

PROPOSED PEACEFUL ASSEMBLIES BILL

SUBMISSION BY LIBERTY VICTORIA

1. Liberty accepts that there is a need for a statutory power to give a direction to disperse an assembly of persons. But the circumstances in which it will be lawful to exercise that power must be strictly limited. Otherwise the right of peaceful assembly will be robbed of most of its meaning.
2. The power to give such a direction should reside in the Chief Commissioner or her delegate being a police officer. Crucially, the power should be exercisable only upon the obtaining of a warrant from a magistrate. There must be an independent assessment of the grounds advanced by the police. To have the power dependent solely on the Chief Commissioner's belief as to what might happen (clause 6(1)(b)(ii)) is wholly unacceptable.
3. Here, as in other warrant procedures, there should be a facility for the obtaining of telephone warrants. The applicant for a warrant should be of the rank of inspector or above.
4. In Liberty's view, it is entirely inappropriate to empower the Chief Magistrate (whether or not "at the request of the Chief Commissioner") to give a direction to disperse (sub-clause 6(2)). Traditionally, legislation of this kind empowered a justice of the peace to "read the riot act" (cf. *Unlawful Assemblies and Processions Act* 1958 s.6). But the Chief Magistrate is a judicial officer and it is wholly inappropriate for him/her to be given a quasi-police role to perform. This is especially so when the hearing of a charge under clause 8, for failure to disperse, will inevitably come before the Magistrates Court.
5. In the ordinary case of unlawful violence or unlawful damage occurring during the course of an assembly, police should arrest and charge suspected offenders in

- the usual way. The only circumstance which would justify a general direction to disperse - removing as it does the right of non-offenders to continue to assemble - is where the assembly is “out of control” or there is an “outbreak of lawlessness”, such that it is not practicable for police to deal with law-breaking on an individual basis.
6. Accordingly, a warrant should only issue if the magistrate is satisfied, on reasonable grounds, that –
 - (a) the assembly is out of control, or lawless, in this specific sense; or
 - (b) there is a serious and immediate risk of that occurring.
 7. The definition of “riotous assembly” is unacceptably broad. As it stands, the definition would mean that violence or damage caused by one or two individuals in a large and otherwise peaceful demonstration would result in the assembly being classified as a “riotous assembly”, such that the Commissioner could give a dispersal direction. As a result, the right to assemble peacefully would be seriously – and unjustifiably – eroded.
 8. Similarly, if opponents of those assembling, or other agents provocateurs, provoked violence, or themselves caused damage, they could effectively create the conditions for the closing down of the assembly. Hence, it is essential that this exceptional power to order dispersal be confined to circumstances where the assembly is truly “riotous”, as set out in paragraph 6 above.
 9. Clause 5 largely replicates Article 21 of the International Covenant on Civil and Political Rights. This should be stated in the legislation.
 10. As a matter of construction, the whole of clause 5 appears to be purely declaratory. Specifically, the power to give a dispersal direction under clause 6 appears to be in no way affected by the reference to “restrictions” in 5(2) and (3).

This, too, should be made clear by a statement in the Bill to the effect that nothing in clause 5 confers rights or imposes obligations on any person, and that clause 5 is not intended to affect the interpretation of clauses 6-9.

11. As to clause 9, if the conditions for the issue of a warrant are satisfied, and a direction to disperse given accordingly, then Liberty has no objection to the use of “no more force than is reasonably necessary” to disperse the assembly.
12. There is a conceptual difficulty with the notion of dispersal. As clause 8 is drafted, a person commits an offence if he/she “fails to disperse”. But it is not physically possible for an individual to disperse, since by definition this involves scattering or going in different directions (Concise Oxford Dictionary). It is the assembly which disperses. We note in this regard that the old direction to disperse was directed to all those assembled since they could, as a group, “disperse”.

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