

QRC Submission

Summary Offences and Other Legislation Amendment Bill 2019

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Introduction

Thank you for the opportunity to provide a submission on the *Summary Offences and Other Legislation Amendment Bill 2019 (the Bill)*, introduced by the Hon Mark Ryan MP, Minister for Police and Minister for Corrective Services on 19 September 2019.

This Committee is currently considering the Criminal Code (Trespass Offences) Amendment Bill 2019 (CCTOA). QRC also made a submission in support of that Bill and had the opportunity to appear before the Committee. As both Bills have broadly similar intent, this submission reiterates many of the issues discussed in our previous submission on the CCTOA.

Due to the similar intent and the limited number of sitting days before the end of the year, QRC has written to Government requesting Parliament consider both Bills in a cognate debate. We'd welcome the Committee making any bipartisan recommendation on the value of a cognate debate.

The QRC is the peak representative organisation for the Queensland minerals and energy sector. QRC's membership encompasses minerals and energy exploration, production and processing companies. QRC works on behalf of members to ensure Queensland's resources are developed profitably and competitively, in a socially and environmentally sustainable way.

For several years the QRC has been raising concerns with the Queensland Government regarding the tactics being employed by groups which oppose the development of the State's minerals and energy resources. The sector has seen a sharp increase in the number of illegal trespasses on rail and port infrastructure in recent years. A timeline of protest actions during just one month is outlined in **Attachment 1**.

In QRC's view, there are several shortcomings in the current law, including:

- It does not provide sufficient deterrent; and
- It does not consider the coordinated nature of orchestrated campaigns of the illegal activities.

QRC supports the Bill, as its intent is to deter people from using dangerous devices that deliberately amplify the risk of injury to themselves, emergency services workers and members of the public. The Bill also aims to assist police officers in minimising the disruption caused to the community through the use of these devices.

This Bill creates the offence of using a *dangerous attachment device* to unreasonably interfere with the ordinary operational of transport infrastructure.¹ The definition of *dangerous attachment device* captures most of the devices currently employed by protestors to disrupt resource transport infrastructure. The Bill also provides police with additional search and seizure powers, and the ability to give on-the-spot fines for the use of dangerous devices.

This submission will outline:

- Illegal trespass activities are part of a broader, concerted campaign.
- Industry's significant safety concerns and the way in which the campaign takes advantage of industry's core value of zero harm.
- The lack of deterrence in the current legal framework.

¹ Summary Offences and Other Legislation Amendment Bill 2019, clause 11.

In reading this submission the Committee should note that QRC respects people's right to protest peacefully in compliance with the law. Indeed, for Queensland Day the QRC organised a march and rally in Brisbane's CBD for a whole range of regional and peak industry bodies to argue for a "fair go for the regions", but only after undertaking the necessary consultation and approvals, including the Queensland Police Service.

Protester strategy

Environment and activist groups in Australia are well funded and organised. Potential international funding has been reported as being as high as \$100 million a year.² Their activities are part of a well-developed and orchestrated anti fossil fuel strategy.

In November 2011 the press obtained a highly sophisticated Greenpeace funding proposal entitled **Stopping the Australian Coal Export Boom** that described the interwoven strategies that are being employed.³ The document demonstrated that these groups are colluding and acting in an orchestrated way to disrupt and delay key projects and infrastructure with the aim of gradually eroding public and political support for the resources industry and for the fossil fuels that still power the Queensland economy.

The document outlines why the group is initially focusing on rail and port infrastructure for coal exports rather than domestic coal production. A key strategy in the document is 'to disrupt and delay key infrastructure' and 'the Battle of the Galilee' is a main project. The document states: "*The rail line to the Galilee Basin is perhaps the single most important piece of infrastructure as it will unlock coal from a series of mega-mines.*" The report goes on:

Currently, the area [Galilee] is not serviced by a rail line and there is no additional port capacity in the region. Port expansions at Abbot Point and Dudgeon Point, as well as the rail line linking these ports to the Galilee Basin are critical bottlenecks for the industry.

The Galilee Basin coal mines are already at the expensive end of the global coal production cost curve. By building a high profile public campaign to disrupt and delay, we can significantly increase investor uncertainty while undermining political support. This in turn may result in ... further driving up costs and increasing risks.

Anti-coal action is not new, but it is escalating. Protesters have made a long term philosophical commitment to doing everything they can to disrupt and ultimately stop coal mining in Queensland. In recent years, the protest activities have taken a dangerous direction that is putting the lives of protesters and others, particularly rail workers, at risk.

Industry's concern with illegal protests

SAFETY

Activists attempt to disrupt and delay the industry by threatening the safety of themselves, the community and company employees. Queensland's resource industry holds the health and safety of its workers as a core value. There are significant safety implications from trespass activity involving mine, rail or port infrastructure. The industry is concerned that if these protester activities

² John McCarthy, *Courier Mail*, 3 July 2017.

³ Bob Burton, Sam Hardy, and John Hepburn, *Stopping the Australian Coal Export Boom* (2013) <https://www.abc.net.au/mediawatch/transcripts/1206_greenpeace.pdf>.

continue to escalate, there will eventually be a serious injury or a fatality. It is unacceptable to threaten the safety of rail and port workers, the police or protesters.

Methods

Protester actions on rail and port infrastructure is designed to stop the transport of coal. This usually involves a protester securing themselves to part of the infrastructure. When targeting rail infrastructure, the protester will alert the rail infrastructure manager to the obstruction and trains will be halted. When targeting port infrastructure, the protesters will await discovery by port workers.

Protesters currently utilise a number of methods to obstruct a railway or port, including:

- Using a bamboo tripod to suspend a protester high enough over the infrastructure that collapse of the device would cause injury to the person suspended from it ('tripod' as per the Bill)⁴;
- Securing a L-shaped cylinder to infrastructure. Usually two large steel pipes welded together at an angle with a thick pin fixed in the centre ('sleeping dragon' as per the Bill).⁵ The protester then inserts their forearms into the cylinder;
- Placing a concrete-filled drum on infrastructure. The drum has a hollow section where the protester inserts their forearms into a 'sleeping dragon' device ('dragon's den' as per the Bill)⁶;
- Suspending a protester from a tree by a rope (referred to as a 'tree sit'). The rope is then secured to the railway track. This offence may be captured by the broader definition of 'dangerous attachment device', and
- Impersonating rail workers to flag down approaching trains using correct emergency signals. Once the train has stopped, the protesters will climb onboard.

As the explanatory notes state, the methods and devices used by protestors represent a real risk of injury or death as their incorrect disassembly or removal may lead to serious injuries, not only for the protestor, but anyone in the vicinity. Most recently we have seen a Queensland Police Officer injured in the disassembly of a dragon's den device at Abbot Point.⁷

Employee impact

Following an increase in unsafe and illegal activities on the rail corridor, Aurizon launched a rail safety campaign centred on train drivers' safety.⁸ The campaign highlighted the traumatic and lasting impact of incidents on train drivers. On-track protests are now one of the primary safety concerns for Aurizon and in particular for more than 1,000 of Aurizon's frontline train drivers in Queensland.⁹ One of the company's North Queensland train drivers, with more than 40 years' driving experience, spoke about his fear of injuring or killing someone:¹⁰

⁴ Summary Offences and Other Legislation Amendment Bill 2019 clause 11; proposed section 14B(6).

⁵ Summary Offences and Other Legislation Amendment Bill 2019 clause 11; proposed section 14B(3).

⁶ Summary Offences and Other Legislation Amendment Bill 2019 clause 11; proposed section 14B(4).

⁷ Jack Evans, 'Police officer injured at anti-Adani protest', *The Bulletin* (online), 1 October 2019

<<https://www.themorningbulletin.com.au/news/police-officer-injured-at-anti-adani-protest/3843762/?cspt=1569968582|a52ed30261cf04fc721e53189307e613>>

⁸ Aurizon, Rail Safety (17 April 2019) Aurizon Website <<https://www.aurizon.com.au/sustainability/rail-safety>>.

⁹ Ibid.

¹⁰ Aurizon, 'Don't put your life on the line' (Media Release, 17 April 2019) <<https://www.aurizon.com.au/-/media/Project/Aurizon/Files/Media-Releases/media-releasedont-put-your-life-on-the-line17-april-2019.pdf>>.

"It's putting too much stress on the train drivers, worrying about whether we're going to get home to our families if something serious happens, and whether we as a group could run over someone and potentially kill one of these protesters locked onto the track.

...We can't pull up on a whim. We've got 10,000 tonnes of coal at the back of us and when we're hurtling along at 80km per hour, it takes at least two and a half kilometres to pull up and stop the train. So, if we come around the corner and they're on the track, all we can do is put the emergency brakes on and then close our eyes. They seem to think that we can stop at any time."

The impact of protester actions on train drivers has also been considered by the Court. In the sentencing of a protester, Acting Magistrate Muirhead said the following:¹¹

[[I]t is possible, that an accident could happen... if there is a breakdown in communication, a number of factors come into play. It's an offence where it could result in serious consequences. I'm talking about either death or serious injury to yourself or other people. And I've got to have regard to the train-driver... he's entitled to expect he has got a safe workplace and to expect that he can carry out his employment, driving a train on the line, without having the possibility of someone being suspended on a tripod over a line and he can't pull up in time.

Protesters will often mischaracterise illegal trespass as 'non-violent, safe, direct action'.¹² The QRC disagrees. The only reason protesters could ever consider their actions 'safe' is because highly skilled and trained rail and port operators are ever vigilant in the application of strict safety duties. Protesters rely solely on procedures that require operations to cease until **any threat** to safety is removed. As Acting Magistrate Muirhead pointed out, if there is an error or breakdown in communication of any kind, the risk of serious injury or death is significant.

In May 2017, an activist illegally flagged down a coal train at Tennyson. Having caused an unscheduled halt on the busy suburban passenger network, the activists climbed onto the locomotive and tried to throw a banner over the top of the train. It was a diesel service, but operating on an fully electrified track used by passenger trains.

Fortunately, the driver immediately called for an emergency isolation of the high-voltage overhead power lines to prevent electrocution of the protester. Only the quick actions of the driver and the safety systems of Queensland Rail prevented a serious injury to the activist, but at the cost of shutting down the entire urban rail network.

The protester was charged with trespass.

The Magistrate ordered 40 hours of unpaid community service (to be performed within eight months) and no conviction was recorded. The Magistrate stated:¹³

"I sympathise with your plight. I understand the frustration about trying to get a message out there. I know there are some disbelievers. I am not one of them. But unfortunately, stopping a train has not helped the cause at all. I do not know what else you can do that

¹¹ Transcript of Proceedings, *Police v Rolles* (Brisbane Magistrates Court, 00225465/18(5), Acting Magistrate Muirhead, 28 May 2019) 1, 30-45.

¹² Julie Macken, 'Big Coal and Friends On Track To Shut Down Your Climate Activism' *New Matilda* (online), 4 December 2018 <<https://newmatilda.com/2018/12/04/big-coal-friends-track-shut-climate-activism/>>.

¹³ Transcript of Proceedings, *Police v Yarnold* (Brisbane Magistrates Court, 105864/17(5), Magistrate Springer, 2 August 2017) 25.

is lawful in trying to raise the profile of an issue which is affecting us all and is going to affect our children in the future."

COST IMPACTS

Illegal protests are utilised as an economic instrument to drive up costs, with the brunt borne by rail operators and police. As an example, rail operators have previously made submissions to Court outlining that delays to coal trains travelling to the Port of Brisbane cost \$90,000 per hour.¹⁴ It is difficult to recover the lost train paths from these unscheduled delays, so exports are directly affected.

Police

Costs to police are significant. Increased protester activity has burdened local police forces. In a small regional community, this burden is significant. The Bowen Police have developed a policing plan to respond to and manage protest activity:¹⁵

- Phase one of the plan consisted of the deployment of 118 police officers in Bowen to respond to the so called "week of action" by protest groups in September 2017. Approximately 100 protesters participated in the "week of action" which resulted in 13 arrests for charges of trespass and interfering with railway. Costs associated with this totalled \$112,418.
- Phase two has been ongoing and is directed towards protest activities. Costs associated with policing phase two have amounted to \$18,571.
 - a) Between October 2017 - March 2019 police had responded to 21 protest activities which have included "lock on" activities at the Adani Mine camp site, "lock on" and "tree sit" activities on the Aurizon rail corridor and "lock on" activities within the Abbot Point port facilities;
 - b) A total of 57 protesters have been arrested as part of phase two for offences which have included trespass, interfering with port operations, undertaking high risk activities and contravening police requirement. A further 27 infringement notices and 142 move-on directions have been issued by police to protesters.
 - c) At various times Bowen has had to call on additional resources from surrounding areas to assist in policing the protests.

Investment

While the individual cost impact of temporarily shutting down operations is significant, the true aim of illegal protests is to negatively impact the industry. The Greenpeace funding proposal **Stopping the Australian Coal Export Boom** outlines that a key aim of the strategy is to increase the cost of doing business, and therefore impact investment attractiveness - particularly in the Galilee Basin:¹⁶

The Galilee Basin coal mines are already at the expensive end of the global coal production cost curve. By building a high profile public campaign to disrupt and delay, we can significantly increase investor uncertainty while undermining political support. This in turn may result in ... further driving up costs and increasing risks.

¹⁴ Aaron Bunch, 'Coal train activists fronts Brisbane Court' *Brisbane Times* (online), <<https://www.brisbanetimes.com.au/national/queensland/coal-train-activist-fronts-brisbane-court-20190420-p51fsz.html>>.

¹⁵ *Avery & Ors v Queensland Police Service* [2019] QDC 21 [69].

¹⁶ Burton et al, above n 4.

The legal framework

There is effectively little deterrent in the current law. Most protesters who have been charged for blocking rail corridors receive fines ranging between \$100 and \$500, often with no conviction recorded. Protesters recognise that the offences are minor. The Galilee Blockade website states:¹⁷

Galilee Blockade will join other groups to go beyond conventional political protest. Sustained non-violent tactics like strikes, boycotts, street occupations and blockades will communicate our refusal to take no as an answer.

*Civil resistance is not easy. It directly challenges powerful people and institutions. It requires large numbers of people to risk arrest or sanction, normally for **very minor offences**. It requires even more people to support and resource bold tactics. (**emphasis added**)*

Further, the current law has little appreciation of the coordinated nature of protester actions. Protesters appear before the Court as individuals and are given penalties as individuals. There is no consequence for the organisers of the deliberate, premeditated and ongoing campaign. **The current law does not consider the coordinated nature of orchestrated campaigns of the illegal activities, complete with training camps and full-scale dress rehearsals. The current law only focuses on the people who are being encouraged to put themselves in harm's way, but not the organisers who co-ordinate the campaign at no personal risk.**

CURRENT CRIMINAL OFFENCES

There are gaps in the current legislation which result in the seriousness of protestors' offences not being reflected in the charges that activists face. Further, protesters are well briefed on how to behave to avoid satisfying the elements of various offences. As a result, there are limited criminal offences which accurately capture the illegal protester conduct **and** provide genuine disincentive in the penalty.

The most common charge for protester actions is trespass, even though the Court has acknowledged that "**actions of this type are not mere simple trespasses** (emphasis added)".¹⁸ As the Committee would be aware, currently in Queensland the offence of trespass is a summary offence with a maximum penalty of \$2,611 or one year's imprisonment.¹⁹ The maximum penalty for trespassing on a railway is 40 penalty units (and does not carry a term of imprisonment).²⁰

There are more serious offences, which carry much heavier penalties, for example, offences relating to endangering the safety of a vehicle. However, there are currently significant gaps in these offences which means they do not capture protester activities. For example:

- The offences of 'endangering the safe use of vehicles and related transport infrastructure'²¹ and 'endangering the safety of a person in a vehicle with intent'²² both contain intent provisions which must be satisfied for the offence to be proven. To do this it needs to be proven that the offender intends to cause harm to others. In most cases, the protesters will try to alert the rail authorities about the obstruction on the track. This action

¹⁷ Galilee Blockade, *Civil Resistance will #StopAdani* (June 2019) <<https://www.galileeblockade.net/>>.

¹⁸ *Avery & Ors v Queensland Police Service* [2019] QDC 21 [77].

¹⁹ *Summary Offences Act 2005* (Qld) s 11.

²⁰ *Transport Infrastructure Act 1994* (Qld) s 257.

²¹ *Criminal Code 1899* (Qld) s 467.

²² *ibid* s 319.

would likely negate the current drafting of the intent provisions. Maximum penalty - life imprisonment.

- The offence of 'interfering with a railway'²³ has been reduced in scope over the years so that it relates only to direct impact caused by someone on or in the corridor. The offence will not be committed by someone standing outside or above the corridor (e.g. in a tree/tripod) but whose presence there causes the railway to be closed. Maximum penalty – 40 penalty units (currently \$5,222).

There has been some criticism of this section by the Magistrates Court. When assessing a protester's charge, the Magistrate commented that there clearly is interference with the railway in a tree-sit protest – however it is difficult to prove that the person charged with the offence was the individual who actually interfered with the railway. Magistrate Young said the following: "Some of the provisions are **particularly technical, convoluted and even tortuous** as to try and get a handle on what it means...that is really a legal interpretive decision, rather than a factual dispute (emphasis added)".²⁴

- There appears to be no offence that captures the disturbing trend of protesters impersonating rail safety workers and flagging down trains using correct emergency signals. Impersonating a public officer is a crime but is not applicable to this scenario, as the construction of the offence requires the public official to owe a public duty under legislation.²⁵ Maximum penalty – 3 years imprisonment.

On 20 November 2018 a coal train was travelling on the QR network at approximately 35km/hr. The train came around a bend – both drivers saw people in orange hi-vis shirts and hard hats in the rail corridor ahead waving red flags on the track. Traincrew followed emergency procedures and applied the emergency brake, coming to a stop approximately the length of one locomotive past the men. Nine trespassers climbed onto coal wagons. The protesters placed banners on the wagons. Police negotiated with the trespassers to come down from the wagons on Queensland Fire Service ladders. The final trespasser was removed at 2.24pm. The train departed at 3.40pm after full inspection of the train and track.

The final trespasser was charged with obstructing railways, trespass on a railway and disobeying police. She pleaded guilty to all charges and received a nine month good behaviour bond. No fine, no restitution, and no conviction recorded.²⁶

Recorded convictions

In protester cases, the Magistrate often orders that no conviction be recorded as the activists are young offenders with minimal or no criminal records. Sometimes, Magistrates have ordered that a conviction not be recorded as it would hurt the offenders' prospects of employment and prevent them from being able to travel. This leaves fines as the only available punishment.

In June 2018, two protesters locked themselves to a cement-filled drum on a rail tuck near Jondaryan to disrupt transport of coal. Both were charged with trespass, obstructing railways and resisting police. The protesters were young and not employed full-time (one was a nursing student). The Magistrate elected not to record a conviction as it would hurt the protester's future prospects of employment. Fines of \$1,200 and \$1,400, respectively, were given to the pair. A more significant fine was given to one offender as he had a previous charge of trespass (for animal activism).

²³ *Transport Infrastructure Act 1994 (Qld) s 255.*

²⁴ Transcript of Proceedings, *Police v Berry* (Bowen Magistrates Court, 105864/17(5), Magistrate Young, 25 October 2018) 2.

²⁵ *ibid* s 97.

²⁶ Transcript of Proceedings, *Police v Jones* (Wynnum Magistrates Court, 222392/18, Magistrate Sarra, 25 January 2019).

The Police sought \$561,000 in restitution on behalf of the New Hope Group and for impost on police. The Magistrate said that as the protesters had no capacity to pay, there would be no restitution ordered. The protesters were represented by a barrister who was acting pro bono.

Fines

Fines are often the only penalty that can be imposed by the Court, as many relevant offences do not carry a possible term of imprisonment.²⁷ A Magistrate expressed frustration regarding the limited options for penalty in a recent protester sentencing, stating:²⁸

*... the only penalty that can be imposed by the court for these matters is a fine. Now, each one of those offences does not carry a possible term of imprisonment. That can't be imposed. And the bottom line is, **if I could have carried term of imprisonment, I would have, certainly, considered that, but I can't, because it – that's not available to the court for these offences** (emphasis added).*

Further, as many protesters reside outside of Queensland, it is not a practical option for Magistrates to impose community service orders.²⁹

When determining the fine, the Magistrate is obligated to take into account:

- a) The financial circumstances of the offender; and
- b) The nature of the burden that payment of the fine will be on the offender.³⁰

Often, the offenders are quite young (just 18 years old in several cases). This impacts on their capacity to pay a fine, and what is held to be a 'significant' amount for that individual. However, while the amount of the fine is determined by the individual's capacity to pay, the fine is often paid by crowdfunding.³¹

The Frontline Action on Coal (**FLAC**) has an FAQ on their website targeted at people who are considering joining the protester camp at Bowen. The FAQ is titled "What if I am fined?".³² It reads:

*Most who have been charged receive fines ranging between \$100 to \$500, depending on what they have been charged with and whether or not they have a previous criminal history. Some people have received more serious charges, and are therefore facing larger sums, though these matters are currently in the appeal process. If you will have trouble paying a fine, it can be referred to SPER by the court, this will allow you to pay it off in instalments. We can assist you with ideas and **support to raise funds to pay off your fine** (emphasis added).*

In January 2018, nine protesters locked on to a live coal conveyer belt at Abbot Point. The protesters took several hours to be removed. The position of the protesters was inherently dangerous given they were very low to the ground and that the coal loading equipment was still operating when they first locked themselves to it. The loading equipment housed a large

²⁷ Transcript of Proceedings, *Police v Rolles* (Brisbane Magistrates Court, 00225465/18(5), Acting Magistrate Muirhead, 28 May 2019) 1-5.

²⁸ Transcript of Proceedings, *Police v Rolles* (Brisbane Magistrates Court, 00225465/18(5), Acting Magistrate Muirhead, 28 May 2019) 1-5.

²⁹ *Avery & Ors v Queensland Police Service* [2019] QDC 21 [35].

³⁰ *Penalties and Sentences Act 1992* (Qld) s 48(1).

³¹ Albert McKnight, 'Activist crowdfunds to pay off fine: The law hasn't always perpetrated our values', *Bega District News* (online), 26 February 2019, <<https://www.begadistrictnews.com.au/story/5915664/activist-crowdfunds-to-pay-off-fine-the-law-hasnt-always-perpetuated-our-values/>>, 'Support the Adani Coal Port Protesters' on Chuffed, <<https://chuffed.org/project/support-front-line-activists>>.

³² Frontline Action on Coal, *What Can I Expect?* <<https://frontlineaction.org/whatcaniexpect/>>.

conveyor belt and other moving equipment which exposed the protesters to risk of injury or death.³³

All nine protesters were charged with interfering with operations of a port, high risk activity, trespass, disobeying direction and obstructing police. Only one protester had a conviction recorded; all were given fines of \$8,000. The total maximum fine that could have been imposed was \$32,799.³⁴ In the judgement, Magistrate Young said:³⁵

*"Standing up for what you believe in should be encouraged... However I consider these acts to be **very serious and very dangerous. You relied entirely on the professionalism and vigilance of port workers** – your lives in hands of other people, who were not expecting you to be there and outside their usual routine – I consider it to be stupid. (emphasis added)"*

In March 2019 the protesters successfully appealed the fines, which were reduced by 75%.³⁶ The District Court Judge in Townsville reiterated that the offences were "serious and dangerous", but took into account the limited financial means of the protesters and reduced all fines to between \$2,000 and \$3,000.³⁷

A crowdfunding site was created by a protester group when the fines were originally given, attempting to raise \$72,000.³⁸ Currently, the appeal has raised \$35,200, well above the total \$21,000 of the appealed fines.³⁹

PROPOSED OFFENCES

The Bill proposes the introduction new offences and police powers to deter people from using dangerous devices:

1. Creating two offences under the *Summary Offences Act 2005* (SOA):

- a. s14C(1): **Prohibiting** a person from using a **dangerous attachment device** to unreasonably interfere with the ordinary operation of transport infrastructure.⁴⁰ Maximum penalty of 50 penalty units or two years imprisonment.
- b. S14C(2): Prohibiting a person 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.⁴¹ Maximum penalty of 20 penalty units or one years imprisonment.

2. Amending the *Police Powers and Responsibilities Act 2000* (PPRA) to give police powers to:

- a. **Search** a person or vehicle without a warrant where there is a suspicion of possession of a dangerous device, and
- b. Disassemble, **seize** and dispose of any dangerous attachment device found.

3. Amending the *State Penalties Enforcement Regulation 2014* (SPER) to allow police to issue **penalty infringement notices** (on-the-spot fines) for the new offences created under the SOA. Penalty will be five penalty units for 14C(1) and two penalty units for 14C(2).

³³ *Avery & Ors v Queensland Police Service* [2019] QDC 21.

³⁴ By reference to the maximum penalties prescribed for each offence, the combined total maximum fine that could have been imposed on each appellant in respect to the three offences was \$32,799.

³⁵ Jessica Lamp, 'Interstate Adani activists cop enormous fines' *Townsville Bulletin*, 14 March 2018.

³⁶ Tess konomou, 'Adani protesters have fines slashed to \$3000 or less' *Townsville Bulletin* 1 March 2019.

³⁷ *Avery & Ors v Queensland Police Service* [2019] QDC 21

³⁸ 'Support the Adani Coal Port Protesters' on Chuffed, <<https://chuffed.org/project/support-front-line-activists>>.

³⁹ *bid*.

⁴⁰ Summary Offences and Other Legislation Amendment Bill 2019 (Qld) cl 11.

⁴¹ *bid*.

Dangerous attachment device is defined as a device that reasonable appears to be constructed or modified to anchor a person so that the person can resist being safely removed.⁴² This includes a 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; and/or
- Incorporates a dangerous substance or thing such as asbestos or poisons; or
- A sleeping dragon, dragon's den, monopole or tripod.⁴³

Transport Infrastructure includes air, busway, light rail, public marine, rail or road transport infrastructure as well as transport infrastructure relating to ports and active transport.⁴⁴

Dangerous substance or thing means

- Any thing likely to explode, when struck or compressed, causing injury to a person; or
- Any thing likely to cut a person's skin; or
- Any substance or thing that requires a person to wear protective clothing to safely handle, cut or break the thing.⁴⁵

Prohibition of use of dangerous attachment devices

QRC supports the introduction of ss 14C(1) and (2) into the SOA. The new sections acknowledge the seriousness of protestor activities and the risk they pose to both protestors and the general public.

However, the fines under ss 14C(1) and (2) are still relatively minor. Currently, 20 and 50 penalty units respectively amounts to \$2669 and \$6672.50. There are similar penalty amounts for current trespass offences, as outlined above. Industry has seen that those penalties do not provide a disincentive to these types of actions. Further, summary offences are viewed as relatively minor criminal offences (or 'simple offences') and are treated as such by the Court.⁴⁶ The creation of *indictable* offences would provide a more powerful deterrent.

Unfortunately, these offences do not capture or acknowledge the organised and coordinated nature of current protest activities. As mentioned above, these protests are orchestrated as part of a concerted strategy against the resources industry but are dealt with on an individual basis by the police and the Court. QRC believes the Bill should incorporate an offence similar to the 'organised trespass offence' outlined in the Criminal Code (Trespass Offences) Bill 2019, recently considered by this Committee.⁴⁷

The **organised trespass offence** was designed to counter the rise of coordinated trespass actions. If a director, member or volunteer of an organisation has been found to have organised a deliberate and premeditated campaign against a project or business that involves individuals from that organisation being found guilty of committing offences of aggravated trespass or serious criminal trespass, that organisation can be liable for a maximum penalty of 10 years imprisonment

⁴² *bid.*

⁴³ *bid.*

⁴⁴ *Transport Infrastructure Act 1994* schedule 6.

⁴⁵ Summary Offences and Other Legislation Amendment Bill 2019 (Qld) cl 11.

⁴⁶ Queensland Government, *Being charged with an offence* (8 June 2018) <<https://www.qld.gov.au/law/sentencing-prisons-and-probation/being-charged-with-an-offence>>

⁴⁷ Criminal Code (Trespass Offences) Amendment Bill 2019 (Qld) cl 5.

or a \$391,650 fine. The increased penalties and recognition of the organised nature of the activities will go some way towards addressing the ongoing issues with the current law.

QRC also holds concerns about the prescriptiveness of the definition of 'dangerous attachment device'. While the definition covers most of the current methods used to disrupt transport infrastructure, protestor groups are adaptable and could use new methods which obfuscate the definition. QRC recommends the Bill contemplate a gazette power for Government to include new devices in the definition as appropriate.

Section 14C(2) does not apply to a 'monopole' or 'tripod' device unless it incorporates a *dangerous substance or thing*. QRC is unclear on why this offence doesn't apply to tripods or monopoles in isolation, particularly if all other factors are the same as the use of any other device.

Search and seizure powers

QRC supports the introduction of increased search and seizure powers for police in regard to dangerous attachment devices. QRC recommends that search powers be extended to include land. We are aware that several protest groups have set up camps where they build and store devices that would be caught by the definition of 'dangerous attachment device'. Extending the police search and seizure powers to land would create a more effective preventative measure, further minimising the risk of harm to persons and disruption to the community, than under the currently proposed search and seizure powers.

Penalty infringement notices

QRC supports the expansion of the variety of measures that may be used by police when responding to protests. However, QRC notes that the penalty is very minor: \$667.25 and \$266.9, respectively. This provides almost no disincentive, and in addition, provision of a fine would curtail any Court process to prosecute the offender.

Further, as protestors often reside interstate, compliance with a Court process can be quite a disincentive in itself. Offenders have to return to the area of the crime at their own expense and face the consequences (however minor). Provision of on-the-spot fines would remove this deterrent.

CIVIL REMEDIES

In a few instances, companies have brought civil actions against protesters and protester organisations in an attempt to stop disruption amid fears there could be a fatality.⁴⁸ This is a costly endeavour. However, companies have seen this as necessary to deter further offences, considering the limited deterrence offered by the existing criminal law and its application by sentencing Magistrates.

At a particular point of severe disruption from illegal trespass, a rail operator and rail infrastructure manager filed an injunction against Frontline Action on Coal (FLAC) and individuals involved in recent protests. The injunction would make trespass on Aurizon land punishable by imprisonment. The claim also included damages totalling \$375,000. Following the outcome of the injunction, the movement became increasingly referred to as 'galilee blockade'.

⁴⁸ Luke Housego and Mark Ludlow, 'Aurizon launches Supreme court legal action against anti-coal activists' *Australian Financial Review* (online), 4 December 2018, <<https://www.afr.com/news/politics/aurizon-launches-supreme-court-legal-action-against-anticoal-activists-20181204-h18orh>>.

It appears that the injunction was more effective than criminal law. The website 'Standup2aurizon' stated: "Australia's largest freight company, Aurizon, is seeking an injunction to prevent protests on its train line en route to the proposed Adani mega mine in Queensland."⁴⁹ This wording could be seen as acknowledgment that current criminal laws do not effectively deter such dangerous activism.

The right to protest

Protesters have characterised the pursuit of civil legal avenues as "bullying", "harassment" and "...yet another attempt by big business and government to shut down political debate",⁵⁰ rather than a genuine attempt to disincentivise dangerous behaviour. Rail and mine operators have maintained that they respect people's right to protest, but not in contravention of the law.

Townsville District Court Judge Lynham addressed this thinking when considering rail protester actions:

The right to freedom of expression does not carry with it a licence to flout the law and join in activities involving damaging public property and potential injury to other person, simply because one does not agree with what has lawfully been done by a relevant agency of Government. Other members of the community are equally entitled to their views and to have the law upheld.

... the freedom of political communication is not unfettered – it is a freedom to communicate by lawful means, not a licence to do what is otherwise unlawful and it does not authorise, for example, the unlawful trespassing onto land.⁵¹

Conclusion

Queensland's current laws are ineffective at countering organised protester action. The orchestrated campaigns of dangerous activism, dressed up as expressions of free speech, have been ingeniously designed to frustrate the application of these laws. There is no doubt that unless Queensland considerably strengthens its laws, activist activity will only continue to increase and will ultimately result in injury or worse to activists and/or the innocent workforce against which they undertake their illegal activities.

QRC commends the Bill to the Committee's consideration. We recommend that the Bill be passed, and that additional measures to address the organised nature of these protests be investigated, such as the organised trespass offence proposed in the Criminal Code (Trespass Offences) Amendment Bill 2019. We would be happy to answer any questions the Committee might have about this submission and to appear before the Committee at any planned public hearing on the Bill.

QRC believes that the Bill should be passed at the earliest possible convenience in the interest of safety of resource industry workers, first responders and the broader community. The Committee is due to report on this Bill on 4 November. The Committee is due to report on the Criminal Code (Trespass Offences) Amendment Bill 2019 on 1 November. In the interests of efficiency, QRC recommends Parliament consider both Bills together in a cognate debate.

⁴⁹ Stand up 2 Aurizon 'Why Take Action'

<https://standup2aurizon.org/?fbclid=IwAR2JnYyoJWI8JUplpjOSUg11sl7tehyW8SZDFCcenjeWJFRKNGG9sF_Rg>.

⁵⁰ *ibid.*

⁵¹ *Avery & Ors v Queensland Police Service* [2019] QDC 21 [78].

ATTACHMENT 1

A timeline of protest actions during January 2018 is outlined below to give the Committee an idea of the pervasiveness of illegal trespass activity. The Court has acknowledged the increase in protester activities, stating in one sentencing:⁵²

[T]his offence or similar offending has been before the Court quite a few times in recent months. People engaged in nearly identical behaviour, where they've disrupted a rail line, been to Court and convicted... so it's getting to be a common offence.

2 January 2018 – Protesters stop a train, board it and hang 15 metre banners.⁵³



Source: The Morning Bulletin

9 January 2018 – Protesters lock on to a 44-gallon drum of concrete placed on the rail line.⁵⁴



Source: Daily Mercury

⁵² Transcript of Proceedings, *Police v Rolles* (Brisbane Magistrates Court, 00225465/18(5), Acting Magistrate Muirhead, 28 May 2019) 2.

⁵³ Andrew Backhouse, 'Adani activists stop coal train before being arrested', *The Morning Bulletin* (online), 2 January 2018 <<https://www.themorningbulletin.com.au/news/police-called-as-adani-activists-climb-aboard-coal/3301868/>>.

⁵⁴ Troy Kippen, 'Adani protesters chained to concrete drum on rail line' *Daily Mercury* (online) 9 January 2019 <<https://www.dailymercury.com.au/news/adani-protesters-chained-to-concrete-drum-on-rail-/3306380/>>.

11 January 2018 – Five protesters lock on to a live coal conveyer belt at Abbot Point.⁵⁵



Source: The Townsville Bulletin

12 January 2018 – A protester is suspended on a raised platform tied to the rack from 5.30am.⁵⁶

18 January 2018 – Four protesters lock on to a live conveyer belt at Abbot Point.⁵⁷

23 January 2018 – A protester suspends a raised platform connected to a rail track.⁵⁸

24 January 2018 – Protesters flagged down and climbed aboard a coal train headed to port.⁵⁹

25 January 2018 – Protesters lock on to a 44-gallon drum of concrete placed to the track (weighing half a tonne).

⁵⁵ Andrew Backhouse, 'Activists shut down rail line and port' *Townsville Bulletin*, 12 January 2018.

⁵⁶ Jamie McKinnell, 'Activists charged after Qld Adani protest' *Yahoo! News* (online) 12 January 2018 <<https://au.news.yahoo.com/activists-charged-after-qld-adani-protest/>>.

⁵⁷ Lamp, above n 32.

⁵⁸ Felicity Caldwell, 'Protester shuts down coal line by suspending herself from a tree' *Brisbane Times* (online) 24 January 2018 <<https://www.brisbanetimes.com.au/politics/queensland/protester-shuts-down-coal-line-by-suspending-herself-from-a-tree-20180124-p4yytv.html>>.

⁵⁹ *bid*.