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8 October 2019

Queensland Parliament
Committee Secretary
Legal Affairs and Community Safety Committee
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Submission regarding the *Summary Offences and Other Legislation Amendment Bill 2019*

1. Greenpeace Australia Pacific (GPAP) welcomes the opportunity to make a submission to the Legal Affairs and Community Safety Committee (Committee) regarding the *Summary Offences and Other Legislation Amendment Bill 2019* (Bill).
2. GPAP is a leading independent campaigning organisation. Amongst other tactics, we use peaceful direct action and creative communication to expose global environmental injustices. We have over one million supporters and are part of a global network tackling the world's most pressing environmental problems. We are an entirely independent, people-powered, registered charity and do not accept donations from governments or corporations.

The Bill in its current form is an unjustified burden on freedom of political communication

3. Free speech in the form of peaceful protest is an essential bedrock of a functioning democracy. This long-held principle was recognised when Australia became a signatory to the *International Covenant on Civil and Political Rights* (ICPR). Article 19 of the ICPR recognises freedom of speech and Article 21 recognises the right to peaceful assembly.
4. The High Court of Australia has recognised that freedom of political communication is implied in the Constitution and that this freedom goes beyond speech and includes non-verbal communication.
5. In its unanimous judgment in *Lange*, the High Court stated that "[f]reedom of communication on matters of government and politics is an indispensable incident of the system of representative and responsible government which the [Australian] Constitution creates and requires."[1]
6. The freedom to protest is essential to representative and responsible government in Australia. It is a form of speech that allows individuals to challenge decisions made by governments or parliaments, and to seek to build support for these views in ways they believe likely to influence policy and decision-making.
7. GPAP incorporates thorough risk assessment and risk mitigation strategies into all campaign planning and considers the safety of its crew, first responders and the community at large to be paramount.

[1] *Lange v Australian Broadcasting Corporation* (1997) 189 CLR, 559 applied most recently in *Brown v Tasmania* (2017) 261 CLR 328 and *Comcare v Banerji* [2019] HCA 23, 20.

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8. The proposed Bill goes far beyond legitimate protection for these groups and seeks to protect "commercial activities" from peaceful protest activities.
9. It is necessary to "strike a balance between competing rights – the right, jealously guarded, of the citizen to exercise freedom of speech and assembly integral to a democratic system of government and way of life, and the right of other citizens not to have their own activities impeded or obstructed or curtailed by the exercise of those rights".[2]
10. This Bill places disproportionate restrictions on the freedom of Australian citizens to exercise their right to free speech and association through peaceful protest. It goes far beyond protecting the legitimate rights of other citizens and has the effect of silencing civil society from providing peaceful educational dissent on important issues.
11. The Bill is an unjustified burden on the implied freedom of political communication in Australia and should not proceed without the major amendments outlined below.

Definition of *"dangerous attachment device"* is too broad and encompasses peaceful, safe protest devices

12. The proposed section 14A(1) of the *Summary Offences Act 2005* defines "attachment device" as a device that reasonably appears to be constructed or modified to enable a person using the device to resist being safely removed from a place or safely separated from a thing. Section 14A(2) excludes glue, a bike lock, a padlock, a rope and a chain (each used on their own) from this definition.
13. We concur that the items outlined in the proposed 14B(1)(a), (b) and (c) of the *Summary Offences Act 2005* should be prohibited.
14. However, the Bill goes too far by encompassing "sleeping dragon", "dragon's den", "monopole" and "tripod devices" in the definition. These should be removed from the definition of "dangerous attachment device" as they are often deployed as part of safe, peaceful protests.
15. Prohibiting such devices, and allowing police officers to effect searches, seizures and destruction of such devices without a warrant will have a large impact on legitimate, safe protests and does not achieve the aim of the Bill – that being to address the use of *dangerous* attachment devices.
16. "Sleeping dragon" devices, as defined in section 14B(3) are not dangerous by their nature. They assist protesters to maintain the protest in order to gain publicity and support for their cause by providing a safe and comfortable way of holding their position. Similarly, there are a myriad of safe ways to use "monopoles" and "tripods".
17. The proposed section 14B(7)(c) takes the outrageous stance that a "dangerous attachment device" will be deemed dangerous even where protective clothing or other shielding would prevent injury to *any* person. It is deeply concerning that the drafter of this Bill has attempted to criminalise safe protest activities by capturing incontrovertibly safe protest devices within the definition of "dangerous attachment device".

No change to the *Police Powers and Responsibilities Act 2000* (Qld)

[2] *Commissioner of Police v Rintoul* [2003] NSWSC 662, 5.

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18. Search and seizure powers are invasive. Such powers interfere with a person's fundamental right to liberty and privacy. Judicial oversight of search and seizure processes through the issuance of warrants is a staple, long-held safeguard in western democracies around the world in order to ensure that such powers are not used unnecessarily or arbitrarily.
19. The *Police Powers and Responsibilities Act 2000* (Qld) imports the problematic definition of "dangerous attachment device" which the Bill intends to insert into the *Summary Offences Act 2005*.
20. The Bill seeks to amend section 30 and 32 of the *Police Powers and Responsibilities Act 2000* (Qld) to grant police additional powers to search persons and vehicles without a warrant. The Act already allows for people and vehicles to be searched without a warrant where the person has "something the person intends to use to cause harm to himself, herself or someone else" (section 30(d) and section 32(m)). The existing legislation is sufficient to allow searches for the purpose of maintaining public safety.
21. The Bill attempts to lower this threshold so that searches without a warrant could be conducted where there is "a dangerous attachment device that has been used, or is to be used, to disrupt a relevant lawful activity". Sections 30(2) and 32(3) further note that under the new Bill a relevant lawful activity is disrupted if the device:
    a) unreasonably interferes with the operation of transport infrastructure;
    b) stops a person from entering or leaving a place of business; or
    c) causes a halt to the ordinary operation of plant or equipment because of safety concerns.
22. The broad and ambiguous drafting of sections 30(2) and 32(3) grants the police invasive search powers without a warrant in circumstances in which a protest device which is safe in nature (such as a safely constructed dragon's den) has not yet been used and may only cause mild inconvenience to the public – such as where a mass protest inadvertently obstructs people from easily moving to and from their place of business.
23. The Bill does not specify what is considered "unreasonable interference" with the operation of transport. For example, if one lane in a four-lane road is shut down due to the sheer scale and support for a peaceful public protest and the protesters marching at the front of the protest are connected to each other by holding hands inside tubing which has had padding added for comfort, under the current wording this may be enough to enliven a maximum penalty of up to 2 years imprisonment or $6,527.50.
24. This is an unacceptable burden on the freedom of political communication and will have a disturbing effect on the ability of the civil society sector to advocate for public policy issues. Page 5 of the explanatory note which accompanies the Bill specifies that "the offences only target the small cohort of persons who use dangerous attachment devices when espousing their cause or ideology. It will not apply to a person or assembly that is otherwise engaging peacefully under the PAA". While this is a reassuring sentiment, it is not reflected in the drafting.
25. The Bill does not specify who determines whether operations should be halted because of safety concerns. In its current form, an ordinary and reasonable reading of the words imports a subjective test in which the operator of the plant or equipment has the discretion to determine when the plant or equipment is halted due to safety concerns, and thereby also

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has the discretion to determine when protesters are subject to these invasive search procedures. It is incredibly dangerous to our democracy and to the freedom of political communication which underpins it, to give the target of a protest the power to determine when the protesters should be searched and when they should be subject to criminal penalty. At the very least, this test should be explicitly amended to an objective test.

26. It is our understanding that the devices which the Bill seeks to outlaw are usually homemade from readily accessible materials. The extension of police powers to not only allow searches, but also seizure and disposal of such devices is likely to lead to circumstances where protesters are subject to invasive search procedures and have their possessions destroyed or seized by the state out of an unfounded fear that such household items like piping or metal tubing may be utilised as "a dangerous attachment device" in a protest. This broad discretion lacks sufficient safeguards and is incredibly susceptible to misuse by the executive.

Amendment of *State Penalty Enforcement Regulation 2014* creates new fines

27. This regulation allows police to issue penalty infringement notices and fines when responding to protests if:
    a) a "dangerous attachment device" is used to "unreasonably interfere with the ordinary operation of transport infrastructure" (5 penalty units, which is currently $652.75); or
    b) a "dangerous attachment device" is "used to stop a person from entering or leaving a place of business" (2 penalty units which is currently $261.10); or
    c) a "dangerous attachment device" is used to "cause a halt to the ordinary operation of plant or equipment because of concerns about the safety of any person" (2 penalty units which is currently $261.10).
28. The amendments imposed by the Bill which criminalise the use of "dangerous attachment devices" are disproportionate in their severity and must be amended. In *Lange* the High Court noted that if there are 'less drastic' measures by which the objectives of a law can be achieved then such other methods should take preference. We advocate that the criminal penalties which the Bill seeks to impose (pursuant to section 14C of the *Summary Offences Act 2005*) are indeed disproportionate to the severity of the conduct, particularly when a less drastic means, such as a fine issued pursuant to an infringement notice is an available avenue for tackling the issue.
29. The proportionality of criminalising acts made by individuals which fall under freedom of political communication is grossly disproportionate to the damage likely to be done to any affected business under section 14C(2) of the *Summary Offences Act 2005*. #21(a) above attracts a maximum penalty of 50 penalty units (currently $6,527.50) or 2 years imprisonment; while #21(b) and (c) above attract a maximum penalty of 20 penalty units (currently $2,611) or 1 year's imprisonment.

Democracy is disruption

30. The very nature of democracy and free speech is disruptive. It is fundamentally undemocratic to place such burdens on the right of the Australian public to protest. Further clarification and a narrower application are required to align this legislation with the principles of democracy and responsible government enshrined in the Australian Constitution.

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Yours sincerely

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