

Queensland Council of Unions

Honorary President: **Rohan Webb** Acting General Secretary: **Michael Clifford**

10 October 2019

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

By email lacsc@parliament.qld.gov.au

Dear Committee Secretary

Re: Summary Offences and Other Legislation Amendment Bill 2019

The Queensland Council of Unions (QCU) is the peak union council in Queensland and has the charter of advancing the political, economic and industrial rights of Queensland workers.

The QCU has grave concerns as to any potential restriction on Queensland workers exercising their democratic right to protest or to take action to defend or advance their rights.

Queenslanders have a long history of demonstrating against injustice and promoting the need for change. Campaigns against conscription, apartheid and oppressive legislation have been a necessary reflection of Queenslanders' democratic rights. Unfortunately, Queensland governments have a history of excessively reacting to such demonstrations. We are concerned about the introduction of any laws that are rushed through Parliament without the proper thought and scrutiny; and without a thorough process to interrogate the need for the laws, the efficacy of the laws, and the potential consequences of the laws.

We are also concerned about the scope of the laws which in our view, are broader than their stated intention and which introduce extensive search powers.

Process

The original date for Committee hearings on this Bill was 21 October. The hearing date has been brought forward to 11 October in an attempt to 'fast-track' the laws through Parliament. That does not inspire a great deal of faith in the integrity of the Committee process.

The Labor Government has previously made a virtue of its willingness to consult and should maintain its proud history in that regard. It was also quite rightly critical of the Newman Government's

disregard for the Committee process. It did so because it recognised the importance of the Committee process to democratic principles, particularly in a unicameral parliamentary system. These are principles worth supporting.

While the Government may hold concerns about the disruption caused by some current protests, this is hardly a state of emergency. These protests do not warrant a knee-jerk response and with laws that will impact on the rights of all Queenslanders, we should proceed with caution, care and due process.

The Bill

QCU is concerned about any laws which impinge on the right to protest peacefully. We believe these laws do that by increasing penalties for peaceful protest actions; by introducing new offences for the use of objects which are, in themselves, not dangerous; and subjecting people to searches which impinge upon the rights of all Queenslanders, not only protesters.

We understand that the laws are at least in part a response to health and safety concerns for police, fire fighters, train drivers and protesters. We believe there are legitimate health and safety issues that should be addressed. However, health and safety concerns will not be fully addressed through a fast tracked or truncated Committee process and the proposed amendments do not guarantee that those health and safety issues will be addressed. We will return to this issue later in our submission.

We believe that these laws will antagonise protesters and people who care about civil liberties. That will inflame protest actions, not discourage protesters.

It is our view that the best way to deal with protests is to demonstrate a willingness to deal with the root cause of the problem and to engage in dialogue. Simply dealing with the symptoms won't make the issue go away.

The QCU does not support the Bill.

If the Committee does not recommend to reject the Bill in its current form, below are specific areas of concern that should be addressed.

Search Powers

The Bill provides police with the power to search for a dangerous attachment device without a warrant. The search powers affect every Queenslanders. There are already extensive search powers in Queensland and this Bill extends those further. Any time search powers are extended, it diminishes the civil liberties of Queenslanders.

A search for a 'dragon's den' may seem simple. We are essentially talking about a 44 gallon drum full of cement which should be fairly easy to spot in the back of a utility. However, in regional and rural Queensland, numerous vehicles will have 44 gallon drums in them leaving them open to searches. If a vehicle has a tarp or other cover over the back, it may be stopped on suspicion of containing a dangerous attachment device, particularly if it is in the vicinity of protest action.

Another so called 'dangerous attachment device' is a sleeping dragon. This is essentially a cleverly designed pipe which from the outside, may look just like a length of pipe. These devices have been used in protests in and around the Brisbane CBD. Also in the Brisbane CBD are two major construction projects, being the Queens Wharf development and the Cross River Rail. Both projects will see an influx of plumbers and other tradespeople in vehicles containing pipes and other tools. Overzealous application of the search laws could see ordinary workers going about their daily business being stopped and searched.

While the above simply provide geographically based examples, the overriding concern is that search laws have the potential to impact Queenslanders in many different places and in many different ways. They are an unwanted and unnecessary intrusion into the lives of all of us.

Definition

The Bill makes it an offence to use a dangerous attachment device to disrupt lawful activities. A dangerous attachment device is broadly defined, in part, as something that "incorporates a dangerous substance or thing". A "dangerous substance or thing" is in turn defined as "anything likely to cut a person's skin".

This part of the definition is very broad and is likely to capture devices or tools that are not in the minds of the legislators at the time of passing the Bill into law and that may be entirely innocuous. Such broad definitions may lend themselves to unintended consequences.

The broad definition becomes even more concerning when combined with the search powers referred to above. The Bill, in this case, is not just facilitating searches for 44 gallon drums full of cement, or for bamboo poles that might form a tripod, but it is facilitating searches for devices that may be simple box cutters and other cutting tools.

We suspect that the words "anything likely to cut a persons skin" are attempting to capture things like a glass rim inside a dragon's sleeve. However, the words allow a much broader interpretation of what a 'dangerous attachment device' is. In fact, it requires a level of interpretation which is dangerous in legislation of this kind.

QCU recommends that 14B(1)(c) and the definitions of 'dangerous substance or thing' and 'protective clothing' in 14B(8) be removed. In the alternative, remove 14B(8)(b) and (c) and the definition of 'protective clothing'.

Exclusions

While the Bill excludes chains, bike locks, glue, padlocks and rope as attachment devices, naming these implements may allow for the inclusion of other innocuous devices which are not intended to be caught by the legislation. It could be argued that a range of devices could cut skin or require the use of protective clothing to remove.

Removing section 14B(1)(c) and the definitions of 'dangerous substance or thing' and 'protective clothing' in 14B(8) would help resolve this uncertainty. The alternative would be to list the above items as examples of devices that are excluded although this would still leave a level of uncertainty about what is captured and what is not.

In addition, section 14A(2) states:

To remove any doubt, it is declared that none of the following things is, **by itself** (emphasis added), an attachment device –

- (a)...
- (b)...
- (c)...
- (d)...
- (e)...

The expression “by itself” leaves the provision open to be interpreted that any combination of those devices could void the exclusion.

QCU recommends the removal of the words “by itself”.

Existing Laws

There are existing laws which provide police powers in protest situations. We believe these laws already provide adequate measures and do not need to be extended. For example, on 30 September 2019, a protester used a tripod on the Victoria Bridge to block traffic. This protester was fined more than \$1000 for causing obstruction as a pedestrian and obstructing a police officer.

Another protester suspended himself from the Story Bridge on 8 October 2019. It was reported that this protester was charged with engaging in an ‘unregulated high risk activity’ on a structure (in this case, the bridge). Under that offence, a protester can be fined \$2,669 (20 penalty units) or face up to 1 year in prison.

Clearly there were measures in place to deal with these actions. The same can be said for other actions that the Bill seeks to deal with.

Slippery Slope

Passing these laws opens the door to future amendments which would see protest rights or civil liberties further diminished. A simple amendment could see exclusions removed. Other implements could be added. Search powers extended to accommodate new implements.

It is true that new legislation could be created from scratch to the same effect, however once the door is opened to laws that further criminalise protest activity, it is easier to nudge the door further open than to unlock it in the first place.

The QCU recognises the constructive role that has been played by the Queensland Police Union of Employees (QPUE). In discussions about these laws they have highlighted their primary concern as being for the health and safety of QPUE members and for protesters. These concerns have been balanced with broader concerns of the union movement. Rightly, the QPUE has the objective of promoting and defending its members’ health and safety.

The QPUE's concerns for its members goes, at least in part, to the difficult task of removing devices such as dragon's dens which require heavy cutting equipment. In removing these types of devices, there are concerns about particles of the device injuring an officer. There are also concerns about injuring a protester who has their arm in the middle of the device.

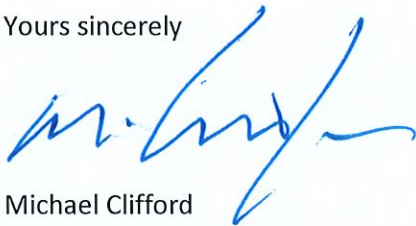
Where fire-fighters are engaged to remove protesters from devices, the same concerns about a fire-fighters safety and the safety of a protester will apply.

The Australian Rail, Tram and Bus Industry Union (RTBU) has also raised concerns for the psychological wellbeing of members and the safety of protesters, in cases where protest action is conducted on railways. The RTBU highlight that trains can take kilometres to stop and as such, any protest action on railway that a train driver is unaware of can have devastating consequences.

The above concerns are serious and must be addressed. QCU will be a willing participant in any discussions to find solutions. We are concerned however that rushing this Bill through parliament is the wrong response. We also believe that widespread search powers, diminishing the rights of all Queenslanders, is not the right answer. There should be a better way to deal with legitimate and serious health and safety concerns.

Please contact me should you require any further information or assistance.

Yours sincerely



Michael Clifford
Acting General Secretary
Queensland Council of Unions