



8 October 2019

Committee Secretary
Legal Affairs and Community Safety Committee
Parliament House
Sent via email only: lacsc@parliament.qld.gov.au

Dear Chair and Committee,

Submission to Summary Offences and Other Legislation Amendment Bill 2019 inquiry

Thank you for the opportunity to provide a submission on this important Bill. This submission is provided on behalf of Environmental Defenders Office Qld and Environmental Defenders Office North Qld.

About the Environmental Defenders Offices

EDOs are non-profit community legal centres with clients from both rural and urban areas and backgrounds. Our solicitors provide legal advice to over a thousand individuals and groups every year, including through educational events we organise in partnership with community groups and in response to specific advice requests by clients. We run a small number of public interest court cases in state and federal courts to assist those who have good grounds to use their legal rights under our laws to defend the interests of the environment and their community. Further we provide detailed submissions to help ensure laws adequately protect the environment and community rights and wellbeing.

Overall, EDO Qld and EDO NQ consider this Bill to be unnecessary, inappropriate and an overreach by the Queensland Government.

EDO offices do not condone illegal activity. EDOs advocate for fair and just laws that are proportionate to the offence. EDO offices consider these new offence provisions to unnecessarily duplicate or be in excess of existing laws and to carry penalties that are excessive when compared with similar existing offences. In summary, we consider:

1. There are existing laws that serve the purpose of these proposed laws, making these proposed offences unnecessary and duplicative of existing laws;
2. The penalties can be considered to be excessive and unnecessary given the significant penalties already awarded against protesters under current laws; and
3. Similar laws sought to be introduced in Western Australia have been strongly criticised broadly by the UN and civil society as contrary to Australia's international human rights obligations and as having a 'chilling effect on silencing dissenters and punishing expression protected by international human rights law', 'disproportionately criminali[sing] legitimate protest action'. Further this Bill is arguably contrary to the new *Human Rights Act 2019* (Qld).

Please find our detailed submissions in the **Appendix** to this letter.

We strongly recommend that the Committee recommends that this Bill is not passed.

Please do not hesitate to contact us if you have any questions or would like to discuss this matter further.

Yours faithfully

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APPENDIX

1. Excessive, inappropriate police powers to stop, search and seize items - Existing laws are sufficient

Through these amendments the Bill proposes to introduce police powers which are unnecessary where sufficient powers already exist for Police to stop and search suspects. Under the *Police Powers and Responsibilities Act 2000* (Qld) police have broad existing powers to stop and search individuals without a warrant, which can and are to our knowledge used currently against people involved in protests in which there is a suspicion of illegal activity. The powers proposed, and the description of an ‘attachment device’ and a ‘dangerous attachment device’ are unreasonably broad and include an element of subjective interpretation as to what ‘reasonably appears’ to resemble the elements of concern.

For example, while the definition of an ‘attachment device’ excludes certain commonly used objects (Clause 11 new s14A(2)), the items listed are only excluded where found ‘by itself’, and would not necessarily be excluded if found together with another of these commonly used items. It is not common for cyclists to have a bike lock and a padlock and chain to assist in securing their bike, yet these items could be unreasonably removed from the holder under this broad provision. The broad, subjective nature of these provisions are open to discretion of the decision maker and could be misused and interpreted in a way that is excessive to the intention even of this Bill.

There are currently sufficient laws in Queensland for managing the activities sought to be subject to further regulation under this Bill. For example, criminal trespass is a summary offence under the [Summary Offences Act 2005](#) (Qld), which makes it illegal to enter into, or remain in someone’s house or yard, or business premises (s11) without their permission, unless they have a lawful reason to be there. The current maximum penalty for this offence of trespass is 20 penalty units (a maximum of \$2,669.00) or 1 year imprisonment.

There are also existing provisions under the [Transport Infrastructure Act 1994](#) (Qld) that make it an offence to interfere with certain roads or railway infrastructure with substantial penalties (see **Appendix**). There is also a criminal offence of endangering the safe use of vehicles and related transport infrastructure in the Criminal Code, which is subject to a maximum penalty of life imprisonment.

Further, the Queensland Government introduced a new offence in the *Biosecurity Regulation 2016*, which commenced in April 2019, to allow Queensland Police Service and biosecurity officers to immediately fine people who put on-farm biosecurity at risk through for example, unlawful entry. These amendments were [stated](#) to be directed to people entering agricultural premises to address perceived potential animal welfare issues. The maximum penalty introduced is the same as that for the existing criminal trespass offence.

In addition to these laws, there is also the ability for an owner of property to sue for civil trespass and to seek damages for any fiscal or property damage that may have occurred due to, or in addition to the trespass. This means that any loss of profit or damage to property may be recompensed directly through suing the perpetrator directly.

These proposed provisions are not necessary as the activities sought to be deterred are currently sufficiently dealt with under our existing laws, and any damage or loss, including economic loss, experienced from the activities can be rectified through these existing laws.

2. Excessive penalty powers unnecessary given significant penalties already provided under existing laws

The Bill seeks to introduce the power to provide penalty infringement notices for the new offences of using a dangerous attachment device, under the *State Penalties Enforcement Regulation 2014* (Qld) (SPER). The fines, provided in the Bill are to the effect of:

- 50 penalty units or 2 years jail for using a dangerous attachment device in way that unreasonably interferes with the operation of transport infrastructure; and
- 20 penalty units or 1 year's jail for using a dangerous attachment device to either stop a person leaving or entering 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.

This equates to potential fines of \$6,672.50 and \$2,669 respectively for these new offences.

We are aware of protesters in the last year being given fines and orders involving far greater amounts under current laws, upwards of \$61,000, as well as fines of \$750 being awarded by Magistrates against protesters sitting in a roadway without any lock-on device used.

This is compared to New Acland Coal Pty Ltd, a subsidiary of the New Hope Group being fined only \$3,152 for illegally drilling at 27 sites at the New Acland coal mine; where New Hope Group reportedly made a profit of \$160 million in after-tax profit in second half of 2018.¹

Queensland's laws currently significantly undervalue environmental offences, particularly when seen against the excessive penalties proposed or currently capable of being awarded against those seeking to defend environmental or social justice issues.

3. Similar laws have been criticised broadly by the UN and civil society, and laws are contrary to international and Qld human rights protections

In 2015 Western Australia sought to introduce the *Criminal Code Amendment (Prevention of Lawful Activity) Bill 2015* (WA) which sought to reduce the legal rights for citizens to protest "lawful activity," in a very similar way to this Bill. The Bill provided for similar provisions, such as:

'A person must not, with the intention of preventing a lawful activity that is being, or is about to be, carried on by another person, physically prevent that activity.'

And that:

'A person must not make, adapt or knowingly possess a thing for the purpose of using it, or enabling it to be used, in the commission of [an offence]'

The office of the United Nations High Commissioner for Human Rights released a statement strongly criticising the Bill and urging that it not be adopted.² The release stated comments that are directly applicable to this Bill and therefore which are here cited by way of reminder for the Committee:

"If the Bill passes, it would go against Australia's international obligations under international human rights law, including the rights to freedom of opinion and expression as well as peaceful assembly and association," said the UN Special Rapporteurs on freedom of expression, David Kaye,

¹ <https://www.theguardian.com/environment/2019/jul/30/new-acland-coalmine-caught-drilling-illegally-at-27-sites-and-fined-just-3152>.

² <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17047&LangID=E>

on freedoms of peaceful assembly and association, Maina Kiai, and on human rights defenders, Michel Forst.

“The Bill would criminalise a wide range of legitimate conduct by creating criminal offenses for the acts of physically preventing a lawful activity and possessing an object for the purpose of preventing a lawful activity,” they explained. “For example, peaceful civil disobedience and any non-violent direct action could be characterized as ‘physically preventing a lawful activity.’”

...

“The proposed legislation will have the chilling effect of silencing dissenters and punishing expression protected by international human rights law. Instead of having a necessary legitimate aim, the Bill’s offense provisions disproportionately criminalize legitimate protest actions,” Mr. Kaye warned.

Special Rapporteur Kiai stressed that the passage of the Bill would grant police disproportionate and unnecessary powers to restrict lawful protests, primarily against environmental activists trying to raise awareness of key environmental issues. “It discourages legitimate protest activity and instead, prioritizes business and government resource interests over the democratic rights of individuals,” he noted.

“Human rights defenders have a legitimate right to promote and protect all human rights, including the right to a healthy environment, regardless of whether their peaceful activities are seen by some as frustrating development projects or are costlier for the police to address,” Mr. Forst underscored.

“Environmentalists and land rights defenders are already among the ones most at risk, and the State is obligated to protect and support them,” said the Special Rapporteur who will carry out his first official visit to Australia later this year.

In September 2014, the three UN human rights experts had urged the Tasmanian Government to withdraw a similar anti-protest bill, which also targets environmental protestors. The experts remain concerned over the implementation of the Tasmanian law.”³

Equally the Law Society of Western Australia raised concern as to this Bill, stating “*These laws will place too much discretion in the hands of the police and prosecutors ...and it’s not fair on anybody when the public have to second-guess how the police may enforce such very broad criminal laws*”.⁴

This Western Australian Bill was subsequently not passed. Queensland should follow the lesson learned in Western Australia.

Further, the Bill appears to be contrary to the newly passed *Human Rights Act 2019* (Qld), particularly with respect to the freedoms of:

- peaceful assembly and freedom of association (s22);
- expression (s21); and
- thought, conscience, religion and belief (s20).

In addition it may potentially be contrary to the ‘Right to liberty and security of person’ (s29) in so far as the law is open to the discretion of the decision maker on broad, subjective terms.

We strongly recommend that the Committee recommends that this Bill is not passed.

³ Ibid.

⁴ <https://www.lawsocietywa.asn.au/news/criminal-code-amendment-prevention-of-lawful-activity-bill/>.