



Comment

on the

Standing Committee on Legal Affairs' Inquiry into Police Powers and Crowd Control

**May
2005**

INTRODUCTION

ACTCOSS acknowledges that modern day Canberra has been built on the traditional lands of the Ngunnawal people. We pay our respects to their elders and recognise the displacement and disadvantage they have suffered since European settlement. ACTCOSS celebrates the Ngunnawal's living culture and valuable contribution to the ACT community.

The ACT Council of Social Service Inc. (ACTCOSS) is the peak representative body for not-for-profit community organisations, people living with disadvantage, and low-income citizens of the Territory. ACTCOSS is a member of the nationwide COSS network, made up of each of the state Councils and the national body, the Australian Council of Social Service (ACOSS).

ACTCOSS's objectives are representation of people living with disadvantage, the promotion of equitable social policy, and the development of a professional, cohesive and effective community sector.

The membership of the Council includes the majority of community based service providers in the social welfare area, a range of community associations and networks, self-help and consumer groups and interested individuals.

ACTCOSS receives funding from the Community Services Program (CSP) which is funded by the ACT Government.

ACTCOSS COMMENT

On the Legislative Assembly Standing Committee on Legal Affairs' Inquiry into Police Powers and Crowd Control

Committee Terms of Reference

To inquire into and report on:

- (a) Current police powers under legislation;
- (b) Where there have been instances of misuse of current powers;
- (c) The existence and/or desirability of special powers for the purpose of particular events
- (d) Any other relevant matter

Current Police Powers under legislation

“Crowd control” does not have a formal definition under ACT legislation. Indeed, the term exists nowhere except in the *Security Industry Act 2003*, where it refers to the role of private security firms in managing groups of people at private events, such as in nightclubs or at concerts. ACTCOSS is concerned that the interpretation of “crowd control” may be interpreted to include any number of police powers, ranging from move-on powers to riot responsiveness.

ACT legislation does contain a number of legislative powers for police to intervene in circumstances where groups of people are congregated and there is, or there is likely to be, a serious disturbance or offence.

The following legislative provisions are examples:

- The *Crime Prevention Powers Act 1988* includes move-on powers, whereby police may require a person to leave an area if an officer reasonable believes that “a person in a public place has engaged, or is likely to engage, in violent conduct in that place”
- The *Crimes Act 1900* (section 190) allows police to enter premises (without permission or warrant) where an officer has a reasonable belief that “an offence or a breach of the peace is being or is likely to be committed, or a person has suffered physical injury or there is imminent danger of injury to a person or damage to property and it is necessary to enter the premises immediately for the purpose of preventing the commission or repetition of an offence or a breach of the peace or to protect life or property”

- The *Crimes Act 1900* (section 394) also allows police to issue a noise abatement direction where an offensive noise is being emitted, and if the noise does not stop, may seize the thing making the noise
- The *Major Events Security Act 2000* allows the Government to designate an event as a “major event”, which allows police to restrict entry, as well as search people entering the event

Furthermore, there are a number of offences in the *Crimes Act 1900* that police may use to arrest people where crowds have become uncontrollable, for instance:

- offensive behaviour (section 392)
- fighting (section 391)
- misbehaviour at public meetings (section 379)
- possession of offensive weapon or disabling substance (section 380)

In addition, there are other pieces of legislation that give police particular powers in dealing with people in certain circumstances, including people in crowds, for instance:

- If a person is intoxicated, they may be taken into custody for their safety under the *Intoxicated Persons (Care and Protection) Act 1994*
- If a person is suffering from a mental illness, they may be taken to an approved health facility under the *Mental Health (Treatment and Care) Act 1994*
- If a child is at risk, they may be taken into care under the *Children and Young People Act 1999*

Police and people living with disadvantage

As the peak organisation for the community sector, ACTCOSS does not provide services directly to members of the public, and so cannot provide specific examples of misuse of police powers, or indeed confirm or deny any such claims. However, ACTCOSS notes that if there were instances of abuse of police powers, they may not be readily reported, for fear of being disbelieved or victimised, because of social disengagement with government authorities, or ignorance of the appropriate complaints procedure.

ACTCOSS would further point out that certain social groups and people living with disadvantage are more likely than the general population to come into contact with law enforcement agencies. These include:

- Young people, particular boys and young men
- Indigenous people
- People living with mental illness
- People who are drug dependent
- Homeless people
- People with low levels of education
- People who are unemployed

Thus, any discussion of the level of appropriate authority police should have in the community should take into consideration that this will have differential impacts on different groups of people. Specifically, the brunt of any power to restriction of freedoms or discretionary powers that police may have tend to be disproportionate used against people who are already disadvantaged.

ACTCOSS believes that addressing the causes of disadvantage, as well as working to otherwise prevent the need for police intervention should be the focus of government concerns about maintaining public order.

Human Rights

Another dimension to any discussion of police powers and crowd control is whether they are consistent with human rights. As the Committee is aware, the ACT Legislative Assembly has enacted the Human Rights Act 2004, which sets out human rights primarily from the International Covenant on Civil and Political Rights that apply in the ACT.

In particular, ACTCOSS would draw the attention of the Committee to two sections of the Human Rights Act 2004:

13 Freedom of movement

Everyone has the right to move freely within the ACT and to enter and leave it, and the freedom to choose his or her residence in the ACT.

15 Peaceful assembly and freedom of association

- (1) Everyone has the right of peaceful assembly.
- (2) Everyone has the right to freedom of association.

ACTCOSS encourages the Committee to ensure that their analysis and findings from this inquiry are consistent with these and other sections of the Human Rights Act, and not transgress its principles.

Ensuring the appropriate police response

In considering the role of police powers in crowd control, ACTCOSS urges the committee to reflect on which situations crowd control might become necessary. There are many times when people may form crowds, for example:

- staging a political protest or demonstration
- gathering for a public event or concert
- socialising or “hanging out” in a public place
- congregating at a private entertainment venue
- attending a private residential party
- watching a sporting event

There have been instances where each of the above has generated anti-social behaviours, including violence. However, this does not mean that the appropriate response should be the same in all cases: police should be mindful of the purpose of the crowd when dealing with any negative behaviour. In particular, a riot response is not appropriate at the first sign of trouble, and excessive police force may make matters worse, as well as increase distrust between the police and disenfranchised communities, creating further problems in the future.

At all times, ACTCOSS would recommend that the response to any negative group behaviour be aimed at minimising harm to participants and police officers, and maintain respect for the human rights of all involved. It would also be useful to review the relevant Codes of Conduct, particularly in light of the passage of the Human Rights Act, to ensure they remain respectful and cognisant of basic human rights and freedoms. This may also present an opportunity for the law enforcers to recognise and strengthen their Duty of Care in ensuring that harm is minimised in police conduct.

Alcohol and Violence

ACTCOSS notes that many instances of group or public violence are often related to excessive consumption of alcohol. This also is often correlated with other forms of disadvantage as previously listed, such as social alienation and lack of meaningful enterprise.

ACTCOSS supports the introduction of additional government programs aimed at educating the public about responsible consumption of alcohol and at assisting those living with alcohol dependency. ACTCOSS would also support a review of laws surrounding the responsible sale and service of alcohol to ensure that harm associated with this drug is minimised.

The Social Context

ACTCOSS would also commend a preventative approach to dealing with anti-social group behaviours. It is far preferable to try to address and alleviate the conditions which might lead to police intervention, rather than simply try to address the problem after the fact.

At a specific level, this might involve working more closely with event and venue managers to ensure that they have in place adequate measures to prevent anti-social behaviour occurring. If co-operation is insufficient, government may need to examine whether closer regulation of private establishments is necessary.

At a more general level, Government can use promotion, prevention and early intervention strategies to reduce the risks of anti-social or violent behaviour. For example,

- Schools might work with children and their families to positively address any behavioural problems and prevent them from becoming worse later in life
- Mental health facilities may be improved to assist people with mental health problems and intervene early to prevent them developing violent behaviours
- Government might implement employment and educational programs to assist those who are unemployed or marginally attached to the workforce, especially for young men
- Provision of adequate safe recreational facilities for young people would help reduce feelings of social alienation
- Greater provision of adequate housing services to reduce homelessness and insecure housing would assist in maintaining a sense of safety and independence
- Greater information about the role and powers of police, as well as about complaints mechanisms and rights protection assistance would help to community maintain relations with police

Conclusion

ACTCOSS acknowledges that very occasionally, groups of people may exhibit anti-social and violent behaviours, often under the influence of alcohol or other drugs. However, to our knowledge, this is no more prevalent in the ACT as other parts of Australia, and is quite possible less so.

ACTCOSS submits that the appropriate response to anti-social or violent group behaviour is not simply increasing the powers of police to intervene in such situations, or to empower them with increased “move-on” powers that infringe on citizens’ human rights and civil liberties, as well as being disproportionately used against disadvantaged groups.

Instead, the government and community need to carefully examine the social contexts that might lead people to become involved in these behaviours. Violence and anti-social behaviour does not occur in isolation, nor is it a demonstration that a group of people are “bad” and therefore require punishment. If the government is willing to do the research and provide the appropriate resources, there is little doubt that instances of anti-social group behaviour can be reduced in the ACT.

ACTCOSS does not support an increase in police powers of crowd control, especially as there is, as yet, little evidence we have seen that such changes would be effective or adequate public debate on the issue. It is far preferable to address the causes of these behaviours than to simply leave the problem as yet another task for the police force to deal with.