

Position – proposed security of police premises reforms

We are opposed to the proposed additional powers for security of police premises in the *Victoria Police Act 2013* (VPA). We recognise the importance of ensuring that police officers are safe at their workplace. However, we are concerned by the broad ambit of the proposed powers. The proposed powers go far beyond their intended purpose of reducing security risks to officers due to filming and reconnaissance at stations. The rationale for introducing such broad additional powers has not been clearly articulated particularly given existing powers at the police's disposal already guard against security risks.

We are concerned that the proposed reforms will have far-reaching consequences for vulnerable members of the community accessing police services, including people experiencing mental ill-health, homelessness and drug and alcohol dependency. We anticipate that the proposed laws will lead to increased criminalisation of groups who are over policed.

We highlight the need for caution in expanding police powers in this way before the government has had an opportunity to consider and address key recommendations of the Inquiry into Victoria's Criminal Justice System and prior to the strengthening independent police oversight mechanisms under the Systemic Review into Police Oversight.

We have set out the reasons we are opposed to these proposed laws, as well as suggested safeguards should the government decide to proceed with enacting these proposed provisions.

About the Federation of Community Legal Centres

The Federation of Community Legal Centres is the peak body for Victoria's 46 CLCs. Our members are at the forefront of helping those facing economic, cultural or social disadvantage and whose life circumstances are severely affected by their legal problem.

For 50 years CLCs have been part of a powerful movement for social change, reshaping how people access justice, creating stronger more equitable laws, and more accountable government and democracy. We want a community that is fair, inclusive and thriving: where every person belongs and can learn, grow, heal, participate and be heard.

The CLC sector plays an important role in providing criminal law advice and representation to clients experiencing disadvantage and advocating for reform to the criminal justice system. CLCs work with local partners and communities to support children and families who are experiencing disadvantage and family violence. CLCs deliver a range of innovative programs, including early intervention initiatives and justice partnerships with the community, health and social sectors.

Key reasons for opposing the proposed reforms

Broad ambit of the proposed police powers

We are concerned by the broad ambit of the proposed police powers. We understand that the key aim of the proposed reforms is to stop people from filming officers at police stations or conducting reconnaissance where this poses a security risk to officers. However, the proposed powers do not expressly refer to this conduct, but create broad general powers to:

- request personal information from people at police premises (or in the vicinity);
- to stop people from entering police premises or requiring them to leave if they reasonably believe that it is necessary for good order, to keep the peace or maintain the security of the premises; and
- to allow officers to remove people from police premises (or the vicinity) where they do not provide their identity information when requested, do not follow the officer's direction or commit an offence under Victorian legislation.

The consequences for non-compliance are serious and can result in people being banned from attending a police station, potentially on an indefinite basis, or arrested. While the proposed powers are intended for a specific safety purpose around filming police officers, the proposed provisions are much broader in their application, and there is no safeguard against the high likelihood that police would apply the laws to capture a far wider spectrum of conduct. We do not consider that there is any rationale for introducing such broad powers.

Existing police powers are adequate

We consider that existing powers at the police's disposal are adequate to authorise police to remove people from police premises who pose a safety risk or to direct individuals to provide their name and address where there are reasonable grounds to do so.

Proposed power to request identity information

It is proposed that the police have the power to require a person at police premises (or in the vicinity) to provide their name and address, reason for being at the police premises and evidence of their identity. This creates a broad power to request personal information from people at police premises with no threshold that needs to be established for the exercise of this power. We consider that such a broad power is not necessary, and that personal information should only be requested in the circumstances set out in section 456AA of the *Crimes Act 1958* (Vic) (the **Crimes Act**). Section 456AA requires a person to provide their name and address where the officer believes on reasonable grounds that the person has committed an offence or may be able to assist in the investigation of an indictable offence.

The broad power to request identity information is problematic given that many people who visit police stations to report crimes or seek help wish to remain anonymous. There are many reasons why someone may not wish to provide their identity information when visiting a police station or reporting a crime to the police. For example, they may:

- feel a sense of shame and fear and not wish to identify themselves;
- wish to make an initial report on a de-identified basis so they can understand their options before deciding whether to pursue further action;
- fear retribution or further violence;
- be involved in whistleblowing; or
- be making a report on behalf of someone else in circumstances where they do not wish to be identified.

We appreciate that the proposed power to request identity information is not intended to be used in the above circumstances. However, the effect of such a broad and unfettered power is that such circumstances are captured. We understand that there may be internal guidelines for the exercise of

the proposed powers, but this is not an adequate safeguard against the potential for unfettered wider use of the power. It is important that people can continue to remain anonymous when visiting police stations should they choose to without the potential for arrest for non-compliance. Such broad powers could deter people from accessing police stations and we do not see any rationale for extending this power beyond the circumstances set out in 456AA of the Crimes Act.

Proposed ‘move on’ powers

The proposed ‘move-on’ powers at police premises can be exercised on wide grounds, including where it is necessary for good order, to keep the peace or maintain the security of the premises, or where someone does not comply with police directions. The police already have move-on powers under section 6(1) of the *Summary Offences Act 1966* (Vic) (SOA). This allows a police officer or protective services officer (PSO) on duty at a designated place to give a direction to a person to leave a public place where the officer suspects on reasonable grounds that the person is breaching the peace, endangering safety or is a risk to public safety.

Additionally, section 9(1)(g) of the SOA provides that it is an offence without lawful excuse, to enter any place (whether private or public) in a manner likely to cause a breach of the peace or reasonable apprehension of breach of the peace. We consider that these powers are sufficient and contain more appropriate safeguards compared to the proposed ‘move-on’ powers. We do not see a clear rationale for the creation of the additional ‘move-on’ powers.

To the extent section 6(1) of the SOA depends upon the potential immediacy of harm, this has been a proposition established by the parliament across jurisdictions and closely enumerated in the common law as the appropriate test for limiting conduct and risking criminalisation.

Other existing powers

We understand that there are also other search powers (for example, in the *Drugs, Poisons and Controlled Substances Act 1981* (Vic)), broad anti-terrorism powers and laws in place to protect police officers from stalking or attempted acts of violence which carry significant criminal penalties. We also highlight the availability of personal safety intervention orders where an officer is being harassed on a continued basis, including where this occurs in both their professional and personal capacity.

Impact on vulnerable groups and unintended consequences

We are concerned that the proposed additional powers could disproportionately impact vulnerable members of the community accessing police services and further criminalise groups that are over-policed. These proposed laws are likely to disproportionately impact Aboriginal and/or Torres Strait Islander people who experience ongoing systemic racism and have higher rates of contact with the police and criminal justice system.

The proposed provisions provide a broad discretion to remove and arrest a person where there is a concern about their conduct at a police station. We understand that the proposed powers are not intended to impact on a person who is attending a police station for a legitimate purpose, where police have no concerns about their conduct or risk to others. However, as the grounds for removing people from police premises are wide, this could result in people being removed or arrested for behaviour that may disrupt the ‘peace’, even where they do not pose any real threat and are accessing the police station to report a crime or seek assistance. We are concerned about framing laws to apply to conduct that it not intended to be captured.

We are concerned that this could disproportionately impact people who may be exhibiting disruptive behaviour at police stations due to distress, mental health issues, cognitive impairments or substance use issues. We highlight generally that many people presenting at police stations may be heightened having experienced or witnessed a horrific incident or may be experiencing a mental health episode. We are concerned that the proposed removal and arrest powers could be used in a way that escalates situations and shifts focus away from a trauma-informed response. A trauma-informed response may involve providing support to minimise the person's distress, such as, linking them into support services, allowing them to sit in a private area if they are posing any risk or disruption to others at the station or assisting them to return at another time for assistance. However, the proposed powers shift focus to removal and arrest which could foreseeably be relied upon by officers in place of a more nuanced and trauma-informed approach.

While we understand that the proposed powers may be accompanied by internal guidelines and potentially training, around the appropriate exercise of these powers, we do not consider that this would be a sufficient safeguard given the breadth of these proposed powers. We highlight that one of the key complaints concerning police accountability is failure of the police to assist. CLCs have highlighted that clients who experience a range of barriers accessing police, such as due to mental health issues, cognitive impairments, drug and alcohol dependency and language barriers, report not being assisted at police stations when they attend to report a crime against them and in some cases being told to leave by police. We are concerned that the proposed powers will amplify this existing issue and will lead to greater arrests in circumstances where a de-escalation approach would have been more appropriate. We are concerned by the flow-on effects for people who are marginalised in our community and who are already over-represented in the criminal justice system and that this will lead to increasing criminalisation of vulnerable groups.

We highlight generally that as part of Victoria police's duty to ensure community safety and assist people in need, police stations should be accessible and welcoming, and a place where the public are encouraged to attend. We are concerned that the wide removal and arrest powers at police stations will inadvertently deter (or criminalise) vulnerable community members from accessing police services, particularly if they have had negative interactions with the police in the past or are intimidated by the police.

Undermining police accountability

We highlight the need for caution in expanding police powers at police premises before the government has had an opportunity to consider and address the Systemic Review into Police Oversight and key recommendations of the Inquiry into Victoria's Criminal Justice System.

The final report to the Inquiry into Victoria's Criminal Justice System did not recommend the expansion of police powers, but highlighted the need for greater police accountability, including consideration of establishing a new independent body to investigate allegations of police misconduct.¹ We strongly urge the establishment of effective monitoring and oversight mechanisms for the police's existing stop, search and move-on powers before any additional powers are introduced. We understand that internal guidelines may be developed alongside the proposed laws and potentially associated training in order to guide the police's discretion in exercising these broad powers. We do not support the introduction of broad powers in legislation that depends on guidelines and training to ensure it is applied appropriately and not misused. These are not adequate mechanisms in ensuring police accountability.

¹ Legislative Council's Legal and Social Issues Committee, *Inquiry into Victoria's criminal justice system*, March 2022, p.256.

We are concerned that as the proposed powers are framed so broadly, they will prohibit people from filming at police premises where there are concerns about police conduct. This record can be important for the purpose of further investigation and accountability, particularly as body worn camera footage is not always accessible. We understand that the proposed powers are not intended to restrict peaceful protest activity. However, given the broad powers to request identity information and remove people for disrupting the peace, we are concerned that the proposed powers will effectively prohibit protests or demonstrations at police premises, particularly where they are not authorised.

Additional safeguards

While we are opposed to the introduction of the proposed laws, we have set out some suggested safeguards should the government decide to proceed with the proposed laws. As an overarching proposition, we question the wisdom of introducing laws which the proponents themselves acknowledge would capture behaviour beyond that which is intended, and to the point that they propose (non-enforceable) guidelines to remedy the overreach. We are concerned by catch-all legislation to address a specific type of conduct.

Limiting the proposed powers

Proposed power to request identity information

For the reasons noted above, we do not consider that the police should be able to request identity information from people at police premises and that this should only be allowed in the circumstances set out in section 456AA of the Crimes Act. As we do not support the existence of this power, it follows that there should not be any related arrest or offence provisions for non-compliance.

However, if this power is introduced, then this should be subject to an officer holding an objectively reasonable belief that identification is necessary to avoid a real risk of violence, property damage, harassment or intimidation.

Proposed ‘move on’ powers

Higher thresholds should apply for the exercise of the proposed ‘move-on’ powers. That is, the powers to stop people from entering a police station, to direct them to leave, to remove them from a police station or prevent them from re-entering. For these powers to be enlivened, an officer should be required to hold an objectively reasonable belief that the relevant action is necessary to avoid violence, property damage, harassment or intimidation.

We also recommend that if the government decides to proceed with the new laws, the power to prevent someone from re-entering a police station has further safeguards beyond an officer’s discretion to allow someone to re-enter. We suggest that there is a temporal limitation on the ban and that it only applies to the extent that the person is continuing to pose a safety risk (e.g., to avoid violence, property damage, harassment, or intimidation). For example, section 6(3) of the SOA provides for a ban of no longer than 24 hours which in the case of a police station should be shorter given the importance of accessing police stations to report crimes and seek assistance.

Proposed definition of police premises

The proposed definition of ‘police premises’ is broadly framed and is intended to include not only police stations, but also adjacent footpaths, car parks and laneways and the area in the immediate vicinity surrounding those premises. This potentially encroaches on a large area of public space. In

metropolitan areas, police premises are often located close to thriving and busy areas and public amenities which we consider should not be captured by these proposed powers. We suggest that the proposed definition of police premises does not extend to additional areas, such as adjacent areas or areas in the immediate vicinity.

Penalties for non-compliance

We do not support the power to arrest people for non-compliance with police directions, for hindering or obstructing police officers or PSOs under the proposed provisions or committing an offence under Victorian legislation. We also do not support such a high maximum penalty of 10 penalty units (\$1,871). We highlight that the penalty for non-compliance with the 'move-on' powers in section 6 of the SOA where there is no reasonable excuse provided is 5 penalty units.

Carve-outs and defences

Reasonable excuse defence

We understand that the proposed powers are not intended to impinge on a person who is attending a police station for legitimate purpose. However, this is not captured in the proposed laws. We suggest that the provision include a reasonable excuse defence to ensure that legitimate activities are not captured by these provisions. For example, section 6(4) of the SOA provides that a person must not without reasonable excuse contravene the relevant 'move-on' direction.

Freedom of expression and protest

We understand that the proposed powers are not intended to disrupt peaceful protest activity. We suggest that there should be specific carve-outs set out in the legislation to protect public expression, protest activity and demonstrations at police premises (and in the vicinity). This should be framed wider than 'peaceful protest activity'. For example, section 6(5) of the SOA provides that the 'move-on' powers do not apply in relation to:

- picketing a place of employment;
- demonstrating or protesting about a particular issue; or
- speaking, bearing or otherwise identifying with a banner, placard or sign or otherwise behaving in a way that is apparently intended to publicise the person's view about a particular issue.

This safeguard should capture protest and freedom of expression on any issues, including concerns around policing practices.

We would also like to see safeguards to ensure that the proposed provisions do not capture filming at police premises where this is for a legitimate purpose or is in the public interest (e.g., for police accountability reasons or due to concerns around police conduct).

For all the reasons highlighted above, we are opposed to the introduction of these proposed laws. However, failing that, the proposed laws should be tightly drafted to achieve their intended purpose and to avoid harmful overreach.

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