SUBMISSION

LACSC INQUIRY INTO

THE SUMMARY OFFENCES AND OTHER LEGISLATION AMENDMENT BILL 2019 (QLD)

OCTOBER 2019

To: The Committee Secretary

Legal Affairs and Community Safety Committee

Parliament House

George Street Brisbane Qld 4000

(By email to: lacsc@parliament.qld.gov.au)

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CONTENTS

	CONTENTS	Page/s
1.	Background to this submission and key concerns.	3
2.	About Caxton Legal Centre Inc and our experience relating to laws governing the public's right to protest and police powers in public spaces.	7
3.	Key issues and overview of our response to the Summary Offences and Other Legislation Amendment Bill 2019	10
	3.1 Possession and use of dangerous locking devices intended to cause injury when removed.	
	3.2 Extended police search powers.	
	3.3 New Offences Relating to Blocking Roads/Railways, stopping access to business and Penalties.	
4.	Conclusion	20

1. Background to this Submission and key concerns

For over four decades, Caxton Legal Centre Inc. (Caxton) has provided free legal advice and has participated in public discourse, community education and law reform activities regarding street offences, individual rights to participate in peaceful assemblies, rights in public space, and the appropriate limiting of police powers. Caxton has also been a long-standing advocate for the rights of members of the community to freely express their political opinions via peaceful protests. We have always remained vigilant when it comes to any unnecessary extension of relevant police powers.

On the 20th of August 2019, ostensibly in response to relatively recent mining/environmental protests, the Queensland State Government issued an announcement regarding proposed new laws to combat the use of certain locking devices used by protestors to prevent their removal from roads or railway lines.

The Minister for Police and Corrective Services, the Honourable Mark Ryan, confirmed that "a new offence (would) be created aimed at stopping dangerous devices being used by extremists to shut down public thoroughfares and infrastructure."[1] The proposed new laws have been set out in the *Summary Offences and Other Legislation Amendment Bill (2019)* (the Bill), which was subsequently introduced in the State Parliament on the 18th of September.

If the Bill is passed, these new laws will make it illegal for individuals to possess specified attachment devices (as defined in the Bill) and police will have the power to search a person or vehicle suspected of carrying one of these devices. Significant penalties may be imposed for certain offences.

The *Legal Affairs and Community Safety Committee* has called for responses from all interested parties regarding the bill, and these are due by the 8th of October.[2]

We are responding to this review because we are concerned about the proposed amendments to Queensland's *Summary Offences Act 2005 (Qld),* which we believe are oppressive and misconceived.

While a number of arrests under existing laws had already been made during the recent protests, no truly cogent reasons as to why existing laws may be insufficient have to date, in our view, been provided by the government. This issue requires further investigation. We are particularly concerned that some of the arguments used to justify the proposed Bill are based on inadequate or inaccurate factual foundations.

Importantly, the *Explanatory Notes for the Summary Offences and Other Legislation Amendment Bill (2019)* (the Explanatory Notes), state that the Bill was

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drafted having consideration to the principles of Queensland's new *Human Rights Act (2019)* (the HRA), but the Explanatory Notes then go on to state that,

> "While some of the proposals may be considered contrary to the intent of those principles, they are considered necessary to promote the safety of Queenslanders and to minimise unreasonable disruptions to the community."

This is alarming, given the apparent lack of compelling evidence of the types of risks being referred to in the government's justification for these new laws.

The HRA, although not fully operative until January 2020, specifically includes in its protection as fundamental human rights requiring protection: freedom of expression (section 21), freedom of thought (and) conscience…(section 20); peaceful assembly and freedom of association (section 22); and rights in criminal proceedings (section 32).[3] Furthermore, the Act's Main Objects set out in section 3 are: "(a) to promote and protect human rights; and (b) to help build a culture in the Queensland public sector that respects and promotes human rights; and (c) to help promote a dialogue about the nature, meaning and scope of human rights." We consider that the Bill undermines this very culture of change that is being promoted under the new HRA. The justifications given by the government to override the HRA considerations, in our opinion, have not been properly substantiated.

The government urgently needs to provide sufficient compelling evidence of the so called "sinister tactics"[4] the Premier referred to in Parliament as justification, in effect, for the stricter laws, now set out in the Bill. The Premier referred to a police briefing advising that some demonstrators were using "locking devices laced with traps that are dangerous… (such as drums containing) glass fragments, even butane gas containers" that were designed to harm those who try to cut protestors free. Anecdotal and news reports[5] suggest that protest groups deny the use of dangerous devices. The Honourable Michael Berkman from the Queensland Greens called on the Premier to provide examples of the number of times the devices were in fact filled with dangerous objects, but we understand that his request has gone unanswered and that he has not been able to secure his own briefing on point with the police. Michael Berkman has stated:

> "If the government is no longer required to provide any factual basis for legislation we're in trouble – particularly in a State where they can easily pass laws through our single house of Parliament. Police have never charged a climate change protester in Queensland with an offence alleging they had set a trap or intended to cause injury to others. Non-violence is a core principle of almost every activist organisation – it just

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[5] Stevenson, A. (20.8.19). *Protesters branded 'extremist' as Palaszczuk Government cracks down on road block tactics.* Retrieved on 2.10.10 from https://www.abc.net.au/news/2019-08-20/climate-protester-tactics-called-extremist-palaszczuk-government/11431336

> wouldn't make any sense for a climate protester to try to hurt emergency officers or anyone else."[6]

It is our submission that this Bill must be held in abeyance until such time as the government can provide appropriate (and sufficient) evidence justifying its stance, and, if cogent evidence, upon further enquiry, does not exist, then the Bill should be rejected. Proper consultation could then be held to determine whether or not other legislative amendments are needed to respond to the various competing needs identified during recent protest events.

We note, in particular, that while section 13 of the HRA states that human rights may be limited, the Act also states that those limitations need to be considered with great care. Section 13(1), in particular, states that "a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom" and the factors that may be considered in determining whether a limit on a human right is reasonable and justified include (under subsection 13(1)):

> "(a)the nature of the human right;
> (b)the nature of the 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 limitation and its purpose, including whether the limitation helps to achieve the purpose;
> (d)whether there are any less restrictive and reasonably available ways to achieve the purpose;
> (e)the importance of the purpose of the limitation;
> (f)the importance of preserving the human right, taking into account the nature and extent of the limitation on the human right;
> (g)the balance between the matters mentioned in paragraphs (e) and (f)."

As the Explanatory Notes to the Bill acknowledge, "The right to peacefully assemble has been held as a defining characteristic of a democratic society as it encompasses a number of fundamental rights including the freedom of expression, the right of peaceful assembly and the freedom of association." We also note that the High Court's 2004 decision in *Coleman v Power*[7]*,* demonstrated the recognised importance of implied freedom of communication about government or political matters.

Inconvenience and violence are different things and must not be confused in the considerations about whether or not these new laws are needed. When Merle Thornton and Rosalie Bognor chained themselves to the Regatta Bar in 1965 as part of their peaceful protest to try to have laws changed about women's rights to drink in a public bar, they no doubt caused inconvenience, but it was certainly a non-violent protest. Indeed, the laws on point were changed as a direct result

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to this public protest.[8] The early 1970s Australian Vietnam Moratorium marches involved much greater levels of 'inconvenience', but they are certainly recognised now as having been critically important in terms of social utility. It is worth noting that:

> "The most visible leader of the moratorium movement was shadow minister for trade and industry, Dr Jim Cairns, whose charisma and intellect galvanised thousands of anti-war activists. Above all he recognised how important it was that the marches, which advocated peace, be peaceful themselves.
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> The moratorium movement drew in a disparate range of groups opposed to the war — clergy, teachers, academics, unions, politicians and school students. Donations poured in. While university students had led the anti-war movement up to this point, the moratorium involved thousands of everyday, middle-class Australians.
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> Not all Australians supported it, because of the unprecedented size and intensity of the protest many found it threatening. Conservatives were strongly opposed, among them Billy Snedden, Minister for Labour and National Service, who described it as 'political bikies who pack-rape democracy'.
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> A total of 200,000 people took part in the First Moratorium. The largest event was in Melbourne where 70,000 marched peacefully down Bourke Street, led by Cairns. The police were restrained and the crowds watching them cheered. Similar events took place in Sydney, Brisbane, Adelaide, Perth, Hobart and dozens of rural towns."[9]

We could cite many other examples, but our point is that rights associated with public protests currently in issue must be handled with great care.

We note that the Premier has referred to the need for emergency services to be able to travel unimpeded by protestors. We regard this as a separate issue that could be addressed in other ways. Naturally, we agree that it is important for fire and ambulance services to be able to navigate roads but it is difficult to imagine protestors blocking these particular vehicles when lives may be at stake. There are less restrictive and reasonably available ways to achieve this particular outcome. Surely negotiation and dialogue could secure 'in principle' agreement with activists for these vehicles to receive safe passage.

We note that the Explanatory Notes state that consultation was undertaken with the Queensland Council of Unions and member Unions, the Queensland Council of Civil Liberties, the Queensland Law Society, the Queensland Bar Association, the Australian Conservation Foundation and the Queensland Resources Council, but there is no indication what level of opposition or support may have been raised/given by those parties. Public perceptions regarding the transparency of government decision-making and due process matter. If the government wishes to avoid being accused of introducing poorly conceived legislation that appears to have been prepared in great haste and rushed-through in response to the direct interests of parties in the mining sector, then proper community consultation about proposed legislative changes needs to be had. We note that

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the consultation period for this Bill is, in practical terms, very short. Again, this is problematic.

In our submission, the current legislature's response to public protests and any subsequent changes to the laws must be more carefully reviewed and legislative amendments should only be made where there is extremely compelling evidence justifying any new laws that may be required. We do not want to see a return to the sorts of problems that arose during the previous state government's regime when imprudent decisions were hastily made to change laws ignoring years of carefully evolved jurisprudence. The introduction of the *Vicious Lawless Association Disestablishment Act (2013)* law, is one such example, which the current government, thankfully, and rightly, repealed.

2 About Caxton Legal Centre Inc. and our experience relating to laws governing the public's right to protest and police powers in public spaces

Established in 1976, Caxton Legal Centre Inc (Caxton) is Queensland's oldest Community Legal Centre, providing 5,000 advice services each year – particularly to the most disadvantaged members of our community, as well as many clients who can fairly be described as 'the working poor', along with retirees and students. The Centre employs over 50 staff and has approximately 200 volunteer lawyers and law students on its rosters. The Centre provides free legal advice and information services (particularly in human rights, family and elder law), specialist legal casework and duty lawyer services, clinical legal education programs and social work support services. The Centre undertakes extensive community legal education and is a well-respected publisher of several well recognised works, including the *Queensland Law Handbook* and the *Lawyer's Practice Manual.* We publish a number of self-help kits, including our *Police Powers Your Rights* booklet, and these materials are in constant demand. The Centre also undertakes law reform activities in areas of law relevant to the community we serve. Indeed, successive governments have regularly invited us to respond to particular law reform reviews because of our known expertise in relevant areas of law, (e.g. laws relating to elder abuse) affecting our clients. Rights in public space has long been an area of focus for our work because vulnerable clients, especially the homeless and the young have been disproportionately affected by laws affecting these rights.

With approximately 36 criminal lawyers regularly volunteering at our free evening advice sessions and a Human Rights focussed practice, we continue to monitor developments in relation to rights in public space and we retain expertise in this particular area of law.

Over its 43-year period, Caxton has advised clients during some very turbulent periods in this State's history when rights in public space, rights of assembly, freedom to express political views, and the appropriate use of police powers have all been tested, critiqued, and, in parts, reformed. Indeed, we have always maintained a watching brief over laws relating to rights in public space and police

powers, particularly because of the problems that our clients have encountered over the years. It is worth noting that, in the past during protest events, clients have often ended up being charged not only with a public nuisance or contravene police direction offence, but also with obstructing police and assaulting police as ancillary charges. Clients have often reported, however, that they were simply enquiring about why they were being dealt with or were asking about why they or others were being arrested and felt that additional charges were used as punitive and/or retaliatory mechanisms. Thankfully, this problem seems to have reduced over the years and we do not want to see a return to an era of heavy-handed policing in Queensland. It is worth reiterating that the 1989 findings of the *Fitzgerald Enquiry,* in particular, highlighted the dangers associated with improper use of police powers.

Interestingly, the current Police Minister, as recently as the 3rd of June this year, issued a statement saying:

> "The Fitzgerald Inquiry was a watershed in the state's history that ushered in a new era of accountability and oversight that has resulted in the Queensland Police Service now being held in high regard by the Queensland community… Police Minister Mark Ryan said the Fitzgerald Inquiry taught us important lessons about transparency and ethical behaviour, ones that we must never forget. "Those dark days pre-Fitzgerald are a cautionary tale of how easily human foibles can lead to corrupt behaviour…To this day the government continues to take steps to enhance transparency and accountability."[10]

This history must never be forgotten and the restriction of the rights of citizens and other members of the public to express their political views similarly should be approached with great caution.

In 2014, when Brisbane hosted the G20, Caxton coordinated 50 volunteer lawyers via its Independent Legal Observers' (ILO) Project to literally watch and record interactions between the police officers and members of the public during demonstrations that were expected during the G20. The role of the ILO's was to monitor, record and report any law enforcement behaviour that unduly restricted the rights of the protestors to protest or attend in public spaces. Because of the violent demonstrations and mass arrests that had occurred in Toronto at the previous G20 meeting, there were fears that there would be large numbers of arrests arising out of G20 incidents in Brisbane. Surprisingly, this is not what occurred and the police officers were seen to have demonstrated restraint and tolerance in their dealings with protectors. In her 2016 analysis of this ILO project and public order policing, University of Queensland academic, Professor Tamara Walsh, wrote:

> "…as reflected in the legislation, QPS employed a strategy based on engagement with protest groups, fostering trust and understanding. This involved the appointment of police negotiators who, prior to and during the event, worked closely with protest groups to help plan and facilitate their protest activities. Second, it was emphasised to police officers that upholding the human rights of protesters was of utmost importance, and that lawful protest should be facilitated, regardless of the noise and discomfort caused by the

[10] Retrieved on 30.9.19 from http://statements.qld.gov.au/Statement/2019/7/3/the-fitzgerald-inquiry--a-history-lesson-we-must-never-forget

> message. Legrand and Bronitt (2015:10) conclude that the emphasis was, therefore, on ensuring safety and security 'by public consent rather than police compulsion'.
>
> …This approach seems to reflect a 'negotiated management' style of policing, which is now considered best practice in managing planned protests and maintaining public order at large-scale events."[11]

While Professor Walsh did not make specific predictions about whether or not relations between police, public space users and the legal community would improve in the wake of the G20, she did note in her discussion that

> "…the success of the Brisbane G20 may actually demonstrate that, in order for the deployment of ILOs to be effective in encouraging police restraint, this must be matched by a commitment on the part of police officers to undertake a negotiated management approach to everyday policing. How this might be achieved is an avenue for further research, and is not something to which lawyers can contribute much advice, except to say that the approach of the police officers on patrol during the Brisbane G20 attracted a significant amount of praise from both the community generally and the legal profession. Since the legal profession has not traditionally been police officers' 'biggest fan', this deserves further reflection by those with operational command in QPS."

It is worth noting that Caxton also received the Assistant Commissioner's Certificate of Appreciation "in sincere recognition of an outstanding contribution to Operation Southern Cross, the Queensland police Service security operation for the G20 meetings in Queensland"[12] on the 31st of December 2014.

Legislative changes likely to increase public antagonism towards the QPS is something that we submit should be avoided. Queensland has come a long way over the last decade in terms of how the community and members of the QPS interact and are able to have dialogue about important issues of shared concern. We fear that this Bill will have an unforeseen impact causing great polarisation between the public and our police. It would be a great pity if the advances made in this journey are lost and if our democracy is negatively influenced. If public sentiment becomes hostile and police begin to act with impunity when dealing with protestors, we foresee that it would take years to return to the position we are still in at this point in time. We recognise that members of the QPS already have a difficult job and believe that alternative ways of dealing with the current protest difficulties ought to be considered. This is a complex public policy issue and any response should not be rushed.

Our statistics show that over the last reportable year period we provided over 1700 services in criminal law matters, including in areas of law relating to public

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[11] Walsh, T. (2016). '*Public Order' Policing and the Value of Independent Legal Observers.* ClCrimJust 11. Retrieved on 1.10.19 from http://classic.austlii.edu.au/au/journals/ClCrimJust/2016/11.html (including references to: Caxton Legal Centre (2015) *Review of the G20 (Safety and Security) Act 2013 (Qld): Report to the Crime and Corruption Commission*, April 2015 https://caxton.org.au/pdfs/G20%20Review%20submission.pdf; Legrand T and Bronitt S (2015) 'Policing the G20 Protests: "Too Much Order with Too Little Law" Revisited', *Queensland Review* 22(1), 3–14)

[12] Queensland Police Service. (2014). *Assistant Commissioner's Certificate of Appreciation.* Brisbane, Qld. QPS

nuisance, police complaints, protest issues, obstructing police, disobeying directions, move-on powers, penalties and sentencing, criminal law processes, and so on.

While we have not had to advise clients about charges relating to the use of the "lock on" or "mantrap" devices, which have received recent press attention during the various climate change protests, we do expect that this work will present at our free night sessions. Requests for legal advice via our free legal service staffed by our volunteer lawyers have always increased during periods when police and protestors have clashed over particular issues.

Given our history of working in this space, Caxton is well placed to provide feedback on a number of important aspects of these proposed laws.

3. Key issues and overview of our response to the Summary Offences and Other Legislation Amendment Bill 2019

We strongly oppose the amendments contained in this Bill and believe that sufficient relevant laws are already contained in the *Criminal Code of Queensland 1899* (the Criminal Code)*,* the *Summary Offences Act 2005* (SOA) and the *Police Powers and Responsibilities Act 2000* (the PPRA)*.*

3.1 Possession and use of dangerous locking devices intended to cause injury when removed

It seems that one of the government's key concerns relates to particular locking devices which could injure or kill a police/emergency services officer attempting to remove the device. Naturally, we understand that, in principle, this would also be a concern for the community generally if there *is* real substance to this claim.

Section 11 of the Bill deals with "dangerous attachment device(s)", and includes a dragon's den, which is defined as being:

> "(4) An attachment device is a ***dragon's den*** if it—
> (a) incorporates 1 or more sleeping dragons or tubes large enough to pass a person's hand through; and
>
> (b) reinforces the casing of the sleeping dragon or tube by adding bulk and weight.
>
> *Example of a dragon's den—*
>
> a 44-gallon drum incorporating a sleeping dragon and otherwise filled with concrete"

A sleeping dragon is defined as being:

> (3) An attachment device is a ***sleeping dragon*** if it incorporates—
> (a) an anchor point for a person to hold or to which a person's hand can be bound or locked; and
>
> (b) a casing that shields the person's hand, or the binding or lock, from being released by another person.
>
> *Example of a sleeping dragon—*
>
> two large steel pipes welded together at an angle with a thick pin fixed in the centre

We are unclear why a sleeping dragon, of itself, is also considered to be a dangerous locking device.

It is important to note that it is already a criminal offence for someone to place a device that is intended to kill or cause grievous bodily harm to others. (Injury is not required to make out the offence and it is not a defence that no injury was sustained.) Section 327 of Schedule 1 of Queensland's *Criminal Code (1899)* specifically creates the offence of "Setting Mantraps", attracting a potential penalty of 3 years jail. That section (with emphasis added in highlighting) states:

> ***"327 Setting mantraps***
> (1) Any person who sets or places any spring gun, mantrap, or other engine calculated to destroy human life or to inflict grievous bodily harm, or causes any such thing to be set or placed, in any place with the intent that it may kill or inflict grievous bodily harm upon a trespasser or other person coming in contact with it, or sets or places any such thing in any such place and in any such manner that it is likely to cause any such result, is guilty of a misdemeanour, and is liable to imprisonment for 3 years.
>
> (2) Any person who knowingly permits any such spring gun, mantrap, or other engine, which has been set or placed by another person in any such place and in any such manner that it is likely to cause any such result, to continue so set or placed in any place which is then in, or afterwards comes into, the person's possession or occupation, is deemed to have set and placed the gun, trap, or engine, with the intent aforesaid.
>
> (3) This section does not make it unlawful to set any gin or trap such as is usually set for the purpose of destroying vermin; or to set any spring gun, mantrap, or engine, at night in a dwelling house for the protection of the dwelling house."[13]

Mantrap is not defined in the Criminal Code and it is difficult to find any useful caselaw on point. The 1958 Queensland Court of Criminal Appeal decision in *R V Williams*[14] is not particularly useful, although the Honourable Justice Stanley does state that "the section aims at protecting life and limb everywhere". The Oxford Dictionary defines mantrap generally as a trap for catching people. (It seems that, historically, a mantrap was a dangerous trap aimed at catching trespassers or poachers).[15] Given that the section still exists in the Code, it is arguable that its use could possibly be extended to cover the type of item the Bill would make illegal – i.e. a locking drum containing gas cylinders intended to cause injury during any attempt to remove them. (Otherwise, perhaps section 327 could be broadened to capture the specific mischief that seems to have so alarmed the government, that is, use/possession of a drum laced with gas canisters. If there are protestors who in fact do intend to use such a device, then this might be a more appropriate way of addressing this one specific issue.)

It is also worth noting that anyone who is injured as a result of a mantrap (if we accept that a mantrap can be interpreted as covering a relevant dangerous locking device that is intended to explode if someone tries to remove it) could

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[13] Retrieved on 23 September 2019 from https://www.legislation.qld.gov.au/view/whole/html/inforce/current/act-1899-009

[14] R v Williams [1958] Qd R. 185 at page 193.

[15] Mantrap In Oxford English Dictionary Online. (2019). Retrieved on 3.10.19 from https://www.thefreedictionary.com/mantrap

potentially bring against the offender a separate personal injuries negligence claim, in appropriate cases.

Sections 317, 317A and 321 of the Schedule additionally provide other sanctions for relevant dangerous conduct. Section 317 creates an offence for acts intended to cause grievous bodily harm and captures other malicious acts. Section 317A creates the offence of "carrying or sending dangerous goods in a vehicle". Section 321 creates an offence for acts intended to cause bodily harm to others. These provisions viewed together arguably capture other behaviours currently of concern to legislators. The penalties for these offences are significant as the offences are crimes – liable to imprisonment for life and to 14 years respectively. These sections are as follows:

"317Acts intended to cause grievous bodily harm and other malicious acts

(1)Any person who, with intent—
(a)to maim, disfigure or disable, any person; or
(b)to do some grievous bodily harm or transmit a serious disease to any person; or
(c)to resist or prevent the lawful arrest or detention of any person; or
(d)to resist or prevent a public officer from acting in accordance with lawful authority—
either—
(e)in any way unlawfully wounds, does grievous bodily harm, or transmits a serious disease to, any person; or
(f)unlawfully strikes, or attempts in any way to strike, any person with any kind of projectile or anything else capable of achieving the intention; or
(g)unlawfully causes any explosive substance to explode; or
(h)sends or delivers any explosive substance or other dangerous or noxious thing to any person; or
(i)causes any such substance or thing to be taken or received by any person; or
(j)puts any corrosive fluid or any destructive or explosive substance in any place; or
(k)unlawfully casts or throws any such fluid or substance at or upon any person, or otherwise applies any such fluid or substance to the person of any person;
is guilty of a crime, and is liable to imprisonment for life.
(2)The *Penalties and Sentences Act 1992*, section 161Q states a circumstance of aggravation for an offence against this section.
(3)An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

317ACarrying or sending dangerous goods in a vehicle

(1)Any person who—
(a)carries or places dangerous goods in or on a vehicle; or
(b)delivers dangerous goods to another person for the purpose of such goods being placed in or on a vehicle; or
(c)has dangerous goods in his or her possession in or on a vehicle;
is guilty of a crime and is liable to imprisonment for 14 years.

(2)A person who knowingly sends by a vehicle any dangerous goods under a false description of the goods or with a false description of the sender of the goods commits a misdemeanour.
Maximum penalty—3 years imprisonment.
(2A)The *Penalties and Sentences Act 1992*, section 161Q states a circumstance of aggravation for an offence against this section.
(2B)An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

(3)It is a defence to a charge of any offence defined in subsection (1) to prove that the act was done by authority or permission of or under a law of the Commonwealth or of the State.

(4)For the purposes of this section—

dangerous goods means—

(a)firearms, ammunition, weapons and explosive substances; and

(b)an explosive or noxious substance, acid or other thing of a dangerous or destructive nature that because of its nature or condition may endanger the safety of a vehicle, a person in, on or in the vicinity of the vehicle."

321 Attempting to injure by explosive or noxious substances

(1)Any person who unlawfully, and with intent to do any bodily harm to another, puts any explosive or noxious substance in any place whatever, is guilty of a crime, and is liable to imprisonment for 14 years.

(2)The *Penalties and Sentences Act 1992*, section 161Q states a circumstance of aggravation for an offence against this section.

(3)An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

Additionally, any person assisting in such criminal act/s is caught under sections 7 and 8 of the same Schedule as a party and conspirator to the offence.

Additional offences potentially are also available under sections 31 and 32 of the *Work Health and Safety Act 2011 (Qld)* (the WHSA). Importantly, a breach of section 31 is a criminal offence. While this aspect of law might not have been tested as yet or considered in the discussions around amending the protest laws, these laws exist, although they have not been tested in this particular context and we again query whether or not the need for the new offences under the Bill has been properly established.

Monopoles have also been included as dangerous attachment devices and are defined in section 41B of the Bill. It states:

"(5)An attachment device is a ***monopole*** if—

(a)it relies on a long pole and support riggings to suspend a person off the ground; and

(b)it reasonably appears to be set up to fall if another person interferes with the support riggings; and

(c)a fall of the device would cause injury to the person suspended from it.

(6)An attachment device is a ***tripod*** if—

(a)the legs of the device form a tripod large enough to be used to suspend a person off the ground; and

(b)it reasonably appears to be set up to collapse if another person interferes with the legs of the device or any support riggings for the device; and

(c)a collapse of the device would cause injury to the person suspended from it."

We understand that removing people from these devices may require the assistance of specialist police from Brisbane or Cairns, which causes inconvenience and cost to the public purse, but we are unclear why monopoles

and tripods are inherently dangerous attachment devices posing a danger to the public.

3.2 ***Extended Police Search Powers***

Before dealing with the extended police search powers contained in the Bill, it is important to note that there are already significant police search powers under the PPRA (and, indeed, under the Commonwealth *Crimes Act 1914* where any offences against the Commonwealth may arise).

The laws contained in the Bill gives police increased powers under the PPRA to search a person or vehicle where the police reasonably suspect the individual has, or that a vehicle contains, a dangerous attachment device that has been used or is to be used to disrupt a lawful activity. We are concerned about whether or not this really necessary given that the police already have significant powers in sections 29-32 of the PPRA. In particular, the police already have power to search a person (and a vehicle they are in) where they are reasonably suspected of possessing something the person intends to use to cause harm to himself, herself or someone else. The existing PPRA sections already state:

"Division 2Searching persons without warrant

29Searching persons without warrant

(1)A police officer who reasonably suspects any of the prescribed circumstances for searching a person without a warrant exist may, without a warrant, do any of the following—

(a)stop and detain a person;

(b)search the person and anything in the person's possession for anything relevant to the circumstances for which the person is detained.

(2)The police officer may seize all or part of a thing—

(a)that may provide evidence of the commission of an offence; or

(b)that the person intends to use to cause harm to himself, herself or someone else; or

(c)if section 30(b) applies, that is an antique firearm.

30Prescribed circumstances for searching persons without warrant

The prescribed circumstances for searching a person without a warrant are as follows—

(a)the person has something that may be—

(i)a weapon, knife or explosive the person may not lawfully possess, or another thing that the person is prohibited from possessing under a domestic violence order or an interstate domestic violence order; or

(ii)an unlawful dangerous drug; or

(iii)stolen property; or

(iv)unlawfully obtained property; or

(v)tainted property; or

(vi)evidence of the commission of a seven year imprisonment offence that may be concealed on the person or destroyed; or

(vii)evidence of the commission of an offence against the Criminal Code, section 469[16] that may be concealed on the person or destroyed if, in the circumstances of the offence, the offence is not a seven year imprisonment offence; or

(viii)evidence of the commission of an offence against the *Summary Offences Act 2005*, section 17, 23B or 23C; or

(ix)evidence of the commission of an offence against the *Liquor Act 1992*, section 168B or 168C;

(b)the person possesses an antique firearm and is not a fit and proper person to be in possession of the firearm—

(i)because of the person's mental and physical fitness; or

(ii)because a domestic violence order has been made against the person; or

(iii)because the person has been found guilty of an offence involving the use, carriage, discharge or possession of a weapon;

(c)the person has something that may have been used, is being used, is intended to be used, or is primarily designed for use, as an implement of housebreaking, for unlawfully using or stealing a vehicle, or for the administration of a dangerous drug;

(d)the person has something the person intends to use to cause harm to himself, herself or someone else;

(e)the person is at a casino and may have contravened, or attempted to contravene, the *Casino Control Act 1982*, section 103 or 104;

(f)the person has committed, is committing, or is about to commit—

(i)an offence against the *Racing Act 2002* or *Racing Integrity Act 2016*; or

(ii)an offence against the *Corrective Services Act 2006*, section 128, 129 or 132, or the repealed *Corrective Services Act 2000*, section 96, 97 or 100; or

(iii)an offence that may threaten the security or management of a prison or the security of a prisoner;

(g)the person has committed, is committing, or is about to commit an offence against the *Penalties and Sentences Act 1992*, section 161ZI;

(h)the person has committed, or is committing, an offence against the *Summary Offences Act 2005*, section 10C;

(i)the person has consorted, is consorting, or is likely to consort with 1 or more recognised offenders;

(j)the person has committed, is committing, or is about to commit, an offence against the *Termination of Pregnancy Act 2018*, section 15 or 16.

Division 3Searching vehicles without warrant

31Searching vehicles without warrant

(1)A police officer who reasonably suspects any of the prescribed circumstances for searching a vehicle without a warrant exist may, without warrant, do any of the following—

(a)stop a vehicle;

(b)detain a vehicle and the occupants of the vehicle;

(c)search a vehicle and anything in it for anything relevant to the circumstances for which the vehicle and its occupants are detained.

(2) Also, a police officer may stop, detain and search a vehicle and anything in it if the police officer reasonably suspects—

[16] Section 469 of the Criminal Code relates to the charge of wilful damage.

(a)the vehicle is being used unlawfully; or

(b)a person in the vehicle may be arrested without warrant under section 365 or under a warrant under the *Corrective Services Act 2006*.

(3) If the driver or a passenger in the vehicle is arrested for an offence involving something the police officer may search for under this part without a warrant, a police officer may also detain the vehicle and anyone in it and search the vehicle and anything in it.

(4) If it is impracticable to search for a thing that may be concealed in a vehicle at the place where the vehicle is stopped, the police officer may take the vehicle to a place with appropriate facilities for searching the vehicle and search the vehicle at that place.

(5) The police officer may seize all or part of a thing—
(a)that may provide evidence of the commission of an offence; or

(b)that the person intends to use to cause harm to himself, herself or someone else; or

(c)if section 32(1)(b) applies, that is an antique firearm.

(6) Power under this section to search a vehicle includes power to enter the vehicle, stay in it and re-enter it as often as necessary to remove from it a thing seized under subsection (5).

32Prescribed circumstances for searching vehicle without warrant

(1) It is a prescribed circumstance for searching a vehicle without a warrant that there is something in the vehicle that—
(a)may be a weapon, knife or explosive a person may not lawfully possess, or another thing that the person is prohibited from possessing under a domestic violence order or an interstate domestic violence order; or

(b)may be an antique firearm that a person possesses and the person is not a fit and proper person to possess the firearm—
(i)because of the person's mental and physical fitness; or

(ii)because a domestic violence order has been made against the person; or

(iii)because the person has been found guilty of an offence involving the use, carriage, discharge or possession of a weapon; or

(c)may be an unlawful dangerous drug; or

(d)may be stolen property; or

(e)may be unlawfully obtained property; or

(f)may have been used, is being used, is intended to be used, or is primarily designed for use, as an implement of housebreaking, for unlawfully using or stealing a vehicle, or for the administration of a dangerous drug; or

(g)may be evidence of the commission of an offence against any of the following—
•the *Racing Act 2002*

•the *Racing Integrity Act 2016*

•the *Corrective Services Act 2006*, section 128, 129 or 132

•the *Nature Conservation Act 1992*; or

(h)may have been used, is being used, or is intended to be used, to commit an offence that may threaten the security or management of a prison or the security of a prisoner; or

(i)may be tainted property; or

(j)may be evidence of the commission of a seven year imprisonment offence that may be concealed or destroyed; or

(k)may be evidence of the commission of an offence against the Criminal Code, section 469 that may be concealed on the person or destroyed if, in the circumstances of the offence, the offence is not a seven year imprisonment offence; or

(l)may be evidence of the commission of an offence against the *Summary Offences Act 2005*, section 17, 23B or 23C; or

(m)may be something the person intends to use to cause harm to himself, herself or someone else; or

(n)may be evidence of the commission of an offence against the *Penalties and Sentences Act 1992*, section 161ZI; or

(o)may be evidence of the commission of an offence against the *Termination of Pregnancy Act 2018*, section 15 or 16.

(2) Also, the following are prescribed circumstances for searching a vehicle without a warrant—

(a)the driver or a passenger in the vehicle has committed, or is committing, an offence against the *Summary Offences Act 2005*, section 10C;

(b)the vehicle is being used by, or is in the possession of, a person who has consorted, is consorting, or is likely to consort with 1 or more recognised offenders.

Division 4Searching public places without warrant

33Searching public places without warrant

(1) It is lawful for a police officer to exercise the following powers in a public place without a search warrant—

(a)power to enter the public place and to stay on it for the time reasonably necessary to exercise powers mentioned in paragraphs (b) to (f);

(b)power to search the public place for anything that may be evidence of the commission of an offence;

(c)power to seize a thing found at the public place, or on a person found at the public place, that a police officer reasonably suspects may be evidence of the commission of an offence;

(d)power to photograph anything the police officer reasonably suspects may provide evidence of the commission of an offence;

(e)power to dig up land;

(f)power to open anything that is locked.

(2) However, if this section applies to a place because it is a public place while it is ordinarily open to the public, the police officer may search the place only—

(a)with the consent of the occupier of the place; or

(b)under a search warrant; or

(c)under chapter 7, part 2.

(3) If the occupier consents, the police officer may exercise search warrant powers at the place."

The Bill creates new powers[17] for the seizure and disposal of dangerous attachment devices and officers will be able to deactivate, seize and disassemble a device. Police, however, already have powers to seize items used in the commission of a criminal offence. We note, in particular, the following section of the PPRA:

[17] Section 53AA of the SOA

"196 Power to seize evidence generally

(1) This section applies if a police officer lawfully enters a place, or is at a public place, and finds at the place a thing the officer reasonably suspects is evidence of the commission of an offence.

(2) The police officer may seize the thing, whether or not as evidence under a warrant and, if the police officer is acting under a warrant, whether or not the offence is one in relation to which the warrant is issued.

(3) Also, the police officer may photograph the thing seized or the place from which the thing was seized.

(4) The police officer may stay on the place and re-enter it for the time reasonably necessary to remove the thing from the place."

The Bill enables police to deactivate or disassemble any dangerous attachment device that they find. They can choose to seize such a device and, if so, the device is automatically forfeited to the state.

We also note that under the PPRA the court also has power to order the destruction of a seized item. Section 701 states:

"701Disposal of seized things at end of proceeding

(1)At the end of a proceeding, a court, in relation to a seized thing, may make any of the following orders—

(a)an order for the return, forfeiture, destruction or disposal of the thing;

(b)an order that the thing be dealt with by way of a proceeding under section 693 or 694 or a forfeiture proceeding;

(c)an order that the police service retain the thing until it is dealt with according to law.

(2)A thing that is forfeited under an order under this Act becomes the property of the State."

3.3 New offences relating to blocking roads/railways, stopping access to business, and penalties

Another one of the motivations behind the introduction of the Bill appears to relate to disruptions to traffic and business in the inner city and the movement of coal freight on trains. The two new offences created under the Bill are contained in section 14C which states as follows:

"14CUse of dangerous attachment device to disrupt lawful activities

(1)A person must not use a dangerous attachment device to unreasonably interfere with the ordinary operation of transport infrastructure, unless the person has a reasonable excuse.

Example of unreasonably interfering with transport infrastructure—

placing an obstacle, on a railway, that stops the passage of rolling stock

Maximum penalty—50 penalty units or 2 years imprisonment.

(2)A person must not use a dangerous attachment device to do either of the following, unless the person has a reasonable excuse—

(a)stop a person from entering or leaving a place of business;

(b)cause a halt to the ordinary operation of plant or equipment because of concerns about the safety of any person.

Maximum penalty—20 penalty units or 1 year's imprisonment.

(3)However, subsection (2) does not apply to a monopole or tripod unless it incorporates a dangerous substance or thing.

(4)In this section—

dangerous attachment device see section 14B.

dangerous substance or thing see section 14B(8).

monopole see section 14B(5).

transport infrastructure see the *Transport Infrastructure Act 1994*, schedule 6.

tripod see section 14B(6)."

Transport infrastructure is defined in the *Transport Infrastructure Act 1994,* Schedule 6.

Unfortunately, there is internal conflict within section 14C(1)A, suggesting that the Bill was drafted in undue haste. This needs to be revised for the sake of clarity.

We note that under section 52 of the PPRA, a police officer already has power to take the steps the police officer considers reasonably necessary to prevent the commission, continuation or repetition of an offence. In short, police already have powers to prevent an offence. Section 50 states:

50 Dealing with breach of the peace

(1)This section applies if a police officer reasonably suspects—
(a)a breach of the peace is happening or has happened; or

(b)there is an imminent likelihood of a breach of the peace; or

(c)there is a threatened breach of the peace.

(2)It is lawful for a police officer to take the steps the police officer considers reasonably necessary to prevent the breach of the peace happening or continuing, or the conduct that is the breach of the peace again happening, even though the conduct prevented might otherwise be lawful.

Examples for subsection (2)—

1The police officer may detain a person until the need for the detention no longer exists.

2A person who pushes in to the front of a queue may be directed to go to the end of the queue.

3Property that may be used in or for breaching the peace may be seized to prevent the breach.

(3)It is lawful for a police officer—
(a)to receive into custody from a person the police officer reasonably believes has witnessed a breach of the peace, a person who has been lawfully detained under the Criminal Code, section 260; and

(b)to detain the person in custody for a reasonable time.

Accordingly, we are uncertain why new powers were required given that the police can already deal with breaches of the peace.

We note that the Bill indicates that police can issue infringement notices for these offences in the following terms: (a) for 14C(1) with 5 penalty units and (b) for 14C(2) of 2 penalty units. However, the actual maximum penalties under these sections are (a) 50 penalty units or 2 years imprisonment and (b) 20 penalty units or 1 year's imprisonment. This a great increase in the maximum penalty. While allowing infringement notices to be given in minor cases is laudable, we have real concerns about the increase in the upper penalty.

Importantly, the SOA already includes offences for Trespass (under section 12), which is subject to a 20-penalty unit fine or 1 year's imprisonment; Unlawful entering in farmland (under section 13) subject to a maximum penalty of 10 units or 6 months imprisonment and section 15, in particular, includes the following relevant offence:

15Possession of implement in relation to particular offences

(1)A person must not possess an implement that is being, or is to be, used—
(a)for burglary of a dwelling; or

(b)for unlawfully entering a place; or

(c)for entering a vehicle with intent to commit an indictable offence; or

(d)to steal or unlawfully use a vehicle; or

(e)to unlawfully injure a person; or

(f)to unlawfully damage property.

Maximum penalty—20 penalty units or 1 year's imprisonment.

(2)A person must not possess an implement that has been used—
(a)for burglary of a dwelling; or

(b)for unlawfully entering a place; or

(c)for entering a vehicle with intent to commit an indictable offence; or

(d)to steal or unlawfully use a vehicle; or

(e)to unlawfully injure a person; or

(f)to unlawfully damage property.

Maximum penalty—20 penalty units or 1 year's imprisonment.

(3) For subsection (2), it is a defence for the person to prove that the person's possession of the implement was not connected to any involvement by the person in the preparation of the offence or in any criminal responsibility in relation to the offence.

4. Conclusion

When reviewing domestic laws affecting rights, it is always helpful, and important, to consider international human rights. *The 1966 International Covenant on Civil*

and Political Rights[18], like our HRA, lists in Articles 18, 19, 21, 22 and 14 rights relating to freedom of belief, expression, public assembly and association, and due legal process. These rights should only be limited in the most compelling of circumstances. Again, we urge the government to revisit its reasons for introducing this Bill and to engage in a more considered analysis of the current laws. We believe that this is an opportunity for the government to focus on providing better solutions for balancing rights to protest with the need to protect the public's right to use public space.

Adopting a one-dimensional "tough on crime" approach employing traditional policing methods that do not produce lasting results is not justified. Adopting a more holistic approach to solving the current issues that have presented during recent protests would also ease the burden placed on the QPS and other emergency services.

We recognise that the QPS requires power to regulate behaviour in public spaces so that these can be enjoyed by all. A socially responsible approach may be costly, but this may well be offset by not directing large numbers of public order offenders through our criminal justice system.

Importantly, the proposed penalty sections should be amended. The prescribed fines are excessive – especially because many offenders will not be able to pay them, which only leads to high enforcement costs, impacting upon SPER. There is no evidence demonstrating that these types of fines act as a deterrent or that they will reduce these protest-related offences. Judges need to be able to apply fines that take account of individual circumstances. We are aware of various recent cases where protestors with no real means have been ordered to pay exorbitant amounts of restitution, which can never be paid. We refer here to the recent case of *Avery & Ors v Queensland Police Service*[19] and note that there are costs to the public purse when affected parties have no option but to commence a section 222 *Justices Act*[20] appeal on sentence. We also refer to the Commonwealth Government's comments in this area[21] and point out that there may be unintended consequences for Centrelink recipients via any widening of criminal convictions in this sphere.

It is fitting in concluding this submission to refer to the words of Lord Hoffman in *Margaret Jones* recently quoted by Lynham DCJ in *Avery & Os v Queensland Police Service:*

> "My Lords, civil disobedience on conscientious grounds has a long and honourable history in this country. People who break the law to affirm their belief in the injustice of a law or government action are sometimes vindicated by history. The suffragettes are an example which comes immediately to mind. It is the mark of a civilised community that

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[18] https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx

[19] *Avery & Ors v Queensland Police Service [2019] QDC 21*

[20] *Justices Act 1886 (Qld)*

[21] Remeikis, A. (2019). Peter Dutton accused of sounding 'like a dictator' after urging welfare cuts for protesters' In *The Guardian* (3.10.19) Retrieved on 4.10.19 from https://www.theguardian.com/australia-news/2019/oct/03/peter-dutton-accused-dictator-urging-welfare-cuts-protesters

> it can accommodate protests and demonstrations of this kind. But there are conventions which are generally accepted by the law-breakers on one side and the law-enforcers on the other. The protesters behave with a sense of proportion and do not cause excessive damage or inconvenience. And they vouch the sincerity of their beliefs by accepting the penalties imposed by the law. The police and prosecutors, on the other hand, behave with restraint and the magistrates impose sentences which take the conscientious motives of the protesters into account. The conditional discharges ordered by the magistrates in the cases which came before them exemplifies their sensitivity to these conventions.[22]

Obviously, we recognise that there is a clear distinction between conduct that is violent, threatening and hugely taxing in financial terms on the public purse. The *Criminal Code* provides an adequate legislative and regulatory response for serious criminal matters.

It is also important to remember that there are various civil remedies available in appropriate cases for individuals/businesses affected by certain extreme behaviour involving wilful damage to property or personal injury. This includes such options as claims for damages for civil assault, trespass and negligence causing financial loss. It is also open to courts to make orders for restitution when sentencing individuals for wilful damage.

We are happy to discuss any aspect of this submission should you require further information from our service. This submission was drafted by Caxton's Human Rights and Civil Law Practice (with thanks to Brittany Smead and Loretta Stellino).

Cybele Koning

CEO

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[22] *R v Jones* [2006] UKHL 16