



Scrutiny of Acts and Regulations Committee
Parliament House
Spring Street
East Melbourne VIC 3002

By email: Andrew.Homer@parliament.vic.gov.au

3 February 2014

Attention: Andrew Homer

**Submission of the Federation of Community Legal Centres in respect of the
Summary Offences and Sentencing Amendment Bill 2013 (Vic)**

The Federation of Community Legal Centres (the Federation) is the peak body for the state's 51 community legal centres. The Federation notes that a number of other centres have made individual submissions in relation to the Bill, including the Human Rights Law Centre, Fitzroy Legal Service and Flemington Kensington Community Legal Centre. We endorse the submissions made by these centres and acknowledge the contribution of member centres in the preparation of this submission.

We are writing to express our concerns in respect of the amendments proposed by the Summary Offences and Sentencing Amendment Bill 2013 (Vic) (the Bill) currently before the Victorian Parliament.

Amongst other things, the Summary Offences and Sentencing Amendment Bill 2013 (the Bill) will amend the *Summary Offences Act 1966 (Vic)* (the Summary Offences Act) by expanding the circumstances in which police and PSOs can issue a direction to move on from a public place. The Bill will also create a new exclusion order of up to 12 months where a person has been subject to repeat directions to move on and a court is satisfied an exclusion order is a reasonable means of preventing further move directions being required.

The Federation opposed the introduction of move on powers in 2009. In our submission in relation to the Summary Offences and Control of Weapons Acts Amendment Bill 2009, we raised concerns that the grounds for making a move on order were overly broad and open to being applied in a discriminatory way. This Bill will expand the grounds on which police and PSOs may direct a person to move on and will substantially exacerbate the concerns we raised in 2009.

The Bill will substantially limit a number of rights that are integral to a civil and democratic society, including freedom of movement, freedom of expression, freedom of association and peaceful assembly. The Federation is concerned that these restrictions are proposed without adequate justification, that they will impact Victorians' legitimate and democratic ability to engage in peaceful protest and assembly, and further that they are open to misuse and likely to have a disproportionate impact on people from vulnerable communities.

Given the issues involved in this legislation, and the nature of the rights and freedoms proposed to be limited, we are disappointed that the Government did

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not conduct community consultation prior to developing or introducing the Bill. We suggest that the Bill be withdrawn pending a full community consultation process.

The Bill in relation to protests

In addition to the existing move on powers, the Bill will allow police and PSOs to issue a move on direction in a number of additional circumstances. These include when the police officer reasonably suspects that:

- the person has committed an offence in a public place in the last 12 hours;
- the conduct of the person or persons is causing a reasonable apprehension of violence in another person; or
- the person is impeding or attempting to impede another person from lawfully entering or leaving premises.

A person has committed an offence in a public place in the last 12 hours

This proposed amendment allows a move on order to be issued if an officer reasonably suspects that a person has committed an offence in a public place in the last 12 hours. There is no requirement that the person is likely to commit another offence or that the person is likely to pose a future risk to the community. We submit that this ground is too broad.

Take, for example, the situation of a person who is fined for turning left without indicating while parking at a protest. This is an offence under the *Road Safety Road Rules 2009 (Vic)*.¹ Under the current Bill, a police officer could issue a move on direction to a protestor on the basis of the traffic offence. In such cases we consider there is no logical basis for linking the earlier offending with the direction to move on from the protest.

The conduct of the person is causing a reasonable apprehension of violence in another person

Under the current legislation, a person can be directed to move on if it is likely that the person will endanger the safety of another person or cause injury to a person or property. The Bill proposes that this power be extended to allow an officer to move someone on if the officer suspects that the person is causing a reasonable apprehension of violence in another person.

The proposed amendment adds a significant element of subjectivity to the officer's decision and may open the way for the officer's discretion to be improperly exercised.

This expansion of powers is not necessary. Apart from the fact that police already have existing move on powers, police can also arrest a person who is breaking the law, charge them and seek bail conditions that preventing them from returning to the protest. This has frequently occurred in the past.

A person is impeding or attempting to impede a person from entering a property

Under the Bill now being considered, there is an expansion of the police power to issue a move on direction when a person is impeding entry to a property. This amendment appears to be directed at picketers who create blockades.² It may,

¹ Rule 46(1).

² Victoria, *Parliamentary Debates*, Legislative Assembly, 12 December 2013, 4682 (Robert Clark, Attorney-General). The second reading speech notes that the Bill

however, have unintended consequences. Impeding entry to a property is not defined and the proposed amendment gives a significant amount of discretion to an individual police officer.

The Bill will enable inconsistent application of police discretion

If passed, the Bill will give police and PSOs increased discretion in relation to issuing move on orders. We are concerned that this will lead to inconsistent and arbitrary applications of the law depending on the opinions or perspectives of the particular officer in charge in any given situation.

Subjective move on powers such as these have a disproportionate impact on vulnerable communities

The move on powers will not only be available in the context of protests and picket lines. Indeed, in addition to the new powers detailed above the Bill will further expand police powers to move persons on on the basis the person or persons are causing undue obstruction.

Experience in other states has shown that these laws have unintended consequences.³ If this Bill is passed, the people who will be most likely to be subject to its provisions will be the homeless, the people experiencing mental illness, other vulnerable members of our community or members of groups that are commonly the subjects of prejudice and discrimination. The clear evidence is that it is these communities that will bear the brunt of stronger move on powers.⁴

Charter of Human Rights and Responsibilities

The *Charter of Human Rights and Responsibilities Act 2006 (Vic)* (the Charter) provides that the rights protected under the Charter may only be limited where

'makes clear that if protesters go beyond legitimate expression of views and instead resort to threats of violence or seek to impede the rights of others to lawfully enter or leave premises, police will have the power to order those protesters to move on. To this end, the bill provides that move-on powers may be used in respect of people engaged in picket lines, protests and other demonstrations'

³ See The University of Queensland and Queensland Public Interest Law Clearing House, *Nowhere to Go: The Impact of Police Move-On Powers on Homeless People in Queensland* (November 2006) <http://www.qpilch.org.au/dbase_upl/Nowhere%20To%20Go.pdf>. This study of 132 homeless people in Brisbane in 2006 found that 76.5 per cent of the people surveyed had been told to move on one or more times in the last six months. 77.9 per cent of respondents who received a move on direction indicated that 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. See also Paul Spooner, 'Moving in the Wrong Direction' (2001) 20 *Youth Studies Australia* 27. Spooner's research in Queensland in 2001 showed that significantly more indigenous young people were issued with move on directions than non-indigenous young people. Indigenous youth received 37 per cent of the move on directions but only represented four per cent of the general youth population in Queensland. More recent data from the Crime and Misconduct Commission confirmed these findings: Crime and Misconduct Commission Queensland, *Police Move-On Powers: A CMC Review of Their Use* (December 2010) <<http://www.cmc.qld.gov.au/topics/police-and-the-cmc/police-powers-and-practice/move-on>> The CMC study showed that directions to move on were disproportionately applied to young people and indigenous people. Indigenous people were '20.0 times more likely to be given a recorded move-on direction than were non-Indigenous people': at 19.

⁴ *Ibid.*

such limitations can be demonstrably justified in a free and democratic society, taking into account a number of factors (section 7(2) of the Charter).

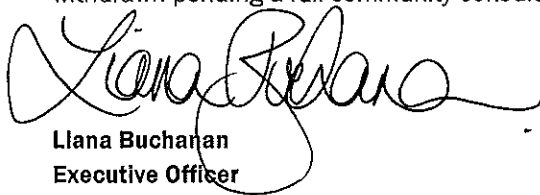
As the Government has acknowledged in the Statement of Compatibility accompanying the Bill, the Bill if enacted will have the effect of restricting a number of rights protected under the Charter. These include the right to freedom of movement (section 12 of the Charter), the right to freedom of expression (section 15) and the right to peaceful assembly and freedom of association (section 16).

While the justification for the proposed limitations are stated to include "protecting public safety and order and the rights and freedoms of others," the Federation is concerned that the Government has not demonstrated the threat or current problem that the proposed powers are necessary to address, nor has the Government demonstrated the ways in which current powers are inadequate. Similarly the Government has not addressed whether the proposed powers represent the least restrictive means reasonably available to achieve the stated purpose (section 7(2)(e) of the Charter).

The Federation considers the Bill includes a number of provisions that are incompatible with the Charter and should not be passed in its current form.

Conclusion

For the above reasons, the Federation recommends that the Bill be withdrawn pending a full community consultation process.



Liana Buchanan
Executive Officer