

G20 (Safety and Security) Complementary Bill 2014

Portfolio: Justice

Introduced: House of Representatives, 20 March 2014

Purpose

1.67 The G20 (Safety and Security) Complementary Bill 2014 (the bill) creates a new standalone Commonwealth Act intended to clarify the interaction between provisions in the *G20 (Safety and Security) Act 2013* (Qld) and existing Commonwealth legislation at the Brisbane Airport during the 2014 G20 Summit, which is to be held in Brisbane in November 2014.

1.68 The new Act will provide for specified Commonwealth aviation laws (including regulations or other subordinate legislation made under Commonwealth aviation legislation) to operate concurrently with the *G20 (Safety and Security) Act 2013* (Qld). The operation of the specified Commonwealth aviation laws will be rolled back with respect to certain areas of the Brisbane Airport (a Commonwealth place) to avoid inconsistency with the Queensland G20 legislation. To the extent that they are not inconsistent with the Queensland G20 legislation, Commonwealth aviation laws will continue to apply to those areas.

Committee view on compatibility

Multiple rights

Human rights assessment of state laws applied by Commonwealth laws

1.69 As described above, the bill would permit the operation of *provisions of the G20 (Safety and Security) Act 2013* (Qld) (the Queensland Act) that would not otherwise apply in certain areas of Brisbane airport in the lead-up to and during the G20 Summit in Brisbane in 2014. The statement of compatibility for the bill concludes that it does not engage any of the applicable rights or freedoms, and is therefore compatible with human rights as it does not raise any human rights issues.

1.70 However, the committee notes that the Queensland Act contains a number of provisions which augment existing Queensland law, and which potentially engage and limit a range of human rights. This includes provisions which, for example:

- regulate the exercise of freedom of assembly;
- confer stop and search and use of force powers;
- confer powers to prevent the entry of vehicles and persons into particular areas and to order their removal;
- confer the power to prohibited or exclude persons and to take steps in relation to those persons;

- enact a presumption against bail in relation to certain persons and offences; and
- create new offences and amend the law relating to a number of existing offences.

1.71 The committee notes that such measures may engage and limit multiple rights.¹

1.72 Insofar as the bill seeks to provide for the application of the Queensland Act to some or all of the Brisbane Airport, a Commonwealth place, the Queensland Act would appear to be applied as a law of the Commonwealth pursuant to the *Commonwealth Places (Application of Laws) Act 1970* (discussed below). The purpose of the bill is to ensure that the provisions of the applied Queensland law are not rendered invalid by the operation of section 109 of the Constitution, to the extent that they would, but for this bill, be inconsistent with the otherwise applicable Commonwealth aviation laws.

1.73 The committee notes that the statement of compatibility for the bill does not provide an assessment of the compatibility of the measures in the Queensland Act with human rights. To the extent that the bill would allow the Queensland Act to be applied as Commonwealth law in places it would not otherwise have applied, an assessment of that Act is required to inform any assessment of the bill's compatibility with human rights.

1.74 The committee therefore requests the Minister for Justice's advice on the compatibility of the measures in the Queensland Act with human rights, insofar as they will apply as Commonwealth laws.

Application of State laws to Commonwealth places under the Commonwealth Places Act

1.75 More generally, the committee notes that the bill is a specific instance of the application of the state law to a Commonwealth place, an example which gives rise to a more general question as to human rights assessment of such laws.

1.76 The committee notes that the general application of state laws to Commonwealth places is governed by the *Commonwealth Places (Application of*

1 For example, right to life (article 6 of the ICCPR), the prohibition on torture and cruel, inhuman or degrading treatment or punishment (article 7 of the ICCPR), right to security of the person and freedom from arbitrary detention (article 9 of the ICCPR), right to human treatment in detention (article 10 of the ICCPR), right to freedom of movement (article 12 of the ICCPR), right to a fair trial and fair hearing (article 14 of the ICCPR), right to privacy and reputation (article 17 of the ICCPR), right to freedom of thought, conscience and religion or belief (article 18 of the ICCPR), right to freedom of opinion and expression (article 19), right to freedom of assembly (article 21 of the ICCPR) and right to freedom of association (article 22 of the ICCPR).

Laws) Act 1970 (the CP Act), which was enacted in response to a decision of the High Court in 1970,² that section 52(i) of the Constitution excludes the direct application of state laws to Commonwealth places.³

1.77 The effect of the CP Act is that the provisions of an applied state law generally takes effect as a Commonwealth law in relation to the Commonwealth place.⁴ Significantly, the effect of the CP Act is to apply as Commonwealth laws the provisions of the state law as amended from time to time. Given this, to the extent that the CP Act provides for what is in effect the enactment of Commonwealth laws,⁵ without the requirement for a human rights assessment under the *Human Rights (Parliamentary Scrutiny) Act 2011*, the committee considers that it should undertake an assessment of the CP Act for compatibility with human rights (as provided for by section 7(b) of the *Human Rights (Parliamentary Scrutiny) Act 2011*).

1.78 To facilitate the committee's assessment of the *Commonwealth Places (Application of Laws) Act 1970*, the committee therefore requests that the Minister for Justice provide a statement of compatibility for that Act, particularly with respect to the question of the compatibility of measures that have or may be applied as Commonwealth law by its operation.

2 *Worthing v Rowell and Muston Pty Ltd* (1970) 123 CLR 89. See also *Attorney-General (NSW) v Stocks and Holdings (Constructors) Pty Ltd* [1970] HCA 58; (1970) 124 CLR 262; and *R v Phillips* [1970] HCA 50; (1970) 125 CLR 93).

3 Section 52(i) of the Constitution provides: The Parliament shall, subject to this Constitution, have exclusive power to make laws for the peace, order, and good government of the Commonwealth with respect to: (i) the seat of government of the Commonwealth, and all places acquired by the Commonwealth for public purposes.

4 See *Pinkstone v R* [2004] HCA 23; 219 CLR 444 at [34], where McHugh and Gummow JJ described the applied state law as operating as 'a surrogate federal law'. See also McHugh J in *Cameron v R* [2002] HCA 6; 209 CLR 339, at [46].

5 See *R v Porter* [2001] NSWCCA 441; 165 FLR 301; 53 NSWLR 354; [41] (Spigelman CJ, with whom Studdert J and Ireland AJ agreed).