



Armed PSOs using force against someone who “appears to be mentally ill” fails rather than protects the community

Justice Legislation Amendment (Protective Services Officers) Bill 2011 (the Bill) & new mental health powers

The Bill aims to give armed protective services officers (PSOs) on Melbourne train stations, and other designated places, powers to “combat crime and antisocial behaviour”. Worryingly, it also gives PSOs the power to apprehend, using reasonable force, a person who hasn’t committed a crime, but whom the PSO reasonably believes appears to be mentally ill, and is at risk of suicide or causing serious bodily harm. Until now, only Police had these powers, under section 10 of the *Mental Health Act 1986* (Vic) (MHA).

PSOs – armed like police but with less training and support

- PSOs currently provide security at courts and parliament buildings, are not sworn members of police and undergo 8 weeks of training.
- New PSOs will be armed with **semi-automatic weapons, capsicum spray & batons** and be deployed on all Melbourne’s train stations after 6 pm & other areas designated by parliament. They will have more police-like powers but undergo a total of **12 weeks** of initial training, compared with the **police’s 23 weeks**, plus have less supervision.

Apprehending by force, someone who hasn’t committed a crime, has serious consequences

- Police have general powers to arrest anyone found committing an offence.¹ But these mental health-specific powers are much wider, since it is not necessary for the person to be found committing a crime.
- Being apprehended like this under section 10 MHA is a serious infringement on one’s rights & liberty and should only ever be used as last resort.² It’s hard to see how expanding use of these significant powers beyond qualified members of the police force is consistent with the principle of least restrictive treatment.

Mental health powers for PSOs is incompatible with a mandate to address “crime” “violence” & “safety”

- The Government says it has a mandate to give PSOs on trains these and other powers so as to protect the community from violence & crime that have become “an unacceptable risk for many in the community”.³
- Section 10 powers are less about addressing crime and violence than they are about **facilitating timely access to mental health assessment** with a view to providing support and services for a person in acute crisis.⁴ For over 25 years, only police have had these mental health specific powers. In 1986 parliament then took care to make sure police powers under section 10 were limited in response to concerns that such powers would be wider than those for the general public.⁵
- There is no evidence to support a need to extend to armed PSOs powers that specifically target people who appear to be mentally ill. Government should instead commit to improved training, supervision, support and accountability of police in exercising their existing powers.
- A mandate to reduce crime and increase safety on trains is better addressed by laws which do not disproportionately target vulnerable groups in the community.

Evidence does not support a need for mental health specific powers to be extended

- The community has a right to be safe as well as to feel safe on public transport. However, as the Victorian Auditor-General emphasised in his report on safety on the rail network, there must be an **evidence-based approach to address public perceptions of safety** as well as actual safety risks.⁶
- Government’s claims about the nature and extent of crime on the rail network are exaggerated. The Auditor-General’s report found that over 60% of crimes committed were property-related offences, whereas less than one fifth (17%) were crimes against the person such as assault or robbery.⁷

¹ See ss 458, 459 and 459A of the *Crimes Act 1958* (Vic)

² See the objects of the MHA at section 4(2)(b)

³ Second reading speech, *Justice Legislation Amendment (Protective Services Officers) Bill 2011*, Hansard, 29 June 2011, p 2376, <<http://tex.parliament.vic.gov.au/>> or via: [Direct link](#).

⁴ See the obligations on police after apprehending a person at s10(4) MHA. See also Second reading speech, *Mental Health Bill 1985* (Vic), Hansard, 30 May 1985 at p 930-1

⁵ Second reading speech, *Mental Health Bill (No 2) 1985* (Vic), Hansard, 28 November 1985 at p 2612.

⁶ Victorian Auditor-General’s report *Personal Safety and Security on the Metropolitan Train system*, 2010-10-28, p5

<http://download.audit.vic.gov.au/files/20100609_Rail_Safety_Full_Report.pdf>

⁷ *Ibid*, at p 1.

- One in three people detained by Victoria Police have mental health issues, yet **only 27% of those detained are charged with violent offences** – most cases concerned alleged property and nuisance offences.⁸
- Neither the Department of Health nor the Office of the Chief Psychiatrist appear to have been **consulted** about extending section 10 powers beyond police & there is clearly no justification for it.

Increased risk of escalation of incidents and adverse outcomes

- Compared with the general population, people with mental illness are more vulnerable to arrest and police detention⁹ and are more likely to suffer adverse - even fatal - outcomes when they engage with armed officers who can use force.¹⁰ Such victimisation can exacerbate a person's preexisting mental health issues and result in a **substantially diminished quality of life**.¹¹
- The presence of armed law enforcement officers can heighten distress and anxiety for the person in mental health crisis, and escalate the situation.¹² Moreover, without officers having adequate training and experience in intervention and de-escalation techniques, such crisis situations can end in tragedy.¹³
- Victoria Police acknowledges the **need for improved mental health specific training** and support for police in dealing with people with mental health issues.¹⁴ Extending section 10 powers to PSOs with less training, supervision and support than police will only increase the risk of harmful, deleterious outcomes.
- There are very real concerns the amendments will mean a person may be **detained for longer**, handcuffed and subjected to greater restraint, use of capsicum spray and **other humiliating treatment**, without access to amenities and in full view of the public while awaiting the arrival of a clinician or member of police.
- Ultimately, it is **counter-productive to community safety** and likely to perpetuate fear among commuters. People with mental illness have very real fears their symptoms or medication side effects will be inappropriately misconstrued by poorly-trained officers and by members of the public.

Misleading messages about mental illness, violence and community protection

- Couching these amendments in terms of "crime" "violence" and "risk" implies that all people with mental illness are violent, dangerous and engage in criminal behaviour.¹⁵ In fact the evidence indicates otherwise:
- Most people with mental illness, including severe mental illness, **do not commit crimes**.¹⁶
- Although there is a link between violence and particular mental illnesses such as schizophrenia fewer than 10% of all violent offences can in fact be attributed to the 1 in 100 people with schizophrenia.¹⁷
- While people with mental illness are overrepresented in the criminal justice system,¹⁸ studies suggest that **mental illness alone** does not necessarily lead to an increase in violence or criminal behaviour.¹⁹ In fact violence is more prevalent among other groups - men aged 18-30 & people with substance abuse issues.²⁰
- Further research by the Australian Institute of Criminology dispels the myth that "mentally disordered offenders prey on innocent and unsuspecting strangers in public places"²¹
- People with mental illness are **more likely to be a victim of violent crime** than to be a perpetrator.²²

Section 10 amendments should be removed from the Bill

- You can write to your local MP urging them **not to support these mental health-specific amendments** & to vote against the inclusion of clauses 37-38 of the Bill. [Find your local MP](#) by entering your postcode.

⁸Police forced to 'hospital shop' for the mentally ill' *The Age* 7 Aug 2011 <<http://www.theage.com.au/victoria/police-forced-to-hospital-shop-for-the-mentally-ill-20110806-1igno.html>>

⁹ Australian Institute of Criminology, 'Australian Crime: Facts and Figures 2010: Chapter 4 Selected offender profiles, at Figure 70

<http://www.aic.gov.au/publications/current%20series/facts/1-20/2010/4_selected_offender_profiles.aspx#police>

¹⁰ Kesic, D., et al. 'Mental illness among police fatalities in Victoria 1982-2007: case linkage study' *Australian and New Zealand Journal of Psychiatry*, 2010, 44:463-468

¹¹ Mental Health Council of Australia Fact Sheet, 'Mental Health, Victimisation and Crime'

<<http://www.mhca.org.au/documents/AboutMentalHealth/CrimeVictimisationandMentalHealth.pdf>>

¹² Senate Select Committee on Mental Health: *A national approach to mental health - from crisis to community, First report*, Commonwealth of Australia, 2006, p 206.

<http://www.aph.gov.au/senate/committee/mentalhealth_ctte/report/report.pdf>

¹³ Ibid, p 205. See also 'Victoria Police to retrain officers after fatal shootings of Gregory Biggs and Tyler Cassidy' *The Australian*, 28 January 2010.

<<http://www.theaustralian.com.au/news/nation/victoria-police-to-retrain-officers-after-fatal-shootings-of-gregory-biggs-and-tyler-cassidy/story-e6frg6nf-1225824312310>>

¹⁴ 'Victoria Police to retrain officers' above n 15.

¹⁵ SANE, Mental Illness and Violence: Factsheet 5, 2010, <<http://www.sane.org/information/factsheets-podcasts/209-violence-and-mental-illness>>

¹⁶ Senate Select Committee on Mental Health, above n 12 at p 333.

¹⁷ Walsh, E., et al. 'Violence and schizophrenia: examining the evidence' *British J of Psychiatry* 2002, 180:490-495 at p 490.

¹⁸ Ogloff, J., et al. 'The identification of mental disorders in the criminal justice system', in *Trends and Issues in Crime and Criminal Justice*, 2007 no. 334, Canberra: Australian Institute of Criminology, <<http://www.aic.gov.au/publications/tandi2/tandi334.html>>

¹⁹ Junginger, J., et al 'Effects of serious mental illness and substance abuse on criminal offences' *Psychiatric Services*, June 2006, 57:6, 879-882; Fazel, S., et al 'Schizophrenia and violence: systematic review and meta-analysis. *PLoS Med* 2009, 6(8) <<http://www.plosmedicine.org/article/info%3Adoi%2F10.1371%2Fjournal.pmed.1000120>>

²⁰ Fact Sheet- Mental illness and violence (Mar2010) http://www.betterhealth.vic.gov.au/bhcv2/bhcarticles.nsf/pages/Mental_illness_and_violence?open; Junginger, J. above n19 at 881

²¹ Mouzos, J., 'Mental disorder and homicide in Australia' in *Trends & issues in crime and criminal justice* no. 133 Canberra: Australian Institute of Criminology, November 1999, at p5, <<http://www.aic.gov.au/documents/4/2/F/42F3A11E-0D6F-4159-B910-0209B7D2EC3E?ti133.pdf>>

²² See Fitzgerald, P., et al, 'Victimization of patients with schizophrenia and related disorders' *Alfred Psychiatry Research Centre*, Melbourne 2004, and Teplin, L., et al. 'Crime Victimization in Adults with Severe Mental Illness', *Arch Gen Psychiatry* 62, August 2005, both cited in the Mental Health Council of Australia Fact Sheet above n 11; Brekke, J., et al., 'Risks for Individuals with Schizophrenia Who Are Living in the Community', *Psychiatric Services*, Oct 2001, Vol 52 No 10.