



Submission on the *Summary Offences and Other Legislation Amendment Bill 2019*

8 October 2019

Lawyers for Climate Action Australia
[REDACTED]

Dear Members

Thank you for the opportunity to make a submission on the *Summary Offences and Other Legislation Amendment Bill 2019 (the Bill)*. Lawyers for Climate Action Australia (L4CA) is a national organisation comprised of legal academics, barristers, lawyers and law students who are exploring ways the legal profession can help to address the climate crisis. L4CA and its supporters are concerned that the new powers and penalties proposed in the Bill are contrary to fundamental legislative principles, human rights, are unnecessary and disproportionate, and have no evidential basis.

Fundamental Legislative Principles and Human Rights

The new powers and penalties proposed in the Bill are contrary to the intent of Fundamental Legislative Principles, as well as the principles and rights conferred by the *Human Rights Act 2019*, *Peaceful Assembly Act 1992* and the International Covenant on Civil and Political Rights. While this is not a comprehensive list, L4CA wish to draw the committee's attention to the following examples:

(a) Legislative intervention should be proportionate and relevant in relation to any issue dealt with under the legislation (Fundamental Legislative Principle)

The new powers and penalties proposed in the Bill are also unnecessary because the actions which the Bill allegedly targets are already unlawful. The Bill creates two categories of 'dangerous attachment device': ones that are designed to cause harm and others that involve lock-on devices with casings of shields to prevent protesters being easily released. The Bill also allows police to search both people and vehicles without a warrant if they suspect possession of 'dangerous attachment devices'. However, it is already unlawful for people to possess something designed to cause harm and the police can already undertake searches without a warrant if they hold a reasonable suspicion that a person is carrying such a thing. L4CA notes that while it is unlikely that anyone opposes strong penalties for endangering the lives of others, those penalties already exist. The use of lock-on devices with casings of shield designed to prevent protesters being easily released is also already regulated under existing laws such as, for example, sections 47 and 48 of the *Police Powers and Responsibilities Act 2000* (Qld). In this way, the Bill appears to be duplicating existing laws and is unnecessary.

L4CA also reminds the Committee of the Queensland Government's own guidelines set out in the Queensland Legislation Handbook that state:



*“Ensuring legislation is appropriately justified and proportionate to the desired policy outcome is particularly important in the context of the Government’s target of reducing the regulatory burden on businesses and the community”.*¹

(b) The right to peaceful assembly (*Human Rights Act 2019 (Qld)*, *Peaceful Assembly Act 1992 (Qld)* and the International Covenant on Civil and Political Rights)

Throughout history, people have used the concept of non-violent direct action to achieve change. As far back as 1215, the Magna Carta was a symbolic document of defiance to an over burdensome monarchy. The right to protest is recognised in international human rights treaties and is enshrined in the *Peaceful Assembly Act 1992 (Qld)* and the new *Human Rights Act 2019 (Qld)*, which is to commence on 1 January 2020. This right is tantamount to a functioning and healthy democracy, and we argue that this Bill seeks to further restrict an individual’s rights to protest; pushing Queensland back to a dark time where an individual seeking to question government action was silenced.

In that vein, non-violent direct action also has an important legacy across Australia in securing large scale societal change, including in First Nations struggles, women’s rights, labour rights and LGBTIQ+ rights. Queensland though, has a dark history of limiting civil liberties and silencing peaceful dissent. In a recent article, Queensland Law Society Present Bill Potts wrote:

*“In days before mass electronic communication ...Joh could spin a few official photographs into the impression that right-to-marches were looters and rioters, thus validating his brutal approach to suppressing them. Thankfully, what Joh couldn’t control was the media and the lawyers, and some very brave reporters, uncompromising lawyers and of course, Tony Fitzgerald’s fearless enquiry allows the people of Queensland to eventually see the truth. Sadly, we are seeing history repeat itself as legislative over-reach in terms of protests is again being attempted and if Joh were alive, he might well laugh, because these days some of the protesters are doing his work for him.”*²

While L4CA respectfully disagrees with some of the sentiments expressed by Mr Potts, we do agree that legislative overreach is again being attempted in Queensland. The right to peaceful assembly must be protected because it is an effective tool for implementing transformational change, particularly at the scale and urgency that the climate crisis demands. For many, engaging in non-violent direct action is a considered decision that prompts action when no-one in power is listening and nothing is changing. People engaging in non-violent direct action have often already prepared “*logical and well-researched policy submissions*”,³

¹ Queens and Government Handbook,
https://www.premiers.qd.gov.au/redrect.ashx?asperrorpath=/pub_cations/categories/policies-and-codes/handbooks/eqsaton-handbook.aspx.

² https://www.qs.com.au/About_QLS/News_media/News/Presidents_update_18_September_2019

³ https://www.qs.com.au/About_QLS/News_media/News/Presidents_update_18_September_2019



**LAWYERS FOR
CLIMATE ACTION**

undertaken government engagement⁴ and “*forcefully but reasonably*”⁵ stated their case. This is particularly true for vulnerable communities who are the most affected by the impacts of the climate crisis and are already experiencing devastating natural disasters, sea level rises and water shortages. In these communities, the scale and immediacy of the problem means that they do not have the luxury of simply continuing to state their case. L4CA is also cognisant that for Aboriginal and Torres Strait Islander communities, the climate crisis is just another chapter in a long history of destruction and dispossession.⁶

Lack of evidentiary basis

In practical terms, the Bill is seeking to increase the penalties for the second category of ‘dangerous attachment devices’ (lock-on devices with casings of shields to prevent protesters from being easily released) in situations where they are used to block access to a place of business or stop equipment operating (up to 1 year in prison or a \$2,669 fine) or interfere with transport infrastructure such a road (up to 2 years in prison or a \$6,672 fine).⁷ In the context of the second category of ‘dangerous attachment devices’, the legislative intervention proposed by the Bill seems disproportionate to the issue being dealt with, namely, non-violent direct action intended to prompt the government to act on climate change.

The policy intent for introducing the new powers and penalties has limited factual or evidentiary basis. The proposed laws were announced amid allegations that protesters were ‘booby-trapping’ devices to harm themselves or others. In August 2019, the Premier of Queensland stated that activists had used lock-on devices and “*...inside these cylinders and drums are glass fragments - even butane containers - so that anyone trying to cut a protester free will be injured or worse*”.⁸ To date, the Premier and the media have declined to produce, or report on, evidence of the use of such devices.⁹ Following the introduction of the Bill, it was stated in the explanatory note that: “*...it has been reported some people have claimed that they have placed glass or aerosol cannisters inside devices.*”¹⁰ If evidence exists to support the assertion that lock-on devices are being ‘booby trapped’ or laced with aerosol or glass, there is no reason why it should not be released publicly. L4CA also notes that in the absence of such evidence, it is not sufficient to rely on third hand reports of claims about the use of devices to justify this Bill.

⁴ https://www.q.s.com.au/About_QLS/News_med_a/News/Pres_dents_update_18_September_2019

⁵ https://www.q.s.com.au/About_QLS/News_med_a/News/Pres_dents_update_18_September_2019

⁶ https://over.and.org.au/2019/09/we-need-a-bak-new-dea-to-fght-the-c-mate-cr/s/?fbclid=IwAR1q6_veMBeUx2_RtfhOv_zUcnANqb_cTFJKYtHV9neSA_Rm-8nRL3Vvxzk

⁷ Summary Offences and Other Legislation Amendment Bill 2019 (Q d),

https://www.eg.s.at.on.q.d.gov.au/v_ew/pdf/b_.f_rst/b_-2019-056.

⁸ Queens and Par ament Record of Proceed ngs, Tuesday, 20 August 2019,

https://www.par_ament.q.d.gov.au/documents/hansard/2019/2019_08_20_WEEKLY.pdf.

⁹ Quest on on Not ce No. 1180 asked on 21 August 2019,

https://www.par_ament.q.d.gov.au/documents/tab_eOff ce/quest onsAnswers/2019/1180-2019.pdf;

<https://www.theguardian.com/australia-news/2019/aug/21/queens-and-government-accused-offabr-cat-ng-c-a-ms-about-c-mate-act-v-sts>.

¹⁰ Summary Offences and Other Leg s at on Amendment B 2019 Exp anatory Note,

https://eg.s.at.on.q.d.gov.au/v_ew/pdf/b_.f_rst.exp/b_-2019-056.



The Bill's explanatory note also states that "*some people have made use of attachment devices that have also been constructed or designed in such a way as to endanger themselves, emergency service workers and potentially members of the public*".¹¹ The explanatory note goes on to state that "*the underlying rationale for people using these devices appears to be based upon a disregard of existing laws and an indifference to the rights, freedoms and safety of others*."¹² L4CA is concerned that there is limited factual evidence to support the assertion that people are using devices to endanger their own lives, or the lives of others, or because they are indifferent to the safety of others.

In recent months, Queensland has seen mass climate protests and smaller, disruptive protests which upset people by slowing traffic or delaying the transport of coal. The groups engaging in these protests openly state their intentions to use non-violent direct action to prompt the changes needed to address the climate crisis in the face of governments ignoring the science and refusing to take meaningful action. For example, the School Strike for Climate movement in Australia is a network of "*school students from cities and towns across Australia*"¹³ who are "*striking from school to tell our politicians to take our futures seriously and treat climate change for what it is - a crisis*."¹⁴ The School Strike for Climate network defines itself as non-partisan, inclusive and most importantly, **non-violent**. Similarly, Extinction Rebellion's core strategy is "*mass disruption of city centres through non-violent civil disobedience*"¹⁵ to prompt government to declare a climate and ecology emergency and take action to reduce greenhouse gas emissions to net zero by 2025. Extinction Rebellion's guiding principles include "*working actively to create safer and more accessible spaces*"¹⁶ and "*using non-violent strategy and tactics as the most effective way to bring about change*".¹⁷

In light of the motivations and guiding principles espoused by the groups engaging in protests, the assertion that such groups would use devices to endanger themselves and the public are completely unfounded.

Regulatory burden

As stated above, there are already sufficient laws available to police should they encounter someone who is breaking the law. To overlay existing laws with an additional piece of legislation, that arguably does not add value, contributes to unjust regulatory burden. Not just for the individual concerned, but also the police and the wider justice system.

It is no secret that the criminal justice system in Queensland and across Australia is over burdened. If passed, this Bill will continue to increase the pressure on the police,

¹¹ Summary Offences and Other Legislation Amendment Bill 2019 Explanatory Note, <https://egsaton.qd.gov.au/vew/pdf/b .frst.exp/b -2019-056>.

¹² Summary Offences and Other Legislation Amendment Bill 2019 Explanatory Note, <https://egsaton.qd.gov.au/vew/pdf/b .frst.exp/b -2019-056>.

¹³ School Strike for Climate, www.schoolstrike4climate.com/

¹⁴ School Strike for Climate, www.schoolstrike4climate.com/

¹⁵ <https://ausrebellion.on.earth/what-s-xr>

¹⁶ <https://ausrebellion.on.earth/what-s-xr>

¹⁷ <https://ausrebellion.on.earth/what-s-xr>



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Legal Aid, community legal centres and the court system. When developing new legislation, consideration must be given to the downstream impacts and costs, and an analysis undertaken to decide whether any additional burden to the system is justified. L4CA argues that this increased burden is not justified, particularly as the Bill has no evidentiary basis and appears to be a placatory tactic to those being impacted by protest action.

As we plummet towards ecological collapse and global warming that is likely to reach between 3.7 °C and 4.8 °C above pre-industrial levels by the end of the century¹⁸, the stakes have never been higher and the need for urgent action never greater. In this context, some people are making a considered decision to engage in non-violent direct action to demonstrate how important this issue is to them. Unlike this Bill, their decision does have a solid factual and evidential basis. Namely, that 97% of scientists, backed by hundreds of peer reviewed papers, understand the realities and urgency of the climate crisis and that once non-violent movements mobilise 3.5% of the population, they never fail to bring about change.¹⁹

L4CA urges the Committee to reject the Bill. L4CA also urges each Committee member to consider their own personal, ethical and professional responses to the climate crisis.

Yours faithfully,

Janelle Rees

Co-Founder

Lawyers for Climate Action Australia

¹⁸ IPCC Climate Change Synthesis Report: Summary for Policy Makers, 2014, p. 20.

https://www.pcc.ch/sites/assets/uploads/2018/02/AR5_SYR_FINAL_SPM.pdf?fbclid=IwAR3gkq1oG5ozuePKxZmCIQ4camQDQN6_kL4teQVZ7LZVRcb1mKSHfQx4.

¹⁹ <http://www.bbc.com/future/story/20190513-t-on-y-takes-35-of-people-to-change-the-world>.