

The Research Director  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
Brisbane QLD 4000  
Via email: lacsc@parliament.qld.gov.au

11 October 2013

Dear Sir

**Submission in response to the Police Powers and Responsibilities and Other Legislation  
Amendment Bill 2013.**

In relation to the new proposed offence of 'organising an out-of-control event',<sup>1</sup> Caxton Legal  
Centre<sup>2</sup> submits the following:

1. The proposed offence is unnecessary because existing police powers are adequate.
2. The penalties under the proposed offence are disproportionately severe.
3. The proposed offence infringes upon an individual's freedom of association in a way that is disproportionate to the increase of operational efficiency said to result from enforcing the provision.
4. The proposed offence infringes upon the United Nations Conventions on the Rights of the Child.
5. There are alternative means of achieving the policy objectives of this Bill.

**Preliminary observations**

Amongst other things, the proposed offence criminalises holding an out-of-control gathering.<sup>3</sup> An event becomes out-of-control where:

- (a) 12 or more persons are gathered together at an event; and

<sup>1</sup> *Police Powers and Responsibilities and Other Legislation Amendment Bill 2013* (Qld), section 53BH.

<sup>2</sup> This submission was prepared by Caxton Legal Centre and University of Queensland Criminal Law Clinic student Ross Lam, and settled by Caxton Legal Centre Director, Scott McDougall.

<sup>3</sup> *Police Powers and Responsibilities and Other Legislation Amendment Bill 2013* (Qld), section 53BH(1).

- (b) 3 or more persons associated with the event engage in out-of-control conduct at or near the event; and
- (c) the out-of-control conduct would cause a person at or near the event—
  - i. to reasonably fear violence to a person or damage to property; or
  - ii. to reasonably believe a person would suffer substantial interference with their rights and freedoms or peaceful passage through, or enjoyment of, a public place.<sup>4</sup>

The scope of the proposed Bill is extremely wide. The following conduct is out-of-control conduct—

- (a) unlawfully entering, or remaining in, a place or threatening to enter a place;
- (b) behaving in a disorderly, offensive, threatening or violent way;
- (c) unlawfully assaulting, or threatening to assault, a person;
- (d) unlawfully destroying or damaging, or threatening to destroy or damage, property;
- (e) wilfully exposing a person's genitals or doing an indecent act;
- (f) causing or contributing to the emission of excessive noise;
- (g) driving a motor vehicle in a way that causes a burn out;
- (h) unlawfully lighting fires or using fireworks;
- (i) throwing, releasing or placing a thing in a way that endangers, or is likely to endanger, the life, health or safety of a person;
- (j) unreasonably obstructing the path of a vehicle or pedestrian;
- (k) littering in a way that causes, or is likely to cause, harm to a person, property or the environment;
- (l) being drunk in a public place;
- (m) conduct that would contravene the *Liquor Act 1992*, part 6;
- (n) conduct that would contravene the *Drugs Misuse Act 1986*, part 2.<sup>5</sup>

At the outset, it is noted that the consumption of alcohol at a private function is routine. Mildly intoxicated, or even merry, guests' behaviour could easily be misconstrued by police as interfering with the peaceful passage through of a public space. Noise and excitement could fall within those very broad provisions. This law will very likely have unintended effects including an increase in unnecessary conflicts between police and the community.

Persons organising an event that becomes out-of-control may be liable to \$12,100 or 1 year's imprisonment.<sup>6</sup> If the person organising the event is a child, the parent of the child is instead liable for the offence if the parent gave the child permission to organise the event.<sup>7</sup>

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<sup>4</sup> *Police Powers and Responsibilities and Other Legislation Amendment Bill 2013* (Qld), section 53BB(1).

<sup>5</sup> *Police Powers and Responsibilities and Other Legislation Amendment Bill 2013* (Qld), section 53BC.

Moreover, court costs may be awarded against the child,<sup>8</sup> parent of child,<sup>9</sup> or any other persons organising the event.<sup>10</sup>

A similar Bill was passed in Western Australia,<sup>11</sup> which has attracted considerable criticism.<sup>12</sup> As far as we understand, there is no other jurisdiction both domestically or internationally that has similar legislation.

### **1. The Bill is unnecessary.**

The Bill is unnecessary because police already have adequate powers to deal with criminal conduct that is associated with gatherings that become out of control.

Section 53BC lists 14 types of conduct that is classified as 'out-of-control' conduct.<sup>13</sup> However, it appears that these are already existing offences under the *Summary Offences Act 2005* (Qld) and *Criminal Code Act 1899* (Qld). For example, the offences of trespass,<sup>14</sup> wilful exposure,<sup>15</sup> being drunk in a public place,<sup>16</sup> assault,<sup>17</sup> wilful damage<sup>18</sup> and arson<sup>19</sup> are already prohibited. Moreover, police currently have very broad move-on powers which allows a police officer to issue a 'move on direction' where amongst other things, the police officer reasonably suspect that a person's behaviour has been causing anxiety to a person or has been disrupting the peaceable and orderly conduct of an event.<sup>20</sup>

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<sup>6</sup> *Police Powers and Responsibilities and Other Legislation Amendment Bill 2013* (Qld), section 53BH(1)(b). Section 5 of the *Penalties and Sentences Act 1992* provides that one penalty unit amounts to \$110.

<sup>7</sup> *Police Powers and Responsibilities and Other Legislation Amendment Bill 2013* (Qld), section 53BH(2).

<sup>8</sup> *Police Powers and Responsibilities and Other Legislation Amendment Bill 2013* (Qld), section 53BL(2).

<sup>9</sup> *Police Powers and Responsibilities and Other Legislation Amendment Bill 2013* (Qld), section 53BM.

<sup>10</sup> *Police Powers and Responsibilities and Other Legislation Amendment Bill 2013* (Qld), section 53BK.

<sup>11</sup> *Criminal Law Amendment (Out-of-Control Gatherings) Bill 2012* (WA).

<sup>12</sup> See, for example: Western Australia, *Parliamentary Debates*, Legislative Assembly, 27 November 2012, [1] (Michael Mischin, Attorney-General; *Spreading 'out of control' parties legislation is unnecessary and disproportionate* (11 July 2013) New South Wales Council of Civil Liberties

<[http://www.nswccl.org.au/news/show\\_pr.php?relNum=1&relYear=2013](http://www.nswccl.org.au/news/show_pr.php?relNum=1&relYear=2013)>; Cheryl Cassidy-Vernon, Submission to Members of Parliament of Western Australia, *Inquiry into the Criminal Law Amendment (Out of Control Gatherings) Bill 2012*; Emma Wynne, *Will Western Australia's new out-of-control party laws work?* (26 September 2012) Australian Broadcasting Corporation <<http://www.abc.net.au/local/stories/2012/09/26/3598310.htm>>.

<sup>13</sup> *Police Powers and Responsibilities and Other Legislation Amendment Bill 2013* (Qld).

<sup>14</sup> *Summary Offences Act 2005* (Qld), section 11.

<sup>15</sup> *Summary Offences Act 2005* (Qld), section 9.

<sup>16</sup> *Summary Offences Act 2005* (Qld), section 10.

<sup>17</sup> *Criminal Code Act 1899* (Qld), section 245.

<sup>18</sup> *Criminal Code Act 1899* (Qld), section 469.

<sup>19</sup> *Criminal Code Act 1899* (Qld), section 461.

<sup>20</sup> *Police Powers and Responsibilities Act 2000* (Qld), sections 44-48.

In addition, as conceded by the Explanatory Notes, police officers have existing powers to deal with breaches or threatened breaches of the peace,<sup>21</sup> public nuisance offences,<sup>22</sup> and affray.<sup>23</sup> Although powers to deal with public nuisance offences and affray appear to be restricted to offences committed in public places, powers to deal with breaches of the peace have no such limitation. Police may take reasonable steps to prevent the breach of the peace happening or continuing, and to detain persons who the police officer reasonably believes has witnessed a breach of peace for a reasonable time.<sup>24</sup>

Further, as also conceded by the Explanatory Notes, it is an existing offence for persons to take part in an unlawful assembly.<sup>25</sup> This is deemed to have occurred where 3 or more persons are present together for a common purpose, and the conduct of them taken together would cause a person in the vicinity to reasonably fear that unlawful violence will be used to a person or property.<sup>26</sup> It is immaterial whether the original assembly was lawful or unlawful.<sup>27</sup> If the offender continues to participate in the unlawful assembly after s/he knows that anyone in the assembly had used unlawful violence to a person or property, the maximum penalty is 2 years imprisonment.<sup>28</sup> Otherwise, the maximum penalty is 2 years imprisonment.<sup>29</sup> For more serious situations, the offence of taking part in a riot is available.<sup>30</sup> A riot is deemed to have occurred where there are 12 or more persons who are present together use or threaten to use unlawful violence to a person or property for a common purpose; and the conduct of them taken together would cause a person in the vicinity to reasonably fear for the person's personal safety.<sup>31</sup> The maximum penalty depends on severity, but ranges from 3 years imprisonment to life imprisonment.<sup>32</sup>

It is our submission that these aforementioned police powers and existing offences are sufficient to deal with the type of out-of-control events that the Bill is targeting. The Bill is primarily targeting events that are generally referred to as 'open house parties' or 'Facebook parties', which can involve large groups of people whose conduct results in community members fearing violence to themselves and their families as well as property being damaged.<sup>33</sup> We are concerned that sensationalist media

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<sup>21</sup> *Police Powers and Responsibilities Act 2000* (Qld), section 50.

<sup>22</sup> *Summary Offences Act 2005* (Qld), section 6.

<sup>23</sup> *Criminal Code Act 1899* (Qld), section 72.

<sup>24</sup> *Police Powers and Responsibilities Act 2000* (Qld), section 50(2), (3).

<sup>25</sup> *Summary Offences Act 2005* (Qld), section 10A.

<sup>26</sup> *Summary Offences Act 2005* (Qld), section 10A(1).

<sup>27</sup> *Summary Offences Act 2005* (Qld), section 10A(2)(a).

<sup>28</sup> *Summary Offences Act 2005* (Qld), section 10A(1).

<sup>29</sup> *Summary Offences Act 2005* (Qld), section 10A(1).

<sup>30</sup> *Criminal Code* (Qld), section 61.

<sup>31</sup> *Criminal Code* (Qld), section 61(1).

<sup>32</sup> *Criminal Code* (Qld), section 61(1).

<sup>33</sup> Explanatory Notes, *Police Powers and Responsibilities and Other Legislation Amendment Bill 2013*.

reporting of these parties has triggered a political response which is likely to affect more responsible and general party hosts. It would appear that violent behaviour at these events would also amount to a breach of the peace. For breaches of the peace, police officers may detain persons whom they reasonably believe to have caused a breach of the peace.

Further, it is difficult to envisage many situations where violent behaviour at out of control gatherings would not be the subject of the offence of unlawful assembly. In 'open house parties', three or more persons are likely to gather at a gathering for the common purpose of leisure and recreation. It is possible that a 'common purpose' may be lacking in situations where individuals who do not know each other 'gate crash' a party without a collective agenda and individually commit different offences. However, it would appear that in such situations, a police officer would be able to use their powers for breaches of the peace. Further, it is submitted that the 'common purpose' requirement is an important mechanism under civil liberties. If the 'common purpose' requirement is not met, then there is no reason why offenders should be prosecuted collectively and not as individuals. Therefore, notwithstanding the Bill's premise that current police powers are inadequate, we suggest the better view is that existing powers are sufficient. It is unnecessary and unreasonable to shift the criminal responsibility from individual offenders onto more responsible and general party hosts.

## **2. The penalties under the Bill are disproportionately severe.**

Under this Bill, persons organising an event that becomes out-of-control may be liable to a fine of \$12,100 or 1 year's imprisonment.<sup>34</sup> If the person organising the event is a child, the parent of the child is instead liable for the offence if the parent gave the child permission to organise the event.<sup>35</sup> Moreover, costs may be awarded against the child,<sup>36</sup> parent of child,<sup>37</sup> or any other persons organising the event.<sup>38</sup>

It is submitted that these penalties are disproportionately severe for two reasons. First, the Bill's definition of an 'out of control' gathering is too broad. This is because it affects all gatherings with more than 12 people and gatherings that are not originally intended by the legislature to be targeted.<sup>39</sup> For example, if a 16 year old teenager hosts a birthday party or another celebration celebrating a rite of passage with their parent's permission, and three of those thirty invitees

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<sup>34</sup> *Police Powers and Responsibilities and Other Legislation Amendment Bill 2013* (Qld), section 53BH(1)(b). Section 5 of the *Penalties and Sentences Act 1992* provides that one penalty unit amounts to \$110.

<sup>35</sup> *Police Powers and Responsibilities and Other Legislation Amendment Bill 2013* (Qld), section 53BH(2).

<sup>36</sup> *Police Powers and Responsibilities and Other Legislation Amendment Bill 2013* (Qld), section 53BL(2).

<sup>37</sup> *Police Powers and Responsibilities and Other Legislation Amendment Bill 2013* (Qld), section 53BM.

<sup>38</sup> *Police Powers and Responsibilities and Other Legislation Amendment Bill 2013* (Qld), section 53BK.

<sup>39</sup> *Police Powers and Responsibilities and Other Legislation Amendment Bill 2013* (Qld), section 53BB(1).

contributes to the emission of excessive noise or behaves in a disorderly or threatening way, the parent of the 17 year old teenager could be liable to 12 months' imprisonment. While it would be a defence for the parent to prove that s/he took reasonable steps to prevent the event becoming an out-of-control event, the standard of these 'reasonable steps' seems to be unreasonably high.

An example of taking reasonable steps provided by the Bill is to hire an appropriate number of security officers for the event.<sup>40</sup> Although hiring appropriate security officers may be suitable for 'open house parties' where there are hundreds of partygoers, it does not seem reasonable for smaller scale family gatherings, birthday or graduation parties. It would seem absurd for parents would hire security officers for a small-scale birthday, graduation party or family gathering where just 12 to 30 friends and/or family attend. Further, it is submitted that it would be unfair to hold organisers liable for 'open house parties'. Some – and perhaps most – organisers do not intend these parties to become unruly. However, in an 'open house party' where just three of those few hundred partygoers make excessive noise, the organiser of the party could be liable up to 12 months' imprisonment. Such a penalty would be excessive and disproportionately severe to the extent that it is likely to discourage gatherings.

**3. The proposed offence infringes upon an individual's freedom of association in a way that is disproportionate to the increase of operational efficiency said to result from enforcing the provision.**

It is our submission that the proposed Bill constitutes a substantial threat to the existing freedom of association. The practical effect of the Bill is to deny Queenslanders – and particularly Queensland teenagers – the right to associate with each other through gatherings.

The right to freedom of association is contained in the International Covenant on Civil and Political Rights (ICCPR). Australia has agreed to be bound by the ICCPR. Article 22 relevantly provides that 'everyone shall have the right to freedom of association of others'. 'No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order ... the protection of public health or morals or the protection of the rights and freedoms of others'.

The Explanatory Notes provides at least two reasons for the new proposed offence which restricts the freedom of association. The first reason is that existing police powers are insufficient. As previously stated, the new offences under the Bill are not necessary and effective in light of the many other offence provisions and law enforcement powers. The second reason is to benefit the

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<sup>40</sup> *Police Powers and Responsibilities and Other Legislation Amendment Bill 2013* (Qld), section 53BH(3).

community by improving the efficiency of the delivery of police services and the efficiency of the use of police resources.<sup>41</sup> While the improvement of the efficiency of the use of police resources is a worthwhile aim, article 22 of the ICCPR does not allow such an aim to be a legitimate restriction of the freedom of association. The only restrictions that may be placed on the exercise of the right to freedom of association are those that are necessary in the interests of national security, public safety and public order. Improving the efficiency of the use of police resources seems to be better seen as matters about resource allocation and policy, rather than to ensure public order. Even if it is argued that an allocation of police resources is a matter of public order because it helps to ensure the order of the general community, it would appear that an individual's freedom of association is infringed by the Bill in such a way that is disproportionate to the increase of operational efficiency said to result from enforcing the provision.

#### **4. The Bill infringes the United Nations Conventions on the Rights of the Child.**

Australia has been a signatory to the United Nations Conventions on the Rights of the Child (UNCROC). The CROC deals with the rights of persons under 18 years of age.<sup>42</sup> The Convention contains the following relevant articles.

- All organisations concerned with children should work towards what is best for each child.<sup>43</sup>
- Governments should ensure that children are properly cared for and protect them from violence, abuse and neglect by their parents, or anyone else who looks after them.<sup>44</sup>
- Children have the right to relax, play and to join in a wide range of leisure activities.<sup>45</sup>

This submission argues that the Bill infringes on these aforementioned articles. First, the Bill does not act to the best interests of children, as it is likely to impact on the ability of young people to meet, socialise or play without fear of excessive punishment and in a safe environment. While it could be argued by those in favour of the Bill that the best interests of children are served as orderly conduct at gatherings are encouraged, the better view is that the Bill deprives children's right to relax and join in gatherings. The disproportionate severity and excessively wide definition of the offence is likely to discourage teenagers under 18 years of age from joining in gatherings. Second, where parents have granted permission to their children to hold gatherings that become out of control, they may be liable for 12 months' imprisonment. The effect of the imprisonment would be to deny children their right to live with their parents at such important stages of their lives.

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<sup>41</sup> Explanatory Notes, Police Powers and Responsibilities and Other Legislation Amendment Bill 2013.

<sup>42</sup> United Nations Conventions on the Rights of the Child, Article 1.

<sup>43</sup> United Nations Conventions on the Rights of the Child, Article 3.

<sup>44</sup> United Nations Conventions on the Rights of the Child, Article 19.

<sup>45</sup> United Nations Conventions on the Rights of the Child, Article 31.

**5. There are alternative means of achieving the policy objectives of the Bill.**

There are alternative and better means instead of legislative reform to discourage violent conduct in 'open house parties' and 'Facebook parties' which are frequently undertaken for financial gain.<sup>46</sup> For example, a better alternative would be a community awareness campaign that details the responsibilities associated with hosting a party with an emphasis on safety and supervision and obligations around duty of care.<sup>47</sup> Detention should continue be a last resort. This is because detention fosters further criminality, which ultimately contributes to a more unsafe community.<sup>48</sup> There also existing means to improve the efficiency of the use of police resources. For example, the existing offender levy enables the government to recover some of the costs of law enforcement and administration.

**Summary**

It is our submission that the Bill is unnecessary because the existing police powers are adequate, that the penalties under the Bill are disproportionately severe, and that the Bill infringes upon individuals' freedom of association and rights of children under the United Nations Conventions on the Rights of the Child. Further, there are alternative means to achieve the policy objectives. It is on these bases that we submit that a better approach would be to penalise persons who actually behave in disorderly conduct, instead of penalising more responsible organisers and general party hosts.

Yours sincerely



Caxton Legal Centre Inc

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<sup>46</sup> Explanatory Notes, Police Powers and Responsibilities and Other Legislation Amendment Bill 2013.

<sup>47</sup> Cheryl Cassidy-Vernon, Submission to Members of Parliament of Western Australia, *Inquiry into the Criminal Law Amendment (Out of Control Gatherings) Bill 2012*; Drugs and Crime Prevention Committee, *Inquiry into Strategies to Prevent High Volume Offending and Recidivism by Young People – Final Report* (parliament of Victoria, Melbourne, 2009) at [http://www.parliament.vic.gov.au/images/stories/committees.dpcp/high\\_volume\\_crime/DCPC-Report\\_HighVolumeCrime\\_2009-07-22.pdf](http://www.parliament.vic.gov.au/images/stories/committees.dpcp/high_volume_crime/DCPC-Report_HighVolumeCrime_2009-07-22.pdf).

<sup>48</sup> Richards K, 2011 'What Makes Juvenile Offenders Different from Adult Offenders?' Trends and Issues in Crime and Criminal Justice, February; Heather Douglas, Submission to the Assistant Director-General of Youth Justice, *Submission in response to the paper 'Safer Street Crime Action Plan – Youth Justice'*.