QUEENSLAND COUNCIL FOR CIVIL LIBERTIES
GPO Box 2281 Brisbane 4001
visit and contact us at www.qccl.org.au

G20 (Safety & Security) Bill 2013
Submission 005

The Research Director
Legal Affairs and Community Safety Committee
Parliament House

lacsc@parliament.qld.gov.au

Dear Sir

G20 (Safety and Security) Bill 2013

Thank you for the opportunity to make a submission in relation to this Bill.

About the QCCL
The Queensland Council for Civil Liberties is a voluntary organisation which has as its objective the implementation of the Universal Declaration of Human Rights in Queensland.

When it comes to freedom of speech issues the Council takes as its starting point that freedom of speech is a first order of liberty requiring extra protection.

Background Facts and Principles
During the G20 Brisbane will be visited by a number of the most significant political leaders from around the world.

The Council accepts that it is important that those world leaders are protected and that given the events in other cities in the world the safety and the property of the citizens of Brisbane are also protected.

On the other hand, the Council takes the view that it is fundamental that the leaders of the world should listen to the views of the population and the citizens of the world should be entitled to peacefully put those views to those leaders.

It is our submission that a government has a duty to respect and protect fundamental rights even when faced with non-peaceful protests.

The fact that a protest is disruptive, inconvenient or noisy is not sufficient grounds to arrest individuals participating in a peaceful assembly.

Individuals who do engage in violent conduct should be individually targeted for arrest; those participating in peaceful activity should not be arrested because some of the crowd are protesting violently. This point was recognised by the European Court of Human Rights in *Ziliberberg v Moldova* where it was held that, "an individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of a demonstration, if the individual in question remains peaceful in his or own intentions or behaviour."

Protesters must have timely access to bail hearings. This means sufficient Magistrates must be made available to hear all the cases.

Possession of objects such as bandannas and gas masks should not be grounds for arrest.

Searches must be based on reasonable and objective security grounds. Individuals should not be denied access to the declared area simply because the government believes they will engage in non-violent protest and dissent. To the extent that there is evidence of specific individuals posing serious threats to the safety of persons and property the QCCL accepts that some form of non-intrusive screening could take place. However, the criteria for exclusion must be publicised in advance.

It is our view that this legislation goes too far in restricting fundamental rights and liberties of the citizens of Brisbane. Even though this restriction may be for a relatively short period of time given the history of police response to demonstrations in other cities the risk of abuse by police is significant.

According to the Canadian Civil Liberties Association,[1] during the G20 in Toronto over 1,100 people were arrested of whom 779 were released without charge. 204 charges were stayed by the Crown or withdrawn or dismissed. There were 44 pleas of guilty. Forty of the cases ended without a criminal conviction. Over 30 police including 4 senior officers were recommended for full disciplinary hearings.

In a report on the G20 conference in Toronto entitled "Breach of the Peace" by the National Union of Canada and the Canadian Civil Liberties Association[2] it was said: "While the widespread property damage that occurred during the G20 summit was deplorable, it neither justified nor warranted the extent of the police response that occurred...1,105 people were arrested by the police-the largest mass arrest in Canadian peacetime history. Media, human rights monitors, protestors and passers-by were scooped up off the streets. Detained people were not allowed to speak to a lawyer or to their families. Arbitrary searches occurred in countless locations across the city, in many instances several kilometres from the G20 summit site. Peaceful protests were violently dispersed and force was used in an effort to locate and frustrate a small cohort of vandals, the police disregarded the constitutional rights of thousands."

It will no doubt be argued that events at G20 Summits in London and Toronto in particular demonstrate the need for increased police powers. It is our view that the events in other cities, particularly in Toronto, do not demonstrate a lack of police powers but an inadequacy of planning. This proposition is supported in relation to Toronto by the report of the Office of the Independent Police Review Director.[3]

International experience demonstrates that prior contact between demonstrators and police can facilitate peaceful protests. The QCCL submits that the police need to make carefully planned and executed attempts to meet with protestors to facilitate peaceful protest.

---

[1] Information on the events of the G20 summit in Toronto is to be found on the website of the Canadian Civil Liberties Association at http://ccla.org/our-work/focus-areas/g8-and-g20/

[2] Dated February 2011 and to be found at http://ccla.org/wordpress/wp-content/uploads/2011/02/Breach-of-the-Peace-Final-Report.pdf

[3] Policing the right to Protest May 2012 https://www.oiprd.on.ca/CMS/getattachment/Publications/Reports/G20_Report_Eng.pdf.aspx

It is our view that Police in Queensland already have more than sufficient powers to deal with demonstrators. They have the longstanding common law power to prevent breaches of the peace as well as the new and extensive power to move people on.

Furthermore, it would be our submission that the extreme police powers and the way they were exercised on the ground contributed to the violent conflicts at the G20s in London and Toronto[4]. A report by the Office of Police Integrity in Victoria in 2009[5] found that the use of force by police most commonly arises during arrests and police stops on the street. They found that force is used on the streets twice as much as in any other environment. Further allegations of excessive force rank highest on the list of public complaints against police officers.

Security perimeters may need to be established which can ensure the participants are able to conduct their business effectively. However the effective conduct of business does not require the protestors to be so far removed from the meeting site or sites that they could be neither seen nor heard. Any extension beyond what is needed to ensure the safe and effective conduct of the meeting will unjustifiably infringe individuals' freedom of movement, expression, peaceful assembly and association.

Commentary on the Bill

We now proceed to comment in relation to particular clauses of the Bill. Before doing so we note that the lead on this issue for the QCCL has been taken by Mr Terry O'Gorman who has participated in some meetings with representatives of the Queensland Police Service. Unfortunately Mr O'Gorman is not available to contribute to this submission.

Clause 4

This provision provides that the Act will prevail over the *Police Powers and Responsibilities Act*. We do not understand the purpose of this provision. We fail to see why the obligations imposed on police by that legislation should be suspended by this Bill. There is in our view absolutely no justification for this provision.

Clause 18

On the basis of the principles enunciated previously this provision is clearly overbroad.

We object in particular to the following aspects of the provision:

1. Paragraph (b) simply provides that the assembly will be lawful so long as it does not "disrupt" any part of the G20 meeting. This is in our view too narrow a test. We have already stated our view that protestors should not be removed so that they can be neither seen nor heard. No doubt any noise has the possibility of "disrupting" the meeting. The test should rather be whether the assembly is preventing the participants in the conference from effectively conducting their business.

2. Paragraphs (c), (d) and (e). These paragraphs will permit an assembly to be declared unlawful on the basis of the conduct of an individual or individuals regardless of the fact that everyone else participating in the demonstration may be doing so peacefully. We have already enunciated our grounds of objection to this provision which clearly involves a violation of the rights of those who wish to protest peacefully. It is simply a case of guilt by

[4] Ibid page x and following

[5] Review of the Use of Force by and against Victorian Police. http://www.ibac.vic.gov.au/docs/default-source/opi-parliamentary-reports/review-of-the-use-of-force-by-and-against-victorian-police---july-2009.pdf?sfvrsn=4

association. It is unjustifiable.

Clause 24

As well as many things which could be categorised as weapons and should appropriately be prohibited there are many other items which would be prohibited in the declared zone which in our submission are entirely appropriate for an area where people live including glass bottles or jars, reptiles, metal cans or tins, hand tools, handcuffs, surf skiis or surfboards and banners bigger than 1 metre by 2 metre as well as bandanas

The list of prohibited items contains in the QCCL's view many items which would not in any way justify a strip search or one of the more invasive searches contemplated under the legislation. A strip search could only possibly be justified by a search for a lethal device coupled with very strong suspicion for thinking that the device can be found in that fashion. The strip (and other extreme) searches should only be permitted after a pat down search has been conducted and the suspicion remains that the suspect has something that only the invasive search might reveal.

No doubt on the basis of appropriate level of suspicion as we have noted non-invasive searches of persons entering the declared area can be justified. Metal detector and pat down search would be justified of individuals entering the restricted areas.

Clause 48
In our submission this power is overly broad particularly having regard to the fact that the provisions in relation to move on powers contained in the *Police Powers and Responsibilities Act* will presumably not apply.

Part 5
The Council strenuously opposes the creation of the prohibited persons list when there is no adequate right of review in relation to a person being placed on it.

It is entirely unacceptable that a person may be named on this list and their reputation ruined by having their name published or their liberty restricted without that person being given a proper opportunity to test the decision to place them on that list. The review system provided is entirely inadequate.

It would appear that the right of Judicial Review remains intact. However no doubt because of section 51(4) of the Act that right of Judicial Review will be largely meaningless because the evidence upon which the decision has been based will not be made available to the person.

Clause 63
These offences are plainly absurd given the nature of many of the items on the prohibited list and the fact that people live in the security area.

Clause 69(2)
The QCCL opposes this provision reversing the onus of proof.

Bail
The QCCL opposes the provisions reversing the presumption in favour of bail. In our system individuals are entitled to the presumption of innocence. The right to bail is a fundamental manifestation of that presumption.

The onus in relation to bail is only reversed in relation to the most serious of offences such as murder. There is in our view no justification for this provision whatsoever.

Furthermore, the QCCL would state its opposition to the imposition of conditions on a person given bail which have no purpose other than to restrict that individual's legitimate right to peaceful free speech.

Yours faithfully

Michael Cope
Executive Member
For and on behalf the
Queensland Council for Civil Liberties
13 September 2013