

## **Fitzroy Legal Service Presentation to the Yarra Drug & Health Forum on 'Drinking Alcohol in a Public Place'**

We are grateful for the opportunity to address this forum.

### **Some Key Messages:**

- It is the view of our service that alcohol consumption per se is better dealt with as a community/ planning/ health/ social issue than as a law and order issue.
- As a legal and widely used drug, discretionary policing of alcohol consumption is an open door to discriminatory practice. Recommendations have been made at various stages that public drunkenness offences are not prosecuted as criminal offences.
- Media and community pressure place police in the position of being asked to deliver a quick fix through law and order. However longer-term prevention work and focusing resources on preventing harms to third parties (for example driving under the influence, instances of violence or threats) is a preferable use of limited resources.
- The law and order approaches to consumption of alcohol often leads to escalation, increases contact with the criminal justice system, diverts significant resources and does little to address long term underlying causes. Additionally human rights such as equality before the law, freedom of movement, and freedom of association are in our view given inadequate consideration through such approaches.

### **Comments on City of Maribyrnong 'Public Drinking Strategy 2008-2011':**

I was impressed that the research undertaken was in many respects balanced and useful.

For instance:

- Consultation with cross section of community groups with differing interests and rights
- Approach of placing the human rights and views of those directly affected in a central space
- Including as an important consideration the vital role of social congregation in the lives of those potentially affected, and congregation as an off shoot of accessing local services
- Issues of fines being unaffordable to those affected and net-widening the criminal justice system
- Critical engagement with the concept of responding to 'perceptions of risk, as opposed to actual identified risks – Council taking a proactive role in decreasing perceptions of risk through approaches that do not involve exclusion
- Recognizing a commitment to cultural and socio-economic diversity shared by many residents

### **Some important differences the City of Yarra needs to contend with:**

- Yarra is an entertainment precinct with over 600 licensed venues. Along with the Central Business District, Yarra is a primary destination for alcohol consumption and other activities for people from all over Victoria. Clearly this leads to management issues in terms of safety. However, it is also very profitable and closely linked to the economic success and profile of the area. So that is one category of drinking that occurs, primarily in licensed premises, but that involves a range of associated issues in terms of management and safety (hereafter referred to as 'night time drinkers').
- Yarra then has a similar demographic of drinking in daytime in public spaces by lower socio-economic communities that may be marginalized in a range of ways – e.g. financially, in relation to mental or physical health, and related to other factors such as

race/ culture – and who choose not to or are unable to drink in licensed premises (hereafter referred to as ‘day time drinkers’). Importantly in Yarra this includes some members of indigenous communities, in relation to whom specific histories and rights should be taken into account, for instance, the findings of the Royal Commission into Aboriginal Deaths in Custody 1988. Overall the City of Yarra would also seem to have greater economic disparity between residents than the City of Maribyrnong.

So in Yarra we have to contend with a much larger population of nighttime drinkers, and daytime drinkers include members of Indigenous communities. These are not the only differences in demographic but are the differences I would like to focus on today.

### **What is Fitzroy Legal Service’s involvement in this issue?**

Our involvement with issues around alcohol consumption occur on two interactive levels – through our legal practice (free legal advice service and ongoing case work) and through our policy work concerning use of public space, social order offences and issues of discrimination.

### **What are we seeing through our legal practice?**

- Sometimes alcohol consumption is a factor in more serious offences (e.g. assaults, domestic violence matters, driving offences) but these kinds of matters are not wholly relevant today, as the laws involved do not target consumption of alcohol specifically. I mention it as an aside as we are well aware of detrimental societal impacts of alcohol consumption.
- Relevantly, in relation to both daytime and nighttime drinkers we are seeing an increase in persons who have been charged with being drunk in a public place under the *Summary Offences Act 1966* (Vic). Sometimes clients will want to lodge a complaint, and frequently will have been charged with resisting arrest, and hindering/ obstructing police. We are also seeing increased use of capsicum spray as a way to manage engagement with these clients.
- In relation to these charges the person will be arrested and placed in the cells. Predominantly the relevant charges will be heard ‘ex parte’ (that is, without opportunity for the person to make submissions or apply for a police diversion) and a fine will attach. Unfortunately a criminal record is also recorded unless diversion is granted.
- One of the key issues arising in these matters is that no proof is required as to a person’s state of intoxication, further than the police member’s perception (that is, it is sufficient proof that the person appeared to be drunk to the attending police). An accused is not breathalysed to identify whether they are in fact drunk. Additionally, because drinking is a legal activity, people affected often feel they are being treated unfairly, particularly where they do not believe themselves to be drunk and/ or they are not engaged in problematic behaviour. It is a paradoxical situation where a person is engaged in a legal and socially endorsed activity in drinking in a bar, but once they depart, they can be conceivably picked up for being drunk in a public place at any point.
- We note the introduction of new laws under the *Liquor Control Reform Act 1998* (Vic) wherein exclusion orders may apply where persons are suspected of, or found to be committing violent or disorderly acts, sexual offences, destroying property, or carrying prohibited weapons. Without commenting further, we are not seeing many cases under these provisions, and would guess it is much easier to prove that someone appears to be drunk in a public place as required by the Summary Offences Act.

### **What is our policy perspective?**

We as a service take the view that law & order approaches to alcohol consumption and the use of public spaces need a rethink at a fairly basic level.

- In relation to nighttime drinkers it would seem that high concentrations of licensed premises should be a primary consideration. There would seem to be an element of scape-goating in picking off a few persons ‘drunk in a public place’, again distinguishing situations where persons engaging in criminal conduct other than being drunk in a public place. It seems there is a need to remedy the paradox – drinking alcohol is legal, when & why does it become illegal? And how can we ensure those shifts are based on objective criteria, and do not involve unfair or unjust discrimination?
- In relation to daytime drinkers, again it is a paradoxical situation that drinking is a legal activity within licensed premises, and yet two metres away it is illegal. These laws do not appear to be operating according to objective criteria and no evidence base has been provided to show that greater harm to the community is resulting from one activity as opposed to another.

**Some places where appropriate guidance may be derived:**

- The Parliament of Victoria Drugs & Crime Prevention Committee ‘*Inquiry into Public Drunkenness – Final Report*’ (June 2001) recommended public drunkenness be decriminalized and other measures such as sobering up facilities be developed in their place. The Report also recommended ‘Consideration be given to ensure that municipal by-laws concerning drinking in public places do not have the potential to ‘recriminalise’ public drunkenness and the potential to further disenfranchise Indigenous Communities.’<sup>1</sup> The research and findings of the Committee should be resourced and adopted.
- Recommendations 79-85 of the *Royal Commission into Aboriginal Deaths in Custody*, which recommended public drunkenness be decriminalized, accompanied by adequately funded programs to establish and maintain non-custodial facilities for the care and treatment of intoxicated persons. These recommendations should be revisited also.
- The *Charter of Human Rights and Responsibilities Act 2006 (Vic)* places public authorities under obligations to give proper consideration to relevant human rights, and prohibits actions that are incompatible with protected human rights. This should engage council in a balancing exercise of competing rights, wherein any infringement should not be adopted where a less intrusive means is available. Some relevant human rights which should be considered are:
  - Recognition & equality before the law – all persons have the right to enjoy their human rights without discrimination; there is a right to equality before the law & equal protection of the law without discrimination
  - Peaceful assembly and freedom of association – being the right to assemble freely & to freely associate with others
  - Cultural rights: people with a particular cultural, racial or linguistic background have the right to enjoy their culture; Aboriginal people have the right to maintain their language, kinship ties, and spiritual and material relationship with land waters and other resources to which they have a connection under traditional laws & customs.

**Overview**

- It seems the approach of wide community consultation with sub cultures with specific interests should be adopted, as should proactive engagement with perceptions of risk and discrimination. Local council is already engaged in this work in a range of ways, as are other community groups and individuals.

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<sup>1</sup> Recommendation 33

- Legal consequences should attach where criminal activity that is objectively harmful to the community is occurring, but public drunkenness and drinking per se should be taken out of the legal frame.
- The large number of licensees and associated issues should be confronted head on. Different strategies should be used to improve community safety, including working with licensees in ensuring responsible service of alcohol (this has been policed more vigorously of late) and creating alternative spaces/ activities for self expression daytime and nighttime drinkers.
- That policing energy and resources are directed to longer-term prevention & protecting people from harm, and that the community is encouraged to support this.