Griffith UNIVERSITY

Griffith Criminology Institute
Director: Prof Janet Ransley

Committee Secretary
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane Qld 4000

Dear Sir/Madam

Submission on *Summary Offences and Other Legislation Amendment Bill 2019*

I make this submission in my capacity as Director of the Griffith Criminology Institute. The submission focuses on two main concerns raised by the Bill, as set out below.

1. Lack of evidence supporting a need for the legislative change

Good legislative practice requires there to be a clear need for new laws. This is particularly so for laws that may adversely affect the rights and liberties of citizens, as this Bill would. But the rationale given for the Bill is largely speculative. The rationale is based on assumptions that tactics adopted in recent protests are intended to cause injuries to protesters and first responders (Explanatory Notes p.2).

While recent protest activities may have been disruptive, and there may be evidence of the use of attachment devices to delay the removal of protesters, no evidence has been advanced publicly to establish the use of devices intended to cause injury. The Explanatory Notes couch this as a possible risk, referring to reports that 'some people have claimed' to have made such devices (p.2).

Apart from this assertion, there seems to be no evidence of the frequency and nature of the threat posed by the devices – how often have they been used, why have existing laws proved inadequate, how many people have been actually or potentially harmed by them? In the interests of evidence-based policy and law-making, this data should be available.

In its absence, the real case for the Bill appears to be a desire to reduce the disruption caused by protesters. Indeed, much of the justification given in the Explanatory Notes relates to 'annoyance or inconvenience to the public' (p.1), 'tactics designed to maximise the disruption' (p.2), and the costs to businesses such as Aurizon (p.3).

This distinction between an intention to prevent injury and one to prevent disruption, is important for a proposal to reduce the right to peaceful assembly. It shifts the rationale for the law from one about preventing injury to one about protecting the rights of one part of society (eg business) at the expense of another (protesters).

The balance between those rights is already enshrined in Queensland law. The existing law recognizes that the democratic rights of protesters to express political views may at times affect the rights of others to go about their business, and it draws a careful balance between those competing rights. The *Summary Offences Act 2005* already contains provisions about unlawful assemblies, trespass, gathering at buildings and entry on farm lands (see ss10-13). Assemblies not authorised under the

Peaceful Assembly Act 1992 are already subject to police powers, and restrictions may be imposed even on authorised assemblies. Businesses already have the right, which some have exercised, to take civil action against protesters and organisations.

In the absence of clear evidence to show why that scheme is now insufficient, there is no rationale for legislative change.

2. Proposed amendment of s30 of *Police Powers and Responsibilities Act 2000*

The Bill proposes an extension to the prescribed circumstances in which police may conduct searches without a warrant, of both people and vehicles. It would allow this on the basis of a reasonable suspicion that the person has or the vehicle contains a 'dangerous attachment device'. The rationale given is for the need of 'a preventative measure that allows police officers to intervene before dangerous attachment devices are deployed thereby minimising the risk of harm to persons and disruptions to the community' (Explanatory Notes p.2).

This rationale is problematic at least in relation to the claimed need to minimise the risk of harm. Section 30(1)(d) of the PPRA already authorises searches without warrants of a person if there is reasonable suspicion the person has something they intend to use to cause harm to himself, herself or someone else, and s32(1)(m) authorises warrantless searches of vehicles in similar circumstances.

Again, it seems the real rationale is to equip police to prevent disruption of the kind which has been seen recently. However, the power to search without warrant is an intrusive power which is confined to limited circumstances because its ungoverned use could threaten the democratic rights and liberties of citizens. Generally search powers without judicial oversight are reserved for circumstances which require an immediate police response to protect community safety.

The police role in managing legitimate protest is complex. The need to maintain public order in the face of increasingly complex and sophisticated protest tactics is challenging. But Queensland's history of state repression of protest resulted in the *Peaceful Assembly Act*, and its history of police misconduct led to the *Police Powers and Responsibilities Act*.[1] Given this history, changes to those laws should be carefully justified and clearly drawn, and intrusions on fundamental rights should only occur as necessary, reasonable and proportionate to the protect the public.

While this Bill is couched in terms of protecting the public and first responders from harm, the main motivation appears to be limiting the impact of protest. There needs to be a balance between the right to protest and the right of the public to go about their business, but the case for changing the existing balance has not been adequately made.

Yours sincerely

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[1] See generally D.Baker et al (2017) Policing Protest, Security and Freedom: the 2014 G20 experience, *Police Practice and Research*, 18:5, 425-448; C.Lewis, J.Ransley & R.Homel (eds) (2010) The Fitzgerald Legacy: Reforming public life in Australia and Beyond, Australian Academic Press.