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The Hon. Ian Berry MP
Chair
Legal Affairs and Community Safety Committee
Parliament House
George Street
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Dear Sir

G20 (Safety and Security) Bill 2013

Australian Lawyers for Human Rights (**ALHR**) thanks the Committee for the opportunity to comment on the *G20 (Safety and Security) Bill 2013* and the extension of time within which to make this submission. In summary, ALHR considers that powers proposed under relevant sections of the *G20 (Safety and Security) Bill 2013* are already appropriately dealt with under the current *Police Powers and Responsibilities Act 2000* (Qld) (**PPRA**) insofar as it provides the powers for police and 'authorised persons' to carry out the objects and purposes of the Bill. ALHR also contends that there is a substantial derogation of civil rights within the meaning and purposes of the Bill.

The ALHR proposes that the Bill be redrafted to reflect the powers already contained in the **PPRA** and sufficiently address civil rights to the extent that derogation is limited only to the extent of public safety.

1. ALHR Contentions

- 1.1. The *G20 (Safety and Security) Bill 2013* proposes to 'provide for the safety and security of persons attending the [G20] summit... [and] to ensure the safety of members of the community and to protect property during the hosting of the summit.'
- 1.2. The Bill provides 'special powers' to police officers and, concerningly for the ALHR, 'appointed persons'. 'Appointed persons' appears to be very broadly defined, which may raise questions as to the type of appointments the Commissioner is likely to make. Queensland already has a regime under which the Commissioner can appoint persons to exercise powers for special events, under the **PPRA** (s563), which has criteria for the appointment. There is no demonstrable need for additional appointment provisions, when the existing law could simply be referenced if necessary.
- 1.3. The ALHR has concern about the use of these 'special powers', particularly by those not in the police service, who at least bear some responsibility to the public. These powers are significantly broad and can encompass many situations, even those not exactly 'disruptive' or violent in any manner.

- 1.4. The ALHR contends the **PPRA** in its current form sufficiently provides the powers sought by the legislative intent of the proposed Bill.
- 1.5. Further, the Bill provides a number of sections where the burden of proof has been reversed and the onus is on the accused for crimes defined under the Bill. The ALHR has concern that these crimes where the onus and burdens of proof are reversed can cause significant harm to accused who are indigent or unrepresented when brought to a Magistrate.

2. Identification of how the PPRA is sufficiently effective at preventing violence

a. What does the PPRA already say?

- 2.1. The PPRA outlines the powers that police have in relation to preserving safety for special events (Chapter 19, Part 2, sections 556-575). These sections deal with conditions of entry, the appointment of authorised persons, the provision of scanning and screening devices at special sites, powers to request the removal of clothing, and related powers.
- 2.2. The PPRA, with respect to preventing violence at special events, has the authorisation to determine prohibited items (including any and all items proposed in the Bill) that are forbidden from bringing into the zone described as the area for the 'special event' (s 558(2)(d)). Furthermore, the person will be forbidden to possess a prohibited item unless a reasonable excuse is provided (s 574). Allowing police officers and authorised persons this discretion provides for a common sense interpretation for the security and prevention of violence for these events whilst simultaneously protecting civil liberties and avoiding the stripping away of rights to protest peacefully.
- 2.3. Furthermore, the assault of an authorised person is an offence, and an authorised person has the power to use x-ray devices and electronic screening to prevent entry and to search for weapons and dangerous material (ss 563, 567 & 575).

b. Why did the legislature enact the PPRA?

- 2.4. For the purpose of stating special provisions necessary for preserving public order and safety for individuals involved in special events and the safety of other individuals at special event sites.

c. Why did the legislature perceive the purpose to be a valuable purpose?

- 2.5. With the introduction of these special provisions, the legislature was able to consider when special events required extra police power and control. The Act enables a regulation to prescribe the existence of a special event and any restrictions that shall apply to it, including the place and period of time where it shall be organised (s 558). Furthermore, the Act requires the Minister to be satisfied that the an event is a special event that the declaration is necessary for preserving public order and the safety of individuals involved in the event, before it can be subject to the Chapter 19 powers. This might be considered a valuable purpose as it allows special events to be created for which the police and publicly authorised personnel may exercise additional responsibilities and may protect the public and individuals involved in the event from violent acts.

d. How did the legislature go about implementing that purpose?

- 2.6. The addition to the PPRA of the Chapter 19 provisions was an accurate reflection of the purpose set out in the Bill proposed to Parliament prior to Royal Assent of the Act in 2000. The PPRA considered the necessity for Queensland public events of a specific nature to be subject to extra powers and

restrictions so that the purpose of protecting individuals from harm in large scale events could be fulfilled.

e. Is the legislation phrased to adequately comply with that purpose?

- 2.7. The ALHR submits the PPRA, in its current form, sufficiently protects special persons and preventing the commission of crimes. Particularly, the powers to search without warrant where reasonable suspicion is raised and issue move-on directions are effective means of control which can just as easily satisfy the proposed Bill's purpose of providing for the safety and security of persons interested in the event and the community at large.

3. Are there any proposed safeguards to this proposed legislation on civil rights?

- 3.1. As at present, there has been no consideration to safeguard civil liberties that the legislation might compromise, directly or indirectly. The proposal is rather to ensure that the public and affected persons are not subject to harm or property is not damaged by acts of civil disobedience. The Bill goes so far as to exclude the application of the *Peaceful Assembly Act 1992* in a security area. The Bill provides that a person will be entitled to assemble with others and if desired, protest against a particular issue provided the person does not, among other things, disrupt a G20 event. The existence of even a peaceful protest will be potentially disruptive from a subjective interpretation, and therefore, realistically, the Bill seeks to ban the assembly of persons for the purpose of peaceful protest. This is contrary to civil and democratic rights.

a. Identification of importance of exercising non-violent civil disobedience in a democracy

- 3.2. Exercising the right to peaceful protest will inevitably involve some level of disruption. It is the view of the ALHR that the Legislature need to expressly state what will constitute a 'disruption' and the proportionate response that would involve from the police.
- 3.3. The right to assembly and peaceful protest is fundamental to the exercise of democracy. The proposed Bill infringes upon this, and the ALHR submits allowing an unfettered discretion for police and other 'authorised persons' to detain and search those deemed to be 'disrupting' the event will have greater detrimental consequences, and indeed, agitate matters between security personnel and protestors.

b. The derogation to the presumption of innocence

- 3.4. The onus of proving a lawful excuse exists is on the accused (cl63 and 69(2)). Further, the burden of proving that bail should be granted without the statutory presumptions or powers of *The Bail Act 1990* is reversed for the accused to prove that detention is not justified (cl 82(2)). With regard to these provisions, the ALHR submits that this is an unlawful derogation of Article 14, Paragraph 2 of the International Covenant on Civil and Political Rights. It is therefore submitted that those provisions be redrafted to impose only an evidential burden on the accused.

c. Potential for abuse

- 3.5. There are examples elsewhere, in Australia and New Zealand, where police and intelligence services have completely misused powers which were given for public safety and security, to harass and persecute people who have committed no offence. The Queensland Parliament would be well served by reflecting on three cases, as a caution against passing the legislation in its current form.

- (i) Queensland should benefit from the difficult lessons learnt from the judicial investigations into the police response to G20 Summit protests in Ontario, Canada. Police need scenario-based training and preparation, and the certainty that there will be accountability for their actions.
- (ii) The New Zealand security services misused their powers, and then subsequently endeavoured to obstruct investigation into that. In the case of *Choudry v Attorney-General* [1999] 2 NZLR 582, New Zealand's Court of Appeal warned of the dangers of unchecked State power:

[O]fficers of the Service...by virtue of the very nature of their work and their own conscientious performance of their task, may be overzealous in their perception of the secrecy which is required. Moreover, it is axiomatic that they will be unlikely to have a complete understanding of the competing public interests which the law seeks to protect.(Thomas J, in separate reasons but agreeing with the majority's decision)
- (iii) Closer to home, the warnings of the 1989 *Report of a Commission of Inquiry Pursuant to Orders in Council* by Mr Fitzgerald QC present a constant reminder of the need for checks and balances to be explicitly included and monitored in policing in Queensland.

4. Conclusion

4.1. The ALHR proposes that the significant provisions identified should be redrafted to reflect:

- (i) the objectives of the Bill;
- (ii) the powers that are at the disposal of law enforcement pursuant to the PPRA;
- (iii) the civil rights for those individuals seeking to express their rights to free and peaceful assembly; and
- (iv) the right to a presumption of innocence of the accused to the extent that the reverse onus provisions be evidentiary only.

4.2. We would like to make this letter available through our website. This is a standard practice for all our work, wherever possible. If you do not want this letter to be made publically available, please can you advise us within 10 business days of receipt of this letter.

5. About ALHR

5.1. ALHR was established in 1993. ALHR is a network of Australian law students and lawyers active in practising and promoting awareness of international human rights. ALHR has a national membership of almost 2500 people, with active National, State and Territory committees. Through training, information, submissions and networking, ALHR promotes the practice of human rights law in Australia. ALHR has extensive experience and expertise in the principles and practice of international law, and human rights law in Australia.

If you have any questions in relation to this submission, please contact ALHR's President, John Southalan by e-mail: john@southalan.net.

Yours faithfully



John Southalan
President

Australian Lawyers for Human Rights

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