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Liberty Victoria comment on the

Crimes Legislation Amendment (Public Order) Bill 2017

1. The Crimes Legislation Amendment (Public Order) Bill 2017 (the **Bill**) is intended to address concerns regarding violence at public demonstrations, in particular the commission of violent acts while wearing masks.
2. Liberty Victoria provided a preliminary comment on public calls for laws to prohibit wearing a mask at protests, and for potentially mandatory or prescriptive sentences for those that commit violent acts at protests.
3. It is our view that wearing a mask can be an important means of self-expression.¹ Consequently, we are still concerned that in practice the Bill could have a chilling effect on freedom of expression.
4. The Bill addresses some of Liberty Victoria's concerns. The Bill does not prohibit the wearing of masks at protests. It permits Police officers to direct a person to leave a designated area if the officer holds a reasonable belief the person is wearing a mask to conceal their identity or protect themselves from crowd control substances

¹ <https://libertyvictoria.org.au/content/victorian-police-minister-proposed-laws-ban-masks-protests>

(the unlawful purposes). The penalty for refusing to comply is 5 penalty units. This power does not apply outside of a designated area. The penalties are not mandatory or baseline sentences.

5. The Bill abolishes the common law offences of affray, rout, and riot replacing them with two new offences of affray and violent disorder. The maximum penalties are 5 years for affray and 10 for violent disorder. The maximum penalties are more severe where the offender is wearing a mask for the unlawful purposes: 10 years for affray and 15 for violent disorder.
6. Liberty Victoria still has significant concerns regarding the Bill.
7. First, in practice, the new powers would likely enable police to direct any person wearing a mask to leave a protest. The Bill provides no guidelines for how a police officer determines if a person is wearing a mask for expressive purposes rather than to conceal an identity. A police officer could form a reasonable view that any person wearing a mask is seeking to conceal their identity. Any mask, by covering a person's face, could be said to be worn for the purpose of concealing identity.
8. In fact, a person who wears a mask for expressive purposes, such as a politician's face, is seeking to conceal their identity. They are pretending to be another person for the purpose of performance.
9. In our view the power to direct persons to leave a designated area when wearing a mask to conceal their identity is unnecessary. Police already have the power to search any person in a designated area and ask that person to identify himself or herself.²
10. Alternatively, if police are to have a power to direct a person to leave a protest that power should require the police to form a view that a person is wearing mask to conceal their identity for the purposes of engaging in unlawful conduct such as *affray* or *violent* disorder without consequence.
11. Second, the offence of affray applies where a person threatens to use unlawful violence or engages in unlawful violence that would terrify a person of reasonable

² *Control of Weapons Act 1990*, s.10K(1).

firmness. It encapsulates a wide range of conduct. Given the lack of clarity over the nature of the offence, we are concerned that the maximum penalties specified in the Bill are excessive.

12. Offenders engaging in violent conduct at a protest can be dealt with through existing criminal laws. Offences including: affray, assault, causing injury, threats to kill, and threats to inflict serious injury could all apply to violent acts committed at a protest. Importantly, these laws apply to specific criminal conduct.
13. Further, it is unnecessary to set higher maximum penalties for affray and violent offenders where a mask is worn for the unlawful purposes. It is sufficient to specify wearing a mask for the unlawful purposes is an aggravating factor.

This is a public submission and is not confidential.

Liberty Victoria