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New Queensland laws breach fundamental democratic safeguards

Queenslanders should be extremely concerned about a number of laws that were passed by the Newman government last week. The amendments radically extend the power of executive government at the expense of the courts, undermine human rights principles such as equality before the law and the freedoms of association and expression and further politicise crime control. The legal rights of Queensland workers to the enjoyment of just and favourable conditions of work, as guaranteed by Article 7 of the International Covenant on Economic Cultural and Social Rights, were also curtailed in the legislative flurry.

In recent years ill-considered laws intended to deal with the very real problem of organised crime have been struck down in NSW and SA for being unconstitutional. These attention-grabbing laws have achieved very little and wasted a huge amount of taxpayers' money in legal costs. The *Criminal Law (Criminal Organisations Disruption) Amendment Act 2013* is one law passed last week that breaches human rights principles on arbitrary detention, and may well be struck down by the High Court.

Queensland Convenor of Australian Lawyers for Human Rights (**ALHR**), Benedict Coyne, stated "This flurry of backdoor secretive legislative action is both unprecedented and a significant blight on the democratic principles which found our lucky country. For reasons inexplicable, the parliamentary committee and public consultation processes were blatantly binned by the Newman Government. These new laws breach numerous fundamental and legally binding obligations owed by Australia to the international community, including the following articles of the International Covenant on Civil and Political Right (ICCPR):

- Article 25 -which guarantees the opportunity to take part in public affairs including commenting on such drastic legislation.
- Article 14 - which guarantees the right to equality before the law
- Article 19 – which guarantees the right to freedom of expression
- Article 22 – which guarantees the right to freedom of association

"These are fundamental principles that make our great democracy what it is. They are not mere optional extras that can be tossed away on a whim. It is highly likely that history will be repeated yet again and the various provisions will be found to be unnecessary, invalid and ineffective in tackling the problem of organised crime" added Mr Coyne.

In Queensland it seems that people will be punished not in proportion to a crime they have committed, but because of who they are and who they associate with. This is a violation of the fundamental human rights principle of equality before the law.

The amendments have introduced a presumption against bail for motorcycle gang members. This breaches international human rights principles, and common law rights recognised by the High Court. Article 9.3 of the ICCPR for example provides that it is not the general rule that a person awaiting trial shall be detained in custody.

The Criminal Code definition of criminal organisation has been broadened to include organisations of 3 or more persons who are declared under a regulation to be a criminal organisation. Previously the Supreme Court had to be satisfied that members of an organisation associated for the purpose of engaging in serious crime and that the organisation posed an unacceptable risk to the safety and welfare of the community. The new laws have done away with judicial safeguards, leaving greater potential for the laws to be used to outlaw activist groups, trade unions or other organisations the Government begins to dislike.

Members of motorcycle gangs brought before Crime and Misconduct Commission ('CMC') hearings can no longer use the excuse of fear of retribution to refuse to provide evidence or answer questions. Contempt is punishable by imprisonment. The courts have to-date played an effective role in balancing public interest and reasonable excuse in relation to CMC hearings. The removal of the right to have courts make such assessments is unnecessary. The CMC had not sought this extension of its powers.

Furthermore, the changes to Workers' Compensation laws significantly erode workers' access to legal remedies against negligent employers. These radical statutory changes also bypassed the parliamentary committee process. The changes are another uppercut to democracy given that an LNP dominated Parliamentary Committee along with 80% of Queenslanders think that the profitable Qld WorkCover scheme with the second lowest premiums in Australia need not be changed.

Criminologist Emma Bell has claimed that governments have used tough on law and order slogans to retain legitimacy following fallout from cuts to services and job-shedding.¹ Bell claims that governments seek to capitalise on the very uncertainties caused in part by their own neoliberal policies, by posing as an able protector of the public.

The Government may seek political advantage in enacting such laws, but some of the government's 'tough on crime' laws will increase rather than reduce crime. Resources will be misallocated, laws that are ineffective will be introduced. Civil liberties are undermined. In the end it will be the Queensland community that picks up the tab.

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ALHR (Australian Lawyers for Human Rights) is a network of Australian lawyers active in practising and promoting awareness of international human rights standards in Australia. ALHR has a national membership of over 3000 lawyers and law students, with active National, State and Territory committees.

¹ Emma Bell, *A New Direction for Penal Politics?*, in *Social Justice and Criminal Justice*, Centre for Crime and Justice Studies p52 <http://www.crimeandjustice.org.uk/publications/social-justice-and-criminal-justice> at 25 June 2013.