

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE

ON THE POLICE OFFENCES

(AMENDMENT) BILL 1989

REPORT

JULY 1989

RESOLUTION OF APPOINTMENT

(Agreed to 5 July 1989)

That –

- (1) A select committee be appointed to inquire into and report on the Police Offences (Amendment) Bill 1989, such inquiry to invite submissions relating to public behaviour.**
- (2) The committee report by 25 July 1989.**
- (3) The committee shall consist of 3 members, including a Liberal party proponent of the Bill, a member of the Residents Rally and one other Member.**
- (4) The Police Offences (Amendment) Bill 1989 be now referred to the select committee.**

COMMITTEE MEMBERSHIP

Mr Bill Stefaniak (Chairman)

Mr Bernard Collaery

Ms Carmel Maher

Secretary: Ms Karin Malmberg

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1 INTRODUCTION

Background

1.1 On the 28 June 1989, Mr Bill Stefaniak, MLA, presented a private members bill, the Police Offences (Amendment) Bill 1989 to the ACT Legislative Assembly. The Bill was presented to give members of the Australian Federal Police (AFP), ACT Region, the power to 'move-on' persons loitering in a public place in certain circumstances.

1.2 On 5 July 1989 the Legislative Assembly established a Select Committee to inquire into and report on the Police Offences (Amendment) Bill 1989, such inquiry to invite submissions relating to public behaviour. The Bill was formerly referred to the Select Committee on the same day and that Committee was required to report on 25 July 1989.

1.3 In addition to the Bill presented on 28 June 19889, the Committee also circulated amendments proposed by Mr Stefaniak to all interested persons and organisations and considered these amendments together with the Bill during the course of the inquiry. A copy of the Bill and the original amendment is at Appendix 1.

Conduct of the inquiry

1.4 The Committee place advertisements calling for submissions from interested persons and organisations in the Canberra Times.

1.5 A total of 50 submissions were received by the Committee from both private individuals and organisations (see Appendix 2).

1.6 The Committee held 2 days of public hearings and examined 23 witnesses representing 12 individuals and organisations (see Appendix 3).

1.7 The Committee also observed the Australian Federal Police on routine patrol around Canberra's nightspots in Civic, Belconnen and Woden on Friday night, 21 July 1989. The Committee was able during the patrol to discuss police concerns regarding public behaviour and safety.

Timeframe for inquiry

1.8 In establishing the Select Committee, the Legislative Assembly allowed 21 days for public consultation, Committee consideration of the issues and reporting to the Assembly of the Committee's findings and recommendations. During the course of the inquiry, the Committee received several representations regarding the time allowed for lodgement of submissions by the public.

1.9 The Committee was very aware of the difficulties that the timeframe posed for certain people and, particularly, organisations who needed to consult their members. Given the high level of publicity accorded this subject, the Committee was of the view that all sections of the community had an adequate time to address the principle contained in this legislation.

1.10 In response the Committee extended the time for lodgement of submissions by four days, however, it did not seek an extension of the reporting date.

2 THE POLICE OFFENCES (AMENDMENT) BILL 1989

Description

2.1 The Bill, as presented to the Assembly on 28 June 1989, amends the Police Offences Act 1930 by inserting a section, section 35, to provide police with powers to direct a person to cease loitering in a public place under certain circumstances, colloquially known as providing police with move-on powers.

2.2 Under the proposed Bill, a person could be directed to cease loitering if the police officer has reasonable grounds for believing that:

- . an offence against a law of the Territory has been, or is likely to be, committed in the vicinity by that person or by another person;
- . the movement of pedestrians or traffic is being, or is likely to be, obstructed by the presence in the vicinity of that person or of another person; or
- . the safety of that person, or of another person in the vicinity, is in jeopardy.

2.3 Following some criticism of the provisions, Mr Stefaniak proposed amendments to the Bill which excluded 'another person' from the subsection. This was to ensure that only the person involved is asked to move-on by the police and that innocent bystanders are not affected.

2.4 However, the AFP raised a possible practical difficulty with the exclusion of the 'another person' criterion. During the public hearing, the AFP stated that, if a direction to move-on is required to be given to a group of people, a collective move-on direction may not be able to be given. Rather, each of the members of the group may have to be individually addressed and given the formal wording of the move-on procedures.

2.5 A new subsection, subsection (3), was added which excluded from the effects of the section persons who are:

- . picketing a place of employment;
- . demonstrating or protesting about a particular matter; 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 matter.

2.6 This subsection was proposed to prevent the section being interpreted as applying to demonstrations or other legitimate forms of assembly and protest.

Purpose

2.7 The proponent of the Bill, Mr Stefaniak, stated that the Bill was introduced as a private members bill in response to concerns expressed by large sections of the Canberra community regarding public safety and the increasing level of street crime.

2.8 The powers of the Australian Federal Police in relation to street crime are limited to police acting only after a crime has been committed, rather than having the discretion to act in a preventative role to prevent a situation developing that may lead to an offence being committed.

2.9 Both the Australian Federal Police and the Australian Federal Police Association strongly support the Bill, as do Victims of Crime Assistance League (VOCAL) and the majority of individual submissions to the inquiry. The AFP's view can be encapsulated in the Assistant Commissioner's comments:

At the outset, let me say from the Australian Federal Police point of view that we believe that the move-on power is an important preventative tool which has the capacity to negate anti-social behaviour before it arises.

2.10 Many of the individual submissions that the Committee received commented on the fear and intimidation experienced as a result of the behaviour of other persons, either singularly or in a group.

2.11 Other submissions and oral evidence, such as that from VOCAL, referred to experiences of physical violence that, from the victim's point of view, could have been prevented by giving police powers proposed in the Bill.

Current legislation

2.12 Under current legislation, the AFP do not have the power to move-on persons who are strongly suspected of loitering in order to commit an offence, or those groups or individuals who are creating difficulties for other people in carrying out their normal day-to-day activities. The inability to dissipate a large and potentially violent crowd is of particular concern to a number of people.

2.13 The proceedings of the inquiry and various submissions outlined other provisions of the law, none of which were found to provide a deterrent or move-on power.

3 COMMUNITY VIEWS

Problems

3.1 During the inquiry it became apparent to the Committee that there were deep divisions within the Canberra community regarding the provision of move-on powers to the Australian Federal Police.

3.2 In particular, the question of civil liberties was raised by the majority of those providing evidence to the Committee. The question of whose civil liberties were at risk was not easily answered by all witnesses.

3.3 The Committee accepts the genuine concerns expressed by many organisations regarding the effect of the proposed legislation on the young, unemployed and the homeless.

3.4 With this in view, the Committee recommends the scope of the provision be narrowed by specifying offences to which the legislation will apply.

3.5 The Committee recommends that:

- . **the new Bill be amended to cover only crimes of violence, intimidation of the person, fighting in a public place or damage to property.**
(Recommendation 1)

3.6 The Committee believes that some public apprehension about the original Bill was heightened by the use of antiquated language such as loitering. The Committee proposes that the word 'loitering' be replaced with 'direction to leave' and 'leave the vicinity of the area'.

3.7 The Committee recommends that:

- . **the term 'loitering' be replaced in the new Bill with 'direction to leave' and 'leave the vicinity of the area'.**
(Recommendation 2)

3.8 Many of the submissions provided by individuals and organisations such as VOCAL and the Tuggeranong Community Centre were in favour of increased police powers and held the view that the civil liberties of the majority of the Canberra population should not be put at risk by the minority.

3.9 Other witnesses however, were not able to easily reconcile the civil liberties of the majority with those of a small proportion who consider it their right to behave as they wish, regardless of the results.

3.10 The problems identified by those in favour of increased police powers were:

- . swearing in public
- . drunkenness in public
- . impeding of way on footpaths
- . vandalism
- . harassment, particularly of women of all ages
- . fighting in public

3.11 The Committee also received a submission from the Small Business Association which support the Bill as an important factor in crime prevention. In addition, two Canberra retailers gave oral evidence concerning public behaviour at Melba, Rivett and Cooleman Court shopping centres and expressed support for the Bill.

3.12 The main concerns of the retailers were the number of persons, some consuming alcohol, congregating around the shops, groups of youths causing difficulties for customers and vandalism. The safety of local shopping centres, particularly for young children on their own, was of particular concern.

3.13 One retailer presented to the Committee the results of a survey he had carried out at several Canberra shopping centres in an effort to determine a small business response to the Bill. He found:

- . Rivett – all shops asked and all were in favour of the Bill.
- . Cooleman Court – all shops asked and 36 of 43 were in favour of the Bill and the rest were unable to comment.
- . Civic – approximately 45 shops asked and all were in favour of the Bill.

3.14 Another issue of concern to many witnesses is police presence in the form of police on the street, in shopfronts and general accessibility. It is considered by many in the community to be an essential factor in reducing street crime.

3.15 During the public hearings the Committee was surprised and concerned to hear that the police presence in Tuggeranong late at night is at such a level as to be ineffective. The Committee notes that the AFP propose to open a shopfront in the Tuggeranong area in October this year.

3.16 The Chairman of the Tuggeranong Community Council emphasised the concern of Tuggeranong residents when he stated that a residents action group had been formed because of the inadequate policing of that area. The Committee considers that the introduction of adequate police power and staffing will check the growth of self-help policing.

3.17 The Committee recommends that:

- . **the Chief Minister urgently make representations to the Commonwealth Minister for Justice regarding improving the police presence in Canberra, particularly in Tuggeranong.**
(Recommendation 3)

Underlying causes

3.18 The Committee is of the view that there are a number of societal and economic conditions in the ACT that require examination and attention. A purely legal solution would not provide answers or a solution to the problems created by certain types of public behaviour. The overlap of social and legal issues was acknowledged by most witnesses, including the Australian Federal Police.

3.19 The majority of evidence received by the Committee referred to alcohol as a major cause of the types of behaviour threatening public safety.

3.20 In addition, social issues such as unemployment, changing values and society norms and homelessness were frequently cited as underlying causes.

Possible answers

3.21 The Committee considers that the problems experienced as a result of public behaviour in the ACT are not easily solved nor are they able to be solved by legislative means only. The Committee therefore welcomes the reference to the Standing Committee on Social Policy to inquire into public behaviour which will provide a review of the broad range of issues in detail.

3.22 The Committee recommends that:

- . the Standing Committee on Social Policy examine as part of its terms of reference in the inquiry into public behaviour the underlying cause of disturbing and disruptive public behaviour.**
(Recommendation 4)

3.23 The Committee received persuasive evidence of the effects that alcohol is having on public behaviour and the level of street crime in the ACT. The Committee considers it important that amendments be made to the Liquor Act 1975 to regulate a number of issues connected with the sale and consumption of alcohol in the ACT and were supported in this view by a number of witnesses, including the Australian Federal Police Association.

3.24 The Committee recommends that:

- . amendments to the Liquor Act 1975 be made to better regulate:**
 - the granting of liquor licenses;**
 - hours of trading;**
 - consumption of liquor in public places;**
 - consumption of liquor in licensed premises; and**
 - serving of liquor in licensed premises.**
- (Recommendation 5)

3.25 The Committee had the advantage of securing the views of the President of the Law Reform Commission of Australia, Justice Elizabeth Evatt. The Committee was of the view that the major concerns expressed by Justice Evatt and the Australian Labor Party had already been met by the further amendments, nevertheless, the Committee took into account the civil liberties issues raised generally in Her Honour's letter and the ALP's submission.

3.26 Justice Evatt indicated that were there to be a need for further legislation the Committee should take into account the first proposal in the 1988 Report of the Working Party on move-on powers. The Committee was of the view that the move-on powers proposed by the Working Party were wider than the Committee were prepared to entertain and indeed wider than those in Mr Stefaniak's Bill.

3.27 The Committee is of the view that the amendments to the Police Offences Act will better ensure public safety and meet the concerns of some community organisations regarding 'targeting' of particular groups and misuse of the powers that would be provided to the police. The Committee recommends that the new legislation have a sunset clause to become operative in two years.

3.28 The Committee recommends that:

- . the new Police Offences (Amendment) Act 1989 in the form recommended by the Committee cease operation in two years.**
(Recommendation 6)

3.29 The Committee also recommends that a committee of the same membership as this Select Committee be formed to monitor, at six monthly intervals, the operation of the legislation and, at the conclusion of the two year operating period, review the continued application of the legislation.

3.30 The Committee recommends that:

a committee be formed to monitor, at six month intervals, the effects of the legislation and prior to the cessation of section 35 of the Police Offences Act, the need for the sunset provisions to be re-examined. The committee membership shall be Mr Stefaniak, Mr Collaery and Ms Maher. The matters to be monitored include:

- the number of arrests for failing to leave an area as directed by a police officer; and**
- the number of complaints to both the Internal Investigations Division and the Ombudsman regarding police use of the powers and the resolution of those complaints.**

(Recommendation 7)

3.31 Several long term strategies were considered by the Committee, including school education programs to increase awareness of police and community interaction.

3.32 A further program that came to the notice of the Committee during the inquiry is a program currently being piloted in Adelaide, the Cautionary Diversion Program. The aim of this scheme is to prevent children under 18 years of age from entering the judicial system. The Committee was particularly interested in this scheme as a measure that will have long term benefits for youth and the community as a whole.

3.33 The Committee recommends that:

the Minister for Industry, Employment and Education incorporate in the community education program in schools, components on the Australian Federal Police, police powers, individuals rights and complaint mechanisms.

(Recommendation 8)

the Chief Minister urgently examine the South Australian program, the Cautionary Diversion Program, and determine how, within existing services, both public sector and voluntary, a similar program can be established in the ACT.

(Recommendation 9)

the Chief Minister seeks the Commonwealth Minister for Justice's cooperation to actively encourage dialogue between the Australian Federal Police and youth groups. Such discussion should include consideration of the Cautionary Diversion Program.

(Recommendation 10)

4 ACCOUNTABILITY

Potential for misuse or abuse

4.1 The fear of misuse or abuse of the discretionary power that this Bill would provide the Australian Federal Police was of concern to some of the organisations and some of the individuals that contributed to the inquiry.

4.2 This fear was largely based on the view that the young, homeless and unemployed would be 'targeted' by individual police due to their circumstances rather than as a result of a reasonable belief that an offence was likely to be committed by that person. In particular, youth were seen to be the social group more likely to bear the brunt of the legislation.

4.3 By comparison, organisations such as VOCAL and many individual submissions supported the use of the proposed legislation against offenders generally without categorisation.

4.4 The Committee also heard of the generally exemplary conduct of the AFP, a sentiment shared by organisations as diverse as the Council for Civil Liberties, ACT Council of Social Service, the Trades and Labour Council and Victims of Crime Assistance League, although some of those organisations did express a concern regarding targeting of particular groups.

4.5 Two witnesses also gave evidence to the Committee of possible abuse of police powers. Reservations were also expressed by the Welfare Rights and Legal Centre regarding compliance by police with police instructions.

4.6 A contributing factor to the concerns expressed would appear to be the age and maturity of police on the streets plus the training that those officers receive.

4.7 Both the Australian Federal Police and the Australian Federal Police Association were strongly of the view that police would not misuse the power given to them. Both bodies also commented on the successful use and community acceptance of move-on powers given to police under previous legislation, section 19A of the Gaming and Betting Act, which was repealed in 1987.

4.8 The Superintendent in charge of City Police Station stated that:

... the ordinance that has been repealed was a valuable tool and I can speak from experience, it was never abused, and to my knowledge no complaints were ever received.

4.9 The Committee acknowledges that any police force will, by its nature, contain officers who act in a manner that is undesirable by either police or community standards. However, a number of mechanisms exist to either minimise misuse or abuse of powers or, if such a situation arises, investigate such complaints in relation to the AFP. The Committee awaits with interest the outcome of current allegations of police misconduct.

Police instructions

4.10 The Australian Federal Police issues regional instructions to its officers with which, as a lawful extension to AFP general orders, officers are required to comply. These instructions cover matters such as the use of powers and the way in which those powers should be used. The Committee believes that the instruction should be available to the Legislative Assembly prior to the vote on the Bill.

4.11 In the AFP's written and oral evidence to the Committee it was stated that the Assistant Commissioner in charge of the ACT Region would issue instructions to officers on the use of the powers contained in the Bill.

4.12 The Committee was also advised that the AFP would be prepared to publish those instructions.

4.13 The Committee considers that wide publishing of the instructions governing the use of the proposed power is essential to ensure that the community is well informed about the extent, limitations and the discretionary nature of the power. It is also important that this information be published prior to, or at the time, of the legislation coming into force.

4.14 The Committee recommends that:

- the Chief Minister seek the co-operation of the Commonwealth Minister for Justice in making available the regional instructions governing the use of the powers contained in the new Bill prior to the passage of the legislation. (Recommendation 11)
- the Chief Minister seek the co-operation of the Commonwealth Minister for Justice in the Australian Federal Police publishing the regional instruction governing the use of the powers contained in the proposed Bill in the Canberra Times prior to, or at the time of, the amendment taking effect. (Recommendation 12)

Internal Investigation Division

4.15 The Internal Investigation Division (IID) was established pursuant to the Complain (Australian Federal Police) Act 1981. Its function is to investigate complaints made by the public concerning action taken by members of the AFP in their official capacity as police officers. The IID investigates other allegations against members that fall outside the ambit of the Act.

4.16 The Act also provides that the IID and the Ombudsman can jointly deal with complaints. In addition, results of IID investigations are reviewed by the Commonwealth Ombudsman and if found not to have been conducted properly and fairly, the Ombudsman can either conduct his own investigation or order that investigations continue in a manner that the Ombudsman determines.

4.17 If a police officer is found to have breached general orders and instructions, disciplinary regulations provide for penalties to be levelled against that officer. Penalties can involve criminal charges and/or dismissal from the AFP.

Ombudsman

4.18 Members of the public who wish to make a complaint against members of the AFP can make simultaneous complaints to both the IID and the Ombudsman, but unless the Ombudsman decides to the contrary, complaints against members of the AFP are usually first investigated by the IID. As previously referred to, the Ombudsman reviews all investigations. In addition, the Ombudsman often maintains an oversighting role during the IID process.

4.19 The Ombudsman also has an investigatory role when questions are raised regarding possible deficiencies in AFP practice and procedure.

4.20 During oral evidence the Ombudsman provided the Committee with the following preliminary statistics for 1988–89 on the number of cases closed that relate to street incidents:

OMBUDSMAN 1988–89 FIGURES

	ASSAULTS	ASSAULTS/ HARASSMENTS	HARASSMENTS
Cases Closed	46	8	29
Substantiated	1	2	2
Partly Substantiated	6	–	6
Incapable of Determination	6	3	5
Unsubstantiated	23	1	8
Withdrawn	10	2	11

4.21 The Ombudsman's Office advised that the above statistics were in line with those of previous years and a trend to either more or less assaults by police was not evident.

4.22 The Committee considers it important that all individuals who are in police custody are aware of their right to complain if they consider that they have been subject to a misuse or abuse of police power. The Committee does not believe that all such persons have adequate knowledge of the avenues available to them. Possible methods by which awareness can be increased are notices in police stations advising the public of the role of the IID and Ombudsman and advertising by the Ombudsman of the responsibilities of that Office.

4.23 In conjunction with this, the Committee considers that persons who make malicious complaints against police should be open to prosecution.

4.24 The Committee recommends that:

- the Chief Minister seek the Commonwealth Government's co-operation in placing notices in all police stations in the ACT Region of the Australian Federal Police concerning the mechanisms for complaints against the police, including the Commonwealth Ombudsman.
(Recommendation 13)
- the Chief Minister make representations to the Commonwealth Government to amend legislation to ensure that persons who make malicious complaints against police to either the Ombudsman or the Internal Investigation Division be open to prosecution.
(Recommendation 14)

5 PENALTIES

Appropriateness

5.1 The Bill contains a penalty of \$1000 or imprisonment for 3 months for contravening a direction given by a police officer to cease loitering.

5.2 Very few of the submissions received by the Committee commented on the level or nature of the penalty included in the Bill. The community's main concern was centred on the issue of the powers proposed to be given to the police.

5.3 During the public hearings the question of the penalty was raised with some witnesses and the Committee heard differing views ranging from support for a strong penalty to the view that the penalty proposed was too high.

5.4 The President of the Council of Civil Liberties of the ACT agreed with a strong penalty that would reflect the nature of the offence which otherwise would have been committed if the offender had not been moved on. His support for a strong penalty was also based upon the fact that the Bill was a serious attempt to reduce crime.

5.5 In a similar desire to correlate the penalty with the offence, the Chairman of the Tuggeranong Community Council raised the issue of restitution and penalties for persons convicted of vandalism and suggested that a practical penalty would include community service orders to make good damage caused by such incidents.

5.6 Whilst this suggestion related to offences actually committed and as such is outside the terms of reference of this Committee, the Committee was of the view that the concept was appropriate and one which should be incorporated in this Bill rather than an initial penalty of imprisonment.

Level

5.7 When examining the question of the level of the penalty, the Committee took into account penalties for other offences, including:

Careless of inconsiderate driving	\$100
Dangerous driving	\$2000 or imprisonment up to 12 months or both
Offensive behaviour	\$1000
Assault occasioning actual bodily harm	liable for imprisonment for 5 years
Defacing premises	\$1000 imprisonment for 6 months

5.8 When compared to penalties for offences such as offensive behaviour, the proposed penalty of \$1000 or imprisonment for three months did not appear inappropriate. However, the Committee concluded that as the Bill will be largely a crime prevention mechanism and an offence (other than not moving on) will not have been committed, a lower penalty should be included in the Bill.

5.9 The Committee recommends that:

- . the penalty for contravening a direction given to leave an area be \$200 or not more than 24 hours community service.**
(Recommendation 15)

5.10 The Committee also agreed to amend subsection (2) in line with the suggestion of the Law Reform commission to allow persons being asked to move-on to provide a reasonable excuse for not doing so.

5.11 The Committee recommends that:

- . the new Bill include a provision to allow persons to provide a reasonable excuse for not moving on.**
(Recommendation 16)

6 CONCLUSION

6.1 There is a justifiable call from the community for increased police powers to disperse would-be offenders where crimes of violence, intimidation of the person, fighting in a public place and damage to property are threatened.

6.2 The Committee notes that no solution was offered by any witness to the inquiry about the situation of a woman threatened by a person otherwise lawfully waiting outside a women's refuge prior to the securing of a restraining order under domestic violence legislation.

6.3 The Committee is of the opinion, that if used wisely, this power could lead to fewer arrests for substantial offences of crimes of violence against people and damage to property.

6.4 As a result of the Committee's inquiry and deliberations it has concluded that the Bill proposed by Mr Stefaniak be withdrawn and that Mr Stefaniak, as an order of the Legislative Assembly, prepare and present to the Assembly a bill in accordance with the recommendations of this Committee. The Committee proposal would take the form as at Appendix 4, subject to legislative drafting amendments.

6.5 This final recommendation, whilst appearing at the conclusion of the Report, is in fact the prime recommendation of the Committee.

6.6 The Committee recommends that:

The Police Offences (Amendment) Bill 1989 be withdrawn and that Mr Stefaniak be ordered to prepare and present a bill in accordance with the recommendations of this Committee.

(Recommendation 17)

Bill Stefaniak
Chairman
25 July 1989

7 RECOMMENDATIONS

The Committee recommends that:

- 1. The new Bill be amended to cover only crimes of violence, intimidation of the person, fighting in a public place or damage to property. (para 3.5.)**
- 2. The term 'loitering' be replaced in the new Bill with 'direction to leave' and 'leave the vicinity of the area'. (para 3.7.)**
- 3. The Chief Minister urgently make representations to the Commonwealth Minister for Justice regarding improving the police presence in Canberra, particularly in Tuggeranong. (para 3.17.)**
- 4. The Standing Committee on Social Policy examine as part of its terms of reference in the inquiry into public behaviour the underlying cause of disturbing and disruptive public behaviour. (para 3.22.)**
- 5. Amendments to the Liquor Act 1975 be made to better regulate:**
 - the granting of liquor licenses;**
 - hours of trading;**
 - consumption of liquor in public places;**
 - consumption of liquor in licensed premises; and**
 - serving of liquor in licensed premises. (para 3.24.)**
- 6. The new Police Offences (Amendment) Act 1989 in the form recommended by the Committee cease operation in two years. (para 3.28.)**
- 7. A committee be formed to monitor, at six month intervals, the effects of the legislation and prior to the cessation of section 35 of the Police Offences Act, the need for the sunset provisions to be re-examined. The committee membership shall be Mr Stefaniak, Mr Collaery and Ms Maher. The matters to be monitored include:**
 - the number of arrests for failing to leave an area as directed by a police officer; and**
 - the number of complaints to both the Internal Investigations Division and the Ombudsman regarding police use of the powers and the resolution of those complaints. (para 3.30.)**
- 8. The Minister for Industry, Employment and Education incorporate in the community education program in schools, components on the Australian Federal Police, police powers, individuals rights and complaint mechanism. (para 3.33.)**
- 9. The Chief Minister urgently examine the South Australian program, the Cautionary Diversion Program, and determine how, within existing services, both public sector and voluntary, a similar program can be established in the ACT. (para 3.33.)**
- 10. The Chief Minister seeks the Commonwealth Minister for Justice's co-operation to actively encourage dialogue between the Australian Federal Police and youth groups. Such discussion should include consideration of the Cautionary Diversion Program. (para 3.33.)**

11. **The Chief Minister seek the co-operation of the Commonwealth Minister for Justice in making available the regional instruction governing the use of the powers contained in the new Bill prior to the passage of the legislation. (para 4.14.)**
12. **The Chief Minister seek the co-operation of the Commonwealth Minister for Justice in the Australian Federal Police publishing the regional instruction governing the use of the powers contained in the proposed Bill in the Canberra Times prior to, or at the time of, the amendment taking effect. (para 4.14.)**
13. **The Chief Minister seek the Commonwealth Government's co-operation in placing notices in all police stations in the ACT Region of the Australian Federal Police concerning the mechanisms for complaints against the police, including the Commonwealth Ombudsman. (para 4.24.)**
14. **The Chief Minister make representations to the Commonwealth Government to amend legislation to ensure that persons who make malicious complaints against police to either the Ombudsman or the Internal Investigation Division be open to prosecution. (para 4.24.)**
15. **The penalty for contravening a direction given to leave an area be \$200 or not more than 24 hours community service. (para 5.9.)**
16. **The Bill include a provision to allow persons to provide a reasonable excuse for not moving on. (para 5.11.)**
17. **The Police Offences (Amendment) Bill 1989 be withdrawn and that Mr Stefaniak be ordered to prepare and present a bill in accordance with the recommendations of this Committee. (para 6.6.)**

1989

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

Presented, 28 June 1989

(Mr Stefaniak)

Police Offences (Amendment) Bill 1989

A BILL

FOR

An Act to amend the *Police Offences Act 1930*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

1. This Act may be cited as the *Police Offences (Amendment) Act 1989*.

5 **Principal Act**

2. In this Act, "Principal Act" means the *Police Offences Act 1930*.¹

Insertion

3. After section 34 of the Principal Act the following section is inserted in Part III:

10 **Loitering**

"35. (1) A police officer may direct a person to cease loitering in a public place if the police officer has reasonable grounds for believing that—

(a) an offence against a law of the Territory has been, or is likely to be, committed in the vicinity by that person or by another person:

- (b) the movement of pedestrians or traffic is being, or is likely to be, obstructed by the presence in the vicinity of that person or of another person; or
- (c) the safety of that person, or of another person in the vicinity, is in jeopardy.

5

“(2) A person shall not contravene a direction given in accordance with subsection (1).

Penalty: \$1,000 or imprisonment for 3 months.”.

NOTE

1. Ordinance No. 9, 1930 as amended by No. 10, 1934; No. 31, 1937; Nos. 7 and 10, 1939; No. 3, 1948; No. 12, 1953; No. 21, 1959; No. 1, 1961; No. 19, 1966; No. 3, 1967; No. 41, 1970; No. 35, 1975; No. 65, 1977; No. 46, 1978; No. 17, 1980; No. 56, 1983; No. 25, 1984; No. 67, 1985; No. 31, 1986.

AUSTRALIAN CAPITAL TERRITORY

LEGISLATIVE ASSEMBLY

POLICE OFFENCES (AMENDMENT) BILL 1989

Amendments to be moved by Mr Stefaniak

Clause 3
Proposed new paragraph 35(1)(a)
Page 1, line 14 -

Omit "or by another person".

Clause 3
Proposed new paragraph 35(1)(b)
Page 2, lines 2 to 3 -

Omit "or of another person".

Clause 3
Proposed new paragraph 35(1)(c)
Page 2, line 4 -

Omit ", or of another person in the vicinity,".

Add at the end the following subsection:

- "(3) A person shall not be taken to be loitering if, whether in the company of other persons or not, the person is -
- (a) picketing a place of employment;
 - (b) demonstrating or protesting about a particular matter;
- or
- (c) 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 matter."

APPENDIX 2

SUBMISSIONS RECEIVED

Individuals

Mrs B Ballard

Mr N Baxendell

Mrs A V Bertley

Mrs S Blick

Mrs A Blythe

Mr P Blythe

Mrs M Booth

B and R Cameron

R Cameron

Mr E H Choudhury

Mr/s Flynn

J E Greig

N R L Grant

Mr A Hastie

Ms M Johnson

Mrs Inglis

Mr P Kaufman

K Keirven

M Kelly

V Lamb

G Marks

Mr D J Meagher

Mr M Moore

Mr G Petersilka

Cmdr J Simpson

C Traynor

G Verhowven

R A Wilson

Mrs Wootton

Organisations

ACT Bar Association

ACT Council of Social Service, Inc

ACT Teachers Federation

Australian Federal Police

Australian Federal Police Association

Australian Labor Party, ACT Branch

Australian Small Business Association

Circle of Friends

Deakin 67 Neighbourhood Watch Area

Havelock House Association Inc

Melba Shopkeepers

Network (ACT Workers with Youth Network)

Open Family Foundation

Short Cuts Information and Referral Service for Young People Inc

The Law Society of the ACT

The Street Peoples Collective

The Welfare Rights and Legal Centre Ltd

Trades and Labour Council

Tuggeranong Community Council

VOCAL

Wanniassa Area 13 Neighbourhood Watch

APPENDIX 3

LIST OF WITNESSES

18 July 1989, Canberra

Civil Liberties Council	Mr L O'Sullivan
ACT Council of Social Service	Dr J Tomlinson
Trades and Labour Council	Mr D Ritchie
Australian Federal Police	Assistant Commissioner B Bates Commander J Dau Superintendent M McGregor Sergeant W T McQualter
Australian Federal Police Association	Mr C Eaton Mr D Small
Victims of Crime Assistance League (VOCAL)	Mrs R Cameron Mr B Slark Mrs P Beswick Mrs B Ballard Mrs A Dowling
Tuggeranong Community Council	Mr D Read
Ombudsman	Prof D Pearce Ms L Shore Ms C Blesing

20 July 1989, Canberra

Welfare Rights and Legal Centre	Mr P Sutherland Ms F Mc Donald
Private capacity	Mr P Blythe Mr R A Wilson Mr G Rushmer

DRAFTING INSTRUCTIONS SENT TO LEGISLATIVE COUNSEL FOR A NEW POLICE OFFENCES (AMENDMENT) BILL 1989, incorporating recommendations proposed by the Committee.

Direction to leave

"35. (1) A police officer may direct a person to leave the vicinity of the area where such direction is given in a public place if the police officer has reasonable grounds for believing that a crime of violence, intimidation of the person, fighting in a public place or damage to property has been, or is likely to be, committed in the vicinity by that person.

(2) Where any person is given a direction under subsection (1), such person shall not, without reasonable excuse, fail to comply with the direction.

Penalty: \$200 or not more than 24 hours community service

(3) Subsection (1) above shall not apply to a person if, whether in the company of other persons or not, the person is—

- (a) picketing a place of employment;
- (b) demonstrating or protesting about a particular matter; or
- (c) 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 matter."

Cessation of operation of Section 35

4.(1) This section, unless sooner repealed, shall cease to be in force at the expiration of two years after the date of commencement of this Act.

(2) For the purpose of Section 8 of the Acts Interpretation Act 1901, when section 35 ceases to be in force by virtue of subsection (1), it shall thereupon be deemed to have been repealed by an Act other than this Act.

DISSENTING AND ADDITIONAL COMMENTS BY MR STEFANIAK

1. My original Bill, incorporating my amendments gives adequate protection to civil liberties and enables the Police to do their job without unnecessary restrictions on the type of offences they are trying to prevent. The bottom line is, however, in the interests of law and order in Canberra, I will support any workable move on power.

2. Alcohol consumption is certainly a big factor in street crime but not the only factor. I am addressing alcohol consumption in certain Public Places with the Liquor (Amendment) Bill 1989 (copy circulated to members for discussion). The move—on power has much more general application as a crime prevention tool than just banning the drinking of alcohol in certain areas. We need both.

3. I believe the penalties in the original bill are quite suitable.

4. I accept the AFP request for police to be able to ask a person acting suspiciously his/her name and address. I ask the Assembly to address this and give Police this power in Canberra.

5. Members are reminded this whilst some groups and individuals put forward various schemes aimed at solving such problems as youth crime, all of these involve money and carry no guarantee of success or really addressing the legal and crime problem. The move—on power costs nothing and prevents crime and damage to property thus saving the community money. It should result in less, not more people being brought before the courts as it stops trouble before it starts. I commend to members the comment of Mr Ray Wilson, ex—ACT Commissioner, ex—South Australian Police Force.

6. If posters are to be put up in Police Stations advising defendants of their rights of complaint then this should be done in conjunction with other reforms in the complaints about police area. This reform must include, a) no anonymous complaints should be acted upon, b) confidentially of complaints enshrined in the legislation, c) an offence must be created for malicious complaints against police. Other Police Forces in Australia have these provisions, the AFP should too. This matter is of course still a Federal responsibility and the ACT can only recommend.

7. I remind members that no evidence was given to the Committee that the move—on power was ever abused in Canberra when the Police had it between 1913—1987. It is a common sense power that should never have been taken away.

8. I close my comments with the following quote by a witness in favour of the Bill. (Page 73 transcript 18/7/89)

" On the decisions of your Parliament you will be judged, and most probably not on the decision itself but on how safe Canberra people feel in the future."

Bill Stefaniak
Chairman
25 July 1989

