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Office of the President

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Our ref: CrLC-BDS

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

Summary Offences and Other Legislation Amendment Bill 2019

Thank you for the opportunity to provide comments on the Summary Offences and Other Legislation Amendment Bill 2019 (Bill) and the short extension of time in which to provide our comments. The Queensland Law Society (QLS) appreciates being consulted on this important piece of legislation.

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

As there has been only a brief opportunity to review the proposed amendments and due to the commitments of our volunteer legal policy committee members, an in-depth analysis of the Bill has not been conducted. It is possible that there are issues relating to fundamental legislative principles or unintended drafting consequences which we have not identified. We note that the comments made in this submission are not exhaustive and we reserve the right to make further comment or supplementary submissions on these proposals.

This response has been compiled by the QLS Criminal Law Committee whose members have substantial expertise in this area.

1. Introductory comments

We understand the policy rationale behind the proposal for the Bill and support efforts to protect individuals from using dangerous attachment devices that endanger themselves, emergency services workers and members of the public. At the outset, it is essential that any legislative response to this issue must be evidence-based, narrowly drawn, necessary, proportional and targeted.

2. Part 4 – amendment of Summary Offences Act 2005

The Bill introduces preventative powers for Police to intervene in the use or proposed use of dangerous attachment devices, as well as providing for two new offences relating to their use.

The Bill affords Police the power to search a person or vehicle without warrant in certain circumstances. An officer must reasonably suspect that a person possesses a dangerous attachment device that has been or is to be used to disrupt a relevant lawful activity. An officer who locates a dangerous attachment device is then empowered to disassemble, seize or dispose of it so far as reasonably necessary.

The Bill proposed the introduction of two new offences under the *Summary Offences Act*, section 14C. Section 14C(1) prohibits a person from using a dangerous attachment device to unreasonably interfere with the ordinary operation of transport infrastructure unless the person has a reasonable excuse. This offence carries a maximum penalty of 50 penalty units or 2 years imprisonment. Section 14C(2) prohibits a person, without reasonable excuse, from using a dangerous attachment device 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. This offence carries a maximum penalty of 20 penalty units or 1 year imprisonment.

Dangerous attachment devices are defined by the new section 14B. The definition incorporates devices designed to cause injury to any person if there is an attempt to interfere with it, for example a device that emits a dangerous substance or thing such as asbestos or poison.

The Bill further amends the *State Penalties Enforcement Regulation 2014* to allow for the issue of infringement notices with respect to each of the new offences.

The definition of *attachment device* under section 14A(1) is a broad one, but it is sensibly clarified by the declaration in section 14A(2) that no single item listed is, by itself, an attachment device. Importantly, the proposed new offence provisions and powers of police apply only to *dangerous attachment devices* the definition of which is detailed and specific, with a clear focus on the prevention of injury to protestors and emergency services personnel.

To offend against section 14C(1) or (2) a person must utilise a *dangerous attachment devices* in a such a way that it causes an unreasonable disruption of the operation of transport infrastructure or prevents the carrying on of ordinary business. The mere possession of such items is insufficient to offend against the Act or trigger the additional powers for search and seizure without warrant.

In our view, we anticipate that the practical effect of the Bill will be focused an appropriately on limiting the kinds of devices that may be utilised by protestors to prevent injury to the protestors themselves as well as emergency services personnel.

3. Clause 5 - Insertion of new s 53AA

The Society notes that this clause proposes to insert new section 53AA which deals with seizure and disposal of dangerous attachment devices. The Society is concerned about the

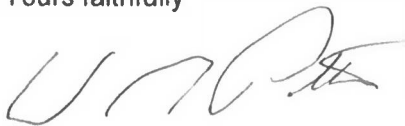
powers in proposed 53AA(3)(b) the ability of Police officers to seize all or parts of the dangerous attachment device and the automatic forfeiture of these devices and parts to the State without further order or the right to appeal or compensation.

4. Consistency with the *Human Rights Act 2019* and *Peaceful Assembly Act 1992*

We note that the section 22 of the soon to commence *Human Rights Act 2019* and the *Peaceful Assembly Act 1992* preserve and protect the right to peaceful assembly and freedom of association. We note that this Bill is part of a raft of legislation that is targeted at addressing protects activity. Therefore, it might be considered that the cumulative effect of the legislation might inappropriately interfere with the right to peaceful assembly in certain circumstances.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [REDACTED]

Yours faithfully



Bill Potts
President