Queensland Law Society

Law Society House, 179 Ann Street, Brisbane Qld 4000, Australia
GPO Box 1785, Brisbane Qld 4001 | ABN 33 423 389 441
P 07 3842 5943 | F 07 3221 9329 | president@qls.com.au | qls.com.au

Office of the President

G20 (Safety & Security) Bill 2013
Submission 003

13 September 2013

Our ref 339/55

Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

By Post and Email to: lacsc@parliament.qld.gov.au

Dear Research Director

G20 (Safety and Security) Bill 2013

Thank you for providing the Society with the opportunity to comment on the *G20 (Safety & Security) Bill 2013* (the Bill).

Please note that in the time available to the Society and the commitments of our committee members, it is not suggested that this submission represents an exhaustive review of the Bill. It is therefore possible that there are issues relating to unintended drafting consequences or fundamental legislative principles which we have not identified.

Introductory comments

At the outset, the Society welcomes the G20 Forum being held in Queensland (with events in both Brisbane and Cairns), particularly noting the positive effect that it will have on business and industry in our communities. The Society also acknowledges that with large, international events such as the G20, a heightened emphasis on security and safety is expected.

Having said this, the Society is concerned with a number of the proposals in the Bill, having regard to its practical effect on our criminal justice system. The Society also expresses concern that some of the ordinary principles of justice are effectively being suspended under this Bill, when there are a number of already existing alternatives in the criminal law available to address security concerns.

The Society notes that special provisions in relation to safety at special events are already provided for in Chapter 19, Part 2 of the *Police Powers and Responsibilities Act 2000* ('preserving safety for special events'). This includes specific powers regarding:

- Declaration of special events;
- Statutory conditions relating to entry to special event sites;
- Powers for special event sites (including power to require reasons for entry, use of electronic screening devices and frisk searches of persons); and
- Offence provisions (discussed later in the submission).

The Explanatory Notes do not refer to the already existing legislation.

The Society has had the brief opportunity to review the NSW *APEC Meeting (Police Powers) Act 2007* (NSW Act) *and* WA *Commonwealth Heads of Government Meeting (Special Powers) Act 2011* (WA Act). We will refer to these Acts where relevant, and note that these Acts have also been referenced in the Explanatory Notes.

We provide our specific feedback on various proposals below.

1. Additional (emergency) security area (proposed s13)

This provision allows the commissioner, without the Minister's approval, to declare an area of land or water to be an additional restricted or additional declared area where the commissioner is reasonably satisfied that:

> *(a) it is necessary to declare the area of land or water to be an additional restricted area or additional declared area as a matter of urgency; and*
>
> *(b) a delay to obtain the Minister's approval would be likely to substantially compromise the safety and security of the G20 meeting.*[1]

The commissioner must also be reasonably satisfied that it will assist in promoting the safety and security of the G20 meeting or the safety and security of the public, and that there is not enough time to make a regulation.

We note that there is no section articulating that the designated period of operation of an additional (emergency) security area cannot extend beyond the end of the G20 period. A restriction on the period of operation of an additional (non-emergency) security area has been stated in proposed s12. Proposed s12(7) and (8) state:

> *(7) The period for which an area is declared to be an additional restricted area or additional declared area must be no longer than until the end of the G20 period.*
>
> *(8) A regulation or order may declare an area is an additional restricted area or additional declared area at all times during the G20 period or only at the times stated in the regulation or order.*

[1] Proposed s13(1)(a)

We consider that it is important that these sections be mirrored for the designation of an additional (emergency) security area.

2. Lawful assembly (proposed Part 3)

The Explanatory Notes on proposed s17 state:

> *Clause 17 of the Bill excludes application of the Peaceful Assembly Act 1992 in a security area. This is necessary to avoid confusion between that Act and the Bill and to introduce a less formal and time effective approval and consultation process which is more appropriate to the nature of the G20 meeting and the expected number of protests it will attract. Outside the boundaries of security areas the Peaceful Assembly Act 1992 continues to apply.*

This is done through proposed s17:

> *The Peaceful Assembly Act 1992 does not apply to an assembly in a security area.*

Proposed s18 and 19 then go on to define when an assembly is lawful (noting that the right to assemble peacefully in a public place contained in s5 of the *Peaceful Assembly Act 1992* does not apply), and provides a process for organising lawful assemblies in security areas.

The Bill terms "violent disruption offence" (s18(2)) as:

> ***violent disruption offence*** *means an offence if—*
>
> *(a) the offence involves violence against a person or damage to property; and*
>
> *(b) the offence is intended or is likely to disrupt any part of the G20 meeting.*

The commission of a "violent disruption offence" by a person in the assembly will mean that the assembly is not a lawful assembly. It is unclear as to exactly what offences will fall within the definition of "violent disruption offence". There are existing criminal law offences which satisfactorily deal with issues of violence during assemblies. Section 10A of the *Summary Offences Act 2005* ('unlawful assembly') is specifically relevant and has a maximum penalty of 2 years' imprisonment in some circumstances. The offence of 'riot' under s61 of the *Criminal Code Act 1899* is also in place to deal with the most serious circumstances of unlawful violence in these situations.

We also note that proposed s18(e) deals with the commission of "an offence involving damage or destruction to property". Therefore, we consider that the words "or damage to property" in the definition of "violent disruption offence" creates unnecessary duplication and should be removed.

On our brief reading of the WA and NSW Acts, neither jurisdiction attempted to suspend the operation of peaceful assembly legislation to accommodate the events that took place, nor created a new classification of offences in order to deal with incidents during the course of an assembly, which would make that assembly unlawful.

Ultimately, the Society considers that it is appropriate to rely upon the various criminal law offences already in existence.

3. Special powers in relation to security areas (proposed Part 5)

Who may conduct a search

The requirement for 'reasonable suspicion' to be held before conducting searches in certain instances has been omitted. These are omitted for:

- A basic search in a restricted area (s23(1))
- A frisk search in a restricted area (s23(2))
- A basic search in a declared area (s24(1))
- A specific search of a prohibited or excluded person in a declared area (s24(4))
- A basic search in a motorcade area (s25(1))
- A frisk search in a motorcade area (s25(2))
- A stop and search of a vehicle in a restricted or motorcade area (s31(1))
- An entry and search of premises in a restricted area without a warrant in some circumstances (s33(3)).

The Society is concerned with the breadth of powers that can be exercised by a police officer or appointed person without the well-established test of 'reasonable suspicion'. Of particular concern is where a frisk or specific search is allowed, noting that the definition of a specific search includes a strip search and medical x-ray (proposed s22). A frisk search can include a search by running hands over the person's outer clothing and a search of anything carried by the person (s21).

It is of concern that intrusive searches can be performed without a basic threshold test of reasonable suspicion being applicable to the circumstance. We consider that, at the minimum, the specific search in a declared area under proposed s24(4) of the Bill be amended to ensure that a reasonable suspicion is held before administering the search (which can include a strip search). We consider the reasonable suspicion threshold should also apply to frisk searches. There is no reason given as to why this fundamental check on the operation of police powers should be omitted.

In s25(4) of the WA Act, a protective clause was inserted for the conduct of basic searches:

> *(4) If a basic search is done of a person under section 24 —*
> *(a) it must be done as quickly as is reasonably practicable; and*
> *(b) it must not be any more intrusive than is reasonably necessary in the circumstances; and*
> *(c) the searcher, if he or she proposes to remove any article that the person is wearing, must tell the person why it is considered necessary to do so.*

We recommend inclusion of a similar clause in this Bill.

The Society also notes the power of entry into premises in the restricted area without a warrant, including that a police officer can enter a residential premises (subject to parameters of consent, search warrant or reasonable suspicion of an offence). We envisage that businesses will be particularly susceptible to this provision, which could significantly impact

the operation of a business and could intimidate clients. The section should be revised to provide that the premises can be entered and searched without a warrant, where reasonable suspicion is held that an offence may be committed within or from the premises and the offence will endanger the safety of a person.

Requirement for searching children and persons with impaired capacity (proposed s30)

The Society welcomes the inclusion of a specific provision which states that a child or person with impaired capacity who may not be able to understand the purpose of the search can only be searched in the presence of an independent person who can provide support (s30(2)). This is qualified by s30(3), which states that the search can be conducted without an independent person if the officer reasonably suspects an immediate search is necessary to protect a person's safety.

The Society requests further clarification as to who the "independent person" is envisaged to be for these purposes.

Removal of headwear provisions

The Society notes that the removal of headwear is guided by proposed s29 of the Bill.

This section is noted in proposed s37(3) (power to require personal details at a security area) which deals with removal of headwear. The Note states:

> *Note for subsection (3)—*
> *See section 29. Also see section 49 and the Police Act, section 615.*

However the Note is not then further included in other provisions of the Bill which deal with the issue of removal of headwear:

- S38(3)- power to require personal details for offence etc; and
- S58 – powers relating to excluded person.

We consider that proposed s29 and the sections of the *Police Powers and Responsibilities Act 2000* apply in these situations, and specific reference in the form of a Note will provide clarification.

4. Power to seize and remove obstruction object (proposed s44)

Proposed s44 grants power to an officer to seize and remove an obstruction object. An obstruction object is defined in the Bill as:

> *a thing placed in, or in the vicinity of, a security area or any other area in a way intended or likely to—*
> *(a) impede passage to or through the security area; or*
> *(b) seriously disrupt traffic flow; or*
> *(c) impede a motorcade.*
> *Examples—*

> • *bicycles chained together across a road leading into a declared area*
> • *an unattended car parked in a traffic lane in a motorcade area*
> • *a truck parked across the Go Between Bridge causing drivers travelling to West End to use the Captain Cook Bridge or the Victoria Bridge, causing traffic congestion near a security area*
> • *a package left at the side of a motorcade area in a way that might lead to a suspicion that it is an explosive device or is otherwise a risk to public safety*

The obstruction object seized is forfeited to the State, without an application being made to the court. The Society is concerned with the operation of this provision, particularly in the cases of motor vehicles which are highlighted as examples of obstruction objects. There is no mention of fair compensation or the operation of the *Personal Property Securities Act 2009 (*PPSA), where security interests might be held over the object in question. We consider that these are important issues which need to be addressed in this legislation. We also recommend that a process be enacted for forfeiture applications to be made to a court- particularly in circumstances where valuable items such as cars or trucks may be in question.

Financiers would be significantly concerned by any provision which would result in the State having a right to forfeit a motor vehicle which was the subject of security interest under the PPSA without any right to fair compensation. To the extent that the provisions punish the owner of the vehicle, they should not punish a financier as the financier has not been involved in the placement of the vehicle in a manner which obstructs.

An issue of a more general nature that would appear to be relevant is whether if a motor vehicle is forfeited, the State should be obligated to provide notice to the secured party. The existence of a security interest over a motor vehicle should be readily ascertainable by the State by a search of the Personal Property Securities Register (PPSR) and it does not appear to be unreasonable that the holder of a security interest would be notified at least by email of the impounding of the vehicle which would in itself in most cases constitute a breach of the underlying security agreement.

We consider that these issues need to be dealt with, and the most reasonable way to do this is to provide that a forfeiture application needs to be brought before the court to determine these matters.

5. Prohibited persons and excluded persons (proposed Part 5)

Part 5 provides for the creation of a prohibited persons list, and for a police officer to exclude a person from stated or all security areas.

A person can be placed on the prohibited persons list (which means that the person should not be permitted to enter any security area) if the commissioner is reasonably satisfied that the person:

> *(a) may pose a serious threat to the safety or security of persons or property in a security area; or*

> *(b) may, by the person's actions opposing any part of the G20 meeting, cause injury to persons or damage to property outside a security area; or*
>
> *(c) may disrupt any part of the G20 meeting.*

The Minister's First Reading Speech introducing the Bill stated:

> *Also, those persons with a history of encouraging or participating in violent demonstrations or persons with a history of disrupting events may be absolutely prohibited from entering a security area for the duration of the act.*[2]

We question the lack of criteria to be used by the commissioner in deciding whether a person should be prohibited, noting that certain important factors (such as whether there are prior relevant convictions to support an assertion that they have a history of participating in violent demonstrations) are not included.

Further, this Bill imports significant powers to exclude persons from security areas and also to give directions. In light of these powers, we are unsure as to why this list is necessary.

Given the serious impact that being placed on this list would have on a person's ability to "engage in employment, commerce, social activities or other activities" (as described in the Explanatory Notes[3]) the Society considers that, at the very least, approval should be required by the Minister in order to place the person on the list.

The Explanatory Notes state:

> *Although the employment and social activities of these persons will be affected if they are normally employed within, or socialise in, a security area, the period during which they will be affected will be minimal and may amount only to the 3 day meeting which occurs on a public holiday and a weekend.*[4]

However, given the time frames involved, a person could be excluded from a period of 1 November 2014 -17 November 2014 (period for the restricted area shown in schedule 5, part 1). If a person is placed on the list for this period, and his or her ability to access employment is affected, this could have a significant impact on his or her livelihood.

In light of the range of issues which needs to be considered, a process by which the Minister is required to consider and approve a person's name on the list may ensure a greater level of scrutiny.

We also note that the Bill does not designate time frames for the commissioner to comply with in terms of providing notice to a person that his or her name has been placed on the prohibited

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[2] Found at: http://www.parliament.qld.gov.au/documents/tableOffice/BillMaterial/130820/G20.pdf, 2603
[3] https://www.legislation.qld.gov.au/Bills/54PDF/2013/G20SafetySecurityB13E.pdf, page 4
[4] Ibid, page 5

persons list (proposed s51),. We consider that the notice provision should be complied with within a short time frame of a person's name being placed on the list.. Similarly, if the person makes written submissions to the commissioner, the commissioner should be compelled to consider and respond within a short time frame stipulated in the legislation.

The Society notes that proposed s51(4) and (5) run contrary to a fundamental legislative principle of the *Legislative Standards Act 1992,* which specifically refers to the need for legislation to be consistent with the principles of natural justice (s4(3)(b)).

We also note that there is no clarity as to the destruction or use of this list after the G20 period has ended. The Society requests that further information be provided regarding what will happen to any compilation of prohibited persons, and also any lists of excluded persons. This is particularly concerning, given that identifying information and photographs of persons on the list can be published publicly.

6. Return or forfeiture of prohibited item (proposed s61)

The same primary concern as stated above in relation to proposed section 44, is echoed here, namely, there is no requirement for the State to pay fair compensation for the forfeiture of a prohibited item. We note specifically the fundamental legislative principle contained in s4(3)(i), *Legislative Standards Act 1992* which states that legislation should provide for "the compulsory acquisition of property only with fair compensation."

7. Prohibited item offences (proposed s63)

The Society is concerned with the proposal that the onus of proving lawful excuse for dealing with a prohibited item under subsections (1), (2) or (3) is on the person claiming the lawful excuse. The Society does not support a reversal of the onus of proof in criminal law legislation, noting particularly the types of everyday items which may be a "prohibited item" under this section (such as glass bottles or jars; metal cans or tins; hand tools; projectiles including eggs; a remotely controlled toy car or model plane).

Given the breadth of examples provided in the legislation, and the clear impact that this will have upon people such as residents and children in the relevant areas, we do not consider it justified in the circumstances that the onus be reversed.

Section 674 of the *Police Powers and Responsibilities Act 2000* already deals with the offence of "prohibited items" at special events, which can be designated by way of declaration. We consider that the circumstances of this offence would be aptly covered by the existing legislation (which does not reverse the onus of proof).

8. Lighting a fire in a security area (proposed s67)

The proposed offence states:

> *A person must not light a fire in a security area without lawful excuse, the onus of proving which is on the person.*
> *Maximum penalty—100 penalty units.*
> *Example—*
> *A chef at a restaurant in a declared area who lights a gas barbecue has a lawful excuse.*

The Society notes the reversal of the onus of proof. Again, we highlight our concern with the reversal of the onus in these circumstances. Section 4(3)(d) of the *Legislative Standards Act 1992* states that legislation should not reverse the onus of proof in criminal proceedings without adequate justification. The Explanatory Notes state, in relation to the variety of offences in which the onus of proof is reversed, that "*It is generally considered facts peculiarly within the knowledge of the defendant and difficult or expensive for the State to prove may afford justification for a reversal.*"[5] No further information is given as to why the facts within this specific offence is considered to be peculiarly within the knowledge of the defendant (noting that similar offences do not contain this reversal), or is difficult or expensive for the State to prove.

9. Unauthorised entry into restricted area (s70)
Unauthorised entry into motorcade area (s71)
Prohibited person not to enter security area (s72)
Unauthorised entry to security area by excluded person (s73)

Sections 571 (unauthorised entry to special event site) and 572 (unauthorised entry to a restricted area) of the *Police Powers and Responsibilities Act 2000* could adequately cover most of the circumstances described by these offences. We consider that these should be analysed to determine whether the already existing provisions of the Act can be relied upon, instead of the creation of new offences.

10. Interfering with any part of the G20 meeting (proposed s74)

Again, a similar offence is included in s573 of the *Police Powers and Responsibilities Act 2000* (interference with a special event). This highlights that, in fact, a large number of the offences created by this legislation already exist and could be enlivened to apply to the G20 Forum.

11. Arrest and custody powers (proposed Part 9)

The Society expresses concern with the presumption against bail for certain alleged offences which is contained in proposed s82 and strongly recommends the omission of proposed s82 from the Bill. The Explanatory Notes state:

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[5] Page 10

> *"The presumption against bail relates only to G20 related offences where an element of violence such as assault or damage to property is associated with the offence or the offence results from a person's efforts to disrupt a G20 event. In these cases the person must show cause to the court or police officer that they will not commit another offence."*[6]

The Society considers that the current bail laws in the *Bail Act 1980* are sufficient to ensure that, in the appropriate circumstances, a person who poses an ongoing threat to G20 would be refused bail. The Society does not consider that there is a need for a presumption against bail.

We particularly note that the offence in proposed s82(1)(d) is not worded to necessarily involve violence or damage. We are unsure whether this is meant to relate to the "violent disruption offence' which we have discussed earlier in our submission. Given our stated view that this is unclear, we consider that this sub section should be omitted at the very least.

We also raise practical concerns with this provision, including clarification on what measures will be taken to ensure that the courts are adequately equipped to deal with an increase in matters during the G20 period (which can start in areas of Brisbane from 1 November 2014). We particularly note that this Act also designates 14 November 2014 as a public holiday- what will be the procedure to process arrested persons when a number of courts may be closed? We note that this was a particular problem during the NSW APEC meeting, highlighted by a report from the Combined Community Legal Centres' Group (NSW) and Kingsford Legal Centre:

> *In the event of arrest, restrictions were also placed upon where an arrestee could be processed as a number of courts were closed as a result of the declared public holiday on the 7 September 2007.*[7]

Similarly, clarification needs to be provided as to the capacity of remand centres and watch houses to accommodate a significant rise in the number of individuals during the G20 period in both Brisbane and Cairns. If it is suggested that persons can be detained in a range of facilities in different areas, we note that this could create significant logistical barriers for the person's support network (for example, legal representatives, family and friends). This may be particularly problematic in Cairns, where location of watch houses or centres may be some distance away.

Given these substantial concerns, and the significant complexity in a defendant having to argue against custody, there should be adequate provision for a person to be provided with legal assistance. We note that, under current legal aid funding guidelines, there may not be ready access to funding in many situations (as current bail funding is only provided in restricted situations). The Society requests further information on the availability of legal representation for persons brought before the court under these provisions.

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[6] Page 4
[7] Protest, Protection, Policing, 2008 found at: www.clcnsw.org.au/public_resource_details.php?resource_id=50 page 30

The defendant will also have to apply or re-apply for bail at the end of the G20 period (proposed s82(6)). The Society requests information as to whether there will be legal aid funding for a defendant to be legally represented.

12. Review of the Act (proposed s98)

The Society welcomes proposed s98, which requires a review of the operation and effectiveness of the Act, and that the report must be given to the Minister by no later than 17 October 2015, and tabled as soon as reasonably practicable. However, we express concern with proposed s98(4) which states:

> *(4) This section does not apply if the State Government calls another review, the terms of reference of which include reviewing the operation and effectiveness of this Act.*

In these circumstances, it is unclear whether this other review will be required to be tabled by the Minister. The Society strongly believes that any review of the operation or effectiveness of the Act by the State Government should be tabled by the Minister. We note the fundamental legislative principle in s4(3)(k) of the *Legislative Standards Act 1992* which states that legislation should be "unambiguous and drafted in a sufficiently clear and precise way." We consider that it should be made clear that, if subsumed into another review, there is still a time-bound requirement for the Act to be reviewed and tabled by the Minister.

13. Continuing provisions (proposed s101)

The Society notes that a number of provisions will continue until 17 November 2015. This includes Part 7 of the Bill, which related to Offences. This appears to indicate that a person can be charged with an offence up to 12 months after the end of the G20 period, for an incident that occurred within the G20 period. It seems to create a dangerous precedent, where a person can be charged quite some time after an alleged offence occurs.

14. Availability and funding for legal representation

The Society is concerned that, despite a significant increase in police powers under this legislation, there have been no announcements regarding increased availability of legal assistance to provide information and advice to members of the community. We note that in NSW, a legal hotline was formed by private practitioners to provide information, referrals and legal advice to the public. Information on the effectiveness of such support is evidenced in the NSW report, 'Protest, Protection, Policing.'[8] We consider that a similar structure should be supported by the government, in order to ensure that members of the public looking for legal information (on complex issues such as being excluded, effect of increased police powers, and ability to move around security areas) are appropriately assisted. Early and effective

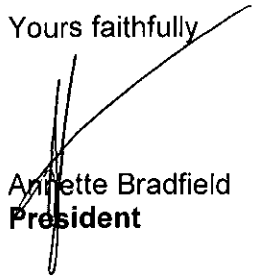
[8] Protest, Protection, Policing, 2008 found at: www.clcnsw.org.au/public_resource_details.php?resource_id=50

dissemination of information and assistance will greatly enhance safety and security during this event.

15. Consultation and impact on vulnerable groups

We note that no public consultation was undertaken during the drafting of this Bill. Considering in particular the likely impact that these provisions may have upon vulnerable groups, such as homeless persons and young people (given that they are likely to use public spaces) within the Brisbane and Cairns city areas, an extensive consultation and education campaign must be undertaken to inform these groups (and their relevant stakeholders, including community legal centres) of the security arrangements during G20. It will also be equally important to ensure that residents and businesses in relevant areas are provided with information well in advance to allay security concerns.

Yours faithfully



Annette Bradfield
President