



Submission to the Summary Offences (Declared Public Precincts) Amendment Bill 2016 consultation.

April 2016

Provided by the
Youth Affairs Council of South Australia Inc.

The Youth Affairs Council of SA (YACSA) was established by the youth sector in 1980 and is the peak body representing the views and interests of young people and the youth sector in South Australia.

Introduction

The Youth Affairs Council of South Australia (YACSA) is the peak body in South Australia representing the interests of young people, youth workers, organisations and networks throughout the non-government youth sector. Policy positions are independent and not aligned with any political party or movement. YACSA's aim is to encourage young people, and those working with them and for them, to achieve meaningful improvements in the quality of young people's lives.

YACSA is pleased to have the opportunity to respond to the Summary Offences (Declared Public Precincts) Amendment Bill 2016. The amendments outlined in this Bill will provide police with many of the same powers that they have dealing with criminality and disorderly conduct in private spaces but will apply to public events and public spaces. YACSA is concerned that young people, who are already scrutinised, monitored and regulated in public spaces may be disproportionately impacted upon by these changes.

YACSA recognises the importance of public space to young people and supports their right to free and unhindered access to public spaces regardless of their backgrounds, economic status and age. However, we remain concerned that young people's right to lawfully use public space, as well as privately owned spaces such as suburban shopping complexes and the city centre, is under threat.

As such, YACSA has concerns that the operationalisation of this legislation by the South Australian Police will have the potential to further impact upon the use of public space by young people in South Australia.

Young People in Context

YACSA advocates for the fundamental right of all young people to participate in and contribute to all aspects of community life, particularly decision making processes which impact upon them directly. Young people's involvement in society is vital in ensuring the development of relevant, forward-thinking and representative policy, programs and services. YACSA believes that young people are the experts in their own lives, and it is young people to whom decision-makers should turn when considering solutions to the problems young people face.

Sadly, it is more often the case that young people are excluded from decisions that affect them. For example, while young people are expected to assume many responsibilities in our society – including the responsibility of securing and maintaining employment – the same society can devalue their contribution and marginalise their role as stakeholders in civil, political, economic, social and cultural life, simply because of their age.

We live in a world where our perceptions are shaped by the media, which provides us with an on-going, often negative commentary that often serves to limit the roles available to young people. Young people are often portrayed as the victim, the child, the criminal, or the symbol of “what is wrong with the youth of today.” Young people are also often seen as “adults in the making,” which suggests they are somehow less capable, less insightful, less intelligent and less valuable than adults. This gives rise to the notion that young people are unable to make proper decisions or contribute in a meaningful way until they are older.

YACSA advocates strongly for young people to be viewed as important, contributing and valued members of their communities and as such, the opinions, knowledge, experience and participation of young people should always be sought and included.

Young people and public space

The use of public space by young people is the subject of almost perpetual debate. With active citizenship and the use of public space being increasingly linked to consumption and financial participation, young people are being progressively excluded from public and commercial spaces¹ and are subjected to increased surveillance, regulation and stigmatisation. Young people are often perceived and promoted (particularly by the media and some business owners) as pests or as a threat to the enjoyment of public spaces by others. The media attention surrounding young people congregating and skateboarding through Victoria Square (shortly before the city skate park closure) is a prime example of the often baseless hysteria inspired by young people enjoying public space. In this case, local business owners reported ‘hoards’² of young people skateboarding through Victoria Square in the afternoons and on weekends allegedly serving to deter others from taking advantage of the space. However, apart from the opinions of local business owners there was no actual evidence offered to back up claims of the reported “hoards” using the space or whether in fact the use of the space by young people was deterring the use of the space by others.

With this example in mind, YACSA contends that young people, (while using public space) are subjected to an increased amount of suspicion, regulation, restrictions and surveillance. Increased regulation for young people accessing public space is often couched in terms such as “crime prevention” or “decreasing anti-social behaviour”³. But low crime and anti-social behaviour rates in juvenile populations aren’t easily reconciled with this heavy handed approach.

¹ M Dee, *Young People and Urban Public Space in Australia-Creating Pathways to Community, Belonging and Inclusion*, PhD Thesis, Queensland University of Technology, 2015.

² T Williams, ‘Skateboarders scaring off users of revamped Victoria Square’, *The Advertiser*, 9 April, 2014, viewed, 5 April 2016, <http://www.adelaidenow.com.au/messenger/city/skateboarders-scaring-off-users-of-revamped-victoria-square/story-fni9lkxa-1226878357116>

³ K Salmon, ‘Space invaders? Young people and public space’, Youth Affairs Council of Victoria Inc, 2005.

This disparity in regulation experienced by some councils, decision makers, police and other authorities often has young people complaining about unfair treatment particularly where they have not committed a crime or broken any laws⁴. To many, it would seem that young people, on the most part are experiencing this treatment purely for being young.

The right to use public space

YACSA and the Council for the Care of Children developed a joint report in response to the Citizens' Jury on "How to ensure that we have a vibrant and safe Adelaide nightlife" in 2013⁵. The basis of this report was the premise that young people have a right to access public space and to do so safely regardless of age or background. We received around 100 responses to a survey which underpinned the report from young people who told us about their experiences in using public space and what had to occur to make accessing public space safer for them. Young people wrote about the importance of public space for them and the importance of public space as a means for them to congregate with their peers and to feel connected to their communities.

It is important to acknowledge that like all citizens, young people have a right to access public space. For young people, it is an important means of feeling connected to their friends, their community, engaging with their peer group/s, and engaging in sports and leisure activities⁶. Regrettably this right to accessing public space is not acknowledged or supported by all within the community and as such, young people are often subjected to increased police and security attention when gathering in public spaces⁷.

The proposed amendments

The Bill proposes a series of amendments designed to give police additional powers to search, bar, and remove individuals who are using public space. These changes and our concerns consist of:

Declared public precincts

The proposed amendments to the Summary Offences Act will enable the Minister to declare certain public spaces "Declared Public Precincts" which are designed to give police similar powers to the powers that they exercise in private spaces. This means police can bar an individual from the 'Declared Public Space' for a prescribed time frame.

⁴ R White, Public spaces for young people: A guide to creative projects and positive strategies, 2nd edn, National Capital Printing, Canberra, 2002.

⁵ The Council for the Care of Children & the Youth Affairs Council of South Australia, 'The Young Citizen's Jury Survey Analysis: How can we ensure we have a vibrant & safe Adelaide nightlife?' Viewed 6 April 2016 <http://www.yacsa.com.au/resources/survey-reports/young-citizens-jury-survey-analysis>, 2013.

⁶ K Salmon, 'Space invaders? Young people and public space', Youth Affairs Council of Victoria Inc, 2005.

⁷ The Council for the Care of Children & the Youth Affairs Council of South Australia, 'The Young Citizen's Jury Survey Analysis: How can we ensure we have a vibrant & safe Adelaide nightlife?' Viewed 6 April 2016 <http://www.yacsa.com.au/resources/survey-reports/young-citizens-jury-survey-analysis>, 2013.

YACSA is concerned that geographical public areas that may have previously been freely enjoyed by young people will now (albeit temporarily) become areas in which they potentially face police scrutiny, fines, barring and/or removal. In addition, how will young people keep informed of these declarations to ensure they know the temporary status of the public space and the potential legal ramifications for entering the area?

Power to conduct searches

Police are also permitted through this legislation to conduct metal detector searches on anyone who is found within a 'declared public space' if they have a reasonable suspicion that the individual is carrying an object which constitutes an offence. If the individual resists or fails to produce the 'item' then the police officer can use other search methods (other than by a metal detector).

YACSA contends that police already have sufficient powers to search individuals whom they suspect of carrying an illegal item or who have committed or are about to commit a crime. The concern is that young people will again be subjected to unnecessary searches by police while accessing public space.

Barring orders and fines

If the police believe that an individual has committed an offence of any kind that poses a risk to 'public order, safety or security' or behaves in an offensive or disorderly manner within a 'declared public precinct' then the police can bar the individual from entering the precinct or any other declared public precinct for up to 24 hours. If an individual, who has been barred from entering a Declared Public Precinct re-enters that space within the prescribed time period then they are subject to fines of up to \$2500. YACSA would like to point out that fines, particularly for young people (whose income may be low or non-existent), will create substantial debt for individuals who transgress this new legislation. This debt (if not paid) may also lead to further contact with the justice system and unnecessary criminalisation.

For young people, barring becomes a more significant issue if the geographical location the young person is barred from is part of their local community or a location frequented by their peer group.

Power to remove young people from dangerous situations

Young people under the age of 16 can be 'removed' from a declared public precinct if:

- that individual is not under the supervision and control of a responsible adult
- if the police officer believes that the individual is in the declared public precinct in circumstances that places that individual at risk
- if the individual is in danger of being physically harmed,
- If the individual is in danger of being abused, or;
- is behaving in an offensive or disorderly manner or is committing or about to commit an offence.

The young person who is removed from the declared precinct (as per the associated Children's Protection Act 1993) will either be returned to their home or will be considered under the guardianship of the Minister.

YACSA is concerned that this section of the legislation will also negatively impact upon young people who access public space due to homelessness. Young people experiencing homelessness are often in public places in groups at night for their own safety. Moving these young people on, or removing them from the public space may serve to criminalise an already marginalised group of young people.

While YACSA values the need for young people to exist within safe environments we have several questions related to this section of the Bill. How will young people (under the age of 16) know that the area is now a 'declared public precinct'? What standards or criteria (apart from the broad list contained in the Bill) will police use to ascertain whether the young person is at risk? Again YACSA believes that young people have the right to access public space and we are concerned that young people will face unnecessary removal from public space and contact with police and other authorities as a result of these changes.

Concerns about this legislation

With young people already bearing the brunt of increased regulation, suspicion, and surveillance when they use public space, YACSA is concerned about the potential for young people to be targeted in declared public precincts, by the organisers of events, business owners and police under the amendments to this legislation.

YACSA contends that the police already have extensive powers to intervene where young people may be involved in offending behaviour or likely to become involved in offending behaviour, and to call in care and protection authorities as necessary.

We are particularly concerned about the potential for young people under the age of 16 (whom we believe have the right to access public space) attracting unnecessary attention and contact with police and other authorities, particularly those who choose to access public space without their parents being present.

YACSA believes that young people have the right and should be free to exercise the right to access public space in South Australia. This includes public space in the city which includes parks, parklands, meeting areas, and Adelaide's five Squares. As such we do not support any legislation that has the potential to disproportionately impact upon young people.