Submission on the Summary Offences and Other Legislation Amendment Bill 2019

Action Ready
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Dear Members,

Thank you for the opportunity to provide feedback on the *Summary Offences and Other Legislation Amendment Bill 2019* ("**The Bill**").

Action Ready is an organisation comprised of law students and graduates with links to the environmental and criminal law sectors, academia and environmental activists. Its primary purpose is to improve community legal literacy within Queensland through the production and distribution of legal information for those engaging in protest actions. Such information ensures that individuals can make informed choices and better understand how their actions relate to the law. We recognise that there are many valid ways to be an activist and that this includes civil disobedience and non-violent direct action, tactics which have been instrumental in progressive social changes.

We are writing to express our deep concern and opposition to The Bill. These laws are politicised, disproportionate, and overreaching. They aim to silence dissent, and are not consistent with community expectations or the democratic pillars on which Australia is built. They appear to be a deliberate tact to demonise protesters desperately calling for action on climate change, and have no evidential basis. Furthermore, these laws present a departure from the fundamental principles that should guide criminal law-making such as retribution, denunciation, deterrence and rehabilitation. We would urge the Committee to reject them.

1. **These laws are not in line with community expectations**

To understand our objections to these proposed laws, it is essential to understand the broader political context in which they were introduced. Right now, we are on the brink of climate breakdown. Scientific evidence on climate change has crystallised and the urgent need for strong action sits within a fast closing window.

First Nations people and our Pasifika neighbours are on the front line of the struggle, and across the world we are already seeing the impacts and terrifying warnings of how much worse it's going to get. Yet, our governments, media and big business continue to burn fossil fuels and drive us to the point of mass extinction and global chaos. Less than one month after the Federal Election, the Queensland State Labor Government signed off final approvals for Adani's coal mine, against the wishes of First Nations owners of the land. Opening this untapped thermal coal basin is likely to irreversibly damage the Great Artesian Basin, and significantly contribute to global temperature rises.

In light of this decision and continued apathy towards this incredibly urgent issue, record breaking numbers of citizens are undertaking unlawful protest activity to draw attention to the climate crisis. The tactics of disruption and civil disobedience they are using reflect tactics that have been employed for decades with great success for what are now treasured social changes.

The public and political circumstances around which these laws were introduced raises serious questions about the true intent for these laws. They have arisen out of a particular political context, in which the State Government is under pressure from big business and the media to enact these laws specifically to target activists engaging in escalating, and disruptive tactics calling for action on climate change.

The proposed legislation risks denouncing protest. Any of the acts engaged in are already unlawful for the purposes of maintaining public order, and apply equally to all. Given the politicised rhetoric surrounding them, it appears this is actually the intention of the bill, rather than any false pretence of community safety. These laws target a very specific group of people, namely environmental protesters, and amount to state-sanctioned discrimination and condemnation of a particular political cause.

We would contend that this is not an appropriate basis from which to be creating legislation with a potentially serious implication on rights and liberties. Government sanctioned discrimination against a particular cause is not a proper foundation on which to create new laws. In fact, one of the most fundamental reasons for enacting criminal legislation is as a symbol of community condemnation. In the context of specifically anti-protest legislation this is entirely inappropriate, and we would argue these laws do not have the support of the broader community.

2. **These laws may impinge on the legitimate and important rights to freedom of assembly, association and political expression**

These new laws may be inconsistent with existing laws designed to protect the right to peaceful protest. In particular, targeting members of the public who participate in protest action by banning an effective method of peaceful protest through legislation is inconsistent with our rights under the Human Rights Act 2019 (Qld), due to come into force in January 2020. In particular, the new laws appear inconsistent with our Freedom of thought (s 20), Freedom of expression (s 21) and Freedom of peaceful assembly and association (s 22). These rights are also enshrined in the International Covenant on Civil and Political Rights (ICCPR) which Australia ratified in 1980.

Although these rights may be limited under the Human Rights Act (s 8(b)), it is only to the extent that is reasonably and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom (s 13). We believe that laws which attempt to curb peaceful protest by introducing new offences and police search powers on the back of unfounded allegations that protestors are a danger to the public, cannot be said to be reasonably or demonstrably justifiable in such a society.

In this instance, the appropriate balance between protestors rights and justifiable limitation has not been struck. The criminal law seeks to maintain public order and in broad terms ensures a balancing of individual and group rights within society. The right to peacefully protest is fundamental to a thriving democracy that is responsive to community opinions and attitudes. When balanced against the right for corporations to carry on lawful business, or the right of the general population to go about their days with minimal disruption, protest is necessarily a right that goes to the heart of our democratic society. For this reason it should be protected above many other rights.

In introducing The Bill to the Queensland Parliament, Minister for Police and Corrective Services, Mark Ryan made the following comments:

> "This government recognises that the foundation of our society rests upon the rights of every individual and that one of the defining characteristics of a democratic society is the right to peacefully protest. This is especially so as this right encompasses a number of other fundamental rights such as freedom of expression, the right to peacefully assemble and freedom of association."

However, he goes on to note that,

> "what this government does not support, and will not support, is the kind of dangerous activity that is currently happening on our roads and railways, and in our cities and rural communities."

This attempt to distance disruptive tactics of nonviolent civil disobedience from the right to peaceful assembly is a dangerous departure, and appears to be a fundamental misunderstanding of the right. It is not for the government to determine which political protests are more or less valid than others. Indeed, this makes space for a much larger erosions of civil liberties and necessary scrutiny of governments. This type of political interference with protest begs the question of where we draw the line. These proposed laws open the door to the criminalisation of other disruptive, and inconvenient protest, such as strikes, occupations, or street marches.

History proves the efficacy of such non-violent direct action, especially peaceful disruptions. This form of protest helped to win the eight hour working day, to protect the Franklin and the Daintree and advance Aboriginal land rights. Protest helped to secure women's right to vote, to stop our involvement in the Vietnam War and end the criminalisation of homosexuality. Protest continues to play a key role in highlighting the cruelty of our refugee policies, in protecting workers' rights, in stopping coal seam gas exploration and so much more. Many of these social struggles are wins that the modern Labor party would celebrate as important wins for our society.

Protests can take many forms, including civil disobedience. A government concerned with protecting democracy and promoting healthy critique and scrutiny, should take positive steps to promote protest rights. Furthermore, it must respond to particular protests in a way that accommodates the right to engage in peaceful protest, and that strikes a proportionate balance with public order and safety, and the rights of others. The Bill, and the politics surrounding its introduction, does not strike this balance.

The suggestion that the government should have any say in when people protest and what they should get to protest about is inconsistent with strong democratic protections. Our democracy is not something that "happens" to us once every couple of years at the polling booth. Its enduring success rests on vital foundations like press freedom, freedom of assembly, the rule of law and the right to dissent. Protest outside of the law is part of our democracy, and has a long and important history. When governments chip away at our protest rights, they erode our democracy. To protect our democracy and help ensure a better future for all Australians, we must protect our protest rights. We must oppose these laws.

3. These laws discriminate against communities and unfairly prioritise corporate interests

Whilst protesters have long been penalised for getting in the way of business-as-usual, there has been a growing trend of legislation that is specifically written to prioritise business interests over that of individuals. This Bill signals the latest advancement by the Queensland Government in a pattern of legislation occurring at state and federal level that, when pieced together makes the government's corporate agenda crystal clear.

Our laws are increasingly being moulded according to the overbearing influence of the business and mining lobby, a wealthy monopoly who cannot and do not reflect our community's collective values and morals. This Bill seeks to enshrine corporate dominance over civil and political rights into law. At page three of the Explanatory Memoranda, the government's priorities and motivations are laid bare:

> "The direct and indirect costs caused by persons who block major transport routes or impact upon vital infrastructure can have a major effect upon individual businesses and the community generally. For example, a person using an attachment device cost freight company Aurizon $1.3 million dollars in April this year, when that person delayed five coal trains at the Port of Brisbane for 14 hours."

All the more unnerving is that the government sought the Queensland Resources Council's input when drafting this legislation, and it is these corporate interests that have been prioritised under the guise of public safety and political necessity. It is very troubling to see the government continue to prioritise the interests of fossil fuel corporations, over those of everyday citizens. As corporations are prioritised, civil liberties are discarded, dissent criminalised and human rights abrogated. In mainstream media, there is a consistent effort to create a narrative that misrepresents and demonises peaceful protestors as "militant extremists" and agitators. These sentiments are given expression in this draconian Bill.[1]

However, recent research carried out by the Queensland Resources Council itself serves as further proof that public sentiment is changing. There is growing discontent amongst the general population with mining companies' self-interest. Survey respondents expressed their views that the profits that the resources sector generates are short-term and benefiting very few at the expense of Queenslanders' futures.[2] The Australia Institute commented that:

> "This polling makes clear that the longer the mining industry continues to defend the central role of coal the more trust and credibility it will lose. Australia used to mine asbestos and hunt whales but at some point the mining and fishing industries decided to stop defending the indefensible."

The people of Queensland want action and responsible leadership on climate change, not action targeting those who are advocating for this very thing.

4. These laws duplicate existing laws, and are unnecessary

Part 2 of the Bill expands police powers under the *Police Powers and Responsibilities Act 2000* (Qld) to search people and vehicles without a warrant if they are suspected of possessing a 'dangerous attachment device'. However, police already have broad powers to search without a warrant where danger to the officer or public is a legitimate concern. For example, the *Police Powers and Responsibilities Act 2000* (Qld) enables police to search a person without a warrant if the person has something that they intend to use to cause harm to themselves or others.[3] Similarly, police can search a vehicle without a warrant if there is something in the vehicle that may be something that the person intends to use to cause harm to themselves or others.[4] These provisions, as well as other provisions contained within ss 30 and 32 of the *Police Powers and Responsibilities Act 2000* (Qld) are more than adequate to allow police to search people and vehicles for safety reasons, further demonstrating that the laws are targeted at curbing peaceful protest rather than legitimate safety concerns.

The Bill also empowers police to seize and dispose of 'dangerous attachment devices'. This is explained as a preventative measure. However, a police officer is already empowered to 'take the steps the police

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[1] Queensland, *Parliamentary Debates*, Legislative Assembly, 1 May 2019 1335-1337 (Mr Dale Last MP).
[2] The Australia Institute, 'Leaked QRC research shows massive public distrust of mining industry in QLD', (Web Page, 15 May 2019) <https://www.tai.org.au/content/leaked-qrc-research-shows-massive-public-distrust-mining-industry-qld>.
[3] *Police Powers and Responsibilities Act 2000* (Qld) s 30(d).
[4] *Police Powers and Responsibilities Act 2000* (Qld) s 32(1)(m).

officer considers reasonably necessary' to prevent an offence if they reasonably suspect an offence is being committed or about to be committed.[5] Additional police powers regarding the prevention of offences related to 'dangerous attachment devices' are overly targeted and unnecessary.

Part 4 of the Bill introduces two new offences which together prohibit the use of 'dangerous attachment devices' to interfere with transport infrastructure, to stop a person from entering or leaving a place of business or to 'cause a halt to the ordinary operation of plant or equipment because of concerns about the safety of any person'. However, a protestor who might contravene these new laws is likely to already face other charges. For example, the protestor may be charged with contravening a police direction,[6] resisting arrest,[7] public nuisance[8] or trespass.[9] The introduction of these new offences serves to duplicate the existing laws and disproportionately punish peaceful protestors.

5. These laws extend police powers and compromise civil liberties

These laws extend police search and seize powers significantly, which will result in on-the-ground compromises to civil liberties. The Explanatory Notes to the Bill state:

> "While the new search powers may be considered to impinge on the rights and liberties of the person, the consequences of the deployment of a dangerous attachment device including the potential harm it can cause to the health of a person and the disruption that may be caused to the community outweighs this concern."[10]

However, given that claims of attachment devices are based on unproven and fabricated evidence (**see s 6**), and the protestors using these devices are peaceful and nonviolent, impingements on civil liberties as a result of extended police powers are not justified. The broadening of police powers should be granted with the utmost care and precision, given that police overstepping is already rife and the downstream effects are felt most strongly by marginalised communities. As a result, we condemn expansions of police powers in these laws because they are motivated by weak and unfounded claims that peaceful protestors cause danger to the public.

Police already have broad stop and search powers in Queensland under the *Police Powers and Responsibilities Act 2000* (Qld). Furthermore, the addition of "the person may have a dangerous attachment device" to the list of prescribed circumstances for searching persons without warrant under s 30 of the *Police Powers and Responsibilities Act 2000* (Qld), is a clear deviation from the existing circumstances in the Act.

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[5] *Police Powers and Responsibilities Act 2000* (Qld) s 52.
[6] *Police Powers and Responsibilities Act 2000* (Qld) s91.
[7] *Police Powers and Responsibilities Act 2000* (Qld) s790.
[8] *Summary Offences Act 2005* (Qld) s6.
[9] S*ummary Offences Act 2005* (Qld) s11.
[10] Explanatory Notes, Summary Offences and Other Legislation Amendment Bill.

Existing prescribed circumstances under s 30 include the possession of a dangerous weapon, dangerous drugs and stolen property. This Bill has been advertised under the guise of public protection and so-called "dangerous attachment devices". However, because these allegations are unfounded and fabricated, the effect is the inclusion of traditional tools of peaceful protest to a list of items which cause real threats to the public. This observation makes clear the real intent of the new laws, which is to curb peaceful protest and impinge on civil liberties.

Acts of civil disobedience, of course, intend to subvert the law, and participants expect to be penalised for their actions. However, penalties for unlawful acts motivated by civil resistance causes should not be treated differently to unlawful acts otherwise motivated. Penalties must be limited to whatever would normally be the sanction for the breach.

For example, a trespass offence committed by a person without the label of being an "activist" or "protestor" and a trespass offence committed by a person ethically or socially motivated, should be the same under the law. Similarly, police search powers cannot be expanded purely to deal with politically motivated crimes as different from the rest. To treat people differently in this way is to discriminate based on their political intent, and to use legal sanctions as a deterrent for people who aim to exercise their fundamental rights.

In practice, these laws which allow police stop, search and seize powers where they suspect a person may have an attachment device will have the effect of limiting freedom of movement and political communication. It will allow police to harass peaceful protestors regardless of whether or not they are engaging in unlawful activities and target individuals in a may which is likely to be arbitrary, designed to intimidate and discriminatory.

Moreover, the addition of police powers to issue on-the-spot infringement notices for using attachment devices are an unacceptable diversion from due process and reverses the onus of proof. These laws give unacceptable discretionary powers to police in a manner which will invoke arbitrary and discriminatory penalties for activists. It will also mean that at first instance, activists will not be able to argue their case before a Magistrate and have their particular circumstances taken into account when receiving their sentences.

These amendments to on-the-spot infringement laws are clearly designed to prioritise expedience disproportionately over justice and due process, in an effort to curb access to peaceful protest.

6. These laws are not founded on evidence

Many of our objections to these laws are based on the fact that the Government's fundamental justification for them is a fallacy. The rhetoric which gave birth to the laws surrounded claims of "booby trapped" attachment devices, however, there is no evidential basis for this. The police have not formally made an allegation that the devices have contained dangerous substances. As a result, there is no evidence that the so-called "dangerous" attachment devices defined within the Bill are actually dangerous. Nor do we believe that the claims have any legitimacy.

On the contrary, the protest actions which are targeted by this Bill are specifically founded on strict principles of nonviolence. Holistic nonviolence is a non-derogable pillar of direct action and peaceful protest. To suggest that professed peaceful activists are trying to hurt others is entirely inconsistent with centuries of theory and practice within these movements. Lock-on devices, themselves, are inherently peaceful. As stated by Aidan Rickets, a lecturer at Southern Cross University:

> *"As a symbol of nonviolence, the lock-on celebrates a shared social contract where there is implicit trust that neither police nor protestors will use personal violence, but rather the rule of law will prevail in an orderly manner. In societies where the rule of law and respect for human life have broken down, it would be extremely dangerous to disable yourself in front of your opponents. The safe use of lock-ons as a tactic for civil disobedience is a sign that human rights and the rule of law are being respected on all sides."*[11]

Furthermore, claims that the devices cause real risk of injury to emergency service workers are weak and flimsy. Members of the Queensland police force are commonly exposed to many real dangers in their line of work involving dangerous weapons and violence. Relatively, it is a meritless claim that police removing a peaceful protestor from an attachment device - absent proof of harm ever being caused by these devices - is a genuine threat to their safety.

The fact that these laws are not founded on evidence adds more weight to our claim that they are an unjustifiable infringement on civil liberties and part of a broader political stunt to demonise activists.

7. Proposed penalties are disproportionate and excessive

When New Acland Mine was caught drilling 27 illegal bores late last year, and undertaking preparation for 41 more bores on land not designated as mining land, it received a paltry $3152 fine. For an incident that was classified as a "major breach" by the Department of Environment and Science, this is unconscionable, and for a company that earnt $160 million in the last half of 2018, is completely ineffective as a means of deterring wilful and reckless destruction of our natural environment by greedy corporations. Contrast this with the penalties proposed under section 14C of this Bill, ranging from on-the-spot fines of $1050 and up to $10,500 for individuals. This disturbing trend of using the criminal law as a tool of enacting retribution, and manifestly excessive, ever increasing fines are examples of over-regulation at its best. Instead of shutting down protest and demonstrations that are inconvenient or annoying to it, our governments should be facilitating peaceful assemblies and public discussions on issues that people care about, and an opportunity for innovative responses to social issues. In fact, Australia is bound by international law to do so, as are state and territory governments. In situations where our system does not offer a real remedy or solution for government inaction, whether through judicial or political processes it is difficult to deny the moral and perhaps the legal right to resort to techniques of civil disobedience.

[11] Aidan Ricketts, 'Lock-on devices' are a symbol of non-violent protest, but they might soon be banned in Queensland' (2 September 2019) *The Conversation*.

8. The Bill will not achieve its legislative intent

The Bill will not achieve its legislative intent to deter protestors from engaging in acts of civil disobedience by creating two new offences relating to the use of "dangerous attachment devices." Protestors engage in unlawful activity with a clear understanding that doing so is illegal and will attract punishment. They do it because they feel an urgent need to draw attention to a social issue, and history has proven that subverting the law has had transformative success in doing so. These laws will therefore not deter protestors from breaking the law to communicate their message.

The Bill also shows undue deference to retributive styles of criminal punishment, without achieving deterrence, adding weight to the claim that these laws are not aimed at public safety, but unjustifiable punishment of dissenters to a political agenda. As a result, the changes to the law are unnecessary and furthermore, will merely result in more arbitrary repression of activists' civil liberties than deterrence of the targeted activities.

Furthermore, expansions of police search and seize powers are contrary to the legislative intent of the *Police Powers and Responsibilities Act 2000* (Qld). The objectives in the explanatory notes to the Act outline that its intent is to "provide consistency in the nature and extent of the powers and responsibilities of police officers"[12] and further, "to ensure fairness to, and protect the rights of persons against whom police officers exercise powers under this Bill."[13] On the contrary, the out-of-place addition of peaceful tools of protest to the list of prescribed circumstances for warrantless searches shows the inconsistency that these laws add to existing police powers (**see s 5**). Further, as explained earlier (**see s 2**), these laws are unjustifiably inconsistent with the fundamental rights and freedoms of Queenslanders protected by the *Human Rights Act 2019* (Qld) and the ICCPR. The Bill is therefore inconsistent with the objectives of the *Police Powers and Responsibilities Act 2000* (Qld).

9. Conclusion

For the above reasons, Action Ready is deeply opposed to this Bill and all amendments proposed within it. We express our serious concerns about the pattern of anti-protestor rhetoric it will contribute to Queensland and Australian law if enacted. We urge the Committee to reject the Bill to protect Queenslanders' rights to peaceful assembly and protest.

[12] Explanatory Notes, Police Powers and Responsibilities Bill 2000, 1(c).
[13] Explanatory Notes, Police Powers and Responsibilities Bill 2000, 1(e).