AGRICULTURE AND OTHER LEGISLATION AMENDMENT BILL 2019

I thank the committee for the opportunity to appear at this hearing without having made a prior written submission. I am happy, with the committee’s permission, to tender these remarks to be placed on the record as the Council’s submission.

The Council wishes to address four aspects of this legislation: body worn cameras, the amendment to section 10A of the Summary Offences Act and the amendment to section 13 of that Act.

1) Body worn cameras

   a) Proposal opposed

This Bill allows the use of body worn cameras by inspectors under five pieces of legislation covered by the Bill.

We have supported the introduction of body worn cameras in the context of police with appropriate safeguards for privacy, but opposed it in other contexts such as parking inspectors.

We are against pervasive government surveillance, but police body cameras are different because of their potential to serve as a check against the abuse of power by police officers.

However, the inspectors covered by this legislation are not police officers. They have more power than parking inspectors because they can conduct searches. However, police officers have the authority to conduct searches, make arrests and in specific circumstances, to use force, including lethal force—and all too often, abuse those powers. The strong oversight function that body cameras promise to play with regards to police officers (and other law enforcement officials such as Border Force) makes the deployment of the technology a unique one. For other officials, the potential abuse of the use of such cameras by a large number of government officials in terms of surveillance and the use of their product, outweighs the benefits to be gained from the extra accountability in the context of their much more limited powers in comparison to police and other law enforcement officials.

It is often said, that both the official and the public will benefit from the introduction of this technology, by enabling the speedy resolution of complaints, one way or the other. However, to be weighed against that is the increased number of government officials wandering around the place videoing what they come across and the potential for that information to be stored and used by government for other purposes.

These are of course balancing issues, on which minds might differ, but in our opinion the balancing process comes out in favour of the use of these cameras by police and other law enforcement officials, but not in the case of the inspectors covered by these Acts.

   b) Safeguards

If the legislation is to proceed clear rules need to be in place to protect privacy.

I was informed yesterday by the Privacy Commissioner, Mr Phil Green, that his office has not been consulted in relation to this legislation. It is our submission that that is most unsatisfactory. Such a piece of privacy invasive legislation should automatically be referred to the office of the Privacy Commissioner before it gets to this place.

This is because, apart from any other reason, it is likely that inadequate safeguards will undermine the effectiveness of the cameras as an accountability mechanism by undermining public confidence, that they are being used in a proper fashion.

i. Period of recording

One of the issues with police is whether the cameras should be on continuously. The legislation addresses this by authorising usage only when a power under the Act is being used. We welcome this limitation.

However, mechanisms need to be put in place to enforce that limitation and if it is to be used. Those might include:
1. disciplinary action against the individual inspector for unauthorised use

2. The adoption of rebuttable evidentiary presumptions in favour of individuals the subject to prosecution who claim exculpatory evidence was not captured or was destroyed.

3. The adoption of rebuttable evidentiary presumptions on behalf of civil plaintiffs suing the government, for damages based on misconduct by inspectors.

4. The exclusion of unlawfully obtained product from evidence in any proceeding.

ii. Notification

Inspectors should be required, wherever practicable, to notify people that they are being recorded

iii. Retention

We oppose the retention of the product of these cameras. The stated purpose of the cameras is accountability. It follows that footage not needed for that purpose should be deleted. Retention periods should be measured in weeks not years, and video should be deleted after that period unless a recording has been flagged.

Flagging should occur automatically for any incident where either a formal or informal complaint has been registered.

Any subject of a recording should be able to flag a recording, even if not filing a complaint or opening an investigation.

Investigating agencies and supervisors should also be able to flag an incident if they have some basis to believe misconduct has occurred or have reasonable suspicion that the video contains evidence of a crime.

People recorded by the cameras should have access to, and the right to make copies of, those recordings, for however long the government maintains copies of them without recourse to the Right to Information Act. That should also apply to disclosure to a third party if the subject consents.

iv. Disclosure

The legislation provides for disclosure by an officer "in the performance of a function or exercise of a power under this Act"

This is the classical formulation given broad scope in the decision of Dixon CJ in Canadian Pacific Tobacco Co Ltd v Stapleton (1952) 86 CLR 1

We say this is too broad in the context of information collected for the purpose of officer accountability.

In the case of recordings where there is no indication of misconduct or evidence of a crime disclosure beyond the holder of any recording should be allowed only with the consent of the subject, as the public oversight value is low.

Section 10A

The first point of make is that the unamended provision is in our view unacceptable.

In our submission, criminal responsibility should not be attributed to individuals simply on the basis that they have formed a group and the conduct of them taken together would cause a person in the vicinity to reasonably fear that unlawful violence will be used to a person or property.

Criminal responsibility in relation to members of a group should only arise from circumstances of personal guilt. That is, to be guilty of an offence an individual member of a group must know that the group is to commit an illegal act, intend the group to commit the illegal act and take some significant action in its support or make a significant commitment to the action being undertaken.

The provision can also be criticized in that in our view freedom of assembly cannot be properly restricted except where the participants incite violence.
On 1 January 2020 section 22 of the Human Rights Act will apply:

**Peaceful assembly and freedom of association**
(1) Every person has the right of peaceful assembly.
(2) Every person has the right to freedom of association with others, including the right to form and join trade unions.

That section is identical to article 11 of the European Convention on Human Rights. The European Court of Human Rights has consistently held that the right to peaceful assembly can only be interfered with "in cases of incitement to violence or rejection of democratic principle". Given the identity of language, we would expect that the Queensland Human Rights Act will be interpreted in the same fashion. This provision is then in our view in breach of the Human Right Act in so far as it relates to assemblies in public.

This amendment and the amendment to section 13 to be discussed, have clearly been proposed in the light of recent protests.

The QCCL accepts that there is no right of protest in a private place. The owners or occupiers of private places are entitled to make use of the law of trespass to exclude those who enter their property without their consent or stay on the property once their consent has been withdrawn

Having said that, when it comes to the criminal law, there are certain principles to be adhered to. Furthermore, when it comes to the right to exercise dissent, even though that right to dissent maybe being exercised in an unlawful fashion, the fact the people involved have a right to political protest must be taken to account in assessing the penalty.

In relation to the proposed subsections A, B and E, the question must be asked is what is meant by the words "a risk". Surely, to be criminally liable, the risk must be a "serious", "significant" or "substantial" one. The present formulation sets too low a bar.

In relation to subsection D we are concerned about the vagueness of this clause as well. What level of likelihood is required under the section? What type of economic loss is going to be sufficient?

**Section 13**

It is a basic principle of the civil liberties movement that if the state wishes to create new offences, it must justify the need for doing so. It must show that existing law is in adequate, because every time you create a new offence, the courts will give the law effect with the consequence that some previous liberty will be taken away.

Of course, the original section 13 is a specific version of the law of trespass. The new version extends the categories of agricultural land and give them more extensive definitions. But it is still not clear why the facilities which are now covered by the section are not adequately covered by the existing law of trespass.

The section then proceeds to double the penalty. Once again, what is there that makes it necessary to double the penalty, particularly as we have noted, the context of this penalty is the exercise of political protest.

Proposed subsection (3), raises another question. It makes it offence punishable by up to 6 months jail to leave a gate open. It makes no reference to any consequence of leaving the gate open. No doubt the absence of a consequence will be reflected in the penalty applied by any court. However, question must be asked as to why it is necessary to have a law which enables somebody to be fined approximately $1500 or to go to jail for six months for leaving a gate open, where that has no consequences.

**Clause 16**

As motor vehicle registry information is not collected for the purposes of investigating offences under the Animal Care and Protection Act, an inspector under that legislation should be required to apply for a warrant from a judicial officer prior to obtaining access to those records.

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1 *Case of Sergey Kuznetsov v. Russia* (Application no. 10877/04) CASE OF ASSOCIATION OF CITIZENS RADKO & PAUNKOVSKI v. THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA (Application no. 74651/01)