

**SUBMISSION OF THE FEDERATION OF COMMUNITY
LEGAL CENTRES (VIC.) INC**

**TO THE INNER CITY ENTERTAINMENT PRECINCTS
TASKFORCE RESPONDING TO THE DISCUSSION
PAPER TITLED: 'A GOOD NIGHT FOR ALL – OPTIONS
FOR IMPROVING SAFETY AND AMENITY IN INNER CITY
ENTERTAINMENT PRECINCTS'**



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This submission was prepared by the Children and Youth Issues Working Group and the Police Issues Working Group in consultation with individual member centres including Fitzroy Legal Service, St Kilda Legal Service, North Melbourne Legal Service and the Victorian Aboriginal Legal Service on behalf of the Federation of Community Legal Centres (Vic).

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The Federation of Community Legal Centres

The Federation of Community Legal Centres Vic. Inc ('the Federation') is the peak body for forty-nine Community Legal Centres across Victoria, including both generalist and specialist centres. Community Legal Centres assist in excess of 60,000 people throughout Victoria each year by providing provide free legal advice, information, assistance, representation, and community legal education. Overwhelmingly, the people who use Community Legal Centres are on low incomes, with most receiving some form of pension or benefit or in casual or low paid employment.

The Children and Youth Issues Working Group works to address and develop strategic responses to legal issues, justice and law reform concerning children and young people.

The Police Issues Working Group looks at the impact of police practices and procedures, and issues in relation to corruption.

Introduction

This submission addresses options 1, 5, 6, 32, 33, 34, 35, 36, 40, 43 and 45 as outlined in the discussion paper.

The Federation welcomes initiatives that seek to improve the safety and accessibility of entertainment precincts and licensed venues in the inner city, including proposals for improved training of staff and regulation of venue management. We also welcome the provision of additional venues for young people unable to access many private venues. However, we are concerned that such initiatives should be consistent with the interests of creating a safe, non-discriminatory environment for all members of the public to freely enjoy public space in and around the inner city entertainment precincts.

The Federation is particularly concerned with the following aspects of the discussion paper:

- the proposal to introduce police dispersal legislation; and
- the use of a definition of antisocial behaviour based on subjective perceptions of danger and stereotyping of particular groups.

The Federation is also concerned at the lack of consultation with young people, agencies and other non-commercial stakeholders in devising the options outlined in the discussion paper. Consumers representing diverse groups, including young people and indigenous people, as well as stakeholders representing consumer groups should be directly involved in the ongoing development of policies in this area.

The Specifics of the Proposal

Behaviour impacts of safety and amenity

Option 1: CCTV Guidelines

The Federation supports crime prevention initiatives that are substantiated by sound evidence. The Federation does not believe that Closed Circuit Television programs (CCTV) are an appropriate or effective means of crime deterrence or prevention. The use of CCTV invades people's privacy and enjoyment of public space. There are also doubts as to the efficacy of CCTV in acting as an adequate deterrent to offenders. CCTV programs are expensive to run due to high staffing costs and we believe that these resources are better allocated to other more effective crime prevention initiatives that are discussed below. We also have concerns about the lack of regulation and adequate safeguards in place for CCTV programs.

The report titled "Safe City Camera Program Evaluation 2003" commissioned by the City Of Melbourne in 2003 revealed some outcomes that question the overall benefit of the use of CCTV. One third of people reported that they were less likely to report crime and misbehaviour when they knew streets were monitored.¹ One third of people felt that the effect of CCTV fades over time.² Of particular relevance is the target group, which indicated that despite their knowledge and awareness of the CCTV cameras, the presence of cameras had little impact on their behaviour and lifestyles, and they were only marginally deterred from committing offences or engaging in forms of public nuisance.³

One concern highlighted in a report to the Australian Institute of Criminology titled "Open-street CCTV in Australia" was that many resources are sunk into CCTV systems and alternative community safety measures are not considered or cannot be funded.⁴ The report also stated that more Australian research is needed on the ways public space is used and its impacts on crime, perceptions of safety and civil liberties.⁵

The Federation supports alternative means to improve the safety of entertainment precincts as outlined in a recent report of one of our member Centres, *Safety for International Women Students* by the RMIT Union Legal Service. That report recommended better lighting, better and faster public transport and staffed super-taxi stops⁶.

¹ City of Melbourne *Safe City Camera Program Evaluation 2003*, p 77.

² Ibid.

³ Ibid.

⁴ Wilson, D and Sutton, T, *Open-street CCTV in Australia*, Australian Institute of Criminology Trends and Issues in Crime and Criminal Justice, November 2003, p 3-6.

⁵ Ibid.

⁶ Gloz, V and Smith, K, *Safety for International Women Students*, RMIT Union Legal Service, 2004, p 21.

Option 5: Alternative meeting places for young people

The Federation does not support Option 5, which clearly links the proposal to provide meeting places and recreational and cultural opportunities for young people with “antisocial behaviour”.

The Federation does support local and state government proposals to provide additional meeting places, recreational and cultural opportunities for young people. However, we do not support this if it comes at the expense of access to public spaces and venues by young people. We believe it is crucial that governments work directly with young people throughout planning processes to ensure that young people’s diverse needs are taken into account.

Additional meeting places and a range of recreational, social and cultural and other opportunities for young people should be established as part of an overall government commitment to embracing young people as integral to community. However, attendance at these meeting places and participation in such opportunities should be voluntary and part of a range of *safe* recreational places available for young people, including those available within the broader community. The Federation does not support “alternative meeting places ... for young people” if they are devised merely to provide a convenient place for young people to be moved onto by police as mooted under Option 6 of this Paper.

Further, we do not support creation of “youth specific” places if this comes at the expense of access to other venues and freedom of movement and association within public spaces by young people.

It is absolutely vital that consultation should be sought from young people and people working with young people in devising new facilities/meeting places for young people.

Option 6: Dispersal Legislation

The Federation strongly opposes expanded police powers to disperse people from public places. We believe the introduction of dispersal legislation is undesirable and threatens young people’s access to and the enjoyment of public space. The use of dispersal powers is an inappropriate way to approach perceptions of danger and the proposed legislation would further alienate the socially disadvantaged. We believe that this legislation will impact on people not contemplated by the taskforce including those residing in rural/regional areas and disadvantaged individuals asked to move on regardless of whether they may be attending entertainment venues or represent an actual risk to others.

The proposed legislation is a breach of fundamental human rights obligations that Australia has agreed to uphold. Article 21 of the International Covenant on Civil and Political Rights provides that:

The right of peaceful assembly shall be recognised. No restrictions may be placed on the exercise of this right other than those imposed in

conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health of morals or the protection of the rights and freedoms of others.

The Federation believes that the proposed legislation would be an unnecessary restriction on the right of peaceful assembly and is not necessary or intended to achieve any of the aims set out in Article 21.

We also have significant concerns about the unintended consequences of this proposal in terms of its potential impact upon fundamental rights in a democratic society to freedom of assembly for the purpose of public protest and debate.

We refer also to the *Concluding observations of the Committee on the Rights of the Child : Australia. 10/10/97. CRC/C/15/Add.79. (Concluding Observations/Comments)* where concern is expressed about the existence of such laws.

16. The Committee is also concerned by local legislation that allows the local police to remove children and young people congregating, which is an infringement on children's civil rights, including the right to assembly.

The wording of the proposed legislation.

Options 6 suggests that police be given the power to give a direction to a person in a public place to move on "if the police officer has reasonable grounds to believe that the person's behaviour or presence in the place is causing or likely to cause fear to another person." This would presumably be accompanied by legislation that enables people to be charged for failing to obey a police direction or refusing to move on. We do not believe it is desirable to criminalise this behaviour and apply penalties such as fines and a criminal record for what is effectively merely assembling in a public place. The law already provides adequate sanctions to deal with behavioural offences and disturbances of the peace.

Furthermore, the test proposed to be applied by the police is problematic for a number of reasons. Firstly, it gives police officers too much arbitrary power. The United States Supreme Court struck out a similar law on the grounds that it constituted "an unjustified impairment of liberty"⁷. Giving police such broad discretion opens the way for potential abuse of the power and potential targeting of young people and disadvantaged groups who may use public spaces more often than other groups because of lack of access to private spaces.

Secondly, the proposal makes no distinction between innocent conduct and conduct calculated to cause harm and it is therefore likely to impinge on people's innocent use of public space.

⁷Justice John Paul Steven, quoted in Article in Boston Globe Newspaper, 11 June 1999.

Thirdly, the test is highly subjective and relies on the apprehension of fear rather than any actual threat to individuals. It is possible under this legislation for a person whose appearance causes fear due to prejudices held by people within the community to fall foul of this legislation and be asked to move on.

A central problem of this type of legislative approach is that it seeks to address concerns of perception rather than the reality of conduct intended to cause harassment or fear. The lack of an intent required on the part of the individual asked to “move on” is of grave concern. People are being asked to give up significant civil rights on the basis of others’ perceptions, no matter how subjective or prejudiced these perceptions are.

It is anticipated from the discussion paper that what is proposed is similar to the antisocial behaviour legislation in the United Kingdom. This legislation uses a subjective definition of “anti-social” that relies on the impact or likely impact on third parties as determined by a police officer, rather than the intention or actions of the individual in question.

We would oppose any exclusion time periods being imposed such as those that exist in the equivalent New South Wales legislation.⁸

The likely efficacy of the legislation

There are many potential pitfalls to such legislation. For example, it could spark feuding between young people who seek to occupy public space and retailers who seek to clear the footpaths in front of shops.

In the event that there is problematic behaviour, these powers could merely cause dispersal of the problem to another location. As discussed above, the current criminal law already provides adequate sanctions to deal with behavioural offences and disturbances of the peace.

The likely discriminatory impact of the legislation on disadvantaged groups

Of significant concern is that this legislation is likely to have a disproportionate effect on young people, CALD communities, the homeless and members of minority and other visible groups. Young people and the homeless often have decreased access to private space for social, financial and legal reasons. As a result, public spaces are of great importance to such groups. Many individuals already socially alienated would be the likely targets of these dispersal powers which would serve to reinforce disengagement with society.

⁸ *The Police Powers (Drug Premises) Act 2001*, section 28F.

The 1999 NSW Ombudsman's review of the reasonable direction powers found that young people and indigenous people were the subject of a large percentage of 'move on' directions⁹.

The cultural significance of public meeting space is very important to many indigenous communities and this legislation would potentially threaten cultural links to the land. Disproportionate use by police could cause further disadvantage to this group.

The dispersal legislation is likely to effect far more people than was intended. The NSW Ombudsman's review also found that the number of directions issued increased steadily throughout the review period and the legislation was employed in many more municipalities than was anticipated.¹⁰

As such these laws provide an opportunity for abuse. Although designed for use in inner city precincts, there is nothing preventing these powers being used in regional and rural centres, against protesters and in a range of other areas. This could potentially have catastrophic effects on individuals being denied access to precincts, which often contain the only shops and support services in the region.

The new laws could also be used to further target homeless people who may rely on begging or unlicensed busking as a last resort to supplement income. The experience of our member centres who work with homeless people is that begging is viewed as an alternative to crime¹¹. As a result of the dispersal laws, these people may be displaced, no longer be able to beg and may be forced to engage in other illegal activities such as theft to survive.

Moving on legislation was passed in March 2000 in Queensland under the *Police Powers and Responsibilities Act (Qld) 2000*. The Act enables police to direct someone to move on from a prescribed area if this person's presence causes anxiety to someone else. A survey conducted by Paul Spooner from the Social Work Department, University of Queensland found that move on powers have a disproportionate effect on young people and indigenous people. He also noted the greatest negative impact of the legislation was that it raised the possibility of an increase in youth-related crime and tension between young people and police.¹²

The criminal law already provides adequate sanctions to deal with behavioural offences and disturbances of the peace. Young people should be entitled to move around the community like any member of the public. Any further regulation

⁹ NSW Ombudsman, *Policing Public Safety*, 1999, p 227-232.

¹⁰ Ibid.

¹¹ Lynch, P, *We Want Change: Joining up Public Policy and Management to Respond to Begging in Melbourne*, Report by Homeless Person's Legal Clinic, April 2005, p 6.

¹² Spooner, P. *Moving in the Wrong Direction*, Youth Studies Australia, v 20, n.1, 2001 p 27-31.

of people's non-criminal enjoyment of public space is an unnecessary infringement of civil rights and may have unexpected and undesirable effects.

Management of Licensed Venues

Option 29: Suitability of venue owners and operators

We support improved training and regulation of venue owners and managers. The safety of patrons and entertainment venues is dependent on the responsible behaviour of venue management. Additional training should be provided to the security industry and venue owners and operators to ensure compliance with accepted standards of behaviour and treatment of the diversity of groups of venue users.

The reduction of licensing hours, the elimination of happy hours and similar inducements to binge drinking would also alleviate potential behavioural issues resulting from excessive alcohol consumption. This would also help to address behaviours across all age groups that may be of concern.

Option 32: Protocols between the security industry and Victoria Police

The Federation supports additional training, discipline and accountability measures for employees in the security industry. We would like to see clearer complaints mechanisms available to address consumers concerns about inappropriate conduct of security guards. We also believe that the POLSEC Committee should include representatives from a cross-section of consumer groups, so as to gain input from other major stakeholders.

Public and private transport

Option 33: Safe City Taxi Ranks

We support the concept of safe city taxi ranks and its extension to other Inner City Entertainment Precincts such as Chapel Street and Brunswick Streets. However, we are concerned that taxis are inaccessible for young people and other groups because they are too expensive and "not available" to groups. The reliance on taxis as the main means of after hours transport needs to be addressed.

Option 34: Review of late night public Transport services

The Federation supports the bolstering of late night public transport services including trains, trams, buses and taxis. In our experience the lack of public transport and late night taxis is a significant reason for perceptions of danger when attending Inner City Entertainment Precincts.

We support an extension of train, tram and bus services after midnight on Friday and Saturday nights. We also support expanded Night Rider Bus services – increased number of services, routes and frequency. We are concerned that after the final trains and trams have departed, young people have little access to

private cars and taxis. We also have concerns about issues of safety at the other end of the journey from the inner city, where the last train or Night Rider Bus does not connect with other transport services.

The current system produces a bottleneck of public transport activity at around midnight that potentially gives rise to the perception of lack of safety. An increased staff presence would improve both the actual and perception of safety on the journey to and from venues.

Traffic management and parking

Option 36: Mechanisms to deter cruising

The Federation supports proposals that will promote safety, based on evidence led research. We are concerned that the mechanisms discussed in this option are not supported by evidence but rather by reliance on stereotypical perceptions of safety. Moreover the legislative examples sighted in the paper refer to mechanisms to prevent loitering for prostitution and streetcar racing. These are not relevant to the legal driving of vehicles by members of the public.

We agree that there needs to be full consideration of the possible means of addressing “hoon” type driving behaviours, and full public consultation, before further steps are taken. We agree that “proposals put forward should be well thought out and balance the usefulness of additional coercive powers against the seriousness of the offences and the potential imposition on innocent third parties.”¹³

If congestion is the cause of concern in key entertainment precincts, alternative options of traffic management, additional off-street parking, clearways, additional safe bicycle parking and improved public transport should be explored.

Perceptions of Safety

Option 40: Guidelines for managing entertainment precincts

The Federation is concerned that any guidelines developed are not based on media driven views about antisocial behaviour but on evidence based research and a broad cross-section of stakeholder views. We support the use of partnerships to promote discussion and policy making but these processes must include all stakeholder groups, not just those promoting commercial interests. As with the development of this discussion paper and the proposals, stakeholders from consumer groups, young people and support agencies should be involved to ensure a diversity of views.

Representative consumer groups should be invited to take up positions on this taskforce and consultation with a diversity of non-commercial stakeholders should take place prior to any future formulation of the guidelines and legislation as proposed.

¹³ Discussion Paper, page 75.

Option 43: Perceptions of Safety data

We believe that data regarding perceptions of safety within Inner City Entertainment Precincts should be made publicly available and comparisons should be made to other areas to provide for informed discussion on safety issues.

Cultural Influences**Option 45: Analysis of Critical Incidents**

We support research to analyse critical incidents in Inner City Entertainment Precincts to inform the development and modification of protocols and guidelines for dealing with such incidents. Such analysis requires a clear definition of a “critical” incident.

Summary of Key Recommendations

- Closed Circuit Television programs (CCTV) are not an appropriate or effective means of crime deterrence or prevention.
- Improvements to the safety of entertainment precincts should be made including better lighting, better and faster public transport and staffed transport waiting areas such as train stations and super-taxi stops.
- Additional meeting and activity centres for young people should be established, but attendance at these centres should be voluntary, part of a range of safe recreational places available for young people and not used as an alternative to facing criminal charges.
- Police should not be given expanded powers to disperse people from public places.
- Additional training should be provided to the security industry and venue owners and operators to ensure compliance with accepted standards of behaviour and treatment of the diversity of groups of venue users.
- Additional regulation of the security industry and venue owners and operators should be established to ensure adequate accountability measures for staff behaviour.
- Late night public transport services including trains, trams, buses and taxis should be expanded.
- Consumers including young people and indigenous people, as well as stakeholders representing consumer groups should be directly involved in the ongoing development of policies in this area.