

Peaceful Assemblies Bill

Submission of Lawyers For Forests, Inc

1. **Lawyers For Forests Inc (“LFF”) opposes the Peaceful Assemblies Bill (“the Bill”) for reasons outlined in this submission.**
2. At common law, peaceful assembly is not unlawful and therefore can be said to be the subject of a common law right or freedom which is in the negative form. This common law principle has been recognised in cases such as *Beatty v Gillbanks* (1982) 9 QBD 308 at 313 per Field J and *Duncan v Jones* [1936] 1 KB 218 at 222 per Lord Hewart CJ. Such a common law right or freedom goes hand-in-hand with civil and political rights internationally recognised by the International Covenant on Civil and Political Rights (New York, 19 December 1966; Aust TS 1980 No 23).
3. Article 21 of the International Covenant on Civil and Political Rights (“the ICCPR”) provides as follows:

“The right of peaceful assembly shall be recognised. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”

4. Clause 1. Purposes

- 4.1. The Bill lists one of its main purposes as “to recognise the right to assemble peacefully.” However, the Bill places heavy restrictions on the right and, by way of example, allows for the dispersal of peaceful assemblies which are not riotous, but which *may* become riotous. Such a power is in total opposition to the right to peacefully assemble.

5. Clause 5. Right to Assemble Peacefully

- 5.1. The SARC review of the *Unlawful Assemblies and Processions Act 1958* in May 1999 recommended that the internationally recognised right to assemble peacefully in a public place be enshrined in legislation. The Bill purports to achieve this but instead places fundamental restrictions on a right which essentially already exists at common law and under international principles.
- 5.2. Clauses 5(1) and (2) purport to restate the right stated in Article 21 of the ICCPR. However, Clause 5(3) qualifies 5(2)(c), stating that a reference to the rights of other persons includes the rights of member of the public to enjoy the natural environment and the rights of persons to carry on business and other lawful activities. That is, the right to peaceful assembly is compromised where there is a perceived need to protect the rights to enjoy the natural environment and to carry on business. This qualification places a heavy restriction on the right to peacefully assemble and essentially favours the right to enjoy the natural environment and the right to carry on business over the right to peacefully assemble. Such a restriction on the right to peaceful assembly and the “favouring” of one right over another is fundamentally flawed and arguably in breach of the ICCPR.
- 5.3. It is recognised that legitimate, peaceful demonstrations and picket lines may cause effects to the carrying on of business and the utilisation of public spaces and amenities. However, the

prevention of such effects cannot properly be favoured over the right to peacefully demonstrate. Indeed, peaceful assemblies themselves will often be demonstrating a compromise of the rights of a group of individuals, or, in the case of peaceful assemblies at forest logging sites, will possibly be obstructing business activities on the basis that these are illegitimate or illegal forestry operations. The police already have powers in these situations to arrest any individuals involved in illegal violence or damage to property. This should remain the limit of their powers.

- 5.4. In reference to the Discussion point under clause 5, therefore, it is submitted that the rights are not properly balanced. The rights to peaceful public assembly should *at the very least* be given equal weight to the rights to enjoy the natural environment and to carry on daily business. The Bill does not achieve this.

6. Clause 6. Direction to Disperse Assembly

6.1. Clauses 6(1)(b)(ii) and 6(2)(b)(ii) confer, to the Chief Commissioner of Police and the Chief Magistrate respectively, the power to give a direction to disperse where they “reasonably believe the assembly may become a riotous assembly.”

- (a) A “riotous assembly” is defined in Clause 3 as “an assembly, whether stationary or moving, which is being carried on in a manner involving unlawful physical violence to persons or unlawful damage to property.”
- (b) The power to disperse therefore extends to dispersing an assembly which the Chief Commissioner or Chief Magistrate reasonably believes *may* become physically violent or *may* result in unlawful damage to property.
- (c) The ambit of this power is too wide since any peaceful assembly of persons in general protest may be seen by the Chief Commissioner or Chief Magistrate as one which they reasonably believe may become a riotous assembly. Most demonstrations and picket lines will fall within the definition of assemblies which “may” become riotous. This is because, by their very nature, they are in protest or demonstration of some action or event. However, many of these assemblies will remain peaceful from their outset and to their conclusion. The power therefore extends to the dispersal of totally peaceful assemblies, without the presence of violence or damage to property. If violence or damage to property does occur, police already have sufficient powers to arrest and maintain peace.
- (d) A power to disperse totally peaceful assemblies both impinges upon the common law right or freedom to form a peaceful assembly and seriously compromises the rights and freedoms enshrined in Article 21 of the International Covenant on Civil and Political Rights as referred to above.
- (e) Article 21 states that “no restrictions may be placed on the exercise of this right [of peaceful assembly] other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.” The power to disperse a peaceful assembly which the Chief Magistrate or Chief Commissioner reasonably believes *may* become a riotous assembly is an unwarranted restriction placed on the right to peaceful assembly.

- (f) The use of the word *may* in this context creates countless practical difficulties for those legitimately assembling in a peaceful manner. It would take only one single event, such as some isolated pushing and shoving (which will naturally occur in any large crowd of people) and a determination could be made that the assembly *may* become riotous and an order to disperse could be made under the Bill. This is totally in opposition to the right to peacefully assemble since no violence has taken place, the incident has occurred in a single isolated area and the incident will have ceased to occur after a matter of seconds or minutes. The assembly has therefore remained peaceful, but an order to disperse could be made.
- (g) The situation becomes more complicated when persons who are totally opposed to the peaceful assembly become the ones who turn the assembly into one that *may* become riotous. The Bill will allow those opposed to assemblies to merely attend and, for example, verbally abuse the assembly to get their desired effect of having the assembly dispersed. Their verbal abuse could easily be determined as a situation in which a totally legitimate peaceful assembly *may* become violent.
- (h) Furthermore, isolated violence among two or three people should not result in the dispersal of an otherwise peaceful assembly, but this is what the Bill contemplates since such an assembly could be deemed as “riotous” or as possibly becoming riotous. The police currently have powers to deal with individuals who are behaving illegally. This should not, however, impinge upon *the rights of the peaceful assembly as a whole to continue their peaceful assembly*. Once again, an individual in opposition to the assembly could initiate violence to result in the dispersal of the assembly because it is determined as being violent or it *may* become violent. The current police powers to arrest or remove such an individual are sufficient for the control of an otherwise peaceful assembly.

6.2. Clause 6(1)(b) of the Bill gives powers to the Chief Commissioner of Police to

“give a direction to disperse to that assembly if-

- (i) the assembly is a riotous assembly; or**
- (ii) the Chief Commissioner of Police reasonably believes that the assembly may become a riotous assembly”**

- (a) Clause 6(1)(b) confers a power upon the Chief Commissioner of Police which should not, in accordance with the Constitutional principle of the separation of powers of Government, be properly conferred to an office holder in the executive arm of Government.
- (b) The power to order the dispersal of an assembly has historically been a judicial power and, as such, has historically been conferred upon a Magistrate. Under the *Unlawful Assemblies and Processions Act 1958*, only a Magistrate had the power to disperse a “procession or meeting of persons”, either by reading “the riot act” to the procession aloud or by making an order which allowed another person to do so. No power exists under the *Unlawful Assemblies and Processions Act 1958* for a member of the executive branch of government to disperse a procession, meeting of persons or assembly. The power is a judicial power and should not properly be conferred upon a member of the executive arm of government.
- (c) If the number of persons given this power is an issue, the power to order a dispersal could be conferred upon Magistrates generally rather than simply the Chief Magistrate, but should not properly be conferred upon police officers of any rank.

Police officers of senior rank could verbalise the properly made order of a Magistrate for an assembly to disperse. However, it is strongly reiterated that it should not be legislated that dispersal may be ordered where the public protest is peaceful.

6.3. Clause 6(3) provides that:

“The Chief Commissioner of Police may, by instrument, delegate his or her powers and functions under this section to a member of the police force of the rank of senior sergeant or above the class of members of the police force of that rank or above.”

- (a) It is reiterated that the power to disperse a peaceful assembly is a power properly conferred upon the judicial arm of government and is a power which should not be conferred upon members of the executive arm of government such as police officers.
- (b) Officers of the rank senior sergeant or above should not be delegated the power to disperse assemblies. The power to disperse an assembly is a significant power and one which must be exercised with extreme caution. Improper exercise is likely to impinge upon common law rights and internationally recognised civil and political rights, with very limited avenues for recourse by those retrospectively judged to have been within their rights in assembling. By the point in time that it is concluded that persons dispersed were actually within their rights in peacefully assembling, the effect and/or meaning of the assembly will be compromised or lost. For this reason, the power to disperse assemblies should be held by few persons, being persons of senior office (and only persons within the judiciary).

7. Clause 7. How is a direction to disperse given?

- 7.1. This clause states that a person authorised to give a direction to disperse must give that direction “in a manner which is likely to be audible to all the members of the group or as many of them as is reasonably practicable.”
- 7.2. The clause essentially allows for the situation where persons involved in a totally peaceful assembly are required to disperse despite not having heard a direction to do so. The words “as many of them as reasonably practical” are not justifiable. Noting that clause 8 makes it an offence to not disperse after such an order, under the Bill, an individual will commit an offence if they do not disperse *even though they have not heard the order to disperse*. An offence will be committed unless there is a “reasonable excuse” for not dispersing. Given that only a reasonably practicable number of persons need to hear the order to disperse, police are unlikely to accept the “reasonable excuse” that an individual did not hear the order.
- 7.3. By way of example, in a very large peaceful assembly, where, in one isolated area, some pushing occurs and it is determined that the assembly *may* become riotous as a result, an order for the whole assembly to disperse could be given to those people close to where the pushing occurred, but may not be given to others as it is not “practicable” to cover a very large assembly giving the order. However, those people assembling in the same group but hundreds of metres away and far removed from the area of pushing would be guilty of an offence if they did not disperse despite that fact they had not been unlawful, had not witnessed any unlawful activity and had not heard the order to disperse.

8. Clauses 8. and 9. Failure to disperse

- 8.1. Failure to disperse within 15 minutes will result in a person committing an offence and, under Clause 9, will allow police to use “no more force than is reasonably necessary” to disperse an assembly. This time limit to disperse is totally unreasonable and does not reflect the varying situations in which an assembly may be taking place.
- 8.2. Firstly, it must be reiterated that people who have not heard the order to disperse cannot reasonably be expected to disperse. A person cannot carry out an order which they have not heard. In such a situation “reasonable force” could be used against a person who is not disobeying an order and the person will therefore not have any knowledge of the legitimacy of such force or why such force is being used on them personally.
- 8.3. Furthermore, an assembly may be occurring in an area which has restricted access or departure areas. Gates, fences and doors can cause problems in the dispersal of large crowds, and crowds of many thousands may take well over half-an-hour to properly disperse. In this situation, the Bill would allow “reasonable force” to be used on people who legitimately cannot leave an area despite their attempts. *It is noted that clause 9 does not allow a reasonable excuse to be given for not dispersing within 15 minutes.* This section is therefore not workable in a situation where dispersal is hindered.
- 8.4. The result is that the Bill condones the use of force on individuals who have not been unlawful but have been ordered to, and are attempting to disperse (and/or have not actually heard an order to disperse).
- 8.5. In the case of peaceful assemblies such as tree sits in forests, the expectation that an order will be heard and a person will be able to disperse within 15 minutes is unreasonable. The dispersal of people in tree sits will ordinarily take well over 15 minutes, especially if dispersal outside a certain area is required.
- 8.6. The Discussion paper contemplates the use of a “reasonable time” to disperse. This is also an unacceptable provision. Those people dispersing cannot possibly know what their particular reasonable time to disperse is and force could therefore be used by police well before the people expected. Furthermore, people could be charged with failing to disperse despite not having know what their “reasonable time” to disperse was. Even if a time was stated during the audible order to disperse, it is highly probable in large assemblies that this time will not be heard by many and it is reiterated that only a “reasonably practicable” number of people are required to hear the order under Clause 7.
- 8.7. The Bill allows collective punishment of crowds because it makes no distinction between those allegedly committing acts of unlawful violence or damage to property and others participating in the assembly. Therefore, in an otherwise legitimate and peaceful assembly, force could be used against those who have been totally peaceful at all times despite the violence of only a few people around them.
- 8.8. Under the Bill, the order to disperse and the force actually used by police cannot be scrutinised. The police are given power to forcibly disperse persons and the Bill does not outline the responsibilities or duties of police and there are no provisions regarding the inappropriate use of force. We are concerned that this Bill condones and encourages summary justice by police at the expense of natural justice before a court.

9. Lawyers For Forests Inc opposes the Peaceful Assemblies Bill in its present form for reasons outlined in this submission.

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