17 year olds abstaining from alcohol has increased from 2007 to 2010⁴, and the number of young people engaging in both risky (more than 2 standard drinks per day on average) and low risk (no more than 2 standard drinks per day on average) drinking also decreased from 2007 to 2010⁵. Therefore, while research evidence does confirm the need for measures to be implemented to target adolescent alcohol use, it also identifies some promising trends in adolescent alcohol consumption over recent years.

It is understood that the pat-down search powers for minors are anticipated to decrease the number of intoxicated minors taken into police custody for their safety because statistics suggest that cautioning by police officers is successful in reducing re-offending among young people, arguably highlighting the effectiveness of early police intervention in unacceptable and anti-social adolescent behaviour⁶. While it is noted that statistics do suggest that cautioning by police officers is successful in reducing the incidence of re-offending among young people, some research also suggests that the particular circumstances and the way in which the caution is administered may impact on the efficacy of the caution.

¹ *Australian Guidelines to Reduce Health Risks from Drinking Alcohol*, National Health and Medical Research Council. Commonwealth of Australia, 2009.

² *Parenting influences on adolescent alcohol use*, Hayes, L., Smart, D., Toumbourou, J. W., & Sanson, A. Australian Institute of Family Studies, Research report No. 10, 2004; *Development of alcoholism: Interaction between heavy adolescent drinking and later low sense of control over work*, Hemmingsson, T. & Lundberg, I. *Alcohol Alcohol*: 36: 207–12, 2001; *Age at Drinking Onset and Alcohol Dependence: Age at Onset, Duration, and Severity*, Hingson, R. W., Heeren, T., & Winter, M. R. *Archives of Pediatrics & Adolescent Medicine*: 160 (7):739-746, 2006. It is also acknowledged in relation to mental health problems that this is a reciprocal relationship in which alcohol use increases risk of mental health problems but mental health problems can also exacerbate alcohol consumption: Brown & Tapert, 2004, as cited in *Australian Guidelines to Reduce Health Risks from Drinking Alcohol*, National Health and Medical Research Council. Commonwealth of Australia, 2009.

³ *Trends in youth alcohol consumption and related harms in Australian jurisdictions, 1990–2002*, Chikritzhs, T. & Pascal, R. National Drug Research Institute, Bulletin No. 6, 2004; *Binge drinking and associated health risk behaviours among high school students*, Miller, J., Naimi, T., Brewer, R., & Jones, S. (2007). *Pediatrics*: 119: 76–85, 2007.

⁴ *2010 National Drug Strategy Household Survey report*, Australian Institute of Health and Welfare. Drug statistics series no. 25, July 2011. An additional study also found that the proportion of 12-17 year old students drinking (including drinking at risky levels) were significantly lower in 2008 than in 2005 and 2002: *Australian secondary school students' use of tobacco, alcohol, and over-the-counter and illicit substances in 2008*, White, V. & Smith, G. Report prepared for Drug Strategy Branch, Australian Government Department of Health and Ageing, September 2009.

⁵ *2010 National Drug Strategy Household Survey report*, Australian Institute of Health and Welfare. Drug statistics series no. 25, July 2011.

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

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For instance, while research studies have found young people are less likely to have further contact with the justice system when cautioned compared to when appearing in court for a first offence, it has also been acknowledged that the impact of cautioning on further contact is likely to vary based on how the caution is administered and the particular circumstances of the caution⁷. Some have concluded that the evidence about the efficacy of diversionary measures is not consistent across situations⁸. Therefore, while the Commission is supportive of the use of diversionary measures in aiming to reduce young people's contact with the criminal justice system, it is not considered an effective approach in the circumstances to increase police powers to search young people (which in many instances may be perceived as a violation of their bodily integrity) in order to be able to issue a caution to the young people involved.

Consequently, it is considered far from a certainty that the proposed amendments will achieve the stated objectives of preventing adolescents from engaging in risky or inappropriate alcohol-related behaviours. Further, it is suggested that the proposed amendments may in fact have a negative impact in terms of adverse reactions from young people, such as physical or verbal outbursts or abuse towards police, which may in turn lead to increased criminalisation of young people and involvement with the justice system. Such concerns are particularly highlighted amongst Aboriginal and Torres Strait Islander young people who are already over-represented in the youth justice system, and who are likely to be at high risk of being adversely impacted by the proposed pat-down powers. Pat-down searches of young people may also potentially have a detrimental effect on young people's relationships with police more generally.

In the Commission's view, if prevention is the ultimate aim of the proposed pat-down search powers, this objective could be better achieved through a public health approach involving educating and engaging parents and consulting with young people, potentially reducing alcohol advertising and marketing campaigns, and providing services and resources to young people to address problematic alcohol use and associated behaviours, which are currently lacking. Despite the frequently held belief that parents have little influence on adolescents' alcohol use and that peer influence is more important, a considerable amount of research evidence suggests that parenting can have a significant influence on adolescent alcohol use. For instance, parental practices including permitting adolescents to drink when underage, poor behaviour management strategies such as harsh discipline and high conflict, lack of quality parent-adolescent relationships, parental alcohol consumption, and lack of parental monitoring are all associated with increased levels of adolescent alcohol consumption⁹.

⁷ *Police cautioning in Queensland: the impact on juvenile offending pathways*, Dennison, S., Stewart, A., & Hurren, E. Trends & Issues in Crime and Criminal Justice No. 306, Australian Institute of Criminology, Australian Government, 2006; *The use and impact of police diversion for reducing Indigenous over-representation*, Allard, T., Stewart, A., Chrzanowski, Ap., Ogilvie, J., Birks, D., & Little, S. Report to the Criminology Research Council, 2009.

⁸ Vignaendra & Fitzgerald, 2006, as cited in *Trends in juvenile detention in Australia*, Richards, K. Trends and Issues in Crime and Criminal Justice No. 416, Australian Institute of Criminology, 2011.

⁹ *Parenting influences on adolescent alcohol use*, Hayes, L., Smart, D., Toumbourou, J. W., & Sanson, A. Australian Institute of Family Studies, Research report No. 10, 2004.

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Young people have been found most likely to obtain alcohol from a friend, acquaintance or parent, and usually drink at a friend's home, party, or their own home¹⁰. Furthermore, adolescents tend to consume less alcohol if they obtain it from their parents compared to someone else, and when they drink at home, compared to at a friend's home or other social occasion¹¹. Although adult supervision of adolescent drinking tends to decrease with age¹², research indicates that there has also been a statistically significant decrease in the proportion of parents regularly buying alcohol for their 12-17 year old children from 2007 to 2010¹³.

Research has shown that when parents are aware of their adolescents' alcohol use and they actively engage with their adolescents in the purchase or provision of alcohol, then their adolescents consume less¹⁴. Unfortunately, despite a decrease in parents regularly buying alcohol for their teens in recent years, research evidence also suggests that parents' awareness of alcohol consumption by their adolescents is limited and their reports of their adolescent's alcohol consumption often differ significantly from actual adolescent consumption patterns¹⁵.

These findings indicate how arming parents (as well as adolescents) with sufficient information regarding alcohol consumption and the associated risks may present a valuable opportunity to impact upon alcohol consumption by youths without the need to introduce further police powers which may be perceived as infringing upon the rights and privacy of young people. Additionally, reducing alcohol advertising and marketing campaigns may also be another effective avenue for addressing problematic adolescent drinking, as evidence suggests that promotional alcohol advertising increases the likelihood that adolescents will start to use alcohol, and to drink more if they are already using alcohol¹⁶.

Nevertheless, despite the Commission's lack of support for these proposed amendments, in the event that the pat-down powers regarding minors are introduced, it

¹⁰ 2010 National Drug Strategy Household Survey report, Australian Institute of Health and Welfare. Drug statistics series no. 25, July 2011; *Australian secondary school students' use of tobacco, alcohol, and over-the-counter and illicit substances in 2008*, White, V. & Smith, G. Report prepared for Drug Strategy Branch, Australian Government Department of Health and Ageing, September 2009.

¹¹ *Australian secondary school students' use of tobacco, alcohol, and over-the-counter and illicit substances in 2008*, White, V. & Smith, G. Report prepared for Drug Strategy Branch, Australian Government Department of Health and Ageing, September 2009; *Parenting influences on adolescent alcohol use*, Hayes, L., Smart, D., Toumbourou, J. W., & Sanson, A. Australian Institute of Family Studies, Research report No. 10, 2004.

¹² *Australian secondary school students' use of tobacco, alcohol, and over-the-counter and illicit substances in 2008*, White, V. & Smith, G. Report prepared for Drug Strategy Branch, Australian Government Department of Health and Ageing, September 2009.

¹³ 2010 National Drug Strategy Household Survey report, Australian Institute of Health and Welfare. Drug statistics series no. 25, July 2011.

¹⁴ *Parenting influences on adolescent alcohol use*, Hayes, L., Smart, D., Toumbourou, J. W., & Sanson, A. Australian Institute of Family Studies, Research report No. 10, 2004.

¹⁵ *Parenting influences on adolescent alcohol use*, Hayes, L., Smart, D., Toumbourou, J. W., & Sanson, A. Australian Institute of Family Studies, Research report No. 10, 2004.

¹⁶ *Impact of alcohol advertising and media exposure on adolescent alcohol use: A systematic review of longitudinal studies*, Anderson, P., de Brujin, A., Angus, K., Gordon, R., & Hastings, G. *Alcohol and Alcoholism*: 44(3): 229-243, 2009; *National Binge Drinking Campaign – Evaluation Survey April 2009*, Ipsos-Eureka. Prepared for Department of Health and Ageing, April 2009.

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is considered imperative that protections are also implemented in order to safeguard the rights and wellbeing of young people involved. For instance, it is noted that general safeguards for searching people in the existing *Police Powers and Responsibilities Act 2000* require an officer searching a person to ensure minimal embarrassment to the person being searched (as far as reasonably practicable), take reasonable care to protect their dignity, and the officer must be of the same sex or, if there is no officer of the same sex available, someone of the same sex as the person being searched acting at the direction of the police officer. Given the inherent vulnerabilities of young people, the Commission considers that further consideration needs to be given to who may carry out a pat-down search of a young person and the location and who may be present during such a search.

More specifically, it is not considered appropriate for a pat-down search to be conducted by a police officer of the opposite sex to the young person being searched, and it is suggested that clarity be provided around what is proposed in instances in which a same sex officer is not present (that is, who else would be involved in conducting such a search and how would they be appropriately trained to carry out such a search given the sensitivities of searching a minor). Further, although it is understood a pat-down search would involve outer clothing, conducting a search in a public area in view of other people may be likely to further increase the likelihood of angry or violent responses from young people. It is therefore suggested that clarification needs to be provided regarding young people's rights in relation to being searched, including the appropriateness of a right to have an independent adult present during a search, and how these rights may be communicated to young people. Finally, the Commission considers it critical that the effects of implementing pat-down search powers be monitored and reviewed regularly to ascertain the efficacy of this approach, both in terms of positive outcomes (reducing alcohol-related violence among youths and the number of intoxicated minors taken into police custody) and negative outcomes (including any increase in young people being charged with assault or similar offences against police).

2. Taking DNA samples from children to investigate or prosecute sexual offences

The Commission supports the proposal to introduce provisions allowing a police officer to apply to a Childrens Court magistrate for a DNA sample order authorising a DNA sample to be taken from a child for the purposes of investigating or prosecuting certain child sexual offences. It is noted that a DNA sample only relates to taking a sample of hair or a sample by swabbing the child's mouth, and that the police may take a photograph of the child to verify the identity of the child from whom the sample was taken, and does not include invasive procedures which would likely frighten, stress or intimidate the child. In line with the Commission's objective to promote and protect the rights, interests and wellbeing of children and young people in Queensland, the Commission considers that these proposed amendments may make a positive contribution towards acknowledging and appropriately responding to certain suspected child sexual offences.

However, the Commission considers that the definition of 'child DNA sampling offence' may require clarification. It is noted that the proposed definition specifies that '*child DNA sampling offence means any of the following offences against the Criminal Code that involves penetration of a penis into a person's vagina- (a) rape or incest, if the victim of the offence is a child; (b) carnal knowledge of a child under 16 years*'. This definition

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does not completely reflect the definition of rape under the *Criminal Code 1899*, pursuant to which rape includes carnal knowledge (including sodomy) with or of another person without that person's consent; penetration of the vulva, vagina or anus of another person to any extent with a thing or a part of the person's body that is not a penis without the other person's consent; and penetration of another person's mouth with the person's penis without the other person's consent.

By limiting the definition of 'child DNA sampling offence' to mean only offences that involve penetration of a penis into a person's vagina, other serious sexual offences that would fall within the meaning of rape under the *Criminal Code 1899* may not be captured, including penetration of the anus without consent, penetration of the other person's mouth with the person's penis without consent, or penetration of the vagina with a thing or part of the body other than a penis. In addition, the proposed definition does not cover other serious child sex related offences such as sexual assault of a child. It is unclear whether this limitation of offences is intentional, however the Commission recommends that this definition of 'child DNA sampling offence' be clarified and, to the extent possible, recommends that consideration be given to expanding the definition of 'child DNA sampling offence' to include additional child sexual offences.

Aside from this recommendation, given the serious nature of the offences involved, the proposed measures are considered appropriate to assist in establishing whether such an offence has been committed and, if so, to help in identifying the perpetrator. The Commission also supports the factors that have been incorporated in the proposed amendments that the magistrate must take into consideration in determining if a DNA sample order for a child is appropriate in the circumstances, so that specific consideration is given to the child's wellbeing and other relevant factors including the gravity of the offence, any physical, mental or emotional harm caused to the victim, and if there are any less obtrusive ways of obtaining evidence.

It is also noted that the police officer making the application to the Childrens Court must give a copy of the application to both the child and a parent of the child at least 7 days before the application is to be heard in the court and, if the child or parent attend, the court must consider hearing their views. However, while children and parents are advised of the application at this early stage, in the event that a DNA sample order is made, the Commission considers it would also be appropriate for young people and their parents to be advised of their rights in relation to the DNA sample being obtained. Importantly, no offence is created for the child's failure or refusal to comply with a DNA sample order, and the Commission welcomes this approach in the interests of avoiding any further potential victimisation of the child.

Please do not hesitate to contact Ms Susan Dwyer, Principal Advisor on 3211 6991 or e-mail susan.dwyer@ccypcg.qld.gov.au should any aspects of this advice require clarification.

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