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G20 (Safety and Security) Bill 2013

Report No. 41

Legal Affairs and Community Safety Committee

October 2013

Legal Affairs and Community Safety Committee

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Abbreviations

ALHR	Australian Lawyers for Human Rights
APEC	Asia-Pacific Economic Cooperation
BCEC	Brisbane Convention and Exhibition Centre
Bill	G20 (Safety and Security) Bill 2013
CEPS	Centre of Excellence in Policing and Security
CCIQ	Chamber of Commerce and Industry Queensland
CHOGM	Commonwealth Heads of Government Meeting
Commissioner	Commissioner of Police
Committee	Legal Affairs and Community Safety Committee
G20	The Group of Twenty
G20 Forum	Public Forum - *G20: dissent, police powers and international reviews of security implementation*, Queen Elizabeth II Courts of Law, held on Thursday, 26 September 2013
Minister	The Honourable Jack Dempsey MP, Minister for Police and Community Safety
OIPRD	Canadian Office of the Independent Police Review Director
PPRA/Police Act	*Police Powers and Responsibilities Act 2000*
QCCL	Queensland Council for Civil Liberties
QLS	Queensland Law Society
QPS	Queensland Police Service

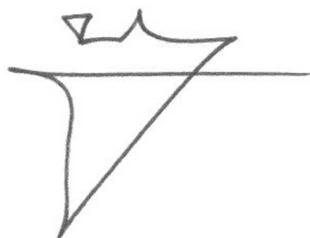
Chair's foreword

This Report presents a summary of the Legal Affairs and Community Safety Committee's (Committee) examination of the G20 (Safety and Security) Bill 2013 (Bill).

The Committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the Bill had sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

On behalf of the Committee, I thank those individuals and organisations who lodged written submissions on this Bill. I also thank the Committee's Secretariat, and the Queensland Police Service.

I commend this Report to the House.



Ian Berry MP

Chair

Recommendations

Recommendation 1 **6**

The Committee recommends the G20 (Safety and Security) Bill 2013 be passed.

Recommendation 2 **21**

The Committee recommends clause 18 of the Bill be amended to remove unnecessary duplication between the criterion involving damage to property and the definition of violent disruption offence.

Recommendation 3 **22**

The Committee recommends that examples and non-examples be added after clause 18 of the Bill to aid in the interpretation of what would and what would not constitute a disruption to the G20 meetings under the Bill.

Recommendation 4 **29**

The Committee recommends the Minister for Police and Community Safety engage in further discussions with the Attorney-General and Minister for Justice and Legal Aid Queensland to investigate the establishment of a G20 Legal Hotline similar to that put in place for the Sydney APEC meeting.

Recommendation 5 **29**

The Committee recommends the Queensland Police Service take steps to ensure appropriate interpreting services are available during the G20 meetings.

Recommendation 6 **38**

The Committee recommends a note be included in the search chapter directing readers to the relevant section of the *Police Powers and Responsibilities Act 2000* setting out the safeguards in relation to searches that will continue to apply throughout the G20 meeting.

Recommendation 7 **39**

The Committee recommends a note similar to that contained in clause 37(3) of the Bill be included in both clause 38(3) - Power to require personal details for offence etc, and clause 58 - Powers relating to excluded person, to ensure there are consistent references to the provisions dealing with the removal of headwear.

Recommendation 8 **45**

The Committee recommends a note be inserted after clause 44 directing readers to the appropriate provisions of the *Police Powers and Responsibilities Act 2000* relating to forfeiture of items to the State.

Recommendation 9 **50**

The Committee recommends clause 51(3) of the Bill be amended to require the Commissioner of Police to give written notice of a decision under clause 51(2) to a person who made written submissions, as soon as reasonably practicable.

Recommendation 10 **51**

The Committee recommends clause 51 of the Bill be amended to require the Commissioner of Police, in his notice given under clause 51(1) to include written reasons as to why a person has been included on the prohibited persons list. The requirement to give reasons should be subject to the situations set out in clause 54(4) and clause 54(5) should similarly apply to a notice under clause 54(1).

1. Introduction

1.1 Role of the Committee

The Legal Affairs and Community Safety Committee (Committee) is a portfolio committee of the Legislative Assembly which commenced on 18 May 2013 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.[1]

The Committee's primary areas of responsibility include:

- Department of Justice and Attorney-General;
- Queensland Police Service; and
- Department of Community Safety.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation;
- the application of fundamental legislative principles; and
- for subordinate legislation – its lawfulness.

The G20 (Safety and Security) Bill 2013 (Bill) was introduced into the House and referred to the Committee on 20 August 2013. In accordance with the Standing Orders, the Committee of the Legislative Assembly set a date for the Committee to report to the Legislative Assembly of 22 October 2013.

1.2 Inquiry process

On 21 August 2013, the Committee invited the Queensland Police Service (QPS) to provide a written briefing on the Bill, and also invited identified stakeholders and LACSC subscribers to lodge written submissions on the Bill.

The Committee received a written advice from the Office of the Minister for Police and Community Safety dated 5 September 2013 and received eight submissions from interested stakeholder groups (see **Appendix A**).

The Committee invited the QPS to respond to the issues raised in submissions and the Minister for Police and Community Safety provided a further written advice to the Committee received 1 October 2013. Both advices from the QPS and the submissions were published on the Committee's website.[2]

The Committee held a public briefing with the QPS on Friday, 13 September 2013 where further information was provided to the Committee on the operations of the Bill. The QPS officers at the hearing provided valuable information to the Committee including observations on the G20 meeting held in Russia only days before the briefing.

A further public hearing was held on Thursday, 26 September 2013, where the Committee received further evidence from the following invited stakeholders: the Queensland Law Society; the Chamber of Commerce and Industry Queensland; and the Queensland Council for Civil Liberties.

[1] *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

[2] http://www.parliament.qld.gov.au/work-of-committees/committees/LACSC.

The transcripts of both the public briefing and the public hearing are published on the Committee's website.

1.3 The Group of Twenty (G20)

What is the G20?

The Group of Twenty (G20) is without doubt, the premier forum for international cooperation on the most important issues of the global economic and financial agenda. As set out on the G20 website, the objectives of the G20 are threefold:

1. Policy coordination between its members in order to achieve global economic stability, sustainable growth;
2. Promoting financial regulations that reduce risks and prevent future financial crises;
3. Modernising international financial architecture.[3]

The G20 leaders, finance ministers and central bank governors, meet regularly to discuss ways to strengthen the global economy, reform international financial institutions, improve financial regulation, and discuss the key economic reforms that are needed in each of the member countries.[4]

G20 members account for 85 per cent of the world economy, 80 per cent of global trade, and two-thirds of the world's population. The G20 represents all geographic regions of the world.[5]

The G20 brings together the following 19 countries: Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, the Republic of Korea, Mexico, Russia, Saudi Arabia, South Africa, Turkey, the United Kingdom, the United States of America plus the European Union.[6]

2014 G20 summit and the role of the Queensland Police Service

On 11 July 2012, the then Prime Minister Gillard, announced that the 2014 G20 summit would be held in Brisbane over the weekend of 14 to 16 November 2014, and the Finance Ministers' meeting would be held in Cairns on 20 and 21 September 2014.

At the public briefing, Deputy Commissioner Ross Barnett of the QPS stated:

> *The G20 meeting has been described as the biggest international meeting Australia has ever hosted, with as many as 4,000 delegates and an additional 3,000 media representatives from around the world expected to attend.*[7]

As a consequence of Queensland hosting the G20 summit in 2014, the QPS will take on the primary responsibility for providing security to G20 delegates and their official parties; security for meeting and accommodation venues, including motorcade routes; and security for any other official event associated with the G20 meeting in Queensland. The G20 delegates will include Internationally Protected Persons who require a high level of personal security.

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3 http://www.g20.org/docs/about/about_G20.html, accessed September 2013.
4 http://www.dpmc.gov.au/g20/, accessed August 2013.
5 http://www.dfat.gov.au/trade/g20/, accessed August 2013.
6 http://www.g20.org/docs/about/about_G20.html, accessed September 2013.
7 *Transcript of Proceedings (Hansard)*, Public briefing, Legal Affairs and Community Safety Committee, 13 September 2013, page 2.

In addition to the protection of delegates and G20 events, the QPS is also responsible for protecting members of the public, businesses and property – unrelated to the G20 summit – from any illegal activities that may be planned by persons opposed to the G20 meetings. At the public briefing Deputy Commissioner Barnett went on to state:

> *World media attention will focus on Queensland during the G20 meeting. Such widespread attention can act as a catalyst for those prepared to use violence and disruption to obtain publicity for their cause. Recent G20 meetings in London in 2009 and in Toronto in 2010 were the target for violent demonstrations and riots, resulting in serious injuries to members of the public and the police officers and extensive damage to property. Also, violent demonstrations against G20 related issues occurred in Rome during the 2011 G20 meeting held in France.*[8]

With these additional responsibilities falling on the QPS for the safe conduct of the G20 meetings, the Newman Government determined it would be appropriate for an additional stand-alone Act to be passed by the Parliament, granting specific powers on the QPS for the duration of the G20 event.

1.4 Policy objectives of the G20 (Safety and Security) Bill 2013

The Bill was introduced into the Parliament with a policy objective to provide police officers and appointed persons with additional special powers to:

- protect the safety or security of persons attending any part of the G20 meeting, which is comprised of the Group of Twenty leaders' summit in Brisbane in 2014, and the Group of Twenty Finance Ministers' and Central Bank Governors' meeting in Cairns in 2014, any official meeting of sherpas in Queensland in 2014 and any other G20 event;
- ensure the safety of members of the public from acts of civil disobedience in relation to any part of the G20 meeting;
- protect property from damage from civil disobedience in relation to any part of the G20 meeting;
- prevent acts of terrorism directly or indirectly related to the any part of the G20 meeting; and
- regulate traffic and pedestrian movement to ensure the passage of motorcades related to any part of the G20 meeting is not impeded.[9]

In his introductory speech, the Honourable Jack Dempsey MP, Minister for Police and Community Safety (Minister), stated that '*special legislation specific to G20 needs would promote the safety and security of G20 events, G20 delegates and members of the public during the course of the meetings*.'[10]

The Bill is stated to achieve its policy objectives by:

> *… allowing inner and outer security areas and motorcade security areas to be established. The inner security areas known as restricted areas cover the venues for meetings and accommodation. Motorcade security areas will have temporary effect and apply to roads during the time required for the safe movement of the Leaders' motorcades. Surrounding the restricted areas and some motorcade areas will be an outer security buffer zone referred to as a declared area. Despite the outer security area, members of the public will generally be at liberty to go about their daily business in a*

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[8] *Transcript of Proceedings (Hansard)*, Public briefing, Legal Affairs and Community Safety Committee, 13 September 2013, page 2.

[9] *Explanatory Notes,* G20 (Safety and Security) Bill 2013, page 1.

[10] *Record of Proceedings (Hansard)*, 20 August 2013, page 2602.

> *declared area. Access to different security areas will be limited or conditional under the Bill.*[11]

Additionally, the Bill will also achieve its objectives by providing for additional powers of search; powers to prohibit or exclude persons from security areas; powers in relation to prohibited items; and the creation of specific offences under the Bill.

The additional powers conferred on the QPS under the Bill are extensive. The powers are listed below and are examined in more detail in part 2 of this report:

- *declaring additional security areas in the event of an emergency situation arising;*
- *restricting access to restricted areas and motorcade areas during the G20 meeting;*
- *excluding access to a security area during the G20 meeting by service of an exclusion notice on a person intent on disrupting a G20 event;*
- *establishment of a prohibited persons list by the commissioner of the Queensland Police Service;*
- *requiring a person's personal particulars and reasons for entering or being in a security area;*
- *searching persons and vehicles seeking to enter a restricted area or a motorcade area including specific searches, as required;*
- *enter and search premises within a restricted area;*
- *restricting possession of prohibited items;*
- *removing obstruction items including a vehicle that might be left abandoned on a potential motorcade route;*
- *forfeiture to the State of prohibited items and obstruction items seized during the G20 meeting;*
- *discretion to close roads, private accesses and waterways;*
- *limited right for motorcade drivers to disobey the* Transport Operations (Road Use Management) Act 1995*;*
- *creation of new offences applicable to the G20 meeting and events;*
- *presumption against bail for the limited period of the G20 meeting;*
- *appointment by the commissioner of non-State police officers to perform duties during the G20 period;*
- *appointment by the commissioner of appointed persons to assist with security arrangements for the G20 meeting;*
- *provision for confidentiality of information; and*
- *authorising limited disclosure of information by the commissioner.*[12]

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[11] *Explanatory Notes,* G20 (Safety and Security) Bill 2013, page 2.

[12] *Explanatory Notes,* G20 (Safety and Security) Bill 2013, pages 2-3.

To aid the police in achieving the stated policy objectives, the Bill also provides that Friday, 14 November 2014 will be declared a public holiday, in the local Brisbane City Council area with an amendment to the trading hours on that day to provide for normal Friday shop trading hours, rather than the reduced trading hours that would ordinarily apply on a declared public holiday.[13]

The Bill also contains a sunset clause which repeals the law enforcement powers and security areas immediately after the G20 meeting is concluded and leaders have safely departed Queensland.[14]

1.5 Consultation on the Bill

No public consultation was undertaken by the Government in relation to the Bill.[15]

The reasons provided in the Explanatory Notes for the lack of public consultation are as follows:

> *Public consultation was not undertaken with respect to the Bill as the additional powers required for policing the G20 meeting are specialist in nature, relevant only to very limited geographical areas and will remain in force for a very short time frame. Additionally, there is an international expectation that Queensland will provide those policing powers essential to maintaining a high level of safety and security during the G20 meeting.*
>
> *Consultation was undertaken with the Commonwealth G20 Taskforce to ensure that particular needs for the G20 meeting are addressed in the legislation.*[16]

In relation to consultation more broadly, the Queensland Law Society (QLS) while not directly critical on the lack of consultation in the development of the Bill, submitted:

> *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.*[17]

Committee Comment

The Committee acknowledges the specialist nature of the Bill in relation to national security and considers that the lack of public consultation is consistent with the approach taken for the G20 held in Melbourne in 2006 and APEC held in Sydney in 2007.

It is also acknowledged that consultation was undertaken with the Commonwealth G20 Taskforce within the Department of Prime Minister and Cabinet and notes this will be ongoing until the G20 event is held next year.

In relation to the broader issue of consultation raised by the QLS on what could be considered the *effect* of the Bill, rather than the Bill itself, the Committee agrees that should the Bill be passed there will need to be an extensive consultation and education campaign to ensure relevant stakeholders are aware of the security arrangements which will be put in place for the G20 meeting.

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13 *Explanatory Notes,* G20 (Safety and Security) Bill 2013, page 3.
14 *Record of Proceedings (Hansard)*, 20 August 2013, page 2603.
15 *Explanatory Notes,* G20 (Safety and Security) Bill 2013, page 15.
16 *Explanatory Notes,* G20 (Safety and Security) Bill 2013, page 15.
17 Queensland Law Society, Submission No. 3, page 12.

1.6 Should the Bill be passed?

Standing Order 132(1) requires the Committee to determine whether or not to recommend the Bill be passed.

The Committee has examined the Bill, including the policy objectives and has given thorough consideration to the information provided by both the QPS and submitters, including the written submissions from stakeholders and the oral evidence taken at the public hearing.

The Committee is not satisfied that the current powers available to the QPS under the *Police Powers and Responsibilities Act 2000* (PPRA or Police Act) are sufficient to cater for the G20 event and that the policy objectives being pursued by the Bill are necessary to ensure the safe conduct of the G20 meetings in Queensland in September and November 2014.

The Committee is cognisant of the following remarks from Deputy Commissioner Barnett at the Committee's public briefing:

> *… the Police Service is satisfied that the elements of the Bill as presented will allow us to do our job effectively and provide the required level of security for both the people attending the event and also members of the community who are going about their business. There are obviously a range of provisions within the bill that give the police additional powers that are not normally available to us. We believe that they are essential for us to be able to deliver the mandate and the heavy responsibility, can I say, that has been placed on this department to facilitate effectively the largest peacetime security operation in Australia's history, which is what G20 will be.*[18]
>
> *…*
>
> *The QPS genuinely believes that the enhanced powers and provisions sought in this bill are necessary to protect persons attending the G20 meetings and events, to protect members of the public and their property from acts of civil disobedience and crime and to prevent acts of terrorism. At the same time we are cognisant of the importance of civil liberties and of limiting the disruptions that are inevitable with an event of this magnitude. To this extent the bill has been designed to specifically meet the challenges that are attached while hosting the G20 meetings. It is a stand-alone piece of legislation with a limited operation, expiring at the end of the G20 period.*[19]

There are a number of areas in the Bill which the Committee considers could be improved and the Committee has highlighted these matters throughout part 2 of this report. Despite this, the Committee has no hesitation recommending that this important Bill be passed by the Legislative Assembly.

Recommendation 1

The Committee recommends the G20 (Safety and Security) Bill 2013 be passed.

[18] *Transcript of Proceedings (Hansard)*, Public briefing, Legal Affairs and Community Safety Committee, 13 September 2013, page 3.

[19] *Transcript of Proceedings (Hansard)*, Public briefing, Legal Affairs and Community Safety Committee, 13 September 2013, page 15.

2. Examination of the G20 (Safety and Security) Bill 2013

The purpose of the Bill is to allow the QPS to provide the level of security that will both be expected and demanded by the Commonwealth and foreign nations attending the G20 meeting.[20] Additionally, the Bill will provide police officers, authorised non-state police officers and appointed persons[21] with sufficient special powers to provide security for the G20 meeting.[22]

The Bill will be a stand-alone piece of legislation which will apply for the duration of the G20 meetings and will sit alongside of the Police Act. The Bill provides that to the extent of any inconsistency with the Police Act in relation to a power conferred, or responsibility imposed under that Act, the provisions in the Bill will prevail.[23]

Specific provisions of the Police Act will apply to certain offences under the Bill as if they were offences under the Police Act and other sections of the Police Act are excluded from applying to police officers exercising powers under the Bill.[24]

2.1 Is the Bill necessary?

Given the extent of the powers contained in the Police Act, and the fact that it already contains 'Special Events Powers'[25], a number of submissions raised issues upfront that the Bill was simply not necessary. Submitters argued that the current police powers in the Police Act were sufficient to cater for the safe conduct of the G20 event.[26]

The Australian Lawyers for Human Rights (ALHR) put forward a number of contentions including:

> *The ALHR contends the **PPRA** in its current form sufficiently provides the powers sought by the legislative intent of the proposed Bill.*[27]

With reference to the current provisions of the Police Act, the ALHR stated:

> *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.*
>
> *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.*

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[20] Letter from the Office of the Minister for Police and Community Safety, 5 September 2013, Attachment, page 2.

[21] Appointed persons are discussed in further detail at part 2.11 of this report.

[22] Letter from the Office of the Minister for Police and Community Safety, 5 September 2013, Attachment, page 2.

[23] G20 (Safety and Security) Bill 2013, section 4(1).

[24] G20 (Safety and Security) Bill 2013, sections 4(3) - (5).

[25] *Police Powers and Responsibilities Act 2000*, chapter 19, part 2.

[26] Queensland Law Society, Submission No. 3; Australian Lawyers for Human Rights, Submission No. 4; Queensland Council for Civil Liberties, Submission No. 5; and Caxton Legal Centre Inc., Submission No. 7.

[27] Australian Lawyers for Human Rights, Submission No. 4, page 1.

> *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).*[28]

Similarly, the Caxton Legal Centre outlined the ability for the QPS to declare special events in its submission submitting:

> *Chapter 19, Part 2 of the PPRA sets out the "Special Events Powers" available to the Queensland Police Service. These powers have been used previously without incident to cover events such as the Goodwill Games, the Commonwealth Heads of Government (CHOGM) Meeting, the Asia Pacific Economic Cooperation (APEC) Meeting, the Rugby Union World Cup and the Gold Coast Indy.*
>
> *Under this Chapter, the Minister has the ability to declare a "special event site" in and around which the police have heightened powers. In and around these special event sites, entrants must provide reasons for entry, submit to physical and electronic searches of both themselves and their belongings. The Minister is able to publish a list of prohibited items which may not be brought into the special event site or possessed once inside. Just twelve months ago the Queensland Police Service reviewed Chapter 19 of the PPRA and noted,*
>
>> "The QPS has not to date, identified any deficiencies with respect to their [Special Events Powers] effective operation. Whilst the test to establish a case to utilise the powers is high, this reflects an appropriate balance between the nature of the powers available to police officers and the justifiable need to limit the use of the powers to 'special occasions' rather than being available for use in 'day to day' policing operations" **(emphasis added)**. [29]

The Caxton Legal Centre concluded:

> *This assessment by the QPS clearly raises questions about the necessity of introducing further 'special powers' legislation specific to the G20.*[30]

In response to submissions that the Bill is unnecessary, the QPS emphasised the G20 event is a unique event which requires specific powers to ensure an appropriate level of security is provided to G20 delegates and the community. [31]

The QPS considered the existing Queensland legislation does not provide sufficient police powers to deal with an event of the scale and magnitude of the G20 meeting and in particular, specific legislation was required to:

- declare structured security areas including motorcade areas;
- quickly declare additional security areas;
- undertake mandatory searches of persons and vehicles seeking to enter restricted areas or motorcade areas;
- establish a Prohibited Persons List;
- serve exclusion notices;

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[28] Australian Lawyers for Human Rights, Submission No. 4, page 2.

[29] Caxton Legal Centre Inc., Submission No. 7, page 3.

[30] Caxton Legal Centre Inc., Submission No. 7, page 3.

[31] Letter from the Minister for Police and Community Safety, 1 October 2013, Attachment, pages 4-5.

- enter and search premises within a restricted area;
- close a road, easement, private access or waterway should the need arise;
- obtain a person's personal particulars;
- remove obstruction items including a vehicle that might be left abandoned on a potential motorcade route;
- override the provisions of the *Transport Operations (Road Use Management) Act 1995* for a motorcade purpose; and
- create specific offences relevant to the G20.

In relation to the necessity to create specific safety and security for the G20, the Explanatory Notes provide:

> *In collaboration with other agencies, the Queensland Police Service is responsible for providing security to G20 delegates and for all meeting and accommodation venues, motorcade routes and any other event associated with a G20 meeting. The delegates include Internationally Protected Persons who require stringent security measures to protect their personal safety.*
>
> *The Queensland Police Service is also responsible for ensuring that members of the public and their property come to no harm as a result of any illegal activities that may be planned by persons opposed to the G20 meeting. Limited powers are available under the* Police Powers and Responsibilities Act 2000 *(PPRA) to deal with an event of this scale and magnitude. Despite the PPRA Special Event legislation, there is a lack of sufficient special powers required to ensure the security of G20 events and the safety of delegates and members of the public.*[32]

The QPS stated the development of the Bill as a stand-alone piece of legislation was considered to be superior to amending the Police Act as it more properly reflects that the powers provided in the Bill will only apply for a limited time and a limited location and will expire at the conclusion of the G20 event.[33]

Is the development of a stand-alone Bill unique?

As part of the process for considering whether the Bill and the additional police powers contained within it were required for the G20, the Committee had regard to existing provisions in the Queensland Statute book and also considered the approach taken by other jurisdictions around Australia to cater for significant international events over the past few years.

The Explanatory Notes provide that the QPS in developing the Bill gave consideration to the provisions of the following two major events legislation in other jurisdictions:

> - APEC Meeting (Police Powers) Act 2007 *(NSW) which was introduced by the New South Wales Government in readiness for the Asia-Pacific Economic Cooperation held in Sydney in 2007; and*
> - Commonwealth Heads of Government Meeting (Special Powers) Act 2011 *(WA) which was introduced by the Western Australian Government for the Commonwealth Heads of Government Meeting in Perth in 2011.*[34]

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32 *Explanatory Notes,* G20 (Safety and Security) Bill 2013, pages 1-2.
33 Letter from the Minister for Police and Community Safety, 1 October 2013, Attachment, pages 4-5.
34 *Explanatory Notes,* G20 (Safety and Security) Bill 2013, page 16.

APEC, Sydney 2007

In 2007, Sydney hosted the Asia-Pacific Economic Cooperation (APEC) group which comprised of a series of meetings and culminated with the APEC Leaders' Week. The APEC events involved the heads of government of 21 member economies and it is estimated that the events were attended by up to 5,000 officials and 1,500 international media.[35]

The *APEC Meeting (Police Powers) Act 2007* (NSW)[36] provided police with additional powers in parts of the Sydney CBD during the APEC meeting. The legislation had a limited period of operation from 30 August to 12 September 2007 and expired on the conclusion of the APEC meeting.

In addition, the New South Wales government declared 7 September 2007 to be a public holiday for the Sydney metropolitan area. The *Industrial and Other Legislation Amendment (APEC Public Holiday) Act 2007* (NSW) provided for the public holiday based on advice from New South Wales Government security officials, that keeping the Sydney metropolitan area open for workers would be too burdensome.

It was also noted that public holidays were declared in Santiago, Chile, in 2004 and in Shanghai, China, in 2001, when these two cities hosted APEC summits.[37]

CHOGM, Perth 2011

In 2011, Perth hosted the Commonwealth Heads of Government Meeting (CHOGM). Every two years, leaders of the Commonwealth meet at CHOGM to discuss global and Commonwealth issues, and to agree on collective policies and initiatives.[38]

The *Commonwealth Heads of Government Meeting (Special Powers) Act 2011* (WA)[39] provided additional security powers for police and authorised officers to use in designated security areas, additional powers for police to close roads for the purposes of conveying dignitaries, and coercive hearing powers to assist in gathering evidence of suspected offences aimed at disrupting the event or harming delegates and property.[40]

The CHOGM legislation did not provide for a public holiday, however like the APEC legislation there were a number of similarities with the current Bill.

Committee Comment

While there are a number of provisions of the Police Act, including those in the special events chapter of that Act which could appropriately be used during the G20 meetings, the Committee is not satisfied that the existing laws, in their entirety, would cover all the necessary requirements identified by the QPS for the G20 meetings.

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35 APEC Meeting (Police Powers) Bill 2007 (NSW), Industrial and Other Legislation Amendment (APEC Public Holiday) Bill 2007 (NSW) (Cognate Bills), Agreement in Principle, NSW Legislative Assembly Hansard and Papers, 7 June 2007, page 1.

36 Passed by the New South Wales Legislative Council on 26 June 2007 and assented to on 4 July 2007.

37 APEC meeting (Police Powers) Bill 2007, Industrial and Other Legislation Amendment (APEC Public Holiday) Bill 2007 (Cognate bills), Agreement in Principle, NSW Legislative Assembly Hansard and Papers, 7 June 2007, page 5.

38 http://www.chogm2011.org/CHOGM2011.html, accessed 9 September 2013.

39 Passed by the Legislative Council on 22 June 2011 and assented to on 11 July 2011.

40 *Explanatory Memorandum*, Commonwealth Heads of Government Meeting (Special Powers) Bill 2011 (WA), page 1.

In particular, the current laws do not appear to adequately provide for the safe conduct of motorcades and associated offences (as outlined above) and a number of other provisions such as those relating to prohibited persons and enhanced search provisions required for the G20 event.

Given the approach taken by New South Wales for the APEC meeting and Western Australia for the recent CHOGM meeting, the development of time limited, stand-alone legislation to cater for the safe conduct of major international events is not unique. The approach taken under the Bill is consistent with the approach taken by other jurisdictions and the Committee agrees that a stand-alone Bill or a 'total package' setting out all the G20 related provisions is preferable to partly using existing provisions of the Police Act and partly using new provisions contained in an amendment Act.

The Bill is appropriately time limited for the duration of the G20 meetings and will expire after the event has concluded.

The Committee considers that an additional advantage for the QPS and other officers who will be exercising the powers on the ground during the G20 event is that the specific legislation contains all the relevant information for G20 together in the one place which will assist with the familiarisation and training of the powers to be used during the event.

Specific aspects of the G20 Bill are examined in more detail below.

2.2 Objectives of the Bill

The Bill contains a single comprehensive objectives clause. The objectives are to provide officers with special powers to promote the safety and security of persons attending the G20 event; ensure the safety of members of the public from incidents related to the G20 meeting; protect property from damage; prevent acts of terrorism and regulate traffic and pedestrian movement to ensure the meeting is not impeded.[41]

Clause 5 of the Bill requires the Commissioner of Police (Commissioner), an Assistant or Deputy Commissioner (when performing a function under a delegation from the Commissioner) or a police officer, non-State police officer or other appointed person – have regard to the objectives of the Bill when performing a function conferred under the Bill.

A number of issues were raised in submissions in relation to particular powers in the Bill, which are specifically dealt with later in this report, however there were also general themes raised in submissions that the Bill will unnecessarily impact members of the community who are going about their regular business.[42]

At the public briefing on the Bill, Deputy Commissioner Barnett stated in his opening remarks:

> *… I believe the bill achieves a balance between providing the powers necessary to ensure the safety and security of the G20 meeting and protection of members of the public whilst ensuring the least possible disruption is caused to the community.*[43]

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[41] G20 (Safety and Security) Bill 2013, clause 2.

[42] Queensland Law Society, Submission No. 3; Australian Lawyers for Human Rights, Submission No. 4; Queensland Council for Civil Liberties, Submission No. 5; and Caxton Legal Centre Inc., Submission No. 7.

[43] *Transcript of Proceedings (Hansard)*, Public briefing, Legal Affairs and Community Safety Committee, 13 September 2013, page 3.

Assistant Commissioner Carroll who will be responsible for leading the QPS G20 group and planning and coordinating the QPS G20 response stated further at the briefing:

> *… one of the guiding principles in my strategic plan is that it has to be delivered with dignity. So it is not only providing the safety and security, it is also the dignity of the people involved. So that will be resonated throughout the G20 event.*[44]

Committee Comment

The objectives in the Bill and the requirement for all officers to have regard to those objectives when performing a function under the Bill adequately reflects it is of paramount importance that the safety and security of persons attending the G20 meeting, the safety of the members of the public and the protection of property is achieved throughout the period of the G20 meetings.

The Committee accepts that there may be some levels of interruption or inconvenience to the local community. However, the evidence from the public briefing that the QPS will go about their duties in a manner that will cause minimum disruption to the community strongly indicates that the focus of the QPS is not only on the protection of delegates, but also that the QPS is mindful about the impacts the Bill may have on sectors of the local community.

2.3 G20 Security Areas

Part 2 of the Bill deals with the three types of Security Areas that will be established throughout the G20 meetings, namely – declared areas, restricted areas and motorcade areas.

Each of the three security areas is defined by the level of security required for the area and the Bill provides that areas will only have application during specific time periods.[45]

Declared areas

Schedules 2 and 3 of the Bill provide maps depicting the declared areas of Cairns and Brisbane. The Bill states the QPS holds detailed digital images of the exact locations of the boundary of each declared area and that they are available free of charge on the QPS website.[46]

The declared areas in Cairns and Brisbane include the respective airports of each city, the meeting venues and enough of the business districts around the venues to create a security buffer zone. The Brisbane Central declared area comprises a significant portion of the Brisbane CBD.

The QPS advised the Brisbane Central declared area is necessary as it will need to include the Brisbane Convention and Exhibition Centre (BCEC) meeting venue, hotel accommodation leased by the Commonwealth for the G20 meeting and the streets between the meeting venue and accommodation areas which will be used as motorcade routes.[47]

A declared area creates a G20 security zone which is accessible to members of the public, other than prohibited persons and persons who are excluded from a part, or all, of a declared area.[48]

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[44] *Transcript of Proceedings (Hansard)*, Public briefing, Legal Affairs and Community Safety Committee, 13 September 2013, page 7.

[45] Schedule 1 of the Bill sets out when the Act applies to the declared and restricted areas in Cairns and Brisbane.

[46] G20 (Safety and Security) Bill 2013, clause 9.

[47] Letter from the Office of the Minister for Police and Community Safety, 5 September 2013, Attachment, page 2.

[48] *Explanatory Notes*, G20 (Safety and Security) Bill 2013, page 19.

In relation to security areas, the QPS advised:

> *People using, or businesses operating in declared areas should not be affected. Generally, businesses will operate as normal and people will be able to go about their business without interference. A higher security presence may be visible but this would be the case despite the declared area.*
>
> *A declared area also includes the area of the footpath on either side of a motorcade area unless the footpath is in a restricted area. This allows for the powers of a declared area to be exercised around a motorcade area but will not limit the general public from lining a motorcade route to view the motorcade.*[49]

Restricted areas

Schedules four and five of the Bill provide maps depicting the restricted areas to be used in Cairns and Brisbane. Similarly, detailed images of the exact locations of restricted areas are available for viewing on the QPS website.[50]

The restricted areas in Cairns comprise the Cairns Convention Centre, the showground at Parramatta Park and the Department of Transport and Main Roads building at Portsmith.

The restricted areas in Brisbane comprise the Brisbane Convention and Exhibition Centre at South Bank; the Royal National Association showgrounds at Bowen Hills; Suncorp Stadium bus terminal at Milton; the Pullman Hotel (CBD); the Treasury Casino and Hotel (CBD); the Royal on the Park Hotel (CBD); the Marriott Hotel (CBD); the Stamford Hotel (CBD); the Novotel Hotel (Spring Hill); Rydges Hotel (South Brisbane); Hilton Hotel (CBD); and the Sofitel (CBD).

In relation to restricted areas, the QPS advised:

> *Restricted areas will have the highest level of security and associated police powers. Access to a restricted area or part of a restricted area will only be authorised under an accreditation issued by the Commonwealth or by approval of a police officer of at least the rank of Superintendent. lt is expected that approval access by a police officer will only be required in exceptional circumstances.*[51]

Motorcade areas

The third security area covered by the Bill is a motorcade area. As set out in the Explanatory Notes, motorcade areas constitute only the road surfaces on which vehicles would normally travel or an area of waterway. In the case of roads, it does not include footpaths which (as described above) will form part of the declared areas.[52] Only a police officer of at least the rank of Superintendent or a police officer acting in that capacity (a senior police officer) can declare an area a motorcade area.[53]

In relation to motorcade areas, the Explanatory Notes provide:

> *Declared motorcade areas will not remain in continuous effect during the entire period of the G20 meeting as to do so would prevent those roads from being used by members of the public for several days. Therefore, motorcade area declarations will remain in force*

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49 Letter from the Office of the Minister for Police and Community Safety, 5 September 2013, Attachment, page 2.

50 G20 (Safety and Security) Bill 2013, clause 11.

51 Letter from the Office of the Minister for Police and Community Safety, 5 September 2013, Attachment, pages 2-3.

52 *Explanatory Notes*, G20 (Safety and Security) Bill 2013, page 20.

53 *Explanatory Notes*, G20 (Safety and Security) Bill 2013, page 20.

until the declaration is revoked by a notice by a police officer of at least the rank of superintendent published on the prescribed website. In practical terms, an area will only be declared to be a motorcade area for the time necessary to conduct a motorcade with the required level of security.

… if there is an overlap between a motorcade area and a declared area, the motorcade area prevails to the extent of the overlap. Effectively, this means that the restrictions associated with motorcades continue to apply even though the motorcade area might also be within a declared area to which fewer restrictions apply.[54]

Motorcade areas can only be declared in Cairns during the period 16 to 22 September 2014 and in Brisbane during the period 14 to 17 November 2014 and are intended to be used for the movement of G20 delegates, particularly from the airport to their accommodation and to and from meeting venues.

The QPS advised it is their intention that motorcade areas will be planned and utilised in a way that will see roads closed for the shortest period of time necessary to transfer delegates to their destination. Roads will be closed to usual traffic for a short time before a motorcade uses the road and will reopen to normal traffic a short time after the motorcade passes along the road. Motorists may use roads associated with motorcade routes when the road are not declared to be motorcade areas.[55]

At the public briefing, Deputy Commissioner Barnett advised the Committee:

… For security purposes these roads will be closed to general traffic. However, these roads will only be closed for the time necessary to allow a motorcade to safely pass. At all other times the road will be open to normal usage. It is intended that road closures will be kept to the shortest time possible which may, in some instances, only be a few minutes.[56]

Additional security areas - Additional (non-emergency) security area

Clause 12 of the Bill also provides that the Commissioner may, with the Minister's approval, by written order, declare an area as an 'additional security area' for a non-emergency purpose.

The Commissioner may only declare an area to be an additional security area if the Commissioner is reasonably satisfied that declaring the area to be an additional restricted area or additional declared area will assist in promoting the safety and security of the G20 meeting or the safety or security of the public; and there is not enough time to make a regulation.[57]

The Explanatory Notes provide further clarification on how the additional areas will operate:

… where there is not 'enough time to make a regulation' to declare an additional security area through the regulation making process, the commissioner of police may, with the approval of the Minister, declare an area of land or water to be an additional restricted area or declared area. It is expected that if this provision is to be utilised, it would be in circumstances where there is an immediate need to extend a security area or declare an additional security area. Such a need might arise if an alternative meeting venue or

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54 *Explanatory Notes*, G20 (Safety and Security) Bill 2013, page 20.

55 Letter from the Office of the Minister for Police and Community Safety, 5 September 2013, Attachment, page 3.

56 *Transcript of Proceedings (Hansard)*, Public briefing, Legal Affairs and Community Safety Committee, 13 September 2013, page 2.

57 G20 (Safety and Security) Bill 2013, clause 12.

accommodation venue for G20 delegates is required as a matter of urgency. The term 'enough time to make a regulation' is defined in subclause (9).

An additional security area declared by the commissioner may also be required if a declared area needs to be extended to subdue acts of violent civil disobedience at the outskirts of an existing declared area.[58]

Additional (emergency) security area

In the case of an emergency, clause 13 of the Bill will allow the Commissioner, without the Minister's approval, to declare an area as an additional *emergency* security area, where the Commissioner is reasonably satisfied that 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 a delay to obtain the Minister's approval would be likely to substantially compromise the safety and security of the G20 meeting.[59]

Again, the Explanatory Notes provide further clarification:

The clause allows the commissioner of police to make a declaration under clause [13] without the Minister's approval if a declaration is required as a matter of urgency and the delay in obtaining the Minister's approval would compromise the security or safety of the G20 meeting.

An order made by the commissioner has effect when it is made, if the delay in obtaining the Minister's approval to make the order would be likely to substantially compromise the security or safety of the G20 meeting because a direct threat has been made against the life of a G20 participant, or otherwise, when the order is published on the prescribed website.

Based on additional time restraints in doing so, it is not necessary to publish the order in the Government Gazette. However, the Minister must table the order within 14 sitting days after it is made.[60]

In its submission to the Committee, the QLS highlighted in relation to clause 13:

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 [clause 12].

…

We consider that it is important that these sections be mirrored for the designation of an additional (emergency) security area.[61]

The QPS responded to this issue by stating that clauses 12 and 13 of the Bill both expire on 17 November 2014 and that sub-clauses 12(7) and 12(8) simply over-emphasise that clause 12 will expire on 17 November 2014.[62] The QPS are of the opinion that inclusion of similar sub-clauses to

58 *Explanatory Notes*, G20 (Safety and Security) Bill 2013, page 21.
59 G20 (Safety and Security) Bill 2013, clause 13.
60 *Explanatory Notes*, G20 (Safety and Security) Bill 2013, page 22.
61 Queensland Law Society, Submission No. 3, pages 2-3.
62 Letter from the Minister for Police and Community Safety, 1 October 2013, Attachment, page 6.

13(7) and 13(8) would have no practical effect as any additional (emergency) security area declared under clause 13 will automatically cease at the expiration of the Act.[63]

Committee Comment

There is a clear need for the Bill to allow the various security areas to be established for the conduct of the G20 meetings. The Committee makes no specific comment on the geographical areas which form the declared and restricted areas. This is an operational matter for the QPS to determine and the Parliament should rely on the operational expertise of the QPS in setting out the requisite boundaries contained in the Schedules to the Bill.

What is more important are the powers that are available to the QPS within those boundaries and how those powers may be exercised. The Committee is satisfied with the processes set out in the Bill for establishing the various security areas.

With respect to the issue raised by the QLS that clauses 12 and 13 of the Bill are not consistent, the Committee does not agree with either the QLS or the response provided by the QPS. It appears clauses 12(7) and 12(8) are drafted to have general application to 'any area that is declared to be an additional restricted area or an additional declared area'. The Committee cannot see any reason why these subclauses would not apply to an additional restricted area or an additional declared area made by declaration under clause 13.

The Committee notes that the balance of provisions in clause 12 and the provisions in clause 13 refer to specific subsections within the clauses and would not have general application across both clauses.

As a matter of clear and precise drafting under section 4 of the *Legislative Standards Act 1992,* the Committee considers this could be made clearer in the Bill, however no amendment is recommended.

2.4 Lawful Assembly

Overview of the provisions

Part 3 of the Bill contains specific provisions in relation to allowing lawful assemblies during the conduct of the G20 meetings.

Clause 16 permits lawful assemblies to be held in declared areas however specifically prohibits assemblies being held in restricted areas or motorcade areas.[64]

The Bill specifically states that the *Peaceful Assembly Act 1992* does not apply to an assembly in a security area and clause 18 of the Bill provides a number of replacement criteria which must be met for an assembly in relation to a G20 meeting to be lawful. These are dealt with below.

As the *Peaceful Assembly Act 1992* does not apply to an assembly under the Bill, different conditions also apply to the organisation of an assembly related to the G20 events. These conditions have been drafted having regard to the nature of the G20 meetings, and recognising the need for a balance between allowing for lawful and peaceful assemblies, while still ensuring the safety and security of the G20 meeting.[65]

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63 Letter from the Minister for Police and Community Safety, 1 October 2013, Attachment, page 6.

64 G20 (Safety and Security) Bill 2013, clause 16(2).

65 Letter from the Office of the Minister for Police and Community Safety, 5 September 2013, Attachment, pages 8-9.

Under the Bill, an organiser of a proposed assembly is only required must give notice to the Commissioner of the proposed assembly at least 48 hours before holding the assembly. The Commissioner must make a liaison officer available to consult with the organiser to negotiate a suitable location, date and time for the proposed assembly.[66] The purpose of the QPS liaison officer is to aid with ensuring assemblies with conflicting interests are able to proceed separated by appropriate distances and provide organisers with information about relevant requirements and restrictions that will be in place under the Bill.

These provisions arguably allow much more flexibility for organisers of assemblies under the Bill as the requirement under the *Peaceful Assembly Act 1992* for notice, in writing, to be provided to the Commissioner at least 5 business days in advance will not apply.[67]

Further, the Bill provides that the failure by an organiser of an assembly to give notice under the Bill or to consult with the QPS liaison officer or the refusal of an organiser to change the date or time of the assembly does *not* make the assembly unlawful.[68]

Issues raised in submissions

Lawful assemblies generally

Understandably, submissions from a civil libertarian perspective highlighted concerns with the provisions relating to lawful assemblies. In relation to peaceful assemblies generally, the Queensland Council for Civil Liberties (QCCL) submitted:

> *… 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.*[69]

The QCCL went on to state:

> *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.*[70]

66 G20 (Safety and Security) Bill 2013, clause 19.
67 *Peaceful Assembly Act 1992*, sections 8-10.
68 G20 (Safety and Security) Bill 2013, clause 19 (3).
69 Queensland Council for Civil Liberties, Submission No. 5, page 1.
70 Queensland Council for Civil Liberties, Submission No. 5, page 2.

At the public briefing, the QPS advised the Committee that demonstrations at comparable events where the G20 meetings were held outside of the central business district or in a remote area, there were no incidents of group violence. In contrast, G20 events held in central business districts attract significant amounts of issue-motivated group violence.[71]

In relation to peaceful assembly, the QPS further advised:

> *… The QPS does not support restricting the right of peaceful assembly. People will be free to engage in a peaceful protest within a declared area should they choose to do so. Indeed, the QPS will be appointing liaison officers who will be responsible to consult with any person or group wishing to conduct a peaceful protest. The only limitations placed on protests is that they be non-violent and participants do not possess a prohibited item without a lawful excuse.*[72]

The Committee agrees with the QCCL submission insofar as it relates to the QPS interaction with demonstrators in order to facilitate peaceful protests. The Committee considers the establishment of QPS liaison officers under clause 19 of the Bill deals with this exact concern. Early and effective interaction with the QPS will greatly enhance the process for the planning and conduct of assemblies and protests relating to the G20 event.

The Committee is satisfied the Bill does not require specific amendment in relation to the role of QPS liaison officers, however the Committee does consider that it will be vital to the success of coordinating peaceful assemblies – that the details of the QPS liaison officers are widely available and that they are readily accessible to enable clear lines of communication with potential organisers of assemblies well prior to the conduct of the G20 meetings.

Appropriate educational material (fact sheets, web pages) will need to be developed and made available in the lead up to the G20 meeting and the Committee is confident the QPS will manage this aspect of the G20 planning, as required.

<u>Criteria for when an Assembly is lawful</u>

A number of issues were set out in submissions in relation to the criteria setting out when an assembly is lawful. Under clause 18(1) of the Bill, for an assembly in relation to any part of the G20 meeting to be lawful the following conditions must be met.

a) the assembly must be held in a declared area;

b) the assembly must not <u>disrupt</u> any part of the G20 meeting;

c) an offence must not be committed under the G20 Bill by at least 2 persons who are acting in concert and participating in the assembly;

d) a <u>violent disruption offence</u> must not committed by a person participating in the assembly;

e) an offence involving damage or destruction to property must not committed by a person participating in the assembly;

f) the assembly must not enter into a restricted area or motorcade area.[73]

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71 *Transcript of Proceedings (Hansard)*, Public briefing, Legal Affairs and Community Safety Committee, 13 September 2013, page 4.

72 *Transcript of Proceedings (Hansard)*, Public briefing, Legal Affairs and Community Safety Committee, 13 September 2013, page 3.

73 G20 (Safety and Security) Bill 2013, clause 18.

g) For the purposes of clause 18, ‘assembly’ means an assembly held in a public place, whether or not the assembly is at a particular place or moving, but does not include a group of unrelated spectators; and ‘violent disruption offence’ means an offence if—

h) the offence involves violence against a person or damage to property; and

i) the offence is intended or is likely to disrupt any part of the G20 meeting.

The term ‘disrupt’ is not defined for the purpose of the clause.

In relation to these criteria, the Caxton Legal Centre made a number of observations:

> *These conditions appear to extend the operation of the* Peaceful Assembly Act 1992 *in that they permit an assembly to remain lawful even when a limited number of people in the assembly commit an offence. However, it fails to recognise the reality of a protest atmosphere and circumstances; the abolition of the right to protest will be effected by the conduct of a single individual who commits a 'violent disruption offence' or an offence involving damage or destruction to property. In large crowds it is unlikely that the majority of those assembled will be aware that any offence has been committed and that the assembly has become unlawful.*
>
> *Further, under this provision an assembly will become unlawful if two or more people participating in the assembly violate the offence provisions of the Bill. The use of a sign exceeding the 1m x 2m dimensions specified in Schedule 6{4} of the Bill, carried by two or more people together would thereby be sufficient to render an assembly unlawful. The commission of a violent or destructive offence by an individual who is not associated with a particular assembly but who nevertheless participates in it will also be sufficient to render the entire assembly unlawful and liable to dispersal.*
>
> *Furthermore, the Bill does not confer the same immunity from prosecution that the* Peaceful Assembly Act 1992 *creates. In particular the individual immunity from prosecution for obstruction of public space is necessary to permit a large group to gather for any length of time. The absence of this immunity from the Bill is a potential justification for the removal of individual persons from an area although a protest has not become unlawful. lt should be made clear in the Bill that protesters will not be subject to obstruction laws and that they cannot be removed from the area on this basis.*[74]

The Caxton Legal Centre recommended that the number of people in clause 18(1)(c) within an assembly who must commit an offence before the entire assembly is deemed unlawful, be raised from two to ten; and that the Bill be amended to confer the same immunity from obstruction offences and torts as is conferred under the *Peaceful Assembly Act 1992*.[75]

The QLS raised specific concerns with the definition and use of ‘violent disruption offence’ in clause 18. The QLS submitted:

> *The commission of a "violent disruption offence" by a person in the assembly will mean that the assembly is not a lawful assembly. lt 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*

74 Caxton Legal Centre Inc., Submission No. 7, page 4.

75 Caxton Legal Centre Inc., Submission No. 7, page 4.

> *'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.*[76]

The QLS also proposed that there was unnecessary duplication in the definition of 'violent disruption offence' as it included the words 'or damage to property' and then section 18(e) deals with 'offences involving damage or destruction to property' as a criteria for an assembly becoming unlawful.

The QCCL submitted that to use 'disrupt any part of the G20 meeting' as the determinant for an assembly to become unlawful was too narrow a test, and considered that the test should rather be whether '*the assembly is preventing the participants in the conference from effectively conducting their business*'.[77] The QCCL also objected to the basis for the actions of an individual or individuals to deem an entire assembly unlawful, when others were demonstrating peacefully. The QCCL submitted this violates the rights of those who wish to protest peacefully.

Additionally, the ALHR submitted that 'disruption' needs to be clarified:

> *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.*[78]

QPS response

In response to the concerns raised in submissions, the QPS responded that the conditions set out in clause 18 are necessarily different to those provided in section 10A – Unlawful Assembly of the *Summary Offences Act 2005* and section 61 – Riot of the *Criminal Code*. The QPS stated that if an assembly at a G20 meeting becomes unlawful, police will be able to take action in accordance with the powers and offences provided for in the Bill or other offences in the *Criminal Code*. [79]

In relation to the use of the term 'disrupt', the QPS stated:

> *'Disrupt' in clause 18(1)(b) is to be given its ordinary meaning. The QPS has no intention to interfere with the fundamental right to peaceful protest and assembly. Protest may occur in declared areas and may in fact occur adjacent to restricted areas and motorcade areas. Police training will focus on protest management and the need to balance the right to protest against the safety and security of the event.*[80]

Committee Comment

The Committee accepts that the specific nature of the G20 meetings warrants a departure from the *Peaceful Assembly Act 1992* and that it is appropriate for specific provisions to be made in relation to the conduct of lawful assemblies relating to the G20.

It is clear to the Committee that submitters, while recognising the need for appropriate provisions in relation to lawful assemblies, do not consider the proposals in the Bill achieve the right balance between protecting the rights and liberties of people wishing to protest and the need to ensure the safety and security of participants in the G20 meetings and the general public, including those wishing to protest.

[76] Queensland Law Society, Submission No. 3, page 3.
[77] Queensland Council for Civil Liberties, Submission No. 5, page 3.
[78] Australian Lawyers for Human Rights, Submission No. 4, page 3.
[79] Letter from the Minister for Police and Community Safety, 1 October 2013, Attachment, page 6.
[80] Letter from the Minister for Police and Community Safety, 1 October 2013, Attachment, page 6.

There is no question that getting the balance right in circumstances such as this is difficult. However, the Committee considers that where the balance needs to tilt in favour of one side, it must lean towards the safety and security of the participants of the G20 meetings and the safety of participants in lawful assemblies, to ensure there is minimal opportunity for acts of violence towards any person or property.

Unlike domestic protests at smaller scale local events, protest groups at international events such as the G20 are now more mobile and technologically advanced than ever before. Protest groups are competing with each other to have their relevant issues aired on the world stage, and unfortunately, this has led to groups ramping up their efforts to the point where coordinated violence and damage to property takes place, in order to gain the attention of the world's media.

The Committee considers that the proposals in the Bill do achieve the necessary balance and will sufficiently allow for peaceful assemblies to gather and protest, while maintaining an appropriate level of safety and security to deal with possible violent offences that may occur. That being said, the provisions as they stand could be improved with some clarity to ensure there is less room for misinterpretation.

The Committee accepts the submission of the QLS that there is duplication in clauses 18(1)(d) and (e) due to the definition of 'violent disruption offence' and how it is used. The Committee considers that rather than removing the words 'or damage to property' from violent disruption offence, the first limb of that definition could be amended to read: '*the offence involves violence against a person or damage or destruction property*'. Clause 18(1)(e) could then be removed from the criteria as it would effectively be covered by the existing 18(1)(d).

Recommendation 2

The Committee recommends clause 18 of the Bill be amended to remove unnecessary duplication between the criterion involving damage to property and the definition of violent disruption offence.

The Committee also accepts that the ordinary meaning of the term 'disrupt' in clause 18(1)(b) may be too broad and may be subject to differing interpretations by the QPS and the participants in an assembly. The Australian Oxford Concise Dictionary defines disrupt as:

1. *Interrupt the flow or continuity of (a meeting, speech etc); bring disorder to.*
2. *Separate forcibly; shatter.*[81]

The Committee acknowledges it would be problematic to include a more precise definition of 'disrupt' or suggest a neat alternative, however it would appear to the Committee that the interpretation of clause 18 could be enhanced if it were to include a list of examples and possibly non-examples of what would (and would not) constitute a disruption to the G20 meetings.

Given the specific nature of the Bill and its limited application to the G20 meetings, the Committee considers the Bill lends itself to the use of examples where appropriate. The use of examples would make the intention of legislature clear and would aid the police in responding appropriately to particular situations. It would also make it clear to participants in assemblies of what would constitute a disruption to the G20 meetings.

[81] *The Australian Concise Oxford Dictionary of Current English*, Third Edition, 1997.

The Committee does not agree however, that it would be appropriate to prescribe in legislation what the proportionate response from police would be to a particular situation, as suggested by the AHLR.[82] To do so, would be delving into police operational matters and would not allow police officers on the ground to exercise a level of discretion appropriate for the situation.

Recommendation 3

The Committee recommends that examples and non-examples be added after clause 18 of the Bill to aid in the interpretation of what would and what would not constitute a disruption to the G20 meetings under the Bill.

In relation to clause 18(1)(c), the Committee does not accept the threshold number of persons in the assembly who are acting in concert and committing an offence should be raised to a number greater than two. To increase this figure to up to ten persons committing an offence against the Bill, as suggested by the Caxton Legal Centre,[83] sends the wrong message. To do so might not just jeopardise the safety and security of the G20 event, but could seriously jeopardise the safety and security of participants of an otherwise lawful assembly or members of the general public. This would be in direct contrast to the objectives of the Bill.

Additionally, due to the specific nature of the G20 event and application of the specific lawful assembly provisions in the Bill, the Committee does not consider that it is necessary to confer on participants similar immunities from obstruction offences and torts as conferred under section 6 of the *Peaceful Assembly Act 1992*.

2.5 Police Training and the role of Lawyers during the G20

History has shown that the interaction between the QPS and protesters or participants in assemblies is more than likely to be one of the major 'friction points' of the G20 meetings.

Although not specifically contained in the Bill, the Committee considers it important that this report address two areas which will have significant impact on the QPS interaction with protesters, namely - the training provided to officers in the lead up to the G20 events and the role of independent observers on the ground watching events as they occur.

Appropriate Police Training – the Canadian Experience

Following the 2010 G20 meetings in Toronto, Canada - where a number of violent clashes occurred between police and protesters, the Canadian Office of the Independent Police Review Director (OIPRD), who has an independent oversight role over the police in Canada, released a systemic review report on the 2010 G20 meetings.[84]

It is not intended to go into the specific events that occurred in Canada and other jurisdictions in detail in this report, however the findings by the OIPRD from Toronto are valuable in relation to how the preparation for the G20 should be conducted.

82 Australian Lawyers for Human Rights, Submission No. 4, page 3.

83 Caxton Legal Centre Inc., Submission No. 7, page 4.

84 *Policing the right to protest, G20 Systemic Review Report*, Office of the Independent Police Review Director, May 2012.

The OIPRD made the following general observations on police training in the lead up to the G20 in its report:

> *The training that did occur was largely delivered electronically, with minimal in-person instruction. The officers saw photos and videos of previous summits showing violence, weapons, and injuries to police officers. They were led to believe that the crowd would likely become violent and were told to be prepared. There was little attempt to prepare them to support peaceful protests during the summit.*[85]

Specifically, what was of concern was the nature of the training to officers who were brought in to assist with the G20 meeting from outside the Ontario province. Officers were provided with an overview of a number of relevant statutes and as highlighted by the OIPRD:

> *The delivery of the training was through online presentations, videos, and interactive elements. It lasted approximately one-and-a-half hours. On completion of each topic, officers were assessed through their performance on an online test.*
>
> *The training consisted of five-minute segments or approximately four slides on each topic and statute listed. The information provided a general overview of the pertinent sections of the acts. In many ways, it was superficial and simplistic. Once again, the training did not provide practical examples or indicate how officers should apply the law in the circumstances of the G20.... Furthermore, there was no reference to the Ontario Human Rights Code or the Accessibility for Ontarians with Disabilities Act, 2005, which may also raise issues in the policing of large protests.*[86]

There were other courses run, appropriately aimed at different levels of command and also appropriately aimed at police carrying out different roles. Tactical courses on public safety and emergency management training were run in the lead up to the G20 and senior officers received training on equipment which would be used during the summit.[87]

The OIPRD report was critical of the delivery and methodology used to provide the training:

> *The same overall training may not have been received by all officers working during the G20 weekend. The majority of officers were from the Toronto Police Service. Despite the number of other services present at the G20, there was a minimal amount of common training.*
>
> *The training methodology may also warrant further examination. The one-day face-to-face training for Toronto officers and the five hours of online training for all officers may not have been sufficient to adequately prepare officers to deal with the conflicting demands and complexity of issues involved in the G20.*[88]

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85 *Policing the right to protest, G20 Systemic Review Report*, Office of the Independent Police Review Director, May 2012, Executive Summary, page iii.

86 *Policing the right to protest, G20 Systemic Review Report*, Office of the Independent Police Review Director, May 2012, page 261.

87 *Policing the right to protest, G20 Systemic Review Report*, Office of the Independent Police Review Director, May 2012, page 261.

88 *Policing the right to protest, G20 Systemic Review Report*, Office of the Independent Police Review Director, May 2012, page 262.

Of critical importance, the OIPRD recognised that while police officers deal with a number of situations while carrying out their regular duties, policing in the context of the G20 event was a very different situation than what the officers involved, experienced on a daily basis. The OIPRD report went on to state:

> *Based on the review of materials provided, the training did not help the officer to develop skills, nor did it provide practical examples or indicate how officers should apply the law in the circumstances of the G20.*
>
> *Training for events such as the G20 should include practical exercises for officers or situational role-plays to actually develop practical interpersonal skills. It is questionable whether the training sessions and online training employed was sufficient to fully develop the required skills and knowledge for policing the G20.*[89]

The OIPRD was also critical of the content of the training that was conducted, having regard to the civil rights of protesters:

> *The interplay of public order with Charter and human rights may demand more specialized and in-depth training. The training received primarily centred on preparing officers for the potential security threats and risks involved in policing the G20. This is an important priority. Equally important was the goal of maintaining and preserving the civil rights of citizens to assemble, protest, and express themselves. One of the six objectives for TPS was to facilitate conditions for peaceful protest. This goal, however, was not reflected in the training materials. Training should also have examined ways to promote peaceful demonstrations. There was no discussion of how police can support or facilitate peaceful protests or of the right to assemble.*[90]

Proposed training for the QPS

The issue of training in readiness for the 2014 G20 was brought up at the public briefing on the Bill in the context of what authority would officers from other jurisdictions have while they are seconded to the G20 in Queensland. Chief Superintendent Coleman of the QPS advised:

> *… they will need to have an understanding of the legislation and the powers involved. So we intend to have a very comprehensive training program in relation to this. For the interstate and overseas police that will be done electronically, so by an on-line learning product. We will also have a portion of last-minute training upon their arrival. So we will actually have face-to-face training with them in relation to a range of issues. Included in that will be the legislation so they have an understanding of the powers that are available to them whilst they do their job here.*[91]

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[89] *Policing the right to protest, G20 Systemic Review Report*, Office of the Independent Police Review Director, May 2012, page 262.

[90] *Policing the right to protest, G20 Systemic Review Report*, Office of the Independent Police Review Director, May 2012, page 262.

[91] *Transcript of Proceedings (Hansard)*, Public briefing, Legal Affairs and Community Safety Committee, 13 September 2013, page 9.

This appears to be a similar approach to the Canadian experience in relation to bringing in external officers to assist in the G20. Exploring the level of training further, the Deputy Commissioner Barnett confirmed:

> *… we recognise the need to have a very rigorous exercise and training regime for the event. That is already underway. We have already had a number of discussion exercises and they will encompass all aspects of any possible security response to all incidents.*[92]

Assistant Commissioner Carroll expanded on this providing:

> *Just to go on from that, the training calendar is extensive. We have to train, just on legislation, over 5,000 people and, as we mentioned before, dignitary protection training for the drivers, crowd management training probably for 2,000, 3,000 people at least. So the training is extensive over the next 12 months. Together with that, there is an exercise package that is also at the Commonwealth level, the state level and the local levels. Those exercises have commenced but we have two major exercises—one in November and July next year—that goes from the tactical level right through to the strategic level. Literally thousands of people will be involved in those exercises for the next 15 months as well.*[93]

At the recent Public forum, *G20: dissent, police powers and international reviews of security implementation* (G20 Forum) sponsored by the Griffith University – the issues of adequate training and police tactics were discussed by the panel. Dr Tim Legrand from the Centre of Excellence in Policing and Security (CEPS) drew out similar points to that raised by the OIPRD above.

Dr Legrand maintained that the Queensland public deserved to be policed by those who are up to the task. While he did not express any doubt the QPS were able to do the job, he made the salient point that with the arrival of interstate and New Zealand police officers – it would be critical that the training provided to all officers was adequate, comprehensive, and common across each police service involved. Dr Legrand also submitted that the training should include a common ethos of how the G20 event will be policed.[94]

Committee Comment

The Committee considers the QPS preparations in the lead up to the G20 meetings will be as important as the conduct of the event itself. Appropriate and consistent training must be provided to all officers who will be tasked with public order policing over the G20 period.

While the Committee recognises there is a place for on-line learning modules to be used in familiarising officers with provisions in the legislation (additional powers, new offences), an electronic learning environment cannot replace face to face, practical training which simulates the issues that police will be dealing with on the ground, in what could be an emotionally charged setting at the G20 meetings.

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92 *Transcript of Proceedings (Hansard)*, Public briefing, Legal Affairs and Community Safety Committee, 13 September 2013, page 14.

93 *Transcript of Proceedings (Hansard)*, Public briefing, Legal Affairs and Community Safety Committee, 13 September 2013, pages 14-15.

94 Public Forum, *G20: dissent, police powers and international reviews of security implementation*, Queen Elizabeth II Courts of Law, held on Thursday 26 September 2013.

The Committee is satisfied that the QPS has taken on board many of the issues from the Toronto experience as evidenced at the public briefing:

> *One of the lessons learned from Toronto was that the command officers were not appointed far enough out. So, in effect, they had a planning team which handed over to an operational team very close to the event. That is a lesson that we have learnt. We have already identified the key people who will hold command positions now in excess of 12 months out from the operation.*[95]

It is promising to know that command positions have been identified early, and that issues appear to be well in hand from a strategic level. However, the junior ranked officers at the front line must also be adequately informed so there is no doubt in their minds at all about what powers they have, when it is appropriate to use them and also what rights the protesters and members of the general public have in going about their business.

The Committee recognises it will be challenging for comprehensive training to be delivered to all officers involved in the G20 meetings, given the need to continue to provide adequate police resources to the Queensland community in the lead up to the event. It will be difficult, nigh impossible to bring the entire cohort of police to be used at the G20 together at the one time to conduct large scale simulated training. Appropriate planning must however be undertaken to overcome these challenges and ensure that all officers from both outside Queensland and even those who will be redeployed from regional centres within Queensland for the G20, receive appropriate training and guidance on their role during the G20 meetings.

While the Committee is not aware of the specifics of the QPS's proposed training program, from the review of the Toronto experience – any training package must not just focus on the police powers and responding to violent situations, but must also include ways to promote peaceful demonstrations and how police can support or facilitate peaceful protests or of the right to assemble. In relation to the style and tone of training in this regard the OIRPD stated:

> *For operations of this size, training frameworks must encompass consideration of the rights, as well as the challenges, of peaceful protests. This will assist the police in making sure that the choice of operational tactics is appropriate and in proportion to the situation. Most of the video images included in the training demonstrated very violent interactions between protesters and the police.*
>
> *Demonstrations were in effect defined by disorderly conduct. The only positive reference to protests was in Module B. In the section on Use of Force Regulation, the module referred to a police demonstration in 1993 that was noted as a peaceful protest which allowed officers to voice their concerns. The training subsequently discussed the violent student demonstrations in 1996 and the aftermath of the Ontario Coalition against Poverty demonstration in 2000.*
>
> *Throughout the training screenshots, protesters were mainly referred to anarchists, and there appeared to be an underlying distrust of protesters' intentions and actions. Training should aim to provide a more balanced approach and tone.*[96]

The Committee agrees that the style and tone of the training will have a direct influence on the attitude of the officers receiving the training, which will then transfer into how they conduct themselves throughout the G20 meetings.

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[95] *Transcript of Proceedings (Hansard)*, Public briefing, Legal Affairs and Community Safety Committee, 13 September 2013, page 4.

[96] *Policing the right to protest, G20 Systemic Review Report*, Office of the Independent Police Review Director, May 2012, page 262.

In relation to police tactics, the Committee has been careful not to comment in this report on the specific tactics which may be used by police at the G20 meetings. The Committee considers that these are operational matters which the QPS is best placed to deal with, within the bounds of the current laws and having regard to the existing use of force continuum. The Committee's only comment on police tactics is that whatever tactics are determined to be appropriate for use at the G20 meetings, officers are comprehensively trained and drilled in the use of them to ensure they are used correctly and effectively.

From the statements provided by Chief Superintendent Coleman at the G20 Forum and the comments at the public briefing in relation to training, the Committee is confident that the QPS is well aware of the issues relating to previous G20 meetings, and will take appropriate steps to ensure scenes which happened in London and Toronto are not repeated in Brisbane next year.

Access to legal representatives and legal observers

Another issue canvassed at both the Committee's public hearing and the G20 Forum was the increased role for lawyers throughout the G20 meetings. Two distinct issues were raised – the use of lawyers on the ground as independent legal observers and access to lawyers for members of the public who may find themselves in breach of the G20 provisions, particularly due to the reversal of the onus of proof in certain circumstances which is discussed in more depth later in this report.

<u>Access to legal representatives</u>

The QLS submitted that due to the nature of the provisions contained in the Bill, the provision of additional legal assistance should also be catered for. Mr Peter Shields, of the QLS' Criminal Law Committee, expanded on this for the Committee at the public hearing:

> *The provision of legal assistance, we submit, goes hand in hand with this bill—that is, on the ground there should be the capacity for solicitors or barristers to be able to give legal advice to ensure that persons who fall under the bill are in a position to be properly advised so that they can, if they have an excuse, give that to the police so that police resources are not being wasted.*[97]

Mr Shields highlighted the QPS's earlier advice at the public briefing, that at present, there was no dedicated interpreting service contemplated for the G20, other than the normal provisions that are currently in place. Mr Shields went on to state:

> *… there should be solicitors on the ground, there should be sufficient funding to ensure that people have access to legal advice and there should also be steps put in place to ensure that on the ground persons have the ability to speak to an interpreter so that resources are not being wasted charging, transporting and prosecuting persons who, but for the provision of legal advice and an interpreter, should not be so prosecuted.*[98]

The QLS also highlighted its concerns in its written submission to the Committee:

> *… 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*

[97] *Transcript of Proceedings (Hansard)*, Public hearing, Legal Affairs and Community Safety Committee, 26 September 2013. page 2.

[98] *Transcript of Proceedings (Hansard)*, Public hearing, Legal Affairs and Community Safety Committee, 26 September 2013. page 2.

NSW report, 'Protest, Protection, Policing.' 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 dissemination of information and assistance will greatly enhance safety and security during this event.[99]

The Committee explored the QLS submission further at the hearing and sought further information on what quantity of lawyers the QLS were suggesting would be appropriate and an indication of approximate costs. Mr Shields responded:

In answer to that question, we are dealing a little bit with an unknown. I do not know what the intelligence is as to how many persons are expected to be at the events demonstrating. If I had to give a number, I would imagine six to 12 lawyers on the ground who are in a position not just to observe what is going on but also to be able to step in and provide legal advice, particularly having regard to the convention centre and the prohibited area there which includes part of the community, South Bank and people coming through….

… In dollar terms, I think Legal Aid rates are about $600 a day. The Legal Aid Office would probably be best equipped to deal with that. If they were to be given extra funding, what they could do is either offer positions to their in-house staff who are solicitors and barristers or they could send it out to tender where they have private firms who do legal aid work who are called preferred suppliers. I would imagine about $25,000, to answer the question.[100]

Committee Comment

The Committee considers that the QLS has raised some important issues in relation to access to legal representatives in the lead up to, and during, the G20 meetings. The Committee does not consider that any amendment to the Bill is necessary in this regard, but considers that further discussions with Legal Aid Queensland could be entered into by the QPS to try and facilitate a coordinated approach to providing accurate legal advice to members of the public on G20 offences and how the provisions of the Bill apply.

To achieve this, the Committee considers that the establishment of a G20 Legal Hotline, similar to that which was set up in NSW for the Sydney APEC meeting is worthy of further consideration.

Initiatives such as this could effectively contribute to QPS resources not being wasted, as suggested by the QLS, in charging, transporting and prosecuting persons who, but for the provision of some basic legal advice and an interpreter, should not be so prosecuted.

Hand in hand with the provision of legal advice, interpreting services must also be available.

The Committee is not convinced that an additional interpreter unit is required to be established for the G20, however current interpreting service providers should be advised, by the QPS, that there is the possibility for increased access to services over the G20 period.

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99 Queensland Law Society, Submission No. 3, pages 11-12.

100 *Transcript of Proceedings (Hansard)*, Public hearing, Legal Affairs and Community Safety Committee, 26 September 2013. page 3.

Recommendation 4

The Committee recommends the Minister for Police and Community Safety engage in further discussions with the Attorney-General and Minister for Justice and Legal Aid Queensland to investigate the establishment of a G20 Legal Hotline similar to that put in place for the Sydney APEC meeting.

Recommendation 5

The Committee recommends the Queensland Police Service take steps to ensure appropriate interpreting services are available during the G20 meetings.

Independent Legal Observers

Separate to the issue of having legal representatives available to provide advice to members of the public in relation to the G20 Bill and associated matters, the Caxton Legal Centre has raised the issue of using independent legal observers during the G20 meetings.

The aim of legal observers is to record the activities of police and to deter any potential for the misuse of power. Additionally, the witnessing and recording of police exercising their powers ensures that unwarranted displays of force are reported. Their observations and recordings provide courts with additional evidence to help resolve legal proceedings.

The Caxton Legal Centre, summarised the role of legal observers as follows:

> *Legal observers watch and record the interactions of police/security personnel with members of the public during demonstrations, protests or public events. Their role is to report any arrest, use of force, intimidating display of force, denial of access to public spaces, and any other law enforcement behaviour that appears to restrict demonstrators' ability to express their political views. Other roles may include proactively distributing information about legal rights and obligations to members of the public prior to the event.*
>
> *Legal observers are an independent third party in a demonstration or protest. They do not engage in crowd control, interfere with an arrest in progress, or provoke action. They are ordinarily officers of the court such as solicitors and barristers. At times, other law professionals may assist them such as law students, paralegals and community legal workers serving in a voluntary capacity.*[101]

As submitted by the Caxton Legal Centre, it is important in understanding the role of a legal observer that '*legal observers and their associated organisations will also meet and maintain communications with all groups, individuals and organisations involved before and during the event, such as police, security and protest groups. However, when liaising with police, legal observers will not disclose information regarding any other group or individual*.'[102]

101 Caxton Legal Centre, Submission No. 7 (supplementary), page 1.
102 Caxton Legal Centre, Submission No. 7 (supplementary), page 1.

To have any effect, the status of legal observers must be recognised by the relevant police or security services, and they must be treated separately to any protest groups of organisations which the police may be dealing with. Legal observers must be clearly identifiable and be allowed to move freely around the area. To this end the Caxton Legal Centre advised the Committee:

> *Legal observers will often work in pairs and be identified with special clothing or signs. To record police behaviour, legal observers will carry equipment such as cameras, video cameras, other recording devices and incident report forms. Police are not empowered to take such equipment unless express permission is granted. Legal observer teams may be coordinated by a 24-hour 'communications base' which is staffed according to a roster. Legal observers will be equipped with radios or mobile telephones to communicate with the 'communications base', other legal observers, and organisations or groups who request legal observer presence.*[103]

In relation to how information, relating to any incidents observed, is recorded - the Caxton Legal Centre advised:

> *Incident report forms are used to report police behaviour. These forms record information such as the date and time of the incident, details of the officer/s involved, charges (if any), medical or legal intervention, photo or video evidence, and the name and contact details of any witnesses.*[104]

The issue of using legal observers for the conduct of the G20 meetings was raised at the G20 Forum by Mr Dan Rogers of the Caxton Legal Centre. Chief Superintendent Coleman confirmed at the forum that representatives from the QPS G20 working group had met with stakeholders in relation to the role of legal observers and that the QPS would continue to engage and support the efforts of the Caxton Legal Centre in relation to their legal observer program in the lead up to the G20 meetings next year.

Committee Comment

The Committee notes legal observers, while not widely recognised, are not a new concept and were present in Sydney for the APEC meeting and were also present at previous G20 meetings in London, Toronto, and Melbourne.

The Committee is of the view that just like the QPS having its role to play at the G20 meetings, there is also a role for legal observers, however the Committee does not consider there is a requirement to provide legal observers with any specific recognition in the Bill.

The Committee notes the advice from the QPS at the G20 Forum that discussions, through the relevant G20 working groups, are ongoing with groups such as the Caxton Legal Centre with respect to the use of legal observers and other related matters.

The Committee encourages the QPS to facilitate the use of legal observers during the G20 events and to ensure that officers are aware of the role they have to play and how the legal observers can work both with the QPS and other organisations to aid in the smooth running of the G20 meetings.

[103] Caxton Legal Centre, Submission No. 7 (supplementary), pages 1-2.
[104] Caxton Legal Centre, Submission No. 7 (supplementary), page 2.

2.6 Specific Police Powers for Security Areas

Searches of the Person

One of the more controversial aspects of the Bill, which to a large extent has been overstated in the media, relates to the additional powers of search conferred on the QPS for the G20 meetings, including the power to conduct a strip search.

The Bill provides for three types of searches of the person to be authorised in G20 security areas: a basic search, a frisk search, and a specific search. There are differing requirements as to when each type of search can be conducted depending on the security area in which the search is being carried out.

Before considering the issues raised in submissions, the different types of search and who may conduct them are set out in detail below.

Basic search

Clause 20 of the Bill sets out that a basic search, of a person, is any or all of the following:

a) a search using any or all of the following electronic screening devices—
   - (i) a walk-through detector;
   - (ii) an x-ray scanner to scan a person;
   - (iii) a handheld scanner;
   - (iv) an explosive detector; or
   - (v) an x-ray machine for property;

b) a search of a person's belongings, including any or all of the following—
   - (i) requiring the person to remove one or more items of outer clothing worn by the person and searching the clothing;
   - (ii) removing all articles from within the person's clothing and searching the articles;
   - (iii) requiring the person to remove the person's headwear, gloves and footwear and searching the headwear, gloves and footwear;
   - (iv) requiring an article in the person's belongings to be searched;
   - (v) placing an item in the person's belongings in or on an x-ray machine.

In its initial briefing to the Committee, the QPS described a basic search as follows:

> *A basic search is similar to the type of search a person might expect at an airport security checkpoint. Basic searches are non-intrusive and will not adversely affect the dignity of the person being searched.*[105]

[105] Letter from the Office of the Minister for Police and Community Safety, 5 September 2013, Attachment, page 5.

Frisk search

Clause 21 of the Bill provides that a frisk search, of a person, is any or all of the following:

a) a search of the person conducted by quickly running the hands over the person’s outer clothing;

b) a search of anything worn by the person that is conveniently and voluntarily removed by the person;

c) a search of headwear, gloves, footwear or outer clothing removed from the person;

d) a search of anything carried by the person.

The QPS described a frisk search as:

> *A frisk search is, in effect, a 'pat down' search of a person including an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.*
>
> *If the search requires the officer running the officer's hands over the person's outer clothing, the search can only be performed by an officer of the same sex as the person being searched, unless a police officer of the same sex is not immediately available and a delay in the search may pose a serious threat to a person's safety.*[106]

Specific search

Clause 22 of the Bill provides a specific search, of a person, is any or all of the following:

a) a search of anything worn by the person that is conveniently and voluntarily removed by the person;

b) a search of headwear, gloves, footwear or clothing removed from the person;

c) a strip search of the person;

d) a medical x-ray of the person;

e) a search of anything carried by the person.

The QPS described a specific search to the Committee as follows:

> *lt is a more intrusive search and can include a search of anything worn or carried by the person, a strip search of the person, or a medical x-ray of the person.*
>
> *If the officer conducting the specific search requires the person to remove clothing, other than outer clothing, the search may only be performed by an officer of the same sex as the person being searched, unless a police officer of the same sex is not immediately available and a delay in the search may pose a serious threat to a person's safety.*
>
> *A specific search involving the person removing clothing, other than outer clothing, must also be carried out at a place where there is reasonable privacy for the person, unless a delay in the search may pose a serious threat to a person's safety.*

[106] Letter from the Office of the Minister for Police and Community Safety, 5 September 2013, Attachment, page 5.

> *The Bill provides further safeguards in relation to searches involving the removal of religious headwear and specific searches of a child or a person with impaired capacity.*[107]

As stated above, there are differing requirements as to when a particular search may be conducted depending on the type of security area in which the person being searched is situate. However in all areas, only a police officer may conduct a frisk search or a specific search. An appointed person may only conduct a basic search and then only in a restricted area or motorcade area.[108]

The methods of conducting each of the three searches are set out, in detail, in clauses 26 – 29 of the Bill.

Searches in a Restricted Area or Motorcade Area

Clauses 23 and 25 deal with searches in restricted areas and motorcade areas, respectively. These are the areas where a higher level of security is required and are referred to collectively in this report as 'higher level security areas'. It is expected that anyone who is in a higher level security area, entering the area, or leaving the area would have appropriate accreditation or authorisation, and accordingly would have a lawful purpose for being there.

Basic Search – in a higher level security area may be conducted by either a police officer or appointed person. The basic search may be carried out on any person attempting to enter, about to enter in or leaving a higher level security area. Due to the non-intrusive nature of a basic search and the level of security required, there is no requirement for a reasonable suspicion prior to the search being conducted.

Frisk Search - in a higher level security area may only be conducted by a police officer. The frisk search may be conducted on any person attempting to enter, about to enter in or leaving a higher level security area. Again, due to the non-intrusive nature of a frisk search and the level of security required, there is no requirement for a reasonable suspicion prior to the search being conducted.

Specific Search - in a higher level security area may only be conducted by a police officer. The specific search (which includes a strip search) may be conducted on any person attempting to enter, about to enter in or leaving a higher level security area, only if –

- the person does not hold appropriate accreditation or approval authorising access to the higher level security area; or
- the police officer holds a *reasonable suspicion* the person may be in possession of a prohibited item without a lawful excuse.

Searches in a declared area

Clause 24 of the Bill deals with searches in a declared area. This is the broader area within which it would be expected that members of the public would be freely going about their business. In this report, the declared areas are referred to as 'lower level security areas'.

Basic Search – in a lower level security area may only be conducted by a police officer. The basic search may be conducted on any person attempting to enter, about to enter in or leaving a lower level security area. Due to the non-intrusive nature of a basic search, again there is no requirement for a reasonable suspicion prior to the search being conducted.

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[107] Letter from the Office of the Minister for Police and Community Safety, 5 September 2013, Attachment, page 6.

[108] G20 (Safety and Security) Bill 2013, clauses 23-25.

Frisk Search - in a lower level security area may similarly only be conducted by a police officer. The frisk search may be conducted on any person attempting to enter, about to enter in or leaving a lower level security area only if –

- the police officer holds a *reasonable suspicion* the person may be in possession of a prohibited item[109] without a lawful excuse ; or
- the person is a prohibited person; or
- the person is an excluded person.

Specific Search - in a lower level security area may only be conducted by a police officer. The specific search (which includes a strip search) may be conducted on any person attempting to enter, about to enter in or leaving a lower level security area, only if –

- the police officer holds a *reasonable suspicion* the person may be in possession of a prohibited item without a lawful excuse; and

either

- the police officer holds a *reasonable suspicion* that a frisk search of the person will not locate the prohibited item; or
- a frisk search has already been conducted and a prohibited item has not been located.

Further, due to unique security concerns, a police officer may conduct a specific search of a prohibited person or an excluded person attempting to enter, about to enter in or leaving a lower level security area without a reasonable suspicion.

Concerns regarding reasonable suspicion prior to searching

As stated earlier, the power for police officers to search a person without a 'reasonable suspicion' have been overstated in the media. At the public briefing, Deputy Commissioner Barnett stated in his opening remarks:

> *I am aware there are concerns that the bill allows for members of the public to be strip searched if they are in a declared area. That concern is unfounded. Members of the public going about their lawful business will not be strip searched unless the person is a prohibited or excluded person or there is a reasonable suspicion that the person may be in possession of a prohibited item without lawful excuse and a frisk search has not located the item.*
>
> *The bill does allow for a basic search of a person who is entering, is in or is leaving a declared area. However, these searches, if conducted at all, will be similar to the basic search that a person undergoes when entering the departure lounge of an airport.*[110]

109 Prohibited items are discussed in further detail later in this report. However in the context of the discussion on searches, prohibited items are those items listed as prohibited items in schedule 6 of the Bill.

110 *Transcript of Proceedings (Hansard)*, Public briefing, Legal Affairs and Community Safety Committee, 13 September 2013, page 3.

Even as recently as last month, after the Bill had been released for public comment, suggestions were made in the media that '*during G20 there's no requirement at all for reasonable suspicion so anyone in the entire Brisbane City area can be stopped by a police officer for no reason at all and subjected to a pat down or a frisk search of their body*.'[111] This is patently untrue.

As evidenced in the Bill and as set out above, before a police officer can conduct a frisk search of someone in the Brisbane City declared area, the officer must have formed a *reasonable suspicion* the person may be in possession of a prohibited item without a lawful excuse.[112] It is comments like those above, that have inflated the public debate over the proposed laws.

Notwithstanding the above, the requirement or non-requirement for a police officer to apply a 'reasonable suspicion' test prior to conducting a relevant search was raised in submissions. The QLS stated:

> *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 relation to conducting searches in a declared (lower level) security area the QCCL submitted:

> *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.*[113]

Committee Comment

The Committee has carefully considered the types of searches contained in the Bill and the requirements for when a reasonable suspicion must be formed prior to conducting a search. It appears to the Committee, there are clear and apparent reasons as to why the provisions have been drafted in the manner they have.

111 *Debate rages over controversial G20 laws*, 7.30 Qld, 27/9/2013, Transcript- Dan Rogers, Criminal Lawyer, accessed 1 October 2013.
112 G20 (Safety and Security) Bill 2013, clause 24(2).
113 Queensland Council for Civil Liberties, Submission No. 5, page 4.

When considering whether these provisions are appropriate or otherwise, the context of why a search is to be carried out must be considered together with the area in which the search is being conducted and the person's reason for being there.

In considering the context of why the search is being carried out, the objectives of the Bill must be revisited – which in a nutshell are to promote the safety and security of people and property. Therefore searches are being carried out by the police in the context of identifying whether someone has, on their person, an item that could be used to damage a person or property.

Basic searches

In relation to the non-intrusive basic search, which is similar to a search at an airport checkpoint, the Committee sees no reason why a reasonable suspicion should be formed before a person is subjected to a basic search in any security area. It will be a common search likely to be carried out at various checkpoints throughout the security areas. While all persons entering restricted areas will likely undergo a basic search at some stage, not every person who enters or is in the declared area will be searched; the Bill simply provides that a police officer, at their discretion, *may* conduct a basic search.

Frisk searches

When considering frisk searches, the Committee does not have any difficultly with the Bill allowing a police officer to conduct a frisk search of a person in, or entering a restricted or motorcade area – again at the discretion of the officer. A frisk search is not a 'mandatory search' and there should be no instances for a person to be in one of these high level security areas without a reason to be there. The Committee considers the police should not be constrained in performing a frisk search of anyone in a high level security area if the officer sees a need for it to occur.

There are obviously different concerns which must be taken into account in relation to declared areas. In this instance, as highlighted above, the Bill quite properly requires that before a police officer may conduct a frisk search of someone in a declared area, the officer must reasonably suspect that the person may be in possession of a prohibited item, without lawful excuse.

Specific Searches

There is no question that a specific search is an intrusive search as it can include a search of anything worn or carried by the person, a strip search of the person, or a medical x-ray of the person. Such a search should not be carried out lightly and must be accompanied by appropriate safeguards.

In relation to specific searches in restricted areas, the Committee considers such safeguards do exist. If a person does not have the requisite accreditation to be in a restricted area or a police officer reasonably suspects that a person may be in possession of a prohibited item, without lawful excuse – the Committee considers that it is not inappropriate for such a person to undergo a specific search.

The Caxton Legal Centre submitted that in relation to the conduct of a specific search in a restricted area:

> *Restricted areas are typically hotels which delegates have been assigned to stay in. These hotels are likely to be fully booked out by the G20 organisers, so the impact to the general public may be minimal, however this section may impact the liberties of hotel staff.*[114]

[114] Caxton Legal Centre Inc., Submission No. 7, page 11.

The Committee does not accept that the liberties of hotel staff will be so affected. It is likely the staff will have appropriate identification to be in their workplace or if they are carrying an item on the prohibited items list, such as bottles, jars or tins – they will most likely have a lawful reason for doing so.

In relation to specific searches in declared areas, the Committee similarly considers that appropriate safeguards exist. A police officer cannot conduct a specific search unless the officer has formed a reasonable suspicion the person may be in possession of a prohibited item without a lawful excuse; and either the officer holds a reasonable suspicion that a frisk search of the person will not locate the prohibited item; or a frisk search has already been conducted and a prohibited item has not been located.

This clearly indicates there must be a substantial reason before a specific search can be conducted on a person within a declared area.

In relation to a prohibited or excluded person, due to the security issues that have been identified prior about such a person, the Committee does not consider it to be inappropriate to allow a police officer to conduct a specific search of that person without a reasonable suspicion. Again, this will be at the discretion of the officer on the ground. It does not automatically follow, that an officer must subject a prohibited person to a specific search, it merely enables an officer to do so.

In summary, the Committee considers the Bill adequately takes into account the rights and liberties of persons going about their business, without being unduly searched. The Bill provides an appropriate level of discretion for police officers to conduct a range of searches as required, having regard to the situation at hand. It is unfortunate that this aspect of the Bill has been blown out of proportion, however the Committee does not consider these provisions warrant the attention they have been given.

Other concerns regarding searches

The Caxton Legal Centre also raised the following concerns in relation to the conduct of searches:

> *The scope of this section indicates that once a person attempts to enter a declared area, they can be searched, regardless of whether they change their mind about entering the declared area. Once a person chooses not to enter a declared area, there is no practical reason to search them - the purpose of the Bill is to provide security around the G20 Summit, so if a person decides not to enter a declared area, they will not be an immediate threat to security in that area and should no longer need to be searched.*
>
> *Clause 20(b)(iv) requires that an article in the person's belongings can be searched. This possibly extends in scope to include the searching of data devices like mobile phones and cameras. This is a particularly draconian invasion of privacy, especially given that this provision comes under the basic search section which, prima facie, seems to be consistent with searches one might undergo when entering an airport, for example.*[115]

Committee Comment

The Committee considers it is appropriate for the search provisions to apply to persons attempting to, or about to, enter the security area. Again, it does not follow that such a person would be automatically searched, but that an officer may search the person taking into account the threshold requirements for the relevant searches discussed above.

115 Caxton Legal Centre Inc., Submission No. 7, pages 11-12.

In relation to the wording of clause 20(b)(iv) and the concerns of police searching data devices such as phones and cameras, the Committee does not agree this is a legitimate concern. Having regard to the objectives of the Bill and the possible reasons for searches to be conducted, that is to locate prohibited items; the Committee is not convinced that QPS officers would have a need to search, nor would they attempt to search through, the memory of a data device itself.

The Committee also notes the safeguards in relation to searches which are contained in the section 624(1) of the Police Act are not inconsistent with the Bill and will therefore continue to apply to searches under the Bill.[116] That section provides:

> 1. *A police officer searching a person must—*
>   a) *ensure, as far as reasonably practicable, the way the person is searched causes minimal embarrassment to the person; and*
>   b) *take reasonable care to protect the dignity of the person; and*
>   c) *unless an immediate and more thorough search of a person is necessary, restrict a search of the person in public to an examination of outer clothing; and*
>   d) *if a more thorough search of a person is necessary but does not have to be conducted immediately, conduct a more thorough search of the person out of public view, for example, in a room of a shop or, if a police station is nearby, in the police station.*

The Committee considers a provision similar to section 25 of the *Commonwealth Heads of Government Meeting (Special Powers) Act 2011* (WA) is unnecessary however does consider the Bill should contain a note in the search chapter directing readers to the additional safeguards in the Police Act that will continue to apply.

Recommendation 6

The Committee recommends a note be included in the search chapter directing readers to the relevant section of the *Police Powers and Responsibilities Act 2000* setting out the safeguards in relation to searches that will continue to apply throughout the G20 meeting.

Requirement for searching children and persons with impaired capacity

Clause 30 of the Bill specifically relates to searching children and persons with impaired capacity. The QLS welcomed the inclusion of such a specific provision however queried who an 'independent person' would be under the clause.

> *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.*

[116] Letter from the Minister for Police and Community Safety, 1 October 2013, Attachment, page 9.

> *The Society requests further clarification as to who the "independent person" is envisaged to be for these purposes.*[117]

The QPS confirmed, in its response to submissions, the term 'independent person' is to be given its ordinary meaning. The QPS stated the term is not unusual and has been used in other legislation without being defined, for example the Police Act, section 503(b).[118] The Committee is satisfied no further clarification is required.

Removal of headwear

Clause 29 of the Bill provides for the removal of headwear in specific circumstances. No issues were raised in submissions in relation to the substance of the removal of headwear provision, and the Committee considers the provision adequately deals with the removal of headwear.

However, as a matter of the Bill's use and readability, the QLS observed that section 29 is referenced in a note in clause 37(3) of the Bill (power to require personal details at a security area) which deals with removal of headwear, but other similar provisions do not contain an equivalent note. The Note states:

> *Note for subsection -*
>
> *See section 29. Also see section 49 and the Police Act, section 615.*

The Committee agrees that for consistency, a similar note should be provided in the two other identified provisions that relate to the removal of headwear. Given the Bill is a stand alone Bill which will be used by a number of police officers from other jurisdictions, the Committee considers additional guidance by the way of consistent notes is appropriate.

Recommendation 7

The Committee recommends a note similar to that contained in clause 37(3) of the Bill be included in both clause 38(3) - Power to require personal details for offence etc, and clause 58 - Powers relating to excluded person, to ensure there are consistent references to the provisions dealing with the removal of headwear.

Stop and Search powers

Clauses 31 to 33 of the Bill contain additional stop and search powers in relation to vehicles in restricted, motorcade and declared areas. Similar to the provisions dealing with searches of a person, the provisions relating to vehicles differ depending on the level of security of the area in which the search is being conducted.

Restricted areas and Motorcade areas

In the higher level security areas, either a police officer or an appointed person may stop a vehicle attempting to enter, or in, the higher level security area and require the person in charge of the vehicle to allow the vehicle to be searched.[119]

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117 Queensland Law Society, Submission No. 3, page 12.

118 Letter from the Minister for Police and Community Safety, 1 October 2013, Attachment, page 9.

119 G20 (Safety and Security) Bill 2013, clause 31.

The Bill details a range of options for the searchers to undertake when searching the vehicle and in the case of the higher level areas, the searchers are empowered to place a seal, lock or other similar device on the vehicle to prevent a person from opening a section of the vehicle.[120]

Declared Areas

In a lower level security areas, only a police officer may stop a vehicle attempting to enter, about to enter, or in the area and require the person in charge of the vehicle to allow it to be searched - and only if the police officer forms a reasonable suspicion that the vehicle contains a prohibited item.[121]

No similar provision empowering a police officer to place a seal, lock or other similar device on the vehicle to prevent a person from opening a section of the vehicle applies in relation to a declared area.

Committee Comment

Similar to the Committee's comments on searches of the person, the Committee considers that the Bill adequately takes into account the rights and liberties of persons going about their business, without their vehicles being unduly searched. The Bill provides an appropriate level of discretion for police officers to conduct searches of vehicles as required, having regard to the situation at hand.

Search of Premises

Section 33 of the Bill allows a police officer to enter and search any premises in a restricted area, without a warrant. No equivalent provision applies for declared areas.

However, a police officer must not enter a part of a premises being used for residential purposes other than:

a) with the consent of the occupier;

b) under the authority of a search warrant or written law; or

c) if the officer reasonably suspects an offence may be committed within or from the premises and the offence will endanger the safety of a person.[122]

The QLS objected to the breadth of the provision, stating:

> *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.*[123]

However the QPS, in its response to submissions explained:

> *Clause 33 is limited to a restricted area. Restricted areas include the meeting and accommodation venues and logistics areas. These areas will have the highest level of security. It is imperative that police have the power to search premises within restricted areas, without a reasonable suspicion test, to ensure the restricted areas are completely safe and secure.*

[120] G20 (Safety and Security) Bill 2013, clause 31.
[121] G20 (Safety and Security) Bill 2013, clause 32.
[122] G20 (Safety and Security) Bill 2013, clause 33(3).
[123] Queensland Law Society, Submission No. 3, page 5.

For example, it is intended that premises within restricted areas will be secured and entirely searched for explosive devices prior to use for the G20 meeting.

The suggested proposal, namely that these areas could only be searched if there was a reasonable suspicion that an offence may be committed within the premises, would have the potential to severely limit the effectiveness of this type of search and thereby compromise the safety of delegates and the community.[124]

Committee Comment

The Committee accepts the provisions are necessary to ensure the safety and security of delegates attending the G20 meeting. As the provisions only apply to Restricted Areas, the Committee is satisfied that no amendment, as suggested by the QLS, is warranted.

Power to require reason for entry and personal details

In order to maintain the high levels of security necessary within security areas, the Bill also provides police officers and appointed persons with powers to require persons to provide information in relation to their presence in an area.[125]

Again, due to the differing requirements of the security areas, the powers are granted on both police officers and appointed persons for restricted areas and motorcade areas, but only on police officers in declared areas. The powers include the ability to:

a) stop a person attempting to enter, or, stop a person in, the relevant area and require the person to state the person's reason for wanting to enter the area or for being in the area;[126]

b) stop a person who is seeking to enter a security area and require, as a condition of entry, the person to disclose their personal details; and to stop a person who is in a security area and require that the person disclose their person's personal details;[127]

c) stop a person who is attempting to enter, or, stop a person in, a restricted area or motorcade area and require the person to produce for inspection an identity card or any Commonwealth accreditation or access approval held by the person authorising access to the area.[128]

A police officer or appointed person who exercises the powers to require a person to disclose their personal details must, if reasonably practicable, warn the person that failure to comply with the requirement is an offence for which the person may be arrested.[129] Further, in requiring a person to provide their personal details, a police officer or appointed person may also require the person to remove any headwear the person is wearing.

Committee Comment

The Committee is satisfied the additional powers to require reason for entry and personal details are necessary to allow the QPS to effectively provide the level of security required for the G20 meetings.

124 Letter from the Minister for Police and Community Safety, 1 October 2013, Attachment, pages 9-10.
125 G20 (Safety and Security) Bill 2013, clause 31.
126 G20 (Safety and Security) Bill 2013, clause 36.
127 G20 (Safety and Security) Bill 2013, clause 37(1)(a) and (b), clause 37(2)(a) and (b).
128 G20 (Safety and Security) Bill 2013, clause 37(1)(c), clause 37(2)(c).
129 G20 (Safety and Security) Bill 2013, clause 37(3).

Road closures

The Bill also empowers the QPS to close a road, easement, access or waterway.

Clause 39 provides that only a senior officer may close, to use, by a person or vehicle, a road, an access or easement, whether public or private, or a waterway. The section also provides that all or part of a road that intersects with a motorcade area may be closed if the police officer is reasonably satisfied that leaving the road open is likely to cause considerable delay to traffic using the road.

The Explanatory Notes outline the following example of the closure of a road:

> *For example, entry to the Clem 7 tunnel may be closed to traffic for a period if it intersects a motorcade route being used for an extended period by G20 delegates. In this instance not closing the Clem 7 tunnel would result in motorists having to remain parked within the tunnel for a lengthy period of time. Alternate routes of travel will be open to motorists.*[130]

Clause 40 of the Bill provides that a senior police officer may cause one or more checkpoints, cordons to be placed around an area or road impeders to be placed on a road, or waterway restrictors to be placed on a waterway, lading into or out of, or that is located in a security area.

The Explanatory Notes provide the following example of a cordon:

> *A cordon may consist of purpose manufactured tape placed on bollards around the perimeter of a building. For example, it may be plastic tape with the words 'Restricted Area – Keep Out' printed on it. The power can only be used for a purpose as outlined in subclause (3). A police officer may use the assistance the police officer considers necessary in exercising the power. Examples are provided in subclause (5).*[131]

It is noted clause 40(2) provides that in relation to a road impeder being placed on a road, if a police officer is reasonably satisfied it is necessary, the officer may cause the road impeder to remain in place for all or part of the remainder of the G20 period.

In the event a road impeder is to remain in place for all or part of the G20 period, the particular purposes are as follows:

- stopping and searching a person or vehicle;
- preventing a person approaching, entering or remaining in a security area;
- preventing a vehicle entering or remaining in a restricted area without the approval of a police officer or appointed person;
- providing a barrier around all or part of a security area in a way that may limit the effect of the detonation of an explosive device or anything or substance propelled, projected or thrown. [132]

Committee Comment

The Committee is satisfied the powers relating to road closures are appropriate to aid with the safety and security of the G20 meetings.

[130] *Explanatory Notes,* G20 (Safety and Security) Bill 2013, page 30.
[131] *Explanatory Notes,* G20 (Safety and Security) Bill 2013, page 30.
[132] G20 (Safety and Security) Bill 2013, clause 40 (3).

Powers to prevent entry or remove

The Bill also contains additional powers in relation to preventing entry by a person or a vehicle into a security area and also the power to remove. [133]

Again, the powers are granted to a police officer or appointed person in relation to the restricted or motorcade areas and only a police officer in relation to the declared areas.[134] Clause 41 of the Bill empowers a police officer or an appointed person, to prevent a *person* from entering, or to remove a *person* from a restricted area or a motorcade area if the officer or appointed person reasonably suspects:

- the person does not hold a Commonwealth accreditation or access approval authorising access to the area; or
- the person (either alone or with others) intends to, or may, disrupt any part of the G20 meeting.[135]

Additionally, a police officer or appointed person may prevent a *vehicle* entering a restricted area or motorcade area if:

- no person in or on the vehicle holds a Commonwealth accreditation or access approval authorising access to the area; or
- the officer or person is reasonably satisfied that preventing the vehicle from entering the area is necessary for the safety and security of the G20 meeting.[136]

In their advice to the Committee, the QPS advised:

> *… given that access to a restricted area or motorcade area is limited by Commonwealth accreditation or authorisation by a senior police officer, powers to prevent entry and to remove a person or vehicle are greater for restricted areas and motorcade areas than for declared areas.*[137]

In relation to declared areas, only a police officer may prevent a *person* entering a declared area, or remove a person from the area, if the officer reasonably suspects:

- the person (either alone or with others) intends to, or may, disrupt any part of the G20 meeting; or
- the person, without lawful excuse, is in possession of a prohibited item.

The Bill provides that before exercising this power, the officer must give a direction to the person not to enter, or to immediately leave, the area. The direction may be given individually or to a group of people generally and may be given in an amplified way, for example, by loud hailer.

Similarly, the Bill provides that a police officer may also prevent a *vehicle* from entering a declared area if a prohibited item is found in or on the vehicle as a result of a search of the vehicle and the officer is reasonably satisfied that preventing the vehicle from entering the area is necessary for the safety and security of the G20 meeting.

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133 G20 (Safety and Security) Bill 2013, part 4, division 7.
134 G20 (Safety and Security) Bill 2013, clauses 41 and 42.
135 G20 (Safety and Security) Bill 2013, clause 41 (1).
136 G20 (Safety and Security) Bill 2013, clause 41 (2).
137 Letter from the Office of the Minister for Police and Community Safety, 5 September 2013, Attachment, page 4.

Clauses 43 – 47 of the Bill contain additional powers regarding roads and vehicles. Clause 43 of the Bill enables a police officer to remove a person, who is, without lawful excuse, on a road that has been closed by a senior police officer, for a G20 purpose, while sections 45 to 47 of the Bill provide that a police officer may remove a vehicle from a restricted area, motorcade area and declared area.

These additional powers are generally not contentious and concerns have not been raised by submitters apart from the power to seize and remove an obstruction object.

Power to seize and remove an obstruction object

Clause 44 provides that a police officer may seize and remove an obstruction object. Schedule 7 of the Bill defines an obstruction object 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.*

The following are examples, provided in Schedule 7, of obstruction objects:

> *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.*

In relation to the power to seize and remove an obstruction object, the QLS highlighted:

> *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.[138]

The QPS, in its response to submissions, advised the Committee:

The Personal Property Securities Act 2009 *(Cth) has no application to 'the forfeiture of property or interests in property (or the disposal of forfeited property or interests) in connection with the enforcement of the general law or any law of the State' due to section 4 of the* Personal Property Securities (Commonwealth Powers) Act 2009 *(Qld).*

Obstruction objects forfeited to the State by the operation of clause 44(3) will be dealt with in accordance with Chapter 21, Part 3 'Dealing with things in the possession of police service' of the PPRA.[139]

Committee Comment

The Committee is satisfied that items seized under this clause and forfeited to the State will be dealt with appropriately under the relevant provisions of chapter 21, part 3 of the Police Act. The Committee notes the object of that Part of the Police Act is to ensure, as far as practicable, a relevant thing (a) is retained by the police service only for as long as is reasonably necessary; and (b) is handled in an efficient, safe and accountable way.[140]

While the Committee does not consider the clause itself requires any amendment - for clarity, a note could be inserted following clause 44 to direct the reader to the relevant section of the Police Act.

Recommendation 8

The Committee recommends a note be inserted after clause 44 directing readers to the appropriate provisions of the *Police Powers and Responsibilities Act 2000* relating to forfeiture of items to the State.

Direction for safety of security

Clause 48 of the Bill gives a police officer the power to give general directions in relation to the G20 meeting. The Explanatory Notes provide:

A police officer may give a person a direction that the officer considers reasonably necessary for the security of any part of the G20 meeting or a security area or for the safety of a G20 participant or a member of the public.

This power includes power to direct a person not enter an area, to leave an area or to move to a stated location within an area. The direction may be given to a person individually or to a group of people generally and may be given by amplified means.

138 Queensland Law Society, Submission No. 3, page 6.
139 Letter from the Minister for Police and Community Safety, 1 October 2013, Attachment, page 11.
140 *Police Powers and Responsibilities Act 2000*, section 687.

Use of force by appointed persons

Clause 49 provides that an appointed person has the same power to use force for the purpose of the person's appointment that a police officer has under sections 614 and 615 of the Police Act.

Section 614 of the Police Act provides:

> 1. *It is lawful for a police officer or law enforcement officer, and anyone helping the police officer or law enforcement officer, to use reasonably necessary force when exercising or attempting to exercise a power under—*
>
>   a) *this Act, including, for example, surveillance powers under a surveillance device warrant or covert search powers under a covert search warrant; or*
>
>   b) *another Act.*
>
> 2. *This section does not apply to the use of force against an individual.*

Section 615 of the Police Act relates of the use of force against individuals:

> 1. *It is lawful for a police officer exercising or attempting to exercise a power under this or any other Act against an individual, and anyone helping the police officer, to use reasonably necessary force to exercise the power.*
> 2. *Also, it is lawful for a police officer to use reasonably necessary force to prevent a person from escaping from lawful custody.*
> 3. *The force a police officer may use under this section does not include force likely to cause grievous bodily harm to a person or the person's death.*

The Committee considers the additional powers granted on the QPS under the Bill should be subject to the same use of force provisions as set out in the Police Act.

2.7 Prohibited persons and excluded persons

Another aspect of the Bill which has received significant attention relates to the Commissioner being empowered to compile a list of persons who should not be permitted entry into any security area (the prohibited persons list). The prohibited persons list may include identifying details and a photo of a person on the list.[141]

To be included on the prohibited persons list, the Commissioner must be reasonably satisfied 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.

In his introductory speech, the Minister stated:

> *… 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.*[142]

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[141] G20 (Safety and Security) Bill 2013, clause 50.

[142] *Record of Proceedings (Hansard)*, 20 August 2013, page 2603.

Further, at the public briefing, the QPS advised:

> *Prohibited persons are expected to be identified in the planning and implementation of security and intelligence arrangements for the G20 meeting by police, security agencies and the Commonwealth G20 Taskforce. lt is expected that the list will be continually updated in the lead up to the G20 meeting.*[143]

Issues raised in submissions

Submitters argued there was a lack of criteria to be used by the Commissioner in deciding whether a person should be prohibited. The QLS submitted:

> *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.*[144]

Similarly, the Caxton Legal Centre stated:

> *The vagary of clause 50(2) creates a lack of transparency in the process the commissioner undertakes to decide if a person should be placed on the list. lt can only be presumed that a person's past conduct or offending will be used to decide if the person may pose a serious threat.*
>
> *Additionally, if past conduct or offending is relevant to the decision of the commissioner, no guidance is given as to the nature and extent of conduct which would deem that person as a threat.*[145]

In its response to submissions, the QPS advised:

> *The criteria for the commissioner to place a person's name on the prohibited persons list is stated in clause 50(2). The criteria can not be further limited as decisions will be made by the commissioner based on information and intelligence reports received from Australian and international police and intelligence agencies.*
>
> *The list is intended to be a preventative and proactive measure to ensure persons identified as posing a serious threat to the G20 meeting are identified and notified of their prohibition prior to the meeting commencing. Reliance on exclusion notices and directions would not be sufficient.*[146]

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[143] Letter from the Office of the Minister for Police and Community Safety, 5 September 2013, Attachment, page 7.

[144] Queensland Law Society, Submission No. 3, page 7.

[145] Caxton Legal Centre Inc., Submission No. 7, page 5.

[146] Letter from the Minister for Police and Community Services, 1 October 2013, Attachment, page 11.

Submitters also raised concerns as to who should be the person responsible for maintaining the prohibited persons list. The Caxton Legal Centre argued:

> *... the Bill raises significant concerns about the conferment of discretionary decision making powers on officials. This represents a delegation of decisions of a judicial nature to bureaucrats and effectively renders the decisions immune from legal challenge. At the very least the decision whether to list a person on the prohibited person list should be vested with the Minister.*[147]

Similarly, the QLS argued:

> *… 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.*[148]

The QPS however advised in its response to submissions:

> *The commissioner is in a position to make an informed decision based on information and intelligence reports received from Australian* and *international police and intelligence agencies. It is not considered necessary for the decision to be made by the Minister. The power of the commissioner under clause 50 will not be delegated.*[149]

Committee Comment

The Committee notes the concerns from stakeholders; however the Committee is satisfied the criteria contained in the Bill relating to the prohibited persons list is appropriate. The Commissioner can not declare a person to be a prohibited person on a whim, but must be reasonably satisfied that a person may, at a minimum, disrupt the G20 meeting.

Further, the Committee notes this power to compile such a list is, again, not a mandatory requirement for the Commissioner, but another avenue which may be used to provide for the safety and security of persons and property in relation to the G20 meetings. There are a range of powers contained in the Bill which may be used in dealing with offenders, however should the need arise, the Committee considers the power to place to a person on the prohibited persons list is appropriate.

From the advice provided by the QPS, the Commissioner will be taking into account intelligence received through both Australian and international law enforcement agencies to inform his decision. The Committee considers that if based on that intelligence, the Commissioner (who is responsible for the safety and security of the G20) is satisfied there is a need to prohibit a person from the declared G20 security areas, then he should be able to place that person on a prohibited persons list and such a person will be dealt with accordingly under the Bill.

The Committee is not satisfied that the Minister ought to be the decision maker in this regard, but that it is entirely appropriate for the Commissioner to exercise his judgment accordingly. The Committee notes this power can not be delegated to any other lower ranked officer and the decision rests with the Commissioner.

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[147] Caxton Legal Centre Inc., Submission No. 7, page 5.
[148] Queensland Law Society, Submission No. 3, page 7.
[149] Letter from the Minister for Police and Community Services, 1 October 2013, Attachment, page 11.

Associated matters

In its submission, the QLS also noted 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 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.*[150]

The QPS responded that '*It is intended to provide notice, unless clause 52 is relevant, to the person as soon as reasonably practicable after the commissioner decides to place a person's name on the list.*'[151]

Clause 52 of the Bill provides that if it is not reasonably practicable for the Commissioner to cause a person to be personally served with a notice, the Commissioner may publicly publish a notice stating the person is a prohibited person and the person's photo and description.

The Bill provides the following example of this scenario:

> *The commissioner may for a person who is a known terrorist, has illegally entered Australia and can not be located, publish a notice that the person is a prohibited person and the person's photo and description.*

In relation to the public publication of a prohibited person of a person on the prohibited list, the QPS advised the Committee:

> *lt is expected that public publication of a prohibited person will only occur in very limited circumstances. For example, a person identified as a threat to a particular Head of State or Head of Government who enters the country and goes into hiding may have his or her photograph and description released to the media as it is not reasonably practicable to personally serve a notice on that person.*[152]

In addition, the QPS advised:

> *It is not intended that the prohibited persons list will be publicly available. The list will be restricted to internal use by police, security or intelligence personnel or agencies and the Commonwealth G20 Taskforce for the purpose of promoting the safety and security of the G20 meeting by enabling the identification of prohibited persons.*[153]

<u>Natural Justice</u>

Both the Caxton Legal Centre and the QCCL raised concerns that clause 51 did not provide a person with natural justice. The QCCL argued:

> *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.*

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150 Queensland Law Society, Submission No. 3, page 7.

151 Letter from the Minister for Police and Community Services, 1 October 2013, Attachment, page 12.

152 Letter from the Office of the Minister for Police and Community Safety, 5 September 2013, Attachment, page 7.

153 Letter from the Office of the Minister for Police and Community Safety, 5 September 2013, Attachment, page 8.

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.[154]

The Caxton Legal Centre added:

This provision does not indicate if the commissioner's notice must include reasons explaining why the person's name has been placed on the List. A person's decision to seek review of the commissioner's decision should be informed by reasons.[155]

The QPS responded:

The rules of natural justice have been excluded by clause 51(4) due to the fact the commissioner may base a decision to place a person's name on the list on information received from a security source and divulging the information could be contrary to national security interests, detrimental to international relations, be prohibited by a law of the Commonwealth or at State or Territory, or place the safety of an informant in jeopardy. Instead, a limited review process has been included in clause 51.[156]

Committee Comment

The Committee notes the additional concerns raised in submissions relating to the processes to be followed by the Commissioner when placing a person on the prohibited persons list.

The Committee considers that it is not inappropriate for the Commissioner to be given guidance, in the legislation, as to when he must give a person written notice of a decision to retain a person’s name on the list or remove a person’s name from the list under clause 51(2).

Recommendation 9

The Committee recommends clause 51(3) of the Bill be amended to require the Commissioner of Police to give written notice of a decision under clause 51(2) to a person who made written submissions, as soon as reasonably practicable.

In relation to the provision of natural justice and the requirement to provide reasons, the Bill is clear in its application, that except for the situations outlined in clauses 54(4)(a)-(d),[157] that the Commissioner is required to give reasons in his notice to a person that despite their submissions (limited appeal to the Commissioner), they are to remain on the prohibited persons list.

154 Queensland Council for Civil Liberties, Submission No. 5, page 4.
155 Caxton Legal Centre, Submission No. 7, page 6.
156 Letter from the Minister for Police and Community Services, 1 October 2013, Attachment, page 12.
157 Relating to national security interests, damage to international relations, prohibition by a law of the Commonwealth or at State or Territory, or placing the safety of an informant in jeopardy.

However, the Committee agrees with the Caxton Legal Centre that it is not clear in the Bill whether the Commissioner is required to provide reasons for his original decision under clause 50 to place the person on the list.

The key to natural justice is the right of a person to know what allegations/claims have been made against them and to be given an opportunity to respond to those allegations. This is reflected in the Bill's requirement that the Commissioner serve notice on a person advising them that they have been included on the prohibited person's list and affording that person the opportunity to make a submission to the Commissioner disputing the validity of including them on the list.

However, as pointed out in submissions, where the Bill falls down in natural justice terms is the uncertainty in relation to the requirement for the Commissioner to give reasons (or other information) about his/her decision to include a person on the list. Without knowing what information or reasons have led to their inclusion on the list, the person tagged as a 'prohibited person' would be distinctly disadvantaged in their attempts at establishing their inclusion on the list was unwarranted.

Clause 51(4) infers that reasons *may* be given for the original decision as that clause makes reference to the decision on 'placing the name on the list under section 50', but unlike the decision on the appeal from a person that they should be taken off the list, it does not specify that reasons must be given.

To enable a person to properly appeal the Commissioner's decision to include them on the prohibited persons list, the default position should be that they are provided with the reasons. In doing so, the Committee is satisfied that consistent with the current drafting of clause 54(4), similar exclusions as those contained in that clause should apply to the Commissioner's original decision.

Recommendation 10

The Committee recommends clause 51 of the Bill be amended to require the Commissioner of Police, in his notice given under clause 51(1) to include written reasons as to why a person has been included on the prohibited persons list. The requirement to give reasons should be subject to the situations set out in clause 54(4) and clause 54(5) should similarly apply to a notice under clause 54(1).

In relation to queries as to what will happen to the prohibited persons list at the expiry of the G20 period, the QPS confirmed:

> *The QPS will retain and dispose of information in accordance with any legislative requirements and in accordance with QPS policy.*
>
> *The list will not be publicly available and a person's name will not be publicly published unless it is not reasonably practicable 'to cause a person to be personally served with a notice' (see clause 52).*[158]

The Committee is satisfied with the explanation by the QPS.

[158] Letter from the Minister for Police and Community Services, 1 October 2013, Attachment, page 12.

Powers in relation to excluded persons

Separate to the concept of 'prohibited persons', clauses 55 -58 deal with a separate category of 'excluded persons'. Clause 55(1) of the Bill allows a police officer, during the G20 meetings, to exclude a person from a security area, if the officer is reasonably satisfied the person is any of the following:

- a person who, without lawful excuse, fails to comply with a requirement made of the person under section 37(1) or (2) that the person disclose the person's personal details;
- a person who, without lawful excuse, fails to comply with a requirement made of the person under section 31(1)(b) or 36(1) or (2);
- a person who, without lawful excuse, resists, hinders or obstructs a police officer, or an appointed person, who is conducting a search under this Act;
- a person who, without lawful excuse, is in possession of a prohibited item in a security area;
- a person who fails to surrender a prohibited item to a police officer under section 60(3) and may pose a serious threat to the G20 meeting;
- a person who, without lawful excuse, fails to comply with a direction given to the person under section 48 if the direction is given to the person when the person is in a security area;
- a person who, without lawful excuse, is on a road that is closed under section 39;
- a person who, without lawful excuse, fails to comply with a limitation or restriction that applies to a Commonwealth accreditation or access approval held by the person;
- a person who, with intention to disrupt any part of the G20 meeting, participates in an assembly in a security area;
- a person who committed, or omitted to do, an act relating to any part of the G20 meeting and is arrested in relation to the act.

The police officer may, by notice, exclude a certain person from all security areas, a stated security area or a stated part of a security area until 17 November 2013.[159]

The Bill sets out a process whereby, prior to the police officer giving a person an exclusion notice, the person may provide an explanation to the officer as to why the person did (or failed to do) an act mentioned in the relevant provision on which the notice is based.[160] If the officer is not reasonably satisfied the person has a reasonable excuse, or the person fails to provide an excuse, the officer must proceed to give the person with a notice.

The QPS advised in relation to excluded persons:

> *Conditions can be added to an exclusion notice to allow an excluded person who normally resides in a security area to still have access to his or her home. For example, if an excluded person resides in an outer area of the Brisbane Central declared area, the person may still be permitted to reside at the person's residence by a condition on the notice allowing the person to enter only that portion of the declared area that gives the person direct access to their residence.*

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159 G20 (Safety and Security) Bill 2013, clause 55 (2).

160 G20 (Safety and Security) Bill 2013, clause 55.

> *Conversely, should the person reside within close proximity of the BCEC, the person may be excluded from the declared area for the duration of the event. This would be for a short period only as the Brisbane Central declared area will only be in effect for four days.*[161]

Committee Comment

The Committee is satisfied that the excluded persons provisions appropriately complement the additional powers granted under the Bill in relation to the G20 meeting. The Committee considers it appropriate, should a person fail to comply with a relevant direction or requirement of the police outlined in clause 55, or breaches one of the specified G20 provisions – that a police officer is able to give the person notice they are excluded from the security area.

The Committee notes the comments from the QPS and is satisfied that appropriate conditions are able to be attached to exclusion notices to deal with the circumstances where the person resides within a security area.

The Committee is also satisfied with the provisions enabling a limited sharing of a photo of an excluded person with other stated security officers at the G20 meeting. Such provisions are necessary to ensure security officers are able to effectively deal with excluded persons.

Prohibited items

Part 6 of the Bill deals with prohibited items and other related provisions. A detailed list of prohibited items is set out in Schedule 6 of the Bill. Prohibited items are only relevant for the exercise of a power within in a security area.

In relation to prohibited items, the QPS advised:

> *These powers will generally not be exercised in relation to prohibited items unless the item is left unattended in a security area, a person has possession of the item without lawful excuse or a person commits a prohibited item offence.*
>
> *During the G20 period, a police officer may also require a person to surrender possession of a prohibited item until the cessation of the Act if the officer reasonably suspects the person could use the item to endanger the safety of a person associated with any part of the G20 meeting, or disrupt any part of the G20 meeting.*
>
> *A surrendered item must be returned to the person at the end of the G20 period. If the person fails to surrender the item as required, the officer may seize it.*[162]

An exemption is contained in clause 62 which provides that it is lawful for a police officer to possess a prohibited a prohibited item in a security area in the course of the police officer's duty.

Additionally, the Commissioner may give written approval for an appointed person or class of appointed persons to possess prohibited items while on duty for the purpose of performing duties at any part of the G20 meeting.

In developing the list of prohibited items, consideration was given to items that have been used to commit offences at previous G20 protests. For example a prohibited item under the Bill would include 'a placard or banner to which a timber, metal or plastic pole is attached or a banner more than 100cm by 200cm wide'. The QPS advised that banners greater than this size were used to

[161] Letter from the Office of the Minister for Police and Community Safety, 5 September 2013, Attachment, page 8.

[162] Letter from the Office of the Minister for Police and Community Safety, 5 September 2013, Attachment, page 8.

commit offences or disguise offenders at past offences.[163] The Committee does not consider that the size of the banner ought to be increased as suggested in submissions,[164] as this could unnecessarily increase the scope for breaches of more serious offences under the Bill.

Related provisions

Clause 60 of the Bill empowers a police officer to seize a prohibited item if the officer reasonably suspects the item is left unattended in any security area or is in the possession of a person without lawful excuse in a security area (clause 60(1)).

Clause 60(2) enables an appointed person to seize a prohibited item they reasonably suspect has been left unattended in only a restricted area or motorcade area or that they reasonably suspect is unlawfully in the possession of a person entering or in a restricted or motorcade area. The appointed person must, as soon as reasonably practicable, deliver the seized prohibited item to a police officer.

Clause 60 goes on to provide that a police officer may, at any time during the G20 period, require a person to surrender possession of a prohibited item until the end of 17 November 2014 if the officer reasonably suspects[165] the person could use the item to endanger the safety of a person associated with any part of the G20 meeting, or disrupt any part of the G20 meeting. If the person fails to surrender the prohibited item upon request, the officer may seize the item (section 60(5)).

Clause 61(1) stipulates that an item surrendered by a person under clause 60(4) must be returned to them as soon as reasonably practicable after the end of 17 November 2014, unless it is unlawful for the person to possess the item, in which case it cannot be returned and is forfeited to the State under clause 61(2)(b). Prohibited items seized under clause 60 are also forfeited to the State.

2.8 Additional offences and related provisions

Offences

Part 7 of the Bill creates a number of new offences that will apply for the duration of the G20 meetings. The QPS note '*some of these offences are similar to offences in the* Summary Offences Act 2005 *and* Police Powers and Responsibilities Act 2000*, but are specific to the G20 meeting*'.[166]

The following are offences under the Bill:

- Prohibited item offences (clause 63);
- Climbing onto, under, over or around barrier (clause 64);
- Entering or climbing building or structure in view of security area with intent to cause injury (clause 66);
- Lighting a fire in a security area (clause 67);
- Failing to comply with requirement to disclose personal details (clause 68);
- Failing to comply with direction (clause 69);

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163 Letter from the Office of the Minister for Police and Community Safety, 1 October 2013, Attachment, page 13.

164 Caxton Legal Centre Inc., Submission No. 7, page 10.

165 The example given in the section is of an officer requiring a person with a history of acts of violence to surrender a longbow in the person's possession.

166 Letter from the Office of the Minister for Police and Community Safety, 5 September 2013, Attachment, page 8.

- Unauthorised entry to restricted area (clause 70);
- Unauthorised entry to motorcade area (clause 71);
- Prohibited person not to enter security area (clause 72);
- Unauthorised entry to security area by excluded person (clause 73);
- Interfering with any part of the G20 meeting (clause 74); and
- Assaulting or obstructing an appointed person (clause 75).

Prohibited item offences

Clause 63 contains three separate prohibited items offences as follows:

A person must not, without lawful excuse:

1. possess a prohibited item in a security area;
2. attempt to take a prohibited item into a security area;
3. use a prohibited item in a way that it, something contained in it or on it or something produced by it, may enter a security area.

The first two prohibited item offences attract a maximum penalty of 50 penalty units ($5,500), while the third offence attracts a maximum penalty of 100 penalty units ($11,000).

Clause 63(4)reverses the onus of proof by stipulating that *the onus of proving a lawful excuse under subsections (1)-(3) is on the person claiming the lawful excuse*. Examples in the Bill of what would constitute a lawful excuse include:

- *a construction worker using an explosive tool in the course of carrying out the worker's work while working at a construction site in a security area;*
- *a resident in a security area lawfully storing a firearm in the resident's residence;*
- *a family using knives to consume food at a barbecue at South Bank Parkland;*
- *a child playing with a radio controlled toy car in the yard of the place where the child lives in a security area;*
- *a person who purchases a longbow from a sports store in a security area and then carries the longbow in a case to the person's vehicle to take it home.*

Examples of an absence of a lawful excuse include:

- *a person operating an electronically controlled model plane in a way that it may enter a restricted area;*
- *a person discharging a blood coloured liquid from a pressurised water pistol into a restricted area;*
- *a person who walks through the Queen Street Mall with an exposed longbow with the intention of firing arrows into the Brisbane River.*

In relation to prohibited items offences, the QCCL argued '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.'[167]

[167] Queensland Council for Civil Liberties, Submission No. 5, page 4.

The QLS submitted:

> *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).*[168]

The QPS stated in its response to submissions:

> *The offences will not be applied to innocent uses of prohibited items. Persons who reside or are employed, shopping or dining within a security area may possess a prohibited item if it is being used in a manner consistent with the person's lawful activities in the residence, employment, shopping or dining.*
>
> *The clause has no effect on a person going about their lawful business.*[169]

Committee Comment

The Committee does not share the concerns of the QLS that the reversal of the onus of proof is inappropriate for prohibited items offences and considers that members of the public who are in possession of prohibited items will be adequately afforded the ability to provide a reason to the QPS as to why they have them.

The Committee notes the concerns raised in submissions however considers there is little risk of the provisions being used inappropriately over the duration of the G20 meetings. From the examples set out in the Bill, the intent of the provisions is clear and the Committee is confident the QPS will use the provisions appropriately.

Reversal of onus of proof

In addition to the prohibited items offences, the Bill also reverses the onus of proof in relation to the following two offences:

- Clause 67 (lighting a fire in a security area); and
- Clause 69 (failure to comply with direction).

In relation to the offence of lighting a fire in a security area, the QLS submitted:

> *The Society notes the reversal of the onus of proof. Again, we highlight our concern with the reversal of the onus in these circumstances. ... The Explanatory Notes state, in relation to the variety of offences in which the onus of proof is reversed, that "It is*

168 Queensland Law Society, Submission No. 3, page 8.

169 Letter from the Office of the Minister for Police and Community Safety, 1 October 2013, Attachment, page 13.

> *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." 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.*[170]

At a public briefing, Mr Peter Shields, on behalf of the QLS, reiterated that, in general, the *'society* [QLS] *does not support the reversal of the onus of proof in criminal law legislation.'*[171]

The QQCL submitted that they opposed reversing the onus of proof in clause 69 (2) – failing to comply with direction.[172]

In response to the issues raised by QLS and QCCL, the QPS advised that the reversal of the onus of proof is not unique to the Bill, and that in fact a number of provisions of the *Criminal Code* reverse the onus in a similar way (sections 204, 205, 207, 230, 236, 425(1)(c), 442M(2) and 515).[173]

<u>Committee Comment</u>

The Committee accepts that generally, legislation should not reverse the onus of proof in criminal proceedings without adequate justification.[174]

Whilst the Committee notes the arguments of the QLS and the implications of the reversal of the onus, the fact remains that such reversals are common, if not essential in practice, for the straightforward operation of offence provisions such as these, in which a person's state of mind and intent are relevant factors. Further, in the reversal of onus situations under this Bill, the onus of proof is arguably reversed to accommodate situations where the requisite knowledge being deposed is largely within the unique knowledge of those charged with the relevant offences.

Finally, the offences apply to a limited area, for a limited period, and the Committee does not consider it would be a great impost on a person who had a lawful excuse for lighting a fire within a security area, when approached by an officer, to provide a satisfactory explanation to that officer as to why they had done so.

In view of the above, the Committee is satisfied that the reversals are appropriate in the context of clauses 63, 67 and 69.

Duplication of offences

The QLS submitted section 571 (unauthorised entry to special event site) and section 572 (unauthorised entry to a restricted area) of the *Police Powers and Responsibilities Act 2000* could adequately cover most of the circumstances of the following offences:

- unauthorised entry into restricted area (clause 70);
- unauthorised entry into motorcade area (clause 71);
- prohibited person not to enter security area (clause 72); and
- unauthorised entry to security area by excluded person (clause 73).

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170 Queensland Law Society, Submission No. 3, page 9.

171 *Transcript of Proceedings (Hansard)*, Public hearing, Legal Affairs and Community Safety Committee, 26 September 2013, page 2.

172 Queensland Council for Civil Liberties, Submission No, 5, page 4.

173 Letter from the Office of the Minister for Police and Community Safety, 1 October 2013, Attachment, page 12.

174 *Legislative Standards Act 1992*, section 4(3)(d).

The QLS considered 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.[175]

Specifically, in relation to clause 74, interfering with any part of the G20 meeting, the QLS submitted:

> *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.*[176]

Committee Comment

The Committee notes the similarity of offences under the Bill with existing offences in the Police Act. The Committee has addressed the reasons for a stand alone Bill earlier in this Part and considers it appropriate that the Bill contain all the necessary offences to apply during the G20 meetings.

2.9 Arrest and custody powers and bail

Part 9 of the Bill deals with arrest, custody powers and bail. These provisions have received a large amount of attention in the media and in submissions, particularly in relation to the bail provisions which create a presumption against bail in limited circumstances.

Arrest

Clause 78 enables a police officer to arrest a person, without warrant, if the police officer reasonably suspects that person has committed, or is committing, a G20 offence.

Clause 79 provides that a person who is arrested for a G20 offence must be taken to a processing facility. The Bill provides that at a processing facility, a person may be held in custody for the time reasonable necessary to establish the person's identity and do one of the following:

- charge the person and decide whether bail it be granted;
- release the person without charge; or
- give the person an exclusion notice.

At the public hearing, the QPS advised that in terms of raw data for arrests, at the 2009 London G20 800 arrests were made and at the 2010 Toronto G20, 1300 arrests were made. It was noted that the CHOGM in Perth was however a 'very quiet affair'.[177]

The Caxton Legal Centre was critical of the provisions relating to arrest stating:

> *This appears to be one of the most concerning aspects of the Bill particularly in light of:*
>
> - *The lack of any indication about the availability of Magistrates to determine applications for bail during the G20 Summit;*
> - *The lack of detention facilities to cope with potentially hundreds or thousands of people detained under the proposed laws;*
> - *The prospect of remand centres having to be used to detain people;*

[175] Queensland Law Society, Submission No. 3, page 9.
[176] Queensland Law Society, Submission No. 3, page 9.
[177] *Transcript of Proceedings (Hansard)*, Public briefing, Legal Affairs and Community Safety Committee, 13 September 2013, page 7.

- *The lack of legal representation available to persons charged with offences under the proposed laws; and*
- *The prospect of many juveniles and or 17 year olds being detained under the proposed laws. Clause 79 establishes the duty of police officers to process individuals who have been arrested for an offence against the Bill. It confers a power to hold such individuals for the length of time "reasonably necessary" to decide how to deal with those individuals.*[178]

The Caxton Legal Centre went on to state:

> *This provision is in conflict with s 403(2) of the* Police Powers and Responsibilities Act 2000 *(Qld) ("the PPRA"} which provides that the maximum amount of time an individual should be detained after arrest is 8 hours. Under Cl 4{1} of the Bill, the Bill will override the PPRA to the extent of any inconsistency in relation to a power conferred, or responsibility imposed on a police officer. On this basis and depending on the number of persons who are arrested over the period the G20, there is potential for individuals to be legally detained for periods more than 8 hours.*[179]

The Caxton Legal Centre made reference to the high numbers of arrests at the Toronto G20 meetings in 2010 and recommended that the maximum duration of detention for G20 offences should be the same length of 8 hours as provided in the PPRA. It was submitted that the imposition of a timeframe would encourage police efficiency in the processing of arrestees and discourage prolonged detention.[180]

The QPS pointed out in its response to submissions that section 403(2) of the Police Act related to the detention of a person for a specific time if the person was arrested for an indictable offence for investigation and questioning of that offence. The QPS considers there is no conflict between the Bill and the Police Act in that regard.[181]

Further, the QPS stated the arrest provisions in the Bill were similar to section 394 of the Police Act which outlines the duties of a police officer on receiving custody of an arrested person and includes the duty to, as soon as reasonably practical, decide whether or not to grant bail.[182]

Bail provisions

Clause 82 of the Bill creates a presumption against bail in relation to certain offences committed in a security area, or at any G20 meeting. The offence must involve:

a) an assault of a police officer, an appointed person in the person’s capacity as an appointed person or a G20 participant; or

b) throwing, propelling or discharging a missile or a substance at a police officer, appointed person or G20 participant; or

c) damage or destruction to property, if the offence relates to any part of the G20 meeting; or

d) disrupting or attempting to disrupt any part of the G20 meeting.[183]

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178 Caxton Legal Centre Inc., Submission No. 7, page 8.

179 Caxton Legal Centre Inc., Submission No. 7, page 8.

180 Caxton Legal Centre Inc., Submission No. 7, page 8.

181 Letter from the Office of the Minister for Police and Community Safety, 1 October 2013, Attachment, page 13.

182 Letter from the Office of the Minister for Police and Community Safety, 1 October 2013, Attachment, page 13.

Clause 82 (2) states - despite sections 7 and 8 of the *Bail Act 1980* (Bail Act), the court or a police officer authorised to grant bail must refuse to grant bail unless the defendant shows cause why the defendant's detention in custody is not justified. All other provisions of the Bail Act apply to the offence.

In addition to the conditions for release which apply under the Bail Act, the Bill imposes additional conditions of release on defendants that, on release, they must not enter, attempt to enter or approach any security area; and must not commit another G20 related offence.[184]

Submissions

The ALHR, QLS, QCCL and the Caxton Legal Centre all strongly opposed the presumption against bail in any circumstances under the Bill.

The QLS submitted:

> *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 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.* [185]

The QCCL stated the onus in relation to bail should only be reversed in relation to the most serious of offences such as murder and there was no justification for the provision [clause 82] in the Bill whatsoever.[186]

Caxton Legal Centre outlined its concerns as follows:

> *This provision is open to abuse by officials as there is no review process available during the period of the G20, and those who have not been given bail must wait until the presumption against bail is lifted at the end of the G20 period to reapply for bail. A concern is that a person may be arrested, taken to a watch house and kept there for the weekend because they aren't able to present a coherent, concise reason as to why they should be released on bail.*
>
> *The power to detain someone for the period of the G20 for an offence they have committed is reasonable if the person is a genuine threat to the security of the Summit participants. If that is the case, then police should be able to rely on the provisions already found in s7 of the* Bail Act 1980 *to deny bail based on the reasons found in s16* Bail Act 1980. *To impose a duty upon the accused to argue why they should be released is unfair, given their unfamiliarity with the legal system and the difficult situation they may find themselves in.*

183 G20 (Safety and Security) Bill 2013, clause 82.
184 G20 (Safety and Security) Bill 2013, clause 82(4).
185 Queensland Law Society, Submission No. 3, page 9.
186 Queensland Council for Civil Liberties, Submission No. 5, page 4.

At the public hearing, Mr Peter Shields for QLS argued that in relation to the presumption against bail, clause 82 (d) was of most concern:

> *The offence which really concerns us is that under subclause (d), which is disrupting or attempting to disrupt. An attempt to disrupt really is a catch-all offence, in our respectful submission, to anyone who may just be observing in that position. The presumption against bail is, in the circumstances, quite an extreme step.*
>
> *As the law currently stands, the presumption against bail in Queensland applies to those charged with murder, those who are currently subject to an indictable offence who are on bail or at large and are in a show-cause position, or offences in which a weapon is being utilised.*[187]

The QPS set out in its initial briefing to the Committee that the presumption against bail is to:

> *… ensure that persons, who have already displayed, through the commission of an offence, an intent to interfere with the G20 meeting or security arrangements, are not automatically released on bail with the possibility of committing further offences during the G20 event and therefore draining security resources.*[188]

The QPS further explained:

> *The conditions of bail in clause 82(4) are necessary to ensure persons intent on committing offences and causing disruption to the G20 meeting are prevented from returning to the area after being granted bail.*

From a practical perspective, submitters also sought further information on how the courts would deal with the possible increase in applications for bail over the G20 weekend. The QLS stated:

> *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?*[189]

The QLS also sought clarification on the capacity for remand centres and watch houses to accommodate the potential rise in the number of individuals during the G20 period in both Brisbane and Cairns.

The QCCL similarly submitted ‘protesters must have timely access to bail hearings. This means sufficient Magistrates must be made available to hear all the cases.’[190]

In response to concerns of the availability of courts to hear bail applications during the G20 period, the QPS responded:

> *Arrest courts will be operating in Brisbane from 14-16 November 2014 for magistrates to hear in-custody matters and determine if bail is appropriate in the circumstances of each individual matter.*[191]

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187 *Transcript of Proceedings (Hansard)*, Public hearing, Legal Affairs and Community Safety Committee, 26 September 2013, page 3.

188 Letter from the Office of the Minister for Police and Community Safety, 5 September 2013, Attachment, page 9.

189 Queensland Law Society, Submission No. 3, page 9.

190 Queensland Council for Civil Liberties, Submission No. 5, page 1.

Committee Comment

The Committee has given much consideration to the submissions relating to the presumption against bail and whether clause 82 which creates a presumption against bail should remain as part of the Bill.

The Committee notes the provision has been adapted from section 31 of the *APEC Meeting (Police Powers) Act 2007* (NSW) and that it is therefore not a new provision for major security events. It is further noted the presumption against bail only applies during the G20 period and a defendant remanded in custody may apply or reapply for bail when the G20 period (14 to 16 November 2013).

Given the limited period during which the presumption against bail will operate and the nature of the offences to which it applies, the Committee is satisfied the presumption against bail as provided in the Bill is satisfactory. The Committee is not convinced that disrupting or attempting to disrupt the G20 meetings are minor matters. The presumption against bail provisions will provide a suitable deterrent to protesters who intend to cause disruption to the meetings, that their actions will not be tolerated.

The Committee does not consider that this will discourage peaceful protests but will assist in ensuring that those who intend to exercise their rights and protest at the meetings will do so in an appropriate manner.

Although the presumption against bail is present in the Bill, it must be recognised that a defendant still has an opportunity to justify why they should not be detained and the Committee has full confidence in the judiciary, that bail may still be granted where that justification has been made. Even in those circumstances, the Committee considers it is essential that persons intent on committing offences and causing disruption to the G20 meetings are prevented from returning to the area after being granted bail.

The additional conditions placed on defendants are also therefore supported.

In relation to adequate court services being provided over the G20 weekend, the Committee notes a recent interview with Chief Justice Paul de Jersey on the 7.30pm Report, Queensland. When discussing the bail provisions of the Bill, the Chief Justice stated:

> *It's a major event - it's an internationally major event, which requires quite different treatment from the treatment we normally accord. It requires particular responses to deal with potentially catastrophic actions within the public domain. So I can understand why quite difficult responses have to be made legislatively to set in place a system whereby disasters can be averted. There will be particular constraints on the courts in that time. In fact we're gearing to a situation where the Supreme Court in Brisbane will not be sitting for a week because the police State wide will be diverted to G20 commitments.*[192]

The Committee is cognisant that police resources will necessarily be diverted into G20 activities and understands that the QPS won't be able to give evidence in criminal proceedings in the superior courts.

For the provisions in the Bill to work effectively, appropriate court services must be in operation over the G20 weekend. The Committee notes the advice from the QPS that arrest courts will be operating in Brisbane from 14-16 November 2014 - for magistrates to hear in-custody matters and determine if bail is appropriate. This is clearly essential.

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191 Letter from the Minister for Police and Community Safety, 1 October 2013, Attachment, page 15.

192 7:30 Queensland, ABC, 13 September 2013, interview with Chief Justice Paul de Jersey, http://www.abc.net.au/news/2013-09-13/new-role-for-queenslands-chief-justice/4957762, accessed 30 September 2013.

At the G20 Forum, Chief Superintended Coleman reaffirmed the QPS was liaising with representatives from the Magistrates Court to ensure magistrates would be sitting over the G20 weekend, including the Friday, (even if declared a public holiday), Saturday and Sunday.

The Committee understands the QPS G20 Group is continuing discussions with the heads of each of the courts to ensure that over the G20 weekend appropriate levels of court services will be provided to deal with G20 related matters.

Compensation to persons residing in restricted/security areas

Clause 83 of the Bill provides that a person (other than an excluded person) who normally resides in premises that are within a restricted area and who does not hold a Commonwealth accreditation or access approval authorising access to the restricted area is entitled to compensation from the state.

In relation to compensation, the QPS advised the following:

> *The Bill provides for compensation to be paid to two classes of people if they are displaced from their residence within a security area due to security requirements.*

The first group eligible for compensation are those people, other than excluded persons, who normally reside in premises that are within a restricted area and do not hold Commonwealth accreditation or access approval authorising access to the restricted area. The compensation is limited to the cost of reasonable accommodation outside the restricted area for the person for the period the person may not enter the restricted area.

Very few people will be displaced from residences within restricted areas as these areas are limited to commercial hotel accommodation and meeting venues. If a person usually resides within a restricted area, for example, has permanent residence within a hotel, Commonwealth accreditation will be issued to the person where possible to allow the person to remain in residence during the G20 period.

The second group eligible for compensation are prohibited persons who normally reside in a security area. The compensation is limited to the cost of reasonable accommodation outside the security area for the person, and any dependents, for the period the person may not enter the security area.

An excluded person is not entitled to compensation if they normally reside in a security area and have been fully excluded from the security area.

The Committee is satisfied with the operation of the compensation provisions.

2.10 Miscellaneous provisions

Part 12 of the Bill sets out a number of miscellaneous provisions, some of which are discussed further below.

Special justification

Clause 94 of the Bill provides for when a person has *special justification* to be in a restricted area or motorcade area. The Committee notes that the onus of proving special justification is on the person claiming it.

Special justification exists in situations such as police officers being on duty in the area, appointed persons performing functions in the area, or other persons having the requisite permission or authority to be in the area. Further, the provision provides justification for persons to be in the security areas if they reside in premises located in the area.

<u>Committee Comment</u>

The Committee considered the provisions and considered them appropriate to allow for the safety and security of G20 events.

The Committee notes however its comments in relation to the establishment of a G20 legal hotline to provide information and advice to members of the community. The hotline would be a useful tool should the need arise where a person may be required to prove special justification for being in a restricted area or motorcade area.

Evidence

Clause 95 of the Bill specifies a range of statements in a charge that, in proceedings for a G20 offence, are sufficient evidence of the facts stated unless the contrary is proved.

These include statements that an order was made declaring an stated area to be an additional declared area or restricted area; the date and time the order was signed; that a stated person has been give an exclusion notice etc.

<u>Committee Comment</u>

The Committee is satisfied that this clause is not contentious and is appropriate to assist with the prompt dealing of offences under the Act.

Review of act

Clause 98 of the Bill provides that the Commissioner must ensure the operation and the effectiveness of the Act is reviewed. To achieve this outcome, the Commissioner must give a report of the outcome of the review to the Minister and the Minister must table the report in the Legislative Assembly.

In relation to the review of the Act, the QLS submitted:

> *The Society welcomes proposed section 98, 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 section 98(4) which states:*
>
> > 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 section 4(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.*[193]

[193] Queensland Law Society, Submission No. 3, page 11.

In its response to submissions, the QPS stated it would not be appropriate for the QPS to suggest terms of reference, such as the tabling of documents, which should be adopted by a Government calling subsequent reviews relevant to the G20 legislation.[194]

The Chairperson of the Crime and Misconduct Commission (CMC) submitted:

> *The CMC is pleased to note the Bill includes a review clause (section 98). A review of the operation of the Act is necessary to determine whether the use of the powers was appropriate and what steps should be taken to refine similar legislation that may be considered necessary to effectively deal with future special events, such as the 2018 Gold Coast Commonwealth Games.*
>
> *The review clause in its current form provides that the Police Commissioner must ensure the operation and effectiveness of this Act is reviewed by 17 October 2015. My reading of this section is that it confers responsibility onto the Police Commissioner for ensuring that the review is conducted. It does not specifically provide that the QPS will conduct the review.*
>
> *The CMC wishes to express its desire to be involved in the review of the Act. Considering the breadth of the powers available to police under the Bill, it is inappropriate for the QPS to evaluate its own performance. The CMC has previously been involved in or conducted such reviews. The CMC's involvement in the review is likely to promote public confidence in the review.*
>
> *The CMC has the capacity to conduct the review independently. Alternatively, the government may wish the CMC to conduct the review in conjunction with the QPS.*[195]

In relation to the CMC being involved in the review of the report, the QPS stated that any involvement by the CMC will be determined through a policy decision made by the Government.[196]

Committee Comment

The Committee supports a full review of the Act after the G20 meetings are completed and considers the timeframe of 17 October 2015 is appropriate. In relation to the concerns raised by the QLS, the Committee does not consider that section 98(4) is ambiguous or unclear. It is clear on the face of it that the review section does not apply, and the associated obligations on the Commissioner will similarly not apply – if the Government calls for another review which would include a review of the operation of the Act.

The Committee considers that the provision appropriately enables the Government to effectively coordinate its resources, should any further review be deemed necessary in the future. The Committee is confident that the terms of reference of any additional review will set appropriate timeframes and that the results of any additional review will be similarly tabled in Parliament.

The Committee also notes the submission from the Chairperson of the CMC that given the nature of the additional police powers granted on the QPS under the Bill, public confidence in the review would be enhanced greatly if the CMC is involved in the review.

It does not appear to the Committee that the provision is prescriptive as to who must conduct the review and subject to the workload of the CMC, the Commissioner may seek assistance from the CMC, as required.

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[194] Letter from the Minister for Police and Community Safety, 1 October 2013, Attachment, page 16.
[195] Crime and Misconduct Commission, Submission No. 7.
[196] Letter from the Minister for Police and Community Safety, 1 October 2013, Attachment, page 16.

2.11 Interstate police officers and appointed persons

Part 12 of the Bill enables the Commissioner to appoint non-state police officers and appointed persons to exercise the powers of a police officer. The appointment of these officers is to provide support to existing QPS officers with providing security for the G20.

Non-state police officers

Under the Bill, non-state police officers must be authorised by the Commissioner. The authorisation must state the name of the non-state police officer and may limit the non-state police officer to specified powers, to specified time and may be on conditions.

The QPS further advised that eight jurisdictions from Australia and New Zealand will be providing security assistance to QPS. The breakdown of figures is as follows:[197]

- *3000 QPS;*
- *1500 interstate and New Zealand police officers;*
- *400 Australian Federal Police;*
- *200 Australian Defence Force Personnel; and*
- *Additionally, there will be SES and volunteers providing assistance.*

In relation to the numbers, the QPS advised:

> *From the research we have conducted around the world, those numbers are comparable to any other G20 event that has been held and very similar to the numbers in Toronto. In fact, as part of our peer review, we currently have in Queensland doing a peer review of our planning Tom Russell, who was one of the chief planners for Toronto, and their numbers were quite similar to ours and they had a very similar environment to ours as well.*[198]

In relation to concerns about how non-state police officers would be identified, at the public briefing the Committee asked the QPS what uniform would interstate officers be wearing and whether there would be any Queensland issued identification to identify an officer should a person wish to lodge a complaint against them.

The QPS advised that the position on this matter was not final at that time, but that based on the research of other large scale events, non-state police officers would be wearing their own uniform, but would likely be wearing a common cap or police hat as an identifiable item.[199] The QPS went on to state:

> *We will have eight jurisdictions here all up—Australian Federal Police and New Zealand and the other states. So there will be a cap that will identify us all as police with 'Police' written across the cap plus the chequered badge plus probably a G20 logo on the side. So we will all be identified as police officers. On top of that they will be expected to wear their normal identification as to who they are. In other states it might just be their registered number or their name. So they are expected to wear their own uniform but*

[197] *Transcript of Proceedings (Hansard)*, Public briefing, Legal Affairs and Community Safety Committee, 13 September 2013, page 4.

[198] *Transcript of Proceedings (Hansard)*, Public briefing, Legal Affairs and Community Safety Committee, 13 September 2013, page 4.

[199] *Transcript of Proceedings (Hansard)*, Public briefing, Legal Affairs and Community Safety Committee, 13 September 2013, page 13.

> *then a cap that puts us under the one police banner, so to speak. So if there are any issues, everyone should be identified easily.*[200]

Deputy Commissioner Barnett stated:

> *… I am sure if there is an incident involving police that could possibly give rise to a complaint about use of force, or other issues which I think is what you may be referring to, I do not believe identification of officers from elsewhere is going to be an issue for us.*[201]

Exploring the issue further, the Committee sought clarification that the arrangements put in place would not make it easy for someone to pose as a police officer, due to the differing uniforms. Chief Superintendent Coleman explained that not all police, including non-state police, would be able to enter all areas of the G20 meetings. A process would be set up as follows:

> *… one of the things that we are going to do is we are going to accredit all of our police. So police will be issued with accreditation to identify which police would be entitled to go into the particular venues. The last thing we want is for a police officer, who wants to go to see a world leader, to just wander off into the BC&EC by themselves. We are going to have accreditation that allows access into those restricted areas, but the accreditation will also be used for our transport system. So on top of every police officer wearing their uniform with a name badge or a number badge, which is unique to themselves, they will also have to carry accreditation for the event as well.*[202]

<u>Committee Comment</u>

The Committee is satisfied with the provisions relating to the appointment and use of non-state police officers. The QPS appears to have given this thorough consideration as to how the non-state officers will be identified and what levels of access to premises will be granted.

The Committee's only concern in relation to the use of non-state police officers has been set out in detail earlier in this report in relation to receiving appropriate training before assisting at the G20 events.

Appointed persons

The Bill also allows for 'Appointed persons' to be appointed by the Commissioner. In its initial briefing to the Committee, the QPS advised that appointed persons are expected to be private security personnel and Australian Defence Force personnel only.[203]

Under clause 89 of the Bill, a person can only be appointed as an appointed person if the Commissioner is reasonably satisfied that the person has satisfactorily completed a course of training recognised by the Commissioner or has the necessary expertise or experience to be an appointed person.

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200 *Transcript of Proceedings (Hansard)*, Public briefing, Legal Affairs and Community Safety Committee, 13 September 2013, page 13.

201 *Transcript of Proceedings (Hansard)*, Public briefing, Legal Affairs and Community Safety Committee, 13 September 2013, page 13.

202 *Transcript of Proceedings (Hansard)*, Public briefing, Legal Affairs and Community Safety Committee, 13 September 2013, page 13.

203 Letter from the Office of the Minister for Police and Community Safety, 5 September 2013, Attachment, page 3.

An appointed person will be issued with an identity card to identify the person as an appointed person. Importantly, such ID card must contain a photo of the person, an expiry date for the card and state a unique number. Appointed persons will work under the control of police officers.[204]

There are additional provisions applying to the production, use and return of the identity card and also penalties for the misuse of the position of an appointed person or the identity card.[205]

At the public briefing the QPS expanded further on the role of appointed persons and what role they would perform during the G20 meetings:

> *There are only two categories of people who may be asked to be an appointed person. That would be tier 1 security or members of the ADF. They are already in a position of authority.*
>
> *They would only be given some very, very limited powers and will be operating under the supervision of a police officer. Some of those where an example might arise are with a tier 1 security person, when you go into the BC&EC, just to give that person a little bit of extra power to do their role, because really they do not have any legislation at all.*
>
> *They are really the only instances that I can see very, very, basic legislation to assist us in our roles.*

The QPS went on to explain that any appointed person would need to undergo a level of police checking by the QPS and would be issued accreditation by the Commonwealth G20 task force, before performing a role at the G20.

In its submission to the Committee, the ALHR raised concerns about the use of appointed persons:

> *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.*
>
> *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.*[206]

Committee Comment

While the Committee accepts that there is a level of duplication with the Police Act regarding the appointed persons provisions - for the reasons outlined earlier in this report in relation to the Bill being a stand-alone Bill, the Committee is satisfied the provisions should be contained within the Bill and not referenced in the Police Act.

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204 Letter from the Office of the Minister for Police and Community Safety, 5 September 2013, Attachment, page 3.

205 G20 (Safety and Security) Bill 2013, clause 91-93.

206 Australian Lawyers for Human Rights, Submission No. 4, pages 1-2.

Further, the Committee is also satisfied from the QPS briefing that the use of appointed persons will be on a limited scale, where necessary, and that appointed persons will not be granted broad powers afforded to sworn police officers under the Bill. The Committee does not share the concerns raised by the ALHR.

The provisions relating to the use and misuse of the appointed persons' identity cards also appear appropriate.

2.12 Expiry provisions

Part 14 of the Bill provides for the Bill's expiry on 17 November 2014 apart from a number of identified continuing provisions which will expire 1 year later.[207] This part also provides for the expiry of the Bill, by Regulation, should the G20 meetings be cancelled.[208]

In his introductory speech, the Minister stated:

> *… this is legislation specifically designed for the G20 meeting. As such it will not continue in existence following that meeting. A sunset clause repeals the law enforcement powers and security areas immediately after the G20 meeting is concluded and leaders have safely departed Queensland.*[209]

At the public briefing on the Bill, the QPS explained the reason for the continuing provisions was to ensure that relevant provisions necessary for prosecuting offenders were in place past the expiration of the act. It was explained that the main reasons were to do with evidence and offence provisions.[210]

The QLS queried the need for the continuing provisions in its written submission stating:

> *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.*[211]

In response, the QPS advised:

> *Section 52 of the* Justices Act 1886 *provides for the limitation of proceedings for a simple offence and states that a complaint must be made within one year from the time when the matter of the complaint arose. Clause 101 merely gives effect to section 52 of the* Justices Act 1886.[212]

Committee Comment

The Bill is clearly designed to be time limited and apply for the duration of the G20 meetings only. Indeed, if the Bill did not have a sunset clause, there would be great concern.

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207 G20 (Safety and Security) Bill 2013, clause 101.

208 G20 (Safety and Security) Bill 2013, clause 102.

209 *Record of Proceedings (Hansard)*, 20 August 2013, page 2603.

210 *Transcript of Proceedings (Hansard)*, Public briefing, Legal Affairs and Community Safety Committee, 13 September 2013, page 6.

211 Queensland Law Society, Submission No. 3, page 11.

212 Letter from the Minister for Police and Community Safety, 1 October 2013, Attachment, page 16.

The Committee is satisfied with the QPS explanation as to why the continuing provisions are required and considers that it is appropriate to extend the specific provisions to assist with the prosecutions (if any) of offenders under the Bill, following the G20 meetings. The Committee does not consider that there is any dangerous precedent set, as suggested by the QPS. As the provisions replicate the existing provisions of the *Justices Act 1886,* the Committee considers the extension of these provisions is appropriate in the circumstances.

The Committee deals with the regulation to repeal the Bill on the cancellation of the G20 meeting in Part 3 of this Report – Fundamental Legislative Principles.

2.13 Declaration of public holiday and amendment to trading hours

In addition to the core objective of establishing specific police powers for the duration of the G20 meeting, the Bill also amends the *Holidays Act 1983, Industrial Relations Act 1999* and the *Trading (Allowable Hours) Act 1990* to provide for a public holiday, for the Brisbane area, on Friday 14 November 2014.

The public holiday is restricted to the Brisbane local government areas.

The QPS advised the Committee the public holiday will '*enhance security arrangements and reduce disruptions to commuter road traffic from motorcades moving through Brisbane as foreign leaders arrive for the Summit or attend pre-Summit meetings on 14 November 2014*.'[213]

While the objective sounds quite simple, the Chamber of Commerce and Industry Queensland (CCIQ) raised a number of concerns that the public holiday would negatively impact businesses in the Brisbane area.

In an article published on its website, the CCIQ stated:

> *… creating a new public holiday has a number of negative impacts on business:*
>
> *Any business that wishes to trade on this day in Brisbane will now have to pay penalty rates all but removing a profit margin. We already see cafés and restaurants ceasing to trade on public holidays and Sundays due to penalty rates. This holiday will take a profitable Friday and turn it into an unprofitable public holiday.*
>
> *Many Brisbane businesses will now have to pay employees for this day where no work will be performed, despite being located well outside the CBD or South Bank.*
>
> *Prevents trade between Brisbane, the rest of Queensland and other states and territories.*[214]

In its submission to the Committee, the CCIQ argued:

> *CCIQ believes a public holiday would negatively impact on Brisbane businesses through restricting their freedom of choice to trade and, for those businesses that are able to trade, their viability as a result of having to pay penalty rates. Brisbane's businesses are not supportive of being required to pay penalty rates for a public holiday that has been declared primarily for a security operation restricted to South Brisbane.*
>
> *Whether directly affected by the G20 summit or not, businesses have expressed strong opposition to the newly created public holiday.*[215]

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213 Letter from the Office of the Minister for Police and Community Safety, 5 September 2013, Attachment, page 2.

214 http://www.cciq.com.au/news/g20-summit-public-holiday-creates-headache-for-brisbane-business/, accessed September 2013.

To support their contention, CCIQ argued the impacts to businesses would be fourfold:

1. *Businesses outside security zones (and unaffected by G20 events) will have to pay penalty rates if they choose to trade;*
2. *Businesses within security zones will have to pay penalty rates which may be counter-productive on a trading Friday which is usually a more profitable day for trade;*
3. *Businesses within security zones may elect not to trade with the impost of penalty rates;*
4. *Businesses outside the Brisbane local government areas may be affected where they rely on interaction with businesses in the Brisbane local government area.*[216]

Both in their submission to the Committee and at the public briefing, the CCIQ put forward two alternatives to counter the negative effects of the public holiday:

1. *Negate the public holiday altogether, or, rely on provisions set out in the Fair Work Act 2009 that enable businesses to instruct their workforce to take leave due to operational reasons; or*
2. *Restrict the public holiday to businesses solely operating within security areas so that businesses not affected by G20 events can trade without restriction.*[217]

In a supplementary submission to the Committee, the CCIQ noted that a stand-alone public holiday was not created for the 2011 CHOGM meeting held in Perth. Instead, the Queens's Birthday public holiday was changed to coincide with the event to minimise disruption to businesses.

The CCIQ argued if the public holiday catchment of the Brisbane local government area cannot be reduced to the security zone, a similar approach could be considered in Brisbane.[218]

At the public briefing, CCIQ highlighted:

> *… there are 36,456 businesses within the Brisbane local government area but outside the cordoned security zone, and there will be serious implications for them as a result of this bill. These are businesses that are in no way directly affected by the security zoning, yet they will have to pay penalty rates or close.*
>
> *… we should not make the decision for them and in turn impart a significant impost on them by reducing a profitable day of trade. We are talking about November; we are talking about Friday. Friday is the most profitable day in terms of business trade, and November is ramping up to the Christmas period. A public holiday on 14 November 2014 has serious implications for their profitability.*[219]

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[215] Chamber of Commerce and Industry Queensland, Submission No. 1, page 1.

[216] Chamber of Commerce and Industry Queensland, Submission No. 1, pages 2-3.

[217] Chamber of Commerce and Industry Queensland, Submission No. 1, page 3.

[218] Chamber of Commerce and Industry Queensland, Submission No. 1 (supplementary), page 1.

[219] *Transcript of Proceedings (Hansard)*, Public hearing, Legal Affairs and Community Safety Committee, 26 September 2013, page 5.

In response to CCIQ's argument that the public holiday be reconsidered, the QPS considered the public holiday was essential for the safe and effective management of the G20 meetings in Brisbane. The QPS set out the benefits of declaring a public holiday for G20 security arrangements to include:

- *A reduction in traffic on major arterial roads that may be used as motorcade routes;*
- *The impost caused to commuter traffic through traffic diversions, closures and rerouting is lessened through a public holiday;*
- *Installation of protective infrastructure (e.g. fencing, blast mitigation barriers where required) will be easier if traffic is reduced;*
- *The risk to police and others working on the roads managing the remaining traffic and other security works will be reduced if traffic is minimised;*
- *The ability of emergency services to provide a timely response to emergencies and incidents in the CBD environs is enhanced through less traffic congestion;*
- *Reductions in pedestrians and workers in the CBD will reduce the risks of persons incidentally becoming involved in violent protests should they occur as they have in other countries; and*
- *Reductions in the number of business, schools and Government buildings that are open reduces the likelihood of 'occupations' where protestors trespass and unlawfully occupy buildings. These 'occupations' have been the focus of violence and damage here and in other countries.*[220]

In response to CCIQ's argument that the public holiday be restricted to businesses with the Brisbane Central declared area only, the QPS stated:

- *the public holiday is not limited to businesses and would also affect residents for example, workers who live and work outside the Brisbane Central declared area may be required to travel through the Brisbane Central declared area to access their workplace;*
- *It fails to take into account the public holiday aims to reduce general traffic congestion in the wider Brisbane area, including to allow for motorcades to and from the Brisbane Airport; and*
- *It has the potential to more greatly impact businesses within the declared area as other nearby businesses outside the declared area would continue to trade as normal.*[221]

Committee Comment

The Committee has given this aspect of the Bill careful consideration.

The concerns of the CCIQ that the public holiday on 14 November 2014, will greatly impact businesses in the Brisbane City local government area are noted, however the Committee considers the issue was best summed up by Deputy Commissioner Barnett at the public briefing:

> *Whilst we understand and regret any financial impediment that might be caused to any business either around the venue or nearby, wherever there is a tension between that sort of an issue and our responsibility to provide a safe and secure environment, in my*

[220] Letter from the Minister for Police and Community Safety, 1 October 2013, Attachment, pages 2-3.

[221] Letter from the Minister for Police and Community Safety, 1 October 2013, Attachment, pages 2-3.

> *view security has to prevail in those balance judgements. Whilst it is unfortunate if any individual business suffers any financial detriment, we felt it essential, for the safe and effective management of this event, to have a public holiday. It was recommended on that basis.*[222]

The Committee sympathises with businesses adversely affected however considers that in the interests of providing a safe and secure environment to the citizens of Brisbane, the declaration of a public holiday should remain in the Bill, as drafted. It is vitally important to the success of the G20 meetings that motorcade routes remain clear on that day and there is reduced chance for traffic incidents that could occur if the usual Friday traffic was to happen, further as set out by the QPS above, the declaration of the public holiday will substantially reduce the risk of incidents to damage to persons and property within the Brisbane CBD.

The Committee considers that some businesses may mitigate part of the burden of penalty rates by the impost of a surcharge to customer bills as is the ordinary case on a public holiday. Further, the Committee is cognisant that normal trading will apply to the public holiday, as opposed to the reduced trading hours that would normally apply on a public holiday. Accordingly, the Committee are of the view that this strikes some balance between the need to allow businesses to trade without restriction whilst also providing security for G20 delegates and the community.

The Committee considered recommending that rather than declare an additional public holiday for the calendar year 2014, that an existing holiday such as the Labour Day holiday in October be shifted, however given the shifting dates of public holidays over the past two years, this was not considered to be a preferred option.

Accordingly, the Committee is satisfied the public holiday for 14 November 2014 is essential to provide for the safety and security of the G20 event.

222 *Transcript of Proceedings (Hansard)*, Public hearing, Legal Affairs and Community Safety Committee, 13 September 2013, page 11.

3. Fundamental legislative principles

Section 4 of the Legislative Standards Act 1992 states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'.

The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

The Committee has examined the application of the fundamental legislative principles to the Bill. In reviewing the Bill, the Committee has recognised that in order to achieve the Bill's objectives, in particular, protecting the safety or security of persons attending the G20 meeting, it has been necessary to impinge upon some fundamental rights and liberties.

The Explanatory Notes tabled by the Minister identified a number of FLP issues and provided detailed responses to the issues raised. Nevertheless, it is incumbent on the Committee to bring the following matters to the attention of the House. The Committee does not consider that any identified FLP issues warrant amendment to the Bill other than those identified earlier in the report.

The Committee is satisfied, for the following reasons, the proposals contained in the Bill are proportionate and appropriate.

3.1 Rights and liberties of individuals

Section 4(2)(a) of the *Legislative Standards Act 1992* requires that legislation has sufficient regard to the rights and liberties of individuals. A number of proposed amendments contained in the Bill will impact on the rights and liberties of individuals.

Searches of a person without warrant

The Police Act, chapter 2 part 2 allows police to search persons, vehicles and places without a warrant only where an officer has a reasonable suspicion that certain prescribed circumstances exist.

By contrast, as set out in the instances in Part 2 of the Report, the Bill gives police the right to conduct a variety of searches without requiring a warrant or a reasonable suspicion in regards to offending behavior.

The Explanatory Notes are, for the most part silent as to why the threshold test of 'reasonable suspicion' for the conducting of searches is omitted however, at page 5 of the notes they do however offer the following justification for the lack of statutory safeguards applying to 'basic searches':

> *Basic searches are nonintrusive and do not adversely affect the dignity of a person. They are necessary to ensure that prohibited items are not unlawfully possessed within security areas where they could be used to harm a G20 delegate or a spectator at a G20 event. Due to the large number of persons who could be subject to a basic search when entering a particular area, the imposition of safeguards to non-intrusive searches would create unnecessary delays in the movement of these persons.*

Committee Comment

The Committee has gone into great detail with respect to searches of the person and has addressed the rationale for not requiring the 'reasonable suspicion' threshold test to apply for searches in part 2.6 of the report.

The Committee is satisfied the searches which may occur without a warrant or applying any 'reasonable suspicion' threshold, whilst impacting upon individuals' right and liberties, are reasonable having regard to the limited areas in which they will be conducted and may only occur during the limited period of the G20 meetings. The Committee is satisfied this is necessary to ensure the smooth running of G20 meetings.

Disclosure of personal details by a person

Under clauses 37 and 38, a person may be required to disclose personal details as a condition of entry to a security area or if a person is in a security area. Failure to comply with the requirement, without lawful excuse, is an offence and may result in the person's exclusion from the area. The requirement may be regarded as significantly impacting on a person's privacy.

Committee Comment

Again, the provision only applies only to the specified security areas and will be in operation for a limited period and is restricted to G20 purposes. The Committee notes the implications of clauses 37 and 38 but regards them as appropriate in the circumstances.

Disclosure of a person's personal details by the Commissioner

Under clause 86, the Commissioner may disclose any information in the possession of the police service to various State, Commonwealth and foreign bodies if the disclosure relates to the safety or security of the G20 meeting. The information may include private information about an individual such as the person's criminal history.

Committee Comment

The Committee notes that the disclosure of information under Clause 86 must be for a purpose relating to the safety and security of the G20 meeting. The disclosure can only be made to –

- an agency of the State;
- the Commonwealth G20 Taskforce;
- an agency of the Commonwealth, another State or a foreign government; or
- the police service or police force of the Commonwealth, another State or a foreign government.

Given the above, the Committee is satisfied that there is little scope for the disclosure powers to be used inappropriately, and to therefore adversely impact upon the rights and liberties of individuals.

Presumption against bail

Clause 82 provides for a presumption against bail for a limited number of offences (basically involving violence) if committed during the G20 period in a security area or at any G20 meeting. The clause places the onus on the accused to show cause why detention in custody is not justified. The presumption effectively allows for the detention of a person who has not yet been proven guilty of an offence.

The statutory presumption in favour of bail arises from the common law principle that a person is innocent until proven guilty and that their free movement should not be impeded by arrest and detention without good cause.

Proposed section 82(2) of the Bill specifically excludes the statutory presumption in favour of bail contained in sections 7 and 9 of the Bail Act, during the G20 period[223], providing that '*Despite the Bail Act 1980, sections 7 and 9, a court or police officer authorised to grant bail must refuse to grant bail unless the defendant shows cause why the defendant's detention in custody is not justified*'.

That statutory presumption against bail applies for an offence listed in section 82(1) alleged to have been committed in a security area, or at any G20 meeting, that involves:

- an assault of a police officer, an appointed person (acting in that capacity) or a G20 participant;
- throwing, propelling or discharging a missile or a substance at a police officer, appointed person or G20 participant;
- damage or destruction to property, if the offence relates to any part of the G20 meeting; or
- disrupting or attempting to disrupt any part of the G20 meeting.

The Explanatory Notes state (at page 4) in respect of this presumption against bail, that:

> *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. Additionally, if the person is released on bail they will be required to enter an undertaking not to attempt to enter a security area or commit another offence against the Bill.*

Proposed section 82(3) provides that all other provisions of the Bail Act will apply to the offence. Proposed section 82(4) makes it a condition for the release of the defendant on bail that the defendant not enter, attempt to enter or approach any security area, and not commit another offence against this [G20] Act.

Committee Comment

The Committee notes that the presumption against bail relates only to offences where an element of violence such as assault or damage to property is involved, or the offence results from a person's attempts to disrupt a G20 event.

Whilst noting that Clause 82 contradicts the statutory presumption in favour of bail, the Committee recognises, on balance, it is appropriate to ensure the safety and security of G20 delegates and members of the public against needless violence and to prevent offenders from re-offending during the course of the G20 meetings.

Natural justice

Section 4(3)(b) of the *Legislative Standards Act 1992,* relates to whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, among other things, the legislation is consistent with the principles of natural justice.

The Committee notes that several clauses of the Bill potentially detract from natural justice protections.

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223 Proposed section 82(6) provides that the subsection 82(2) presumption against bail applies only during the G20 period and, when the presumption against bail ends, the defendant may apply or reapply for bail.

Prohibited persons list

Clause 50 provides for a prohibited persons list. Proposed section 50 will authorise the Police Commissioner to compile a list of persons who should not be permitted entry into any security area (the prohibited persons list) (section 50(1)). Section 50(2) will allow the Commissioner to place a person's name on that list if the Commissioner is reasonably satisfied the person may:

- pose a serious threat to the safety or security of persons or property in a security area;
- by their actions in opposing any part of the G20 meeting, cause injury to persons or damage to property outside a security area; or
- disrupt any part of the G20 meeting.

The Bill is silent as to any further criteria to be used by the Commissioner in making the decision that someone poses a sufficient threat to warrant their inclusion on the prohibited persons' list.

Where a person is personally served with notice that they have been put on a prohibited persons' list, they may dispute that inclusion by making a written submission to the Commissioner (section 51(1)(c)).

The Bill is not clear as to whether reasons are required to be given at that time. However, if after considering a submission the Commissioner decides to retain the person's name on the prohibited persons' list,[224] the Commissioner must give the person written notice of that decision and the reasons for it, unless the Commissioner is reasonably satisfied that the giving of reasons/other information about the decision to the person may be against Australia's national security interests, may damage international relations, may be prohibited at law, or may jeopardise the safety of an informant.

The only avenue available to a person seeking to challenge their inclusion on the prohibited person's list would be by way of judicial review.

<u>Committee Comment</u>

The Committee recognises that to achieve the desired objectives of the Bill, there is a requirement to limit the application of natural justice in relation to the process for placing a person on the prohibited person's list.

The Committee has however made recommendations to improve this process. The Committee is satisfied however that clause 51(4)[225] outlines a number of undesirable scenarios which could arise relating to the provision of reasons to prohibited persons. Providing reasons in the situations outlined would make the process unworkable as it would disclose highly protected information to prohibited persons - potentially a breach of security in itself.

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[224] If the Commissioner decides to remove a person's name from the prohibited persons' list the Commissioner must give written notice to any person or agency to whom the list was circulated and if a notice was publicly published under section 52(2), must publicly publish a notice about the removal (see section 52(6)).

[225] 51(4) Despite subsection (3) and any rule of natural justice to the contrary, the Commissioner need not give reasons for the Commissioner's decision to retain a person's name on the prohibited persons list (or for placing the name on the list under section 50) if the Commissioner is reasonably satisfied disclosure to the person of any information in relation to the decision—
(a) may be against Australia's national security interests; or
(b) could damage international relations between Australia and another nation; or
(c) may be prohibited by a law of the Commonwealth or a State; or
(d) may place the safety of an informant in jeopardy.

Compulsory acquisition of property

Under section 4(3)(i) *Legislative Standards Act 1992,* the issue arises whether the Bill provides for the compulsory acquisition of property only with fair compensation.

Forfeiture of property

Proposed section 44 will authorise a police officer or person acting under a police direction to seize and remove an obstruction object[226] (44(1)) and to use force to cut, sever, detach or break any thing securing the object (44(2)). The obstruction object is then forfeited to the State (44(3)). Examples listed in section 44 include bicycles, cars and trucks left unattended and causing an obstruction, and for suspicious packages left in a motorcade area.

Proposed section 60 will also permit a police officer to seize a prohibited item if the officer reasonably suspects the item is left unattended in a security area or is in the possession of a person without lawful excuse in a security area (60(1)). Proposed section 60(2) will allow an appointed person to seize a prohibited item they reasonably suspect has been left unattended in a restricted area or motorcade area or that they reasonably suspect is unlawfully in the possession of a person entering or in a restricted or motorcade area. The appointed person must, as soon as reasonably practicable, deliver the seized prohibited item to a police officer.

Proposed section 60(3) will allow a police officer during the G20 period to require a person to surrender possession of a prohibited item until the end of 17 November 2014 if the officer reasonably suspects[227] the person could use the item to endanger the safety of a person associated with any part of the G20 meeting, or disrupt any part of the G20 meeting. If the person fails to surrender the prohibited item upon request, the officer may seize the item (section 60(5)).

Proposed section 61(1) stipulates that an item surrendered by a person under section 60(4) must be returned to them as soon as reasonably practicable after the end of 17 November 2014, unless it is unlawful for the person to possess the item, in which case it cannot be returned and is forfeited to the State under section 61(2)(b). Prohibited items seized under sections 60(1)[228], 60(2)[229] and 60(5)[230] are also forfeited to the State.

Committee Comment

Given the level of security that needs to be maintained to ensure the safety of delegates during the course of G20 meetings, it is not considered that the relevant provisions place unrealistic impositions on people found with obstruction objects or prohibited items.

The Committee notes the relevant provisions of the Police Act – dealing with things in the possession of the police[231] will apply to items seized or forfeited to the State under the Bill.

The Committee considers it is appropriate for these provisions to apply to property which comes into the possession of the QPS during the G20 meetings and has no ongoing concerns in relation to the treatment of property under the Bill.

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226 A thing in, or in the vicinity of, a security area or any other area, in a way intended or likely to impede passage to or through the security area, seriously disrupt traffic flow or impede a motorcade.

227 The example given in the section is of an officer requiring a person with a history of acts of violence to surrender a longbow in the person's possession.

228 Items in a security area left unattended or unlawfully in a person's possession.

229 Items left unattended in a restricted or motorcade area or unlawfully in a person's possession in a restricted or motorcade area.

230 Items seized after a failure to surrender them on request

231 Police *Powers and Responsibilities Act 2000*, chapter 21, part 3.

Onus of Proof

Generally, legislation should not reverse the onus of proof in criminal proceedings without adequate justification (*Legislative Standards Act 1992,* section 4(3)(d)).

The former Scrutiny of Legislation Committee had noted that reverse onus provisions are a natural extension of the basic common law principle that the burden of proving or negativing a state of affairs should rest on the person who has superior or peculiar knowledge of the essential facts.[232] Justification for the reversal is therefore sometimes found in situations where the matter the defendant is being asked to prove is peculiarly within the defendant's knowledge and would be extremely difficult, or very expensive, for the State to prove.[233]

Prohibited Items

Proposed clause 59 declares each item mentioned in Schedule 6 to be a prohibited item, with the extensive list of prohibited items ranging from typical weapons to what could be considered benign household objects but that are capable of being used as a projectile or otherwise be used to commit an offence under the Bill. Proposed section 60 will allow seizure of a prohibited item left unattended in a security area or carried by a person without lawful excuse in a security area.

Possession of a prohibited item in a security area without lawful excuse - attracts a maximum penalty of 50 penalty units ($5,500) under clause 63(1).

As the security areas include primarily inner urban residential and commercial areas, it is entirely plausible that a person who lives or works within a security area would be in possession of a prohibited item – and therefore be at first glance in breach of section 63(1) and potentially subject to prosecution despite their possession of the prohibited item being innocent.

The person will not be in breach of section 63 if they can establish they have a lawful excuse for possessing the prohibited item in a security area.

Clause 63(3) provides examples of a lawful excuse for the purposes of the offences in sections 63(1)-(3) (such as a child playing with a remote controlled toy car in the yard of their home in a security area) and examples of 'absence of a lawful excuse' for other behaviours (such as a person discharging a blood coloured liquid from a pressurized water pistol into a restricted area). Clause 63(4) reverses the onus of proof by stipulating that *the onus of proving a lawful excuse under subsections (1)-(3) is on the person claiming the lawful excuse*.

Other provisions

Proposed section 67 does so by making it an offence attracting a maximum penalty of 100 penalty units ($11,000) to light a fire in a security area without lawful excuse, the onus of proving which is on the person. The section gives the example of a chef who lights a gas barbecue at a restaurant in a declared area as having a lawful excuse.

Clause 69 makes it an offence punishable by a maximum penalty of 50 penalty units ($5,500) to, without lawful excuse, fail to comply with a direction given by a police officer under the Bill. The clause effectively reverses the onus of proof by providing that, in a proceeding for an offence against clause 69, a direction given to a person or a group of persons is taken to have been heard and understood by the person or group, unless the contrary is proved.

232 *Alert Digest* No. 6 of 2002, pages 21-22.

233 *Alert Digest* No. 3 of 2005, pages 6–7; *Alert Digest* No. 1 of 2005, page 10 and 14; *Alert Digest* No. 7 of 2004, pages 7-8; *Alert Digest* No. 7 of 2003, pages 44-45; *Alert Digest* No. 6 of 2002, pages 21-22; *Alert Digest* No. 2 of 1997, page 11.

Clause 94 affords special justification to various persons to be in a restricted area or motorcade area where their official duties require them to be in the area (e.g. police officer on duty in the area), where they have official approval to be in the area, or where they have to be in, or pass through, the area for a work-related purpose and hold a Commonwealth accreditation or access approval authorising their access to the area for that purpose.

Special justification is also afforded to a person who is resident in premises in the area and holds a Commonwealth accreditation or access approval authorising their access to the premises. Section 94(2) will place the onus of proving special justification on the person claiming it.

Committee Comment

As outlined in Part 2 of the report, the Committee is satisfied that the reversal of the onus of proof is appropriate in the context of the provisions to which it applies.

Administrative Power

Section 4(3)(a) of the *Legislative Standards Act 1992,* relates to whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, among other things, the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

Entry to premises

Section 4(3)(e) of the *Legislative Standards Act 1992,* relates to whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, among other things, the legislation confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.

Search without warrant

Provisions of the Bill will (if passed) give police the right to enter premises and/or search property without requiring that they hold a warrant[234] or that they have a reasonable suspicion in regards to offending behaviour, specifically:

- police may stop and search a vehicle entering or in a restricted or motorcade area (section 31(1));
- police may enter and search premises in a restricted area without a warrant (excluding a part of the premises used for residential purposes other than under specified circumstances) (sections 33(1)-(3)).[235]

Clause 32(1) will allow a vehicle search of a vehicle entering or in a declared area without a warrant, but requires that the police officer conducting the search reasonably suspects the vehicle may contain a prohibited item.

[234] It should be noted that, typically, searches of the person are conducted under authority of a statutory provision, rather than under authority of a search warrant (which generally applies more to searches of property such as premises and vehicles).

[235] The officer is only authorised to enter a part used for residential purposes with the consent of the occupier of that part, under authority of a search warrant or law, or if the officer reasonably suspects that an offence may be committed within or from the premises that will endanger the safety of a person (section 33).

Seizure without a warrant

Proposed section 44 will allow a police officer or person acting under police direction to use force (to unsecure it), seize and remove an obstruction object, which is then forfeited to the State. An obstruction object is defined to mean a thing in, or in the vicinity of, a security area or any other area, in a way intended or likely to impede passage to or through the security area, seriously disrupt traffic flow or impede a motorcade.

Proposed section 60 will also permit a police officer to seize a prohibited item if the officer reasonably suspects the item is left unattended in a security area or is possessed by a person without lawful excuse in a security area (60(1)). Proposed section 60(2) will allow an appointed person to seize a prohibited item they reasonably suspect has been left unattended in a restricted area or motorcade area or is unlawfully in the possession of a person entering or in a restricted or motorcade area. The appointed person must, as soon as reasonably practicable, deliver the seized prohibited item to a police officer.

A police officer may also seize a prohibited item (section 60(5)) if the person with possession of it fails to surrender the item to the officer upon request under subsection (3).

Committee Comment

The Committee accepts the provisions are necessary to ensure the safety and security of delegates attending the G20 meeting noting the provisions will have limited application to the relevant security areas for the short duration of the G20 meetings.

Self-incrimination

Section 4(3)(f) of the *Legislative Standards Act 1992,* relates to whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, among other things, the legislation provides appropriate protection against self-incrimination.

Power to require reason for entry to security area

Although failure to comply with a requirement under clause 36 to state a person's reason for wanting to enter a security area, or for being in a security area, is not an offence (it may result in exclusion from the area if a lawful reason is not given), it may be perceived to be a denial of the protection against self-incrimination.

Committee Comment

The Committee is of the view that given the level of security that must be maintained during the G20 meeting, clause 36 is entirely appropriate. It is integral to security that persons seeking to gain entry to security areas volunteer their reason for wanting to do so where required, without exception.

Immunity from proceedings

Section 4(3)(h) of the *Legislative Standards Act 1992,* relates to whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, among other things, the legislation does not confer immunity from proceeding or prosecution without adequate justification.

Clause 35

Proposed clause 35 confers immunity from civil liability on the detection dog handler and the State in relation to the use of a detection dog under the Bill. The incorporation of this immunity means that a dog handler will not incur civil liability for an act done, or omission made, honestly and without negligence under the section.

The former Scrutiny of Legislation Committee stated in relation to section 38 that, given the nature of the drug detection activities authorised under legislation to be carried out by drug detection dogs, the immunities granted to the dogs' handlers and the State were generally appropriate: Alert Digest 2005, No. 11, page 8, paragraphs 13–20.

Committee Comment

The Committee notes the former Scrutiny of Legislation Committee's advice and regards the immunity granted pursuant to clause 35 as appropriate and necessary to ensure that dog handlers are able to perform their duties during G20 without fear of legal repercussions.

Clause 76

Clause 76 exempts motorcade drivers from particular offence provisions of the *Transport Operations (Road Use Management) Act 1995*.

Committee Comment

The clause allows the driver of a vehicle in a motorcade, whilst under police escort, to disobey the provisions of the *Transport Operation (Road Use Management) Act 1995* (TORUM) other than the drug or drink driving provisions.

This exemption is obviously necessary for security reasons and to allow the unimpeded traffic of motorcades. The Committee notes that the roads upon which a motorcade travels will be closed to general traffic movement.

Clause 77

Clause 77 grants immunity to a person engaged by the State who complies with a police officer's direction to disobey particular offence provisions of that Act.

Committee Comment

The Committee notes that this immunity applies only in an emergency situation, to enable the rapid deployment of equipment or personnel to a particular location. As such the provision is entirely appropriate.

3.2 Explanatory Notes

Part 4 of the *Legislative Standards Act 1992* relates to Explanatory Notes. It requires that an explanatory note be circulated when a bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory Notes were tabled with the introduction of the Bill. The notes were comprehensive and contained the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

Appendix A – List of Submissions

Sub #	Submitter
001	Chamber of Commerce and Industry Queensland
002	Brisbane City Council
003	Queensland Law Society
004	Australian Lawyers for Human Rights
005	Queensland Council for Civil Liberties
006	Crime and Misconduct Commission
007	Caxton Legal Centre Inc.
008	Human Rights Law Centre