



Our reference: BNE 3415488

9 October 2019

Committee Secretary  
Legal Affairs and Community Safety Committee  
Parliament House  
BRISBANE QLD 4000

**By email:** [lacsc@parliament.qld.gov.au](mailto:lacsc@parliament.qld.gov.au)

Dear Committee

## **SUMMARY OFFENCES AND OTHER LEGISLATION AMENDMENT BILL 2019**

Thank you for the opportunity to make a submission to the inquiry into the Summary Offences and Other Legislation Amendment Bill 2019 (the Bill).

The Queensland Human Rights Commission (the Commission) has functions under the *Anti-Discrimination Act 1991* and the *Human Rights Act 2019* to promote an understanding and discussion of human rights in Queensland, and to provide information and educative services about human rights.

According to the Explanatory Notes, the purpose of the Bill is to:

- deter people from using dangerous attachment devices that endanger themselves, emergency service workers, and the public; and
- assist police in minimising disruption of the community caused through employment of the devices.

The Bill aims to achieve this by:

- creating new offences under the *Summary Offences Act 2005* that are specific to 'dangerous attachment devices';
- giving police additional powers of search, seizure and disposal; and
- providing an option for police to issue penalty infringement notices for the new offences.

The Bill stems from recent protest activities in Brisbane that have disrupted the flow of traffic, and in other areas where transport has been disrupted. In some cases protesters have used devices (including glue and locks) to attach themselves to structures. In order to stop the protest, police or other emergency workers have needed to detach the person from the structure.

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## Outline of the new offences and police powers

Central to the new offences is the definition of ‘dangerous attachment device’. A dangerous attachment device is defined as an attachment device that:

- reasonably appears to be constructed or modified to cause injury to any person if there is an attempt to interfere with the device;
- incorporates a dangerous substance or thing such as asbestos or poison (dangerous substance is also defined); or
- is a sleeping dragon, a dragon’s den, a monopole, or a tripod (these things are described in the Explanatory Notes and in the Introductory speech).

There are two new offences, namely:

- using a dangerous attachment device to unreasonably interfere with the ordinary operation of transport infrastructure, without a reasonable excuse; and
- using a dangerous attachment device (other than a monopole or tripod that does not incorporate a dangerous substance or thing) without reasonable excuse, to:
  - ◆ stop a person from entering or leaving a place of business; or
  - ◆ cause a halt to the ordinary operation of plant or equipment because of concerns about the safety of any person.

The Bill would give police additional powers of search, seizure, and disposal. Police would have the power to search, without warrant, people and vehicles if the police officer reasonably suspects there is a dangerous attachment device that has been, or is to be, used to disrupt activities referred to in the offence provisions.

A police officer who finds a dangerous attachment device would also have power to deactivate or disassemble the device, or to seize and dispose of the device.

## Human rights considerations

The Explanatory Notes refer to the *Peaceful Assemblies Act 1992* and the *Human Rights Act 2019*. The right to peaceful assembly is recognised in both of these Acts, and both Acts recognise that the exercise of the right is only to be limited where it is necessary and reasonable in a democratic society.

Human rights that are relevant to the Bill include the right to peaceful assembly, freedom of association, freedom of expression, property rights, and the right to privacy. The Explanatory Notes identify and discuss the right to peaceful assembly and property rights.

The right to peaceful assembly is interrelated with the freedom of expression, and freedom of association, and together they constitute the foundation of a system of government based on democracy, human rights, and pluralism. Assemblies are a

tool of political and social participation aimed at the testing of ideas by members of the population.<sup>1</sup>

The right to peaceful assembly that is provided for in both the *Peaceful Assemblies Act 1992* and the *Human Rights Act 2019* is drawn from article 21 of the International Covenant on Civil and Political Rights (the ICCPR), to which Australia is a party. Article 21 of the ICCPR provides:

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Recognition of the right to peaceful assembly imposes an obligation to accommodate the exercise of the right and its repercussions. This requires refraining from unwarranted interference, as well as facilitating and enabling peaceful assemblies. The primary obligation is to 'leave them alone'. This requires the government not to prohibit, restrict, block, or disrupt assemblies without good reason, and not to sanction participants without good cause. The obligation of accommodation also means that the government must facilitate and create an enabling environment for the exercise of assembly rights, and to assist participants, for example by blocking off streets, redirecting traffic, and providing security.<sup>2</sup>

Because political speech enjoys particular protection as a form of expression, assemblies with a political message should enjoy a heightened level of accommodation and enhanced protection.<sup>3</sup>

The rights to freedom of expression, peaceful assembly and freedom of association, encompass the choice of how to enjoy those rights. This includes, for example, in situ assemblies, sit-ins, marches, temporary structures, and attachment to structures. It is in the nature of assemblies and expression that they sometimes disrupt the daily exercise of freedom of movement and other rights.

### *Limitations*

The three main general requirements for limitations on ICCPR rights are legality, necessity, and proportionality.<sup>4</sup> The substantive requirements of necessity and proportionality are interrelated, which is reflected in the provision for the limitation of human rights in the *Human Rights Act 2019*.<sup>5</sup>

A restriction of rights must be demonstrably justified in the context of a society based on political pluralism and human rights, as opposed to being merely

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<sup>1</sup> Human Rights Committee, *Draft General Comment No. 37 on Article 21 (Right of Peaceful Assembly)*.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> See *Human Rights Act 2019*, section 13.

reasonable or expedient, and must be the least intrusive measure to achieve the relevant legitimate purpose.

While public safety, public order, and the protection of rights and freedoms of others are legitimate purposes for limiting rights, it is necessary to demonstrate the necessity and proportionality of the proposed limitations.

In terms of police powers, the fundamental duty involved in a peaceful assembly is to accommodate, by enabling and facilitating the exercise of the rights of participants while also protecting other members of the public, and property, from harm.

### **Application of human rights considerations to the Bill**

The task for the Committee and the Parliament is to give proper consideration to the necessity and proportionality of the proposed new offences and police powers.

#### *Necessity*

The first question for the Committee and Parliament to consider is whether the interference with the rights is warranted.

The Explanatory Notes describe how attachment devices that contain dangerous substances or things, or are constructed to cause injury, pose a risk, in the removal of the device, for the person attached to the device, the person removing the device, and members of the public. Public safety is one of the legitimate purposes for limiting the right to peaceful assembly.

However, in terms of this type of dangerous device, the Explanatory Notes state that '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', and 'a person could use material in constructing these devices that represent a danger to a person if that material is disturbed, such as asbestos'.

It is a fundamental principle that the necessity for legislation should be evidence-based rather than pre-emptive. In this case there is a lack of publicly available evidence of the need for this legislation.

Further, the Explanatory Notes have not addressed any deficit in existing offences and police powers to address these potential issues, and it is noted that police appear to have effectively dealt with the protests that have occurred to date within their existing powers.

#### *Proportionality*

Proper consideration under the *Human Rights Act 2019* involves having regard to and balancing the following factors:

- (a) the nature of the human rights involved (peaceful assembly, freedom of expression, property, privacy);

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- (b) the nature and purpose of the limitation (including whether it is consistent with a free and democratic society based on human dignity, equality and freedom);
  - (c) the relationship between the proposed limitations and their purpose (including whether each limitation helps to achieve the purpose);
  - (d) whether there are any less restrictive and reasonable ways to achieve the purposes;
  - (e) the importance of the purposes of the limitations;
  - (f) the importance of preserving the human rights; and

This reflects the test of proportionality under international human rights law.

While the legitimate purpose of public safety may apply in relation to devices that contain dangerous substances or things or are constructed to cause injury, there doesn't seem to be a relevant connection between a legitimate purpose and other attachment devices, namely a sleeping dragon or a dragon's den, which are not inherently dangerous but would be deemed to be dangerous by virtue of the proposed new section 14B of the *Summary Offences Act 2005*.

In fact, the reasons for prohibiting these devices as set out in the Explanatory Notes and the Introductory speech relate to disruptions and the need to deploy experts to remove and disassemble the devices.

It is in the very nature of some peaceful assemblies and expression of ideas that daily activities will be disrupted, including the exercise of the rights of others such as freedom of movement. Under international law, mere disruptions is not normally ground for restrictions, and disruption must be tolerated unless it imposes an undue burden. To the extent that assemblies that cause disruption may create risks, they have to be managed within a human rights framework.<sup>6</sup>

International law also requires that wherever possible, only law enforcement officials who have been trained in policing of assemblies should be deployed for that purpose.

The Bill would give the police broad powers to search, seize property, and to disassemble or dispose of property. These powers intrude on property rights and the right to privacy.

The Explanatory Notes do not explain why additional police powers are necessary and why current police powers, including the power to search a person when police reasonably suspect the person has something they intend to use to cause harm to themselves or others<sup>7</sup>, are not adequate.

Further questions for the Committee and Parliament to consider are whether:

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<sup>6</sup> Human Rights Committee, *Draft General Comment No. 37 on Article 21 (Right of Peaceful Assembly)*.

<sup>7</sup> *Police Powers and Responsibilities Act 2000*, section 30.

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- the limitations on the human rights are consistent with the obligations of accommodation; and
  - whether the necessity and proportionality of the proposed limitations has been demonstrated.

Having regard to the human rights principles discussed above, the Commission considers that necessity and proportionality has not been demonstrated in relation to the prohibitions on attachment devices per se, that is, those that do not contain dangerous substances or things, or have not been constructed to cause injury.

The Commission recommends the Committee require further information during the inquiry process.

As the use of attachment devices per se are used in protests and expressions of ideas that are political in nature, for the reasons discussed above, there is also a real risk that the provisions may be unconstitutional as an impermissible burden on the implied freedom of political communication.

Yours sincerely



**SCOTT MCDOUGALL**  
Queensland Human Rights Commissioner