LEGAL AFFAIRS AND COMMUNITY SAFETY SUB-COMMITTEE

Members present:

Mr IM Berry MP (Chair)
Miss VM Barton MP
Mr SK Choat MP
Mr AS Dillaway MP

Staff present:

Mr B Hastie (Research Director)
Ms K Christensen (Principal Research Officer)

PUBLIC HEARING—G20 (SAFETY AND SECURITY) BILL 2013

TRANSCRIPT OF PROCEEDINGS

THURSDAY, 26 SEPTEMBER 2013

Brisbane

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Committee met at 11.08 am

CHAIR: Good morning. I now declare the second part of today's hearings open where we will be hearing public submissions on the G20 (Safety and Security) Bill 2013. I might say the police minister is keeping us very busy.

On 20 August 2013, the Minister for Police and Community Safety introduced the bill into parliament. The bill was then referred to this committee for examination and report to the House by 22 October 2013. The committee has advised the public of its examination of the bill on the committee's website and by writing directly to a number of individuals and organisations. I wish to stress that the committee is undertaking its examination process on behalf of the parliament and has, as yet, made no recommendations nor put forward any proposals.

Today the committee will hear evidence on the bill from the following organisations: the Queensland Law Society, the Chamber of Commerce and Industry Queensland and the Queensland Council for Civil Liberties. I now welcome the representatives from the Queensland Law Society.

BRADFIELD, Ms Annette, President, Queensland Law Society

DUNN, Mr Matthew, Principal Policy Solicitor, Queensland Law Society

SHIELDS, Mr Peter, Member, Criminal Law Committee, Queensland Law Society

CHAIR: Good morning and thank you for coming along today. I welcome Ms Annette Bradfield, the current president; Mr Matt Dunn; and Mr Peter Shields. Can I begin by asking if you object to being filmed or recorded by Hansard and the media, and that you confirm that you have read the guide 'Appearing as a Witness'?

Ms Bradfield: Yes.

CHAIR: Can you please introduce yourselves, speaking clearly for Hansard? Do you wish to make an opening statement?

Ms Bradfield: Thank you, Chair. We do wish to make an opening statement. Thank you for inviting the society to speak with you today about the bill. My name is Annette Bradfield. I am the President of the Queensland Law Society this year. Appearing with me is Mr Peter Shields, who is a member of the society's Criminal Law Committee. He is an accredited specialist in criminal law and Principal of Peter Shields Lawyers. We also have Mr Matt Dunn, who is the Principal Policy Solicitor at the Queensland Law Society.

To set the scene, the society's key role is to provide leadership to the Queensland legal profession through upholding the rule of law for the protection of the community. This is done through our various policy committees to provide expert advice and guidance to develop policy positions on areas of legal reform. It is in this capacity that we highlight issues to the government about the operation of the rule of law when considering proposed legislative change.

So to begin with the society welcomes the G20 forum being held in Queensland because it will have a positive effect on the economy here. It will have a positive effect on business and industry in our communities. We acknowledge that there will be a heightened emphasis on security and safety, and that is expected with any large international conference such as the G20.

Certainly it is not the case that the society takes security and public safety issues lightly. However, we are concerned about a few aspects of the bill when considering the ordinary principles of criminal justice. We would like to highlight those issues today and to provide recommendations at the end of our statement as to how those concerns could be alleviated. So I now pass to my colleague Peter Shields, who will briefly highlight what those issues are.

Mr Shields: I might commence by letting you know what our recommendations are. There are two parts. The first is the presumption against bail for certain offences under section 82 of the proposed bill, and our recommendation is that that should be removed. The second is the reversal

of the onus of proof, under section 63(4) of the bill. I will deal with them in a sequential way, as you would expect the police would have to deal with them if issues arise where they need to use these powers.

The society does not support a reversal of the onus of proof in criminal law legislation. It has been longstanding that when a person is charged with an offence the obligation is on the prosecution to prove the elements of the offence to the requisite standard. The particular offending section, section 63, reverses the onus of proof, so it is up to the person charged to demonstrate that they have the lawful excuse. Our submission is that this is a catch-all provision where the use of everyday items that are prohibited under the bill could have the unexpected effect of persons being arrested because they are unable or unwilling to explain and therefore satisfy that reversal of the onus. I will come back to that in a short period of time with some evidence that was previously given before this committee.

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.

One of the concerns the society has arises out of questions asked by the chair in the committee's deliberations on 13 September. The question on page 6 of the transcript was—

> It would not be impossible to suggest that people will be at the wrong place at the wrong time. How are you going to deal with that if their native language is not English?

Quite candidly, Assistant Commissioner Carroll advised the committee that they actually had that same issue in Russia. The chair asked the question—

> … I will be a little bit more pointed by asking whether there is any contemplated unit set up via radio or mobile phone to an interpreting service for an officer only conversing in English to talk to somebody conversing in Danish, for instance? In other words, can they ring somebody to get an interpreter?

The response was—

> Other than the normal provisions that we have now, nothing has been put in place at the moment, but it can be put in place for this event.

So where you have a catch-all offence where there is the reversal of the onus of proof—therefore the obligation being on the members of the community to provide that lawful excuse for the possession of what can sometimes be described as everyday articles that are prohibited under the bill—our submission is 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.

Sequentially, the next concern is the presumption against bail for certain offences. Section 82 of the bill provides that there is a presumption against bail. Section 82(1)(d) of the bill states that the presumption against bail will apply to those persons charged with an offence that involves 'disrupting or attempting to disrupt any part of the G20 meeting'. Again, I would with respect describe that as a catch-all offence. So the situation is that the bill provides a presumption against bail. The society's position is that that is unnecessary. We already have legislation in place, and what has been handed to the committee is section 16 of the Bail Act. Very quickly, if I can take you through that, you will see that under subsection (1)(a) there are three Roman numerals, and they are situations where any person who appears before the court and the magistrate, in this instance, decides that there is an unacceptable risk that that person may either fail to appear or commit an offence then that person can be remanded in custody and bail refused. So our submission is that we already have that provision in place. It is a section of legislation that has been well argued in our superior courts including the Court of Appeal. There is binding authority, and those circumstances which concern the police as referred to on 13 September are already well positioned to be dealt with by our courts.

I know my introduction is going a little bit longer than I thought. So I will quickly move to our concluding position, which is this: consistent with the concerns that have been raised are the logistical concerns—the Friday being a public holiday, courts are not normally open; the Saturday, the courts only normally have one magistrate; the Sunday, the courts are not normally open. For those who are not aware of the machinations of the criminal justice system in Queensland as far as the logistics are concerned, can I just explain this? Where the watch-house is the Magistrates Court is attached, and there are three courthouses there. So our submission would be that there must be

three magistrates sitting on each of those days, with funding being advanced to ensure that Legal Aid have a sufficient number of duty lawyers to ensure that persons who are arrested are processed as quickly as possible, and similarly in relation to the police. That is our opening position. No doubt there will be questions in relation to that.

CHAIR: No doubt. I call the member for Ipswich West.

Mr CHOAT: My question is to Mr Shields. I note in your address you mentioned the idea that you would like to see solicitors or lawyers on the ground. Could you please outline for me how many you are talking about, what sorts of hours you are looking at and what the costs would be that you are proposing?

Mr Shields: 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. The real concern that we can see with the legislation, particularly with the reversal of the onus of proof, is persons who get caught up in an event where English is not their first language may not understand that they have to explain to the police that they are in possession of eggs because they are on their way to South Bank for a breakfast or something. With a literal reading of the legislation, possession of eggs is an offence unless there is a lawful excuse. If English is your second language and you do not really understand the questions that are being asked, I can see in those circumstances, particularly having regard to the numbers that will be there, that persons could be charged when they should not be.

Mr CHOAT: I just need you to hone in on the question that I asked. So you are saying about half a dozen to a dozen lawyers. How much are we looking at in dollar terms?

Mr Shields: 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.

CHAIR: I have a question in relation to the bail issue. I will make a brief statement by saying that G20, on any stage, is a world forum. This legislation has been gathered from a number of sources, one of which is the Western Australian legislation as a result of the Commonwealth Heads of Government Meeting. When we talk about the issue of bail, you have to be in a security area and been alleged to have committed one of those offences for it to apply. The security area is really the germane element.

Mr Shields: That is so, but 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. These are summary offences.

CHAIR: I understand that bail extends for the duration of the meeting. Perhaps I might deal with it in two ways. Firstly, I would have thought that attempting or disrupting a meeting of world leaders would be tantamount to why bail ought to be refused in a security area. That is the first thing. I will get you to comment on that, although you may have already commented. Secondly, in relation to the lawyer position, if in fact you have a Magistrates Court being convened and the legislation says that, if you do those things in clause 82, you will not be granted bail, what is the benefit of having a lawyer there? Perhaps you might expand on that and flush out how they are going to assist.

Mr Shields: By having a lawyer there, you mean on the ground in situ?

CHAIR: Indeed. For instance, if it is alleged that a person in a security area is attempting to disrupt a meeting and that person will be apprehended, taken before a court and bail will not be granted for the duration of the meeting, I am wondering how you see a lawyer assisting in that process?

Mr Shields: The lawyer could assist on the ground if a person does have some excuse: they were waylaid, they did not understand it was a security area, they got caught up in the throng of a crowd that is moving into a security area and therefore had an excuse for being there, or in circumstances where if the lawyer is not on the ground and not able to provide that explanation to the police, then in the court being able to make a bail application. One can still make a bail application. Even though the legislation reverses the onus, there is still provision for a bail application. I do not understand that the legislation is doing away with a magistrate or, if the matter theoretically could be brought before the Supreme Court, denying the courts the ability to grant someone bail.

Mr CHOAT: In relation to point No. 5 in your submission, could you expand on your concern about prohibited persons and excluded persons. For example, could you inform the committee why given recent examples of violence at G20 events and other significant events, both in Australia and abroad, the Queensland Law Society would take issue with this proposed part in the bill?

Mr Shields: We take issue, and the issue is not one that we have orally argued here before the committee but one that we rely upon in our written submission, because the Australian justice system is based on a fundamental belief in the rules of law. That is, all people—Australians and non-Australians alike—are treated equally before the law and safeguards exist to ensure that people are not treated arbitrarily or unfairly by governments or officials. This is an international event. That quote is from the Department of Foreign Affairs and Trade website which deals with the rule of law. Our submission is concerned with the fundamental rule of law—that is, there must be safeguards in place to ensure there are not arbitrary limits on persons' abilities for free assembly and free speech. It is not a position that we wish to advance orally unless there is a specific question you have for us.

The Law Society understands the importance, not just for Queensland but for Australia and for the community, of hosting an event like G20. When the committee listened to Assistant Commissioner Carroll and Deputy Commissioner Barnett explain their experiences in Russia and how in Russia because the event was removed from the CBD it made security so much easier, we understand their concerns but we also have the concern that because it is in the CBD, particularly around the South Bank area, it is a high-density area. We will have people from overseas who are in Brisbane and there will be language difficulties. Our concern is for those persons who inadvertently for whatever reason find themselves in a position where through a lack of a capacity to speak English and explain themselves they may fall foul of the reversal of the onus of proof and the presumption against bail, and they are our two concerns.

CHAIR: Thank you very much for that. Our time for questions and responses has expired. I thank you for giving us your time here today. It really is appreciated, and you have given another perspective to the other side of the bill.

BEHRENS, Mr Nick, General Manager Advocacy, Chamber of Commerce and Industry Queensland

STUBBINGS, Ms Susan, Senior Employer Advisor, Chamber of Commerce and Industry Queensland

CHAIR: Thank you very much for attending the public hearing here today. I won't take formality too much to hand because we do not have a long period of time. Do you wish to make an opening statement?

Mr Behrens: Yes, I do. The chamber wishes to thank the committee for the opportunity to appear and speak further to our submission. Firstly, the chamber would like to articulate its strong support for Brisbane hosting the G20 summit. This is a fantastic opportunity for Brisbane. It will showcase our wonderful city to the world, and I think this opportunity should be strongly supported by all persons who reside here in Brisbane; however, there are some poor consequences of the bill in its current form for the Brisbane business community.

The primary issue that we have is the use of the Brisbane Local Government Area as the catchment for defining the public holiday. The Brisbane Local Government Area is a wide geographical expanse from Sandgate in the north to Logan in the south, from Wynnum Manly in the east to Kenmore Brookfield in the west. There are 36,456 employing 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.

To define what the penalty rate obligation is for these businesses should they wish to trade, it is double time and a half; that is, for every $1.00 in wages these businesses will now be required to pay $2.50.

In respect to those businesses within the cordoned security zone, it is our view that the vast majority will choose not to trade as a result of the significant reduction in patronage that they would reasonably expect; however, it will be a different equation for the hospitality sector. What we do know about the hospitality sector is that the imposition of penalty rates will have serious implications for their profitability. One of the case studies that the chamber has done is on restaurateurs in Hastings Street and Gympie Terrace up in Noosa. On Easter Sunday and Easter Monday, two-thirds of those restaurants chose not to trade because of the penalty rates and the double-time-and-a-half obligation that they had towards their employees. We are somewhat fearful that through the creation of a public holiday we may well find ourselves with a number of restaurants not opening. We fear for what impact that will have in terms of a visitor's experience; however, our biggest concern is the public holiday for the entire Brisbane Local Government Area which unnecessarily and adversely impacts on businesses unaffected by the heightened security in South Brisbane.

The chamber has put forward two solutions for the committee's consideration: firstly, that we pull back entirely from the creation of a public holiday and we rely on provisions within the Fair Work Act that enable businesses to instruct their workforce to take leave due to operational reasons. The second solution is that we restrict the holiday to the cordoned security zone and thus free up those 36,456 employing businesses who are not in that zone so that they will be able to go about their normal business and who are in no way really impacted or will benefit from the G20 summit being down in South Bank.

Miss BARTON: I just have a question about your submission with regard to the public holiday. Surely you would accept that given that the G20 is a one-off, there are certainly exigent circumstances. Particularly with regard to option 2 where you would submit that businesses outside of the security cordon should be able to operate normally and not be constrained by a public holiday, would you not accept that there are still going to be concerns in terms of movement and people being able to access work? I appreciate that for those 36,000 businesses it is not ideal that they have to have a public holiday on that day, but it is not something that is going to be recurring every year. I think given that we have the opportunity to host a number of world leaders, I wonder whether it is worth going down the path of having confusing boundaries that are not clear to everyone perhaps and whether or not it is worth, given the exigent circumstances, to just perhaps work within the bounds of the legislation.

Mr Behrens: Boundaries will always have threshold issues and wherever you create the boundary there will be some uncertainty associated with it, so put that to the side.

Businesses are strongly opposed to the creation of a public holiday because they essentially believe that this bill underestimates their operational capacity to deal with the implications of hosting G20. We should allow businesses to choose whether or not the operational implications of hosting G20 will have an impact on them. For example, if their workforce is not able to attend that workplace, then give business the choice of closing. We find that business is very good at adapting, and they should be able to choose for themselves whether or not it is worth their while to trade on this day, or whether or not the implications of hosting G20 are to the extent that it will materially impact on their business and they will chose to voluntarily close themselves. But 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.

CHAIR: You mentioned about business being adaptable and I do accept that, being in business myself. You do make those decisions—I won't say daily—but certainly weekly and monthly. As a result, it will be at the behest of every business owner to make the decision as to where they will be placed with an influx of 7,000 people plus. As opposed to the opposition closing, you will make a decision as to whether you open and you will make a decision as to whether you stay open. It seems to me that they are all decisions that will be made on a business-by-business basis. For instance, if you open and you do not have any customers, you will close. At the same time if your competitors have closed and you have an influx of patrons, then you will remain open. am I being too simplistic? We are talking about one day for a very important summit. am I being too simplistic?

Mr Behrens: Indeed, you are not; however, the one distortionary influence on this is that through the creation of a public holiday, it creates an obligation for that business to pay double time and a half. That seriously influences the equation of whether or not that trading day is profitable for that business.

It is unfortunate that this is a penalty rate issue, but it is created by the declaration of Friday the 14th being a statutory holiday. We have to look at what causes the issue, and that is the statutory holiday. We cannot deal with the penalty rates. It is under the Fair Work Act; it is outside of our immediate control. But it is really penalty rates that are the issue. Every $1.00 will now be $2.50.

CHAIR: I do understand, and I appreciate your alternatives. They certainly will have an impact on our consideration.

Mr DILLAWAY: I will just ask a very quick question. You cite the 36,000 businesses and, as you are acutely aware, we very much see those as being a very important part of getting this economy going. But those 36,000 businesses do not just operate within the four walls of where they are located. There is a significant impact of those businesses which are travelling, delivering and working through the city and South Bank region, so there will be an impact to a lot of those businesses that would normally go about their day-to-day operations outside the four walls of their office.

What do you see the impact on business would be if it was not a public holiday and they were confronted with issues such as security areas, motorcades and roads opening and closing? Would it not be better for them to take the opportunity not to be involved in those implications that are surrounding the G20 summit?

Mr Behrens: We recognise that if we were to discontinue the public holiday there would be a significant obligation on organisations like the chamber, Premier and Cabinet and many other stakeholders to educate and raise awareness of what these operational issues are going to be for those businesses. For some businesses, yes, they will chose to close and not operate, but others will choose to open. I think ultimately it is all about choice. I can see many businesses in your electorate that will want to be open and not have to pay penalty rates that do not have any overlap or interaction with South Bank and the cordoned security zone, and they should be afforded the opportunity to trade without having to pay penalty rates on that day.

I concede your point that there is going to be a lot of crossover into that cordoned security zone that businesses will have to be made aware of, but if you were to do a cost benefit analysis on providing the resourcing to bring businesses up to speed with the obligations that they have, it would be nowhere near the extent of what the cost is on business and the Brisbane business community of the imposition of penalty rates for that entire day.

As my colleague points out, under the Fair Work Act businesses have to be open for a minimum of two to four hours. A shift is two to four hours, so that is a minimum of two to four hours at double time and a half. It is an impost on business, and we think that through adaptation and

refining where that threshold is in terms of where the public holiday is declared, we can minimise the expense to the business community and showcase to the world that—unlike Perth and Sydney—we can actually hold a world event in our city and still be open for trade.

Mr DILLAWAY: Do you know through your affiliations with other chambers across those other states what impact it did have on business to have those public holidays deemed for CHOGM in Perth and APEC in Sydney?

Mr Behrens: That is a very good question, and I could undertake to talk to the Chamber of Commerce and Industry of Western Australia and the NSW Business Chamber to get their feedback on the implications. We have not done it to date, but we will happily do so.

Mr DILLAWAY: Are you aware of any other jurisdictions around the world that have undertaken a G20 or large events like a G20 that have had it in the CBD that have not declared a public holiday?

Mr Behrens: I am not aware.

CHAIR: When you mentioned about the Fair Work Act 2009, you mentioned that you need to be open two to four hours. I was not entirely sure as to what that meant. Does that mean that you have to be open for a minimum of two hours? If so, how does the four hours equate?

Ms Stubbings: Typically on public holidays employers will roster on the most flexible workers, which in most instances are casual employees, despite them carrying a loaded rate that again will be compounded by a penalty rate. In most modern awards and enterprise agreements, casuals must be rostered on for a minimum shift which can vary across award and industry. In this instance it may be two hours, but typically we find that most provisions provide for four hours. So when you call in a casual employee and you decide after two hours trade that it really is a ghost town, you are still responsible for the balance of that four hours in the pay packet.

CHAIR: We do not have any other questions. On behalf of myself and the committee, we certainly thank you, Mr Behrens and Ms Stubbings, for giving us your time today and your submission, which was very clear. You certainly have some persuasive arguments which we will consider in due course. Once again, thank you very much for coming along and giving us your participation in this public hearing. Thank you.

COPE, Mr Michael, Executive Member, Queensland Council for Civil Liberties

CHAIR: Michael, thank you again for coming along and giving us your input. We appreciate it very much. Would you like to make an opening statement, keeping in mind that we probably have about 20 minutes within which to ask you questions?

Mr Cope: Yes. On behalf of the council I thank the committee for the invitation to appear today. The council does not doubt the difficulties of policing in relation to the G20. Having read some of the reports coming out of the Toronto situation, it is quite clear that some people at these events have very sophisticated tactics. However, we are concerned that the legislation arbitrarily and unnecessarily restricts fundamental rights to freedom of speech and liberty in general. Our view is that the police have an obligation not only to protect life and property but also to facilitate the right of people to participate in protest. This is an event being attended by world leaders. They are not the kings of old. Some of them do not get the benefit of clear views being expressed by their citizens. People in Australia who have that right should be allowed to exercise it.

The onus, as always, in our view is on the state to demonstrate why powers curtailing people's liberty are necessary. We do not see that that has been demonstrated by reference to what happened in London or Toronto or anywhere else. What seems to have been demonstrated in London or Toronto, according to all of the reports, is a lack of training. In that regard, we welcome the comments of the deputy commissioner to this committee the other day that extensive training is being put in place. We trust that will extend to the wider Police Service. We note, for example, in relation to the Toronto reports and in relation to London that it was identified that police officers coming in from the rural and provincial areas were particularly inadequately trained. In relation to the particular provisions, I was going to say something about bail but I do not have anything to add to what the Law Society has said about bail.

We are concerned about the power to strip-search. In that regard, I note the comments of Deputy Commissioner Barnett at the bottom of page 2 where he says—

> 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.

If the police only intend to use these powers in those circumstances, it should be reflected in the legislation. The legislation does not say that and, if the police do not think they need those powers, then they should not be given those powers. We also have serious concerns about the prohibited list—the banned list. It is extraordinary that a person's reputation and liberty can be restricted on the basis of a decision of a member of the executive in which there is no proper right of review. That is totally inconsistent with any conception of the rule of law. Those are my opening remarks.

CHAIR: Thank you very much, Mr Cope. As you know, the G20 is a world summit and you indicated that you believe that Toronto and London are not benchmarks for the ramping up of legislation. Is it not the case though that it is these previous experiences that cause governments to put legislation in to anticipate concerns?

Mr Cope: The powers are justified on the basis, presumably, that they are necessary to stop what happened in Toronto or London. But in fact in Toronto the police had more powers. They were acting under a wartime statute that had not been used for 60 years. According to the systemic review report, they had the power to in effect remove anybody and to search anybody without any suspicion whatsoever, unlike this legislation. So they had extraordinary powers which did not stop this. The police already have in our view, having regard to the powers in relation to the breach of peace, common law traditional powers and the move-on power, more than sufficient powers. As I say, this analysis clearly says that the police in Toronto had no lack of power. In fact, they had extraordinary powers. The legislation is now being repealed, as I understand it. With regard to what happened in Toronto—and once again I acknowledge the comments of the police here in Queensland; they have learnt from it—no-one in Toronto was told that if they came within five metres of the perimeter barrier they were likely to be asked questions and searched. It was an extraordinary failure of organisation and of policing in Toronto, as all of the reports seemed to demonstrate. So, as I say, these powers are said to be required because of incidents overseas. But certainly in Toronto the police had more powers and it did not stop the incident. The real focus should be on the effective use of the powers the police already have and not introducing draconian legislation which attacks fundamental rights.

CHAIR: But, on your argument, we actually have less than draconian legislation if in fact they had almost absolute power to search whereas in this regime they actually have a degree of search—that is, exterior and strip searches et cetera are really down the track depending on the circumstances.

Mr Cope: It does not help to say that one piece of legislation is this evil and this piece of legislation is only that evil. It is still extraordinary powers that are given to people. But as I say in relation to the strip search, if, as the police have said, they do not intend to strip-search people unless they go through the other processes first, it should be in the bill. It should not be just left up to their discretion that police are able to conduct the most invasive search you could possibly imagine of somebody. Given the items on the prohibited list, how many of them are not going to be found by a metal detector or a pat-down search? It is an extraordinary power and it should be restricted to the circumstances in which the police say they intend to use it.

CHAIR: But following on from that though, you cannot be—and I mean this with the greatest of respect—so prescriptive to put legislation down so that a policeman has absolutely no discretion. Clearly the circumstances will warrant the extent, keeping in mind that this is not a secured area.

Mr Cope: Yes, I heard you say that before, but it is a secure area in which people live. It is all very well to declare something a secure area, but people have to go on living there. It is quite clear, once again in London and Toronto, that many people were detained who were just walking by. We place restrictions on the powers of police in all sorts of circumstances and I go back to the point: the deputy commissioner indicates that they do not want to use the powers, and why would you subject somebody to a strip search as the first option? That is just an extraordinary thing to say. So we restrict the discretion of police in all sorts of circumstances. In this one, given that the police say they do not need it, it just seems odd that it would not be acceptable to restrict their discretion in those circumstances.

Miss BARTON: Michael, I noticed that you said in your opening statement—and I am sorry if I am verballing you—that police have the responsibility to facilitate free speech.

Mr Cope: Yes.

Miss BARTON: I would also submit that police have the responsibility to make sure that the rest of the community is safe and is able to engage in their everyday activities in a safe way. I think certainly the QPS is very aware that things in London and Toronto were not handled in perhaps the best possible way and that they have learnt from that. I note that in recent times Terry O'Gorman has commented on the increased professionalism of the QPS and I just wonder why you have concerns about the QPS's ability to be able to use their discretion with regard to these particular measures. Certainly they are not measures that we are hoping will be there for the rest of time. These are temporary measures and the only measures that will continue are those that relate to any possible prosecution. I am sorry if I am misinterpreting what you are saying, but it seems to me as though you are expressing doubts about the capacity of the QPS to train their officers to be able to make a true assessment about what someone is attempting to do.

Mr Cope: All right. First of all, in my opening remarks I said that we acknowledge that one of the roles of the police is to protect life and property and in a general context their obligation is also to protect the right of freedom of speech. I also acknowledged quite clearly that it seems to us that the police in Queensland on the basis of their evidence to this committee are approaching this task in a very professional and proper fashion, and we are not disputing that at all. But one of the fundamental principles of the rule of law is that liberty should not depend on whether you have good men or women conducting it. It is the rule of law, not the rule of men, that we want. Therefore, people or police or anybody else should not be given powers unless they are absolutely needed and it is demonstrated that they need them. It appears from the evidence of the deputy commissioner that they do not need the power. It is extraordinary to strip-search someone if you do not first run the metal detector over them and pat them down. In what circumstance would that possibly be necessary? So we are just advocating the basic idea of the rule of law. Although people may be very well trained and the government may be run by saints, at the end of the day we should not depend on whether the government or the police are saints. We should depend on the system identifying quite clearly what their powers are and putting in processes which ensure that they are accountable for the use of their powers.

Miss BARTON: You said that in the public briefing that we received from the QPS at the end of the last sitting week that they did not feel that they would need to use some of these provisions. Certainly, I think we would all hope that they do not have to. But surely you would concede that it is important that they be there just in case. I would hate to think that we are leaving ourselves in a

position or that we would create a position where we have a gap and something suddenly happens. Because we have taken on board some of your comments and we have weakened some of the scope, we leave ourselves open to some potential disaster, for lack of a better word.

Mr Cope: Once again, I do not see the deputy commissioner saying that. Of course, you get to the point where we see these issues. We live in an open society. Living in an open society involves some level of risk. If you want to eliminate all the risk that things might go wrong, you create East Germany and have a Stasi. The power to strip-search somebody is extraordinary and it should not be open to the discretion of the police, particularly when they say, 'Well, we don't expect to do it.' It is just fundamentally wrong in terms of the way we normally approach the writing of legislation—or perhaps we used to. We increasingly seem to take the view, 'We'll just rely upon people having vague general discretions and it will be all right, because the government is full of good people.' It might be today, it might be tomorrow, but who knows what happens next year or next week. Although this legislation will have a sunset clause, that is the general point.

Our concern always is that when you give special powers like this, inevitably somewhere down the track somebody will say 'Oh, well, it was all right to give them these special powers in this circumstance. That is a precedent for giving them similar powers in other circumstances.' That happens all the time. It has happened with the terrorism legislation. The terrorism legislation is the main example, but wherever you first give somebody some powers it creates a precedent for it to be given somewhere else.

Miss BARTON: But surely special powers must be required in special circumstances. I cannot foresee how it would set the precedent that you are suggesting that it would. There is something very specific about the G20 and who that brings to our city and who that brings to that particular security cordon. Perhaps if we were to host CHOGM down the line, that would be an appropriate circumstance in which you would look at these special provisions again. But surely you would have to have faith in the fact that these special provisions would be brought back only where they were required and it was of a similar standard that needed to be met and you had a similar standard of people coming?

Mr Cope: I do not have that faith. The history of these things does not support that proposition that you are arguing. The history of these things, in fact, supports the opposite proposition.

Miss BARTON: But that is history in other jurisdictions, with all due respect.

Mr Cope: No, no, in this jurisdiction.

Miss BARTON: I do not accept the proposition that you are making that this sets an unreasonable precedent. I am not sure that I can see in your submissions that it is successfully argued. I had just wondered if you could expand on that, but I am acutely aware that we are probably running out of time.

Mr CHOAT: Mr Cope, the theme of your submission is largely about the right to protest. Can I say that my community respects that right—the right to peaceful protests. I would say to you that our community—my local community and the community of Queensland and perhaps beyond—would not like the opposite of a peaceful protest. So I will put to you: do you not see that, in putting these arrangements in place, what the government is doing is facilitating the ability for people to go about a peaceful protest? You state in your submission—

The fact that a protest is disruptive, inconvenient or noisy is not sufficient grounds...

and it goes on. I will put to you: why should one group have the right to disrupt and, therefore, impair the liberties and rights of others?

Mr Cope: In effect, liberties are always brushing up against one another. How else do you have a protest if it is not making a bit noise, if it is not disrupting a bit of traffic, if it is not a bit rowdy and out of place? That is the history of protests going back for centuries. On that view you would never have protests.

Mr CHOAT: I would disagree, actually.

Mr Cope: We make it clear that what we are talking about is a peaceful protest and that the approach is that those who are engaged in violence should be arrested and be removed. We have made that point repeatedly, except that if you stop people from protesting just because somebody is being inconvenienced, or somebody is being disrupted—that is an extremely broad term—then the right to protest becomes a pale shadow of what it should be. We did not get these democracies by sitting around and contemplating. The Chartists, the people in the English civil war—all of those

movements—did not get our democracies by sitting on their backsides and just wishing for it. They got out on the streets and they protested and they inconvenienced people and they disrupted people. That is just part of the process.

CHAIR: Indeed. You mentioned before in respect of the member for Broadwater's questions about there being precedents in Queensland. Are you able to provide those to us?

Mr Cope: I mentioned that one is the terrorism legislation. That has been taken and it has been moved into bikies, it has been moved into sex offenders. Another example would be the continual expansion of the use of wire taps when, of course, originally they told us that wire taps were only ever going to be used for murder and now there is a broad range of offences where they can be used. So those are classic examples of function creep and precedents being used to move things along to say, 'Well, it's okay over there. Now we're moving over there.' It happens all the time.

CHAIR: Certainly. As I said, democracy is dynamic. Nothing stays still.

Mr Cope: No.

CHAIR: You mentioned the English civil war. A lot of has happened since then. In relation to strip searches you stated—

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.

You also say—

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.

Clauses 23 and 24 of the bill provide that strip searches or specific searches may be carried out only in declared areas if—

The officer reasonably suspects the person may be in possession of a prohibited item without lawful excuse; and

Either—

(i) the officer reasonably suspects a frisk search of the person will not locate the prohibited item; or

(ii) a frisk search of the person has not located the prohibited item.

This would clearly rule out strip searches for all prohibited items such as light items and effectively limit it to those prohibitive items that could be concealed on a person's body. Is not that approach appropriate?

Mr Cope: Sorry, what are you quoting from?

CHAIR: I am just trying to limit what you said about strip searches. If you go to clause 24, it basically says—

A police officer may conduct a basic search of a person attempting to enter, about to enter, in or leaving a declared area.

It goes on to say—

A police officer may conduct a frisk search of a person attempting to enter, about to enter, in or leaving a declared area if the officer reasonably suspects the person—

(a) may be in possession of a prohibited item without lawful excuse; or

(b) is a prohibited person; or

(c) is an excluded person.

It goes on to say in clause 24(3) the conditions in relation to the officer suspecting a person having a prohibited item without lawful excuse.

Mr Cope: I am sorry, I walked out of the office without my copy.

CHAIR: You can have mine if you like.

Mr Cope: Sorry.

CHAIR: That is okay. What I am trying to say—

Mr Cope: I am reading the bill. That is relatively providing—

CHAIR: That is a tempered approach to a search. It is not out of the ordinary to have a reasonable suspicion. That is the criteria.

Mr Cope: Yes. In fact, that is an improvement on the situation in Toronto. We acknowledge that. Yes, but in our submission we recognise that there is a difference between a restricted area and a declared area. As I read it, restricted areas are the buildings in which it is being conducted. I

do not see that as being different from if you are going into the courthouse or something. What we are talking about is the searches in the declared area, which is the vast area in which people might, as Mr Shields pointed out, be walking home from the shop with some eggs. We accept that, of course, if you are going to have to enter the building in which Obama is staying or these people are in, that in itself requires a different level of search and that is reflected in the submission.

CHAIR: What I am really saying to you is that those are measured provisions. There is nothing really out of the ordinary in terms of the protection of people's rights. Effectively, there has to be a reasonable suspicion on the part of the police officer or it has to concern a person who is banned or excluded. I do not know how else you could frame the legislation to make it more fair.

Mr Cope: We have made our submission about that. There is a difference between those sorts of searches and stripping somebody. That is a much higher level of invasion of somebody's privacy than those other searches. We just simply say that it should be reflected in the legislation.

CHAIR: Okay. Mr Cope, thank you very much for giving us your time today. As usual, it is very instructive to have you here and we thank you for your participation. It is really appreciated. That brings a conclusion to the committee's questions. I would like to thank the officials of the Queensland Police Service, the chamber of commerce and also the Queensland Council for Civil Liberties for coming along. I now declare the committee's public briefing for the examination of the G20 (Safety and Security) Bill 2013 closed.

The committee adjourned at 12.12 pm