



**THE LAW SOCIETY
OF SOUTH AUSTRALIA**

THE VOICE OF THE SOUTH AUSTRALIAN LEGAL PROFESSION

124 Waymouth Street, Adelaide, South Australia, 5000

GPO Box 2066, Adelaide, South Australia, 5001, DX 333

Phone 08 8229 0200 • Fax 08 8231 1929

Email email@lawsociety.sa.asn.au • www.lawsociety.sa.asn.au

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The Honourable Ann Bressington MLC
Parliament House
North Terrace
ADELAIDE SA 5000

Dear Ms Bressington

Summary Offences (Weapons) Bill 2010

I refer to my letter to you of 18 November 2011, providing comments in relation to the above Bill. The Society makes the following additional comments in relation to Sections 21J and 72A.

Section 72A

Generally, a search of a person or a person's property may only be conducted with a warrant or if there is otherwise reasonable cause to suspect that it would uncover evidence of an offence.

The proposed s72A is, in effect, a without cause provision. That is, it empowers the police to search, necessarily invasively, a person and the person's property without cause. The only limitations are that the search must take place in respect of people who are in an area to which s72A applies. The powers may otherwise be exercised arbitrarily. The places to which s72A apply include licensed premises (and an area in "the vicinity" of licensed premises) and any public place holding an event, including community, cultural, arts and entertainment events.

There does not appear to be any proper basis to empower the police with the right to commit a trespass against the person as outlined in s72A. Whilst members of the community will, from time to time, offend by carrying or using offensive weapons that, in itself, should not justify the creation of laws permitting police to search wide groups of people without cause. We accordingly do not support the section.

We note that a metal detector search will, in most cases, detect some metal given that people generally carry items which will trigger the detector, such as keys and coins. This will then lead to a more invasive search as s72A(6) contemplates, providing the police with powers well beyond those they are currently vested with without justification.

Section 72C

The problem with s72A is compounded when the implications of s72C(6) are considered. Section 72(6) creates the offences of hinder or obstruct police and refuse or fail to comply with a police direction. The maximum penalty is imprisonment. In the context of s72A, an otherwise law abiding citizen is at jeopardy of imprisonment for failing to comply with what would appear to be an unreasonable request to search.

We understand and accept random breath testing because of the ever present danger drink driving has been shown to cause. Drinking, and driving, are very prevalent in our society. The chances, therefore, that a person may drink (at least to some degree) and drive are high. Statistics will establish that that is so.

The same relevance cannot be found for carrying offensive weapons, particularly for the vast majority of the areas and times that s72A applies to, and therefore the breadth of the proposed power does not appear justified.

Section 21J

We are uncomfortable with s21J to the extent that it empowers police to search without first having a reasonable suspicion concerning an offence or that the person is carrying an offensive weapon.

We suggest that the limitations imposed by the Bill on a person the subject of a weapons prohibition order are sufficient for the objects of the Bill to be satisfied without requiring the person to be subject to a search without cause for up to five years.

Evidence of Non-Related Offending

Generally, in our view, a law that empowers the authorities to search for a particular purpose does not permit evidence obtained as a result of such search to be used against the person for another purpose. The wide, without cause, powers of search under the Bill are to be exercised for a specific purpose (see, for example, s72A(1)).

We query whether it is the intention for this Bill to provide the police with the power to obtain evidence of other offences not contemplated by the Bill with a view to using such evidence against the person? If it is, then we express serious objection because it would provide police with general search powers to cover all offending.

If it is not the intention, then the Bill should make it clear that evidence of any other offending may not be used against the person. As the Bill is currently framed, it seems that that is the case in any event. Notwithstanding that this may be so, the Bill should make this position clear on its terms.

I trust these additional comments are of assistance. Should you wish to discuss any aspect of this submission please do not hesitate to contact me.

Yours sincerely



Ralph Bönig
PRESIDENT