Dear Committee Members,

Summary Offences and Control of Weapons Acts Amendment Bill

The PILCH Homeless Persons’ Legal Clinic (HPLC) is writing to express our grave concerns regarding the introduction of the Summary Offences and Control of Weapons Acts Amendment Bill 2009 (Bill)

The Bill has been introduced into the Victorian Parliament to ‘enhance police powers to tackle violence and disorder’. While there may be a legitimate need for the Victorian Government to take legislative or other action to combat violence in our community, the HPLC is extremely concerned that:

1. the Bill is inconsistent with fundamental human rights in the Charter of Human Rights and Responsibilities Act 2006 (Charter);
2. the Government has issued a Statement of Compatibility that admits that some of the limitations on human rights are neither ‘reasonable’ nor ‘demonstrably justifiable’ but wishes to pass the law anyway; and
3. there has been no consultation with the community during the development of the Bill or prior to its introduction to Parliament, despite the HPLC requesting such consultation several months ago.

These issues are discussed in more detail below.

1. Statement of Compatibility admits that the Bill breaches human rights

It is clear the Bill is incompatible with human rights in at least the following ways:

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

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1 See Statement of Compatibility in Hansard, Thursday 12 November 2009, p 64.
2 See proposed section 10G of the Bill.
3 Section 13(a) of the Charter.
Police powers to search will include searching children of any age, which the Government admits is inconsistent with the right of the child, without discrimination, to such protection as is in his or her best interests.4

Move on powers in Item 3 of the Bill may be applied in a discriminatory way. For example, the police will have power to give directions to people to 'move on' in circumstances where police believe that a person 'is likely to breach the peace' or 'is likely to endanger the safety of other persons'. This involves granting police powers based on subjective predictions of future behaviour by individual police officers. The test for the exercise of the powers is far too broad, vague and arbitrary and means the powers will be prone to be applied in a discriminatory and disproportionate way against some of our most vulnerable community members, including people who are homeless, young people, Aboriginal people and people experiencing mental health issues. For example, in NSW 79% of all directives and 48% of all directions are issued to people under 17.5 This creates a law that is discriminatory and contrary to the right of every person to enjoy his or her human rights without discrimination, such as freedom of movement.5

There is no exemption for peaceful protests applying to the random search powers. Accordingly, it is arguable these powers breach the rights of freedom of association and freedom of expression contained in the Charter.7

The Statement of Compatibility expressly states that parts of the Bill are not compatible with human rights. This means that the Government admits that limitations on rights are not necessary, reasonable or demonstrably justified, as required by section 7 of the Charter. We consider that this sets a dangerous precedent for the introduction of non-compatible legislation and is contrary to the spirit of the Charter.

2. The new police powers don’t reduce crime

There is no empirical evidence to show that 'move-on' legislation does actually result in reductions in crime rates, in Australia or internationally.

Empirical research has been conducted in the United States into the effect of curfews, another tool used to regulate the use of public spaces. According to a major study of the effects of curfews on youth crime in 21 cities of 100,000 or more people:8

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4 Section 17(2) of the Charter. See also Statement of Compatibility in Hansard, Thursday, 12 November 2009, pp 69 and 70.
6 Sections 8 and 12 of the Charter.
7 Sections 15 and 16 of the Charter. In contrast, there is a specific exemption for peaceful protests in the amendments to the Summary Offences Act.
curfews cannot be shown to reduce youth crime or violent death over time or by locale, as cities without curfews showed the same patterns as cities that enforced curfews;

curfews may actually increase crime and reduce youth safety by occupying police time removing law-abiding youths from public space, leaving emptier streets and public places which urban planning experts argue are conductive to crime;

in the Monrovia neighbourhood of Los Angeles California, the crime rate did not decline after the introduction of curfews in 1994. More surprising, it declined only during the summer months and on school-year nights and weekends when the curfew was not enforced; and

in Vernon, Connecticut, police reported no instances of criminal activity among the youth they cited for curfew, so the effect was to remove law-abiding youths from the streets.

This research demonstrates the questionable effectiveness of removing people from public spaces in reducing crime rates.

Locally, Crime Prevention Victoria (CPV) suggests that anti-social behaviour can range from serious criminal offending such as assault, to non-criminal ‘inconsiderate’ behaviour such as playing music loudly in public. There is no empirical evidence to suggest that anti-social behaviour is reduced through the introduction of ‘move-on’ legislation.

The level of subjectivity and ambiguity of ‘anti-social’ behaviour and the real possibility that these powers will be mis-interpreted, despite its possible populist appeal, fails to justify the introduction of discretionary ‘move-on’ powers as a means to prevent such ‘anti-social’ behaviour.

In the context of begging, there is evidence suggesting that zero tolerance policing methods such as ‘move-on’ powers tend to either divert beggars to other geographical locations with a lesser police presence, or divert them into the commission of more serious criminal activity. The Clinic submits that this principle applies equally to general move on powers, particularly as there is no empirical evidence to show that ‘move-on’ legislation does actually result in reductions in crime rates, in Australia or internationally.

On the basis that move on powers cannot be shown to reduce crime, the HPLC opposes the introduction of the Bill.

3. The new powers will disproportionately effect people experiencing homelessness

A comprehensive study of 132 people experiencing or at risk of homelessness in Brisbane was conducted in early 2006 for a joint research project undertaken by the T.C. Beirne School of Law, University of Queensland, Queensland Public Interest Law Clearing House.

Homeless Persons’ Legal Clinic. The survey asked respondents to comment on the use of move-on powers against them, including the frequency of their use, the circumstances surrounding their use, and the efficacy of their use.

The key findings of the survey were:

- 76.5% of homeless people surveyed had been told to move-on one or more times in the last six months.
- Homeless people sleeping rough or in squats were most susceptible to being moved on; 90% respondents who were sleeping rough had been moved on in the last six months.
- 77.9% respondents who received a move-on direction indicated their behaviour or presence when directed to move-on was innocuous and unlikely to meet the threshold requirements for lawfully issuing a move-on direction.
- 85% respondents who had been told to move-on one or more times within the last six months were given nowhere in particular to go upon being issued with move-on directions.
- Concerns about police ‘chasing’ homeless people from one place to the next were raised throughout the research. Some respondents stated that it was often the same officers that followed homeless people throughout the day to ‘chase them away’.
- 40% respondents who were asked to move-on in the last six months were not given a time frame for doing so (as required under the relevant Queensland law and the Local Law).
- 71% homeless people who were given a move-on direction complied with direction when issued, without question or argument.
- Homeless people surveyed had little knowledge about what constitutes a lawful police move-on direction, indicating their vulnerability to abuse of the power by police.

People experience homelessness occupy public spaces out of necessity and are disproportionately impacted by move-on powers due to their lack of secure housing.\(^\text{12}\) It is well-recognised that Indigenous Australians\(^\text{13}\) and young people\(^\text{14}\) comprise a large proportion of Australia’s homeless population. Consequently, commentators agree that young people and Indigenous Australians are most likely to be moved on compared to other community members.\(^\text{15}\)

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\(^{15}\) See Monica Taylor and Tamara Walsh (eds), Nowhere to go: The impact of police move-on powers on homeless people in Queensland (2006) 152; NSW Ombudsman, above n 10.
4. **Lack of community consultation**

We are disappointed that the Government has not sought to consult at all with the communities affected by a Bill in circumstances which will unreasonably and unjustifiably infringe fundamental human rights.

The HPLC wrote to Police Minister Bob Cameron, requesting “the opportunity to meet with you to discuss these concerns, and ideas for more effectively and meaningfully addressing criminal and anti social behaviour in public spaces.” The Minister responded that:

> Victoria is the first Australian state to enact formal protection of human rights by introducing a Charter … [which] ensures human rights are valued and protected within government and the community. New legislation in Victoria including Bills, amendments to legislation and most statutory rules must have a Statement of Compatibility to advise Parliament on whether a Bill is compatible with the Charter …

Clearly, the Statement of Compatibility has failed this test, and we are disappointed with both the Minister’s response and the lack of follow-up on these comments. A consultation process would provide an opportunity for communities and individuals affected by the Bill to make constructive suggestions to ameliorate the harshest aspects of the Bill.

**Conclusion**

*The HPLC recommends that the Bill should not be passed in its current form.*

*The HPLC recommends that the Government should establish a consultative process to consider how to best address concerns about rates of violence in the community, whilst at the same time protecting the fundamental human rights of citizens, particularly people experiencing homelessness.*

Please contact me on (03) 8636 4408 if you have any queries.

Yours sincerely,

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