

## Frontline Action on Coal

### Public submission

## Summary Offences and Other Legislation Amendment Bill 2019

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## About Frontline Action on Coal

### WHO WE ARE

Frontline Action on Coal (FLAC) is a group committed to community-led, non-violent direct action (NVDA), as part of a strategy to achieve climate justice and create meaningful change in the world. Using our collective power to bring attention to and highlight injustices, we are on the frontlines of transforming the way we relate to our world and each other.

We also aim to support community and grassroots groups on the front line of dangerous fossil fuel development and expansions, through solidarity, training and resources.

We are a diverse group of people committed to community led, non-violent direct action. We believe that another world is possible, that together we can achieve a state of economic and environmental balance we call 'climate justice'. We support community and grassroots groups on the front line of dangerous fossil fuel development and expansions, through solidarity, training and resources.

Due to politicians putting the interests of mining companies over all else, we face an ever increasing risk of societal and environmental collapse. People from all walks of life stand together to protect farms, forest, community, culture and the climate.

We pay respect to the First Nations people of this country, and extend that respect to ancestors and elders of the community - past, present and emerging. We recognise that environmental struggles for a sustainable future and climate justice are intrinsically linked to the centuries long resistance of the Aboriginal and Torres Strait Islander community. We must set our foundations in solidarity with Indigenous peoples and acknowledge that environmental activism in Australia will never be successful without the restoration of land and First Nations sovereignty. We acknowledge that they are of continuing importance to the people living today and future generations, and stand in solidarity with First Nations people in their continuing struggle for justice.

## 1. Comment on Policy objectives

*Frontline Action on Coal condemns this bill. While we support genuine efforts to protect community and personal safety, this bill curtails human rights based on unfounded hyperbole and sets anti-democratic precedents.*

The policy objectives of the bill as presented in the explanatory notes can be paraphrased as such:

- Peaceful assembly is a longstanding tenet of domestic and international human rights law.
- Peaceful assembly has been employed in the past to affect social change. The explanatory notes consider that *“A peaceful assembly can take many forms ranging from an individual engaging in a silent protest to a march of thousands. Peaceful assemblies may be planned or spontaneous and authorised or unauthorised under the PAA. However, common to most peaceful assemblies is the desire to capture public attention, advocate a position or an ideology and to cause change. In doing so, it has been recognised that actions taken by some activists during a peaceful assembly have been unlawful and can cause annoyance or inconvenience to the public.”*
- Protests have employed tactics to *“maximise the disruption”* via devices. The examples given in the explanatory notes are tripods, sleeping dragons, and dragons dens.

The policy objectives contain glaring omissions and faulty logic. The opening statement, gives the *example* of peaceful assembly *“as a vehicle by many Australians to advocate for legal and social change.”* However peaceful assembly is in no way the only avenue that has been used to advocate for social change.

It would be more truthful, and more historically accurate to observe that various forms of Protest activity have been used as a vehicle by many Australians to advocate for legal and social change, including:

- Peaceful assembly
- Boycotts
- Strikes, withdrawal of labor(eg: the 1891 Shearer’s Strike, the 1912 General Strike, The Gurinji Strike/Wave Hill Walk off, Green and Black bans)
- Civil disobedience(eg: The Mt Etna Campaign, <sup>1</sup>Franklin Dam, Terania Creek Blockades, The Bentley Blockade)

Notably, many of these examples of civil disobedience were later vindicated, ultimately resulting in legislative or policy changes in social policy such as:

- The peaceful assembly act
- Workers Rights, such as the 5 day work week
- Indigenous Rights
- Women’s rights, such as entering public bars<sup>2</sup>

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<sup>1</sup> <https://www.qhatlas.com.au/content/mount-etna-queenslands-longest-environmental-conflict>

- Women's right to vote

Civil Disobedience campaigns have also resulted in legislative changes to environmental policy:

- Protests in the around Terania creek area catalysed an environmental impact study by the NSW government, resulting in an interim environmental impact statement and ultimately Formation of the world heritage listed Nightcap National Park.<sup>3</sup>
- The seminal Tasmanian dam case, resulting in precedents in case law with regards to s51(xxix) of the Australian Constitution<sup>4</sup>, which has formed the modern context for laws such as the modern EPBC act(World Heritage properties, Ramsar wetlands, threatened species and threatened ecological communities and migratory species). This formed the basis for other environmental protections, eg Richardson v Forestry Commission<sup>5</sup> allowing for in interim protection order and ultimately long term protection of significant world heritage areas<sup>6</sup>.
- The Bentley blockade, which successfully opposed fracking licences around Bentley and other towns in the northern rivers area of NSW.
- The Daintree Rainforest protests, which were ultimately unsuccessful in their immediate objective but arguably lead to the national park world heritage listed protections of the greater Daintree national park.

Alarminglly, there are recent notable examples of peaceful assembly being curtailed such as:

- The premier condemning 'school strikers' and adult supporters.<sup>7</sup>
- Brisbane City Council taking peaceful assemblies to court, in a bid to prevent the assembly.<sup>8</sup>

This narrow focus on peaceful assembly, therefore ignores the limits to peaceful assembly and flies in the face of demonstrable evidence that civil disobedience has contributed to contemporary environmental and social protections. It does not acknowledge that peaceful assembly and other forms of legal protest are often suppressed by all tiers of government. In actual fact, direct protest, including controversial, and at times illegal, has directly contributed to the robustness of Australian Democracy. The premise of this bill as outlined in the explanatory notes is demonstrably flawed by its historical inaccuracy.

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<sup>2</sup> <https://researchers.uq.edu.au/researcher/16724>; <https://www.abc.net.au/news/2015-03-27/merle-thornton-revisits-regatta-hotel-50-years-after-protest/6355004>

<sup>3</sup> <https://www.abc.net.au/news/2019-08-17/terania-creek-anti-logging-protest-40-years-on/11406660>

<sup>4</sup> <http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/1983/21.html>

<sup>5</sup> <http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/1988/10.html>

<sup>6</sup> <https://www.abc.net.au/news/2010-10-19/forestry-peace-deal-the-end-of-another-chapter/2304060>

<sup>7</sup> [https://www.parliament.qld.gov.au/documents/hansard/2019/2019\\_09\\_18\\_WEEKLY.pdf](https://www.parliament.qld.gov.au/documents/hansard/2019/2019_09_18_WEEKLY.pdf)

<sup>8</sup> <https://www.theguardian.com/australia-news/2019/aug/27/brisbane-city-council-loses-court-bid-to-prevent-protest-march>

### *Relation of bill to itself and other acts*

While FLAC maintains its absolute opposition to the bill as a whole, and the intent of the bill, there are specifically troubling parts of the bill which we comment on here:

## 2. Analysis of the bill:

The Examples cited of the protest groups that the bill is targeting are climate change activists and animal rights activists, as noted on page 2 of the explanatory notes. We therefore note that the primary targets of the bill are usually acting on unselfish motive.

The basis for asserting is dubious involving 2 qualifying phrases “It has been *reported* some people have *claimed* that they have placed glass or aerosol canisters inside devices such as ‘sleeping dragons’ and metal fragments have been used to lace the concrete found in ‘dragon’s dens’”

### Comment on claims of “dangerous attachment devices”.

## Central to the premise of this bill is the notion that lock on devices are dangerous.

Several claims have been made by the premier and the minister for Police and Minister Corrective Services which are quoted below for reference(bold added):

“The Premier, Anastasia Palaszczuk, when introducing the Police have made dozens of arrests under existing laws, but I now believe we need new ones. Last week I learned of the tactics some protesters are using to prevent themselves being removed from roads and railway lines. The Police Commissioner showed me evidence of locking devices that are laced with traps that are dangerous. These protesters put their arms into steel cylinders and drums filled with concrete. **Inside these cylinders and drums are glass fragments—even butane gas containers—so that anyone trying to cut a protester free will be injured or worse.**<sup>9</sup>

The police minister repeated these claims:

This concern is magnified by a small cohort who intentionally incorporate inherently dangerous items into these devices. **Items such as glass, metal or aerosol or butane cartridges in these devices exacerbate both the dangers presented and the time taken to end the disruption.** Police have seen this approach used in the past during other protest activities and they do not want to see this practice adopted in the current environment. Devices with these sorts of objects in them increase the likelihood that equipment used by police could fail, with catastrophic consequences.<sup>10</sup>

<sup>9</sup>[https://www.parliament.qld.gov.au/documents/hansard/2019/2019\\_08\\_20\\_WEEKLY.pdf](https://www.parliament.qld.gov.au/documents/hansard/2019/2019_08_20_WEEKLY.pdf), p2254

<sup>10</sup>[https://www.parliament.qld.gov.au/documents/hansard/2019/2019\\_09\\_19\\_WEEKLY.pdf](https://www.parliament.qld.gov.au/documents/hansard/2019/2019_09_19_WEEKLY.pdf), p3023

*FLAC is not aware of reliable, first hand, evidence in the public domain that supports these claims and in fact, the premier has specifically declined to make the basis for these claims public.<sup>11</sup> FLAC believes these claims are a sinister misrepresentation of the truth.*

We advise that the committee investigate the basis for these claims, specifically:

- Who reported these incidents, and to whom? Notably, the premier has refused to offer evidence to back up these claims.
- Were the claims investigated? That is to say, has evidence of *either* glass *or* aerosol canisters appearing inside lock on devices, as a tactic to create a hazard, been investigated? Is such evidence on the public record (for example,
- If evidence of booby trapping has been obtained was there a prosecution under ss327 of the *Criminal Code Act 1899*?
- Why is ss327 of the *Criminal Code Act 1899* not sufficient for dealing with these allegations?
- What is the documented evidence of glass being incorporated into concrete lock ons?
- What is the documented evidence of “butane cartridges” being incorporated into concrete lock ons? Was butane gas a component of the “lock on”?

### *Relation to human rights act (QLD)*

There are pertinent considerations with regards to the Human Rights Act 2019(Qld)

S13 states that

*(1) A human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.*

*(2) In deciding whether a limit on a human right is reasonable and justifiable as mentioned in subsection (1), the following factors may be relevant—*

...

*(d) whether there are any less restrictive and reasonably available ways to achieve the purpose;*

*(e) the importance of the purpose of the limitation;*

*(f) the importance of preserving the human right, taking into account the nature and extent of the limitation on the human right;*

**We advise the committee carefully consider how this legislation meets these criteria.** As the

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<sup>11</sup><https://www.parliament.qld.gov.au/documents/tableOffice/questionsAnswers/2019/1180-2019.pdf>

explanatory notes suggest, this legislation has 2 primary purposes:

- to address safety concerns
- to address concerns around social and economic disruption

Specifically in regards to d), the less restrictive and reasonably available ways to address safety concerns would be to base legislation on a wholistic and scientific approach to safety around protest, taking into account the safety concerns associated with environmental collapse. It has been argued that the devices this legislation attempts to ban actually make protest safer.<sup>12</sup>

We believe concerns being presented around social and economic disruption are minimal or non-existent, when compared to factors, such as industrial relations policy as a driver of wealth inequality or the real economic loss of environmental degradation.<sup>13</sup>

Specifically, with regards to e) it should be considered how the purported concerns around safety are backed up by evidence or case studies showing that the concerns are of high enough frequency and severity to warrant new laws.

### *Relation to Fundamental Legislative Principles:*

Section 4(3) of the Legislative Standards Act 1992 outlines requirements that legislation should follow. This bill is inconsistent with the following criteria for the reasons outlined below:

Legislation should be:

(b) consistent with principles of natural justice; and...

*- The bill makes use of the test “reasonably appears to be” as the test for an attachment device and a dangerous attachment device. The structure of the bill subverts the requirement for evidence as a principle of natural justice as it requires*

(d) does not reverse the onus of proof in criminal proceedings without adequate justification; and...

The bill makes use of the test “reasonably appears to be” as the test for an attachment device and a dangerous attachment device. There appear to be no safeguards for the presumption of innocence here.

(k) is unambiguous and drafted in a sufficiently clear and precise way...<sup>14</sup>

The following sections of the bill are ambiguous:

*“A ‘dangerous substance or thing’ is defined to mean:*

- *anything likely to explode when struck or compressed causing injury to a person;*

<sup>12</sup> <https://theconversation.com/lock-on-devices-are-a-symbol-of-non-violent-protest-but-they-might-soon-be-banned-in-queensland-122472>

<sup>13</sup> <http://carbonpricemodelling.treasury.gov.au/content/overview/page16.asp>

<sup>14</sup> [https://www.legislation.qld.gov.au/file/Leg\\_Info\\_publications\\_FLP\\_Clear\\_meaning.pdf](https://www.legislation.qld.gov.au/file/Leg_Info_publications_FLP_Clear_meaning.pdf)

- *anything likely to cut a person's skin; or*
- *any substance or thing that requires a person to wear protective clothing to safely handle, cut or break up the thing."*

This is alarmingly broad. For example, police are required to use personal protective clothing in a broad variety of instances and the requirement for protective clothing (which may be merely a precaution or standard procedure) is not a reliable indicator of situational danger. Are common household chemicals requiring the use of gloves a "dangerous substance or thing"? Similarly, "anything likely to cut a person's skin" could refer to a variety of everyday items which would be criminalised.

FLAC notes that compliance with FLPs is not mandatory and it is for the Parliament to determine whether legislation has 'sufficient regard' to one or more of the FLPs and whether sufficient justification is given in the Bill's explanatory notes for any departure from them.

**We suggest this bill does not have enough regard to the FLPs as outlined above. As the explanatory notes do not even recognise potential inconsistency with fundamental legal principles, the committee should investigate whether the principles were considered in the drafting of the legislation.**

### 3. Alternative ways of achieving policy objectives

*To ensure safety of Queensland residents the committee should examine protest holistically and determine whether this bill does more harm than good by limiting forms of dissent.*

The Explanatory Notes State that: "There are no alternative means of achieving the policy objectives other than by legislative reform."

FLAC contends that there are alternative means of achieving policy objectives by creating reasonable and well thought out policy that mitigates the motivation for protest for example:

- Implementing systems of direct democracy to inform policy.
- Taking urgent, unprecedented and swift action to phase out fossil fuel use and mining to limit the necessity and motivation for non-violent direct action. Eg: for the Queensland Government to create and be led by the decisions of a Citizens' Assembly on climate and ecological justice, or by recommending such measures as the Mineral Resources (Galilee Basin) Amendment Bill 2018 be passed.
- Limiting corporate political donations and empowering the average citizen to *meaningfully* contribute to political decisions.



Although it may be argued that these considerations are not within the remit of the committee to examine, we would argue that submissions like these are one of the few ways that ordinary citizens can contribute to the parliamentary process. Therefore, the limited nature of the committee process and of parliament itself, is a driving factor for protest.

## Recommendations:

**RECCOMENDATION 1) We strongly recommend that the bill not be passed.**

**RECCOMENDATION 2) The claims made by the premier are a question of fact, and as such the committee should request to examine if there is evidence of lock on devices designed to injure emergency service workers.**

**RECCOMENDATION 3) Given the public interest, the committee should make evidence or the absence of evidence of these claims public.**

**RECCOMENDATION 4) The committee should reject the bill outright for its incompatibility with other statutes, notably human rights act. FLAC submits that there are less restrictive and reasonably available ways to achieve the purpose of the bill.**

**RECCOMENDATION 5) While it is noted that this bill does not affect peaceful assembly, it is important to note that it is occurring in concurrence with attacks on peaceful assembly, see footnotes 6 and 7. The committee should investigate whether the current protections for peaceful assembly are sufficient, given these examples.**

*“Actually, we who engage in nonviolent direct action are not the creators of tension. We merely bring to the surface the hidden tension that is already alive. We bring it out in the open, where it can be seen and dealt with. Like a boil that can never be cured so long as it is covered up but must be opened with all its ugliness to the natural medicines of air and light, injustice must be exposed, with all the tension its exposure creates, to the light of human conscience and the air of national opinion before it can be cured” - Martin Luther King<sup>15</sup>*

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<sup>15</sup>[http://www.africa.upenn.edu/Articles\\_Gen/Letter\\_Birmingham.html](http://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html)