

QUEENSLAND COUNCIL FOR CIVIL LIBERTIES

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19 January, 2007

Committee Secretary
Senate Legal and Constitutional Affairs Committee
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

Also via email: legcon.sen@aph.gov.au

Dear Madam/Sir

Customs Legislation Amendment (Augmenting Offshore Powers and Other Measures) Bill 2006

We thank you for the opportunity of making a submission concerning this bill.

We acknowledge remarks made by Senator Andrew Bartlett also drawing this legislation to our attention.

This Bill contains two concerning features:

1. The authorisation of Customs officers to carry out personal searches without a warrant; and
2. The granting of immunity to officers *and other persons acting on their direction* if they do so in good faith.

The power to carry out the search seems to arise simply if a person has been found on board a ship or an aircraft. There appears to be no requirement of reasonable suspicion that they have committed an offence, nor is there any requirement for a reasonable suspicion that they pose any threat to anyone. In effect, the legislation provides that simply being on board the ship or aircraft will be a justification for a personal search.

The legislation goes further to provide immunity from civil and criminal proceedings, not only for a Commonwealth officer but also for any person acting on their direction if they act in good faith.

In our view the granting of such powers requires a strong justification.

16.01.07.MIC.KTELW.130842P191.DOC *Watching them while they are watching you!*

Two justifications are advanced for the legislation. The principle justification seems to be that they are a piece with amendments made to other legislation including the *Migration Act* and the *Fisheries Management Act*. The second argument is that they are intended to protect Customs officers from assault.

We join with the Senate Standing Committee for the Scrutiny of Bills in its 12th Report where the Committee expresses concern at the increasing number of statutes which have given Commonwealth officers and others power to conduct personal searches without a warrant.

The provisions of this Bill do not go as far as some of the others discussed by that Committee in that they do not provide for strip searches nor do they provide an absolute immunity. However, the point of principle remains.

The Council is concerned about the safety of Customs officers from potential assault or injury. However, if these powers are to be granted then it is incumbent upon the Government to provide detailed justification for doing so. The short remarks in the explanatory memorandum about these powers being to protect officers are insufficient to justify the granting of these powers which constitute a significant violation of an individual's personal liberty.

However, our reading of the Explanatory Memorandum leads us to believe that the substantive justification for the granting of these powers is that they have been granted elsewhere. If the legitimate purpose of this legislation is to provide protection for Customs officers, then it is the Council's submission that Section 185AA (7A) ought to be removed. The existence of this provision expressly permitting the use of any evidence found in the course of the search raises questions about the real purpose for giving the powers.

Furthermore the fact that similar powers have been granted before is in our view no justification whatsoever for the granting of the powers. We question whether they were legitimately granted in the other instances. This seems to be an example of the common bureaucratic strategy of justifying further erosion of civil liberties by reference to previous equally unjustifiable erosion of civil liberties. It is startling to note in this context the Scrutiny of Bills Committee reference in paragraph 3.30 of its recent report to the granting of personal search powers without a warrant to officers under the *Environment Protection and Biodiversity Conservation Act*.

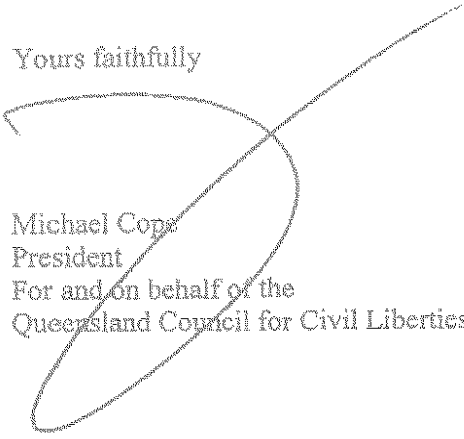
It is the Council's view that there may be circumstances in which good faith immunities may be granted. However, in the context in which these powers are to be exercised and given the lack of any apparent restraint on these powers it is our view that it is not an appropriate course to grant any immunity. We are particularly concerned about the extension of the immunity to persons other than Commonwealth officers.

We submit that it is time the Commonwealth gave serious consideration to the introduction of a public interest monitor ("PIM") similar to that which

has been created in Queensland. The PIM would not only appear in relation to applications for search warrants before the courts and tribunals. It also could be tasked with reviewing the operation of provisions similar to that under consideration to ensure that these powers are not being abused.

We look forward to the Government providing detailed justification for this legislation or withdrawing it.

Yours faithfully

A large, handwritten signature in black ink, appearing to be 'Michael Cope', is written over the typed name and title.

Michael Cope
President
For and on behalf of the
Queensland Council for Civil Liberties