

Summary Offences and Other Legislation Amendment Bill 2019

Explanatory Notes

Short title

The short title of the Bill is the Summary Offences and Other Legislation Amendment Bill 2019 (the Bill).

Policy objectives and the reasons for them

Protest activity has been used as a vehicle by many Australians to advocate for legal and social change. Peaceful assemblies allow interest groups to express their views to the wider public and, in particular, may allow the concerns of minorities to be voiced, heard and potentially acted upon. 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.

The right of peaceful assembly has long been recognised in international human rights law through Article 21 of the International Covenant on Civil and Political Rights. This right has been enshrined in Queensland through the *Peaceful Assembly Act 1992* (PAA) and is also acknowledged within the *Human Rights Act 2019* (HRA).

The PAA provides that a person has the right to assemble peacefully with others in a public place. This right is subject only to those necessary and reasonable restrictions required to ensure public safety, public order; or the protection of the rights and freedoms of other persons.

The protection of the rights and freedoms of other persons includes the rights of members of the public to enjoy the natural environment and the rights of persons to carry on business.

The PAA operates to exempt participants in authorised public assemblies from civil or criminal liability for any obstruction of a public place. This exemption only applies to assemblies that are peaceful and held substantially in accordance with any relevant conditions outlined in a notice or order under that Act. As the PAA only applies to public places, it does not affect laws involving trespass, such as the right of a person in, or entitled to, possession of land to request a trespasser to leave the land or to remove a trespasser from the land.

The PAA highlights that the right to assemble peacefully is not absolute. There must be a balance between the rights of those participating in a peaceful assembly with considerations about public order and safety and the rights and freedoms of others. A person purporting to exercise the right to assemble peacefully does not have the right to completely disregard the rights and freedoms of others.

A peaceful assembly can take many forms ranging from an individual engaging in a silent protest to a march of thousands. Peaceful assemblies may be planned or spontaneous and authorised or unauthorised under the PAA. However, common to most peaceful assemblies is the desire to capture public attention, advocate a position or an ideology and to cause change. In doing so, it has been recognised that actions taken by some activists during a peaceful assembly have been unlawful and can cause annoyance or inconvenience to the public.

Recent assemblies held across the State in regional and metropolitan areas demonstrate that the disruptions that may be caused by this activity can impact upon all Queenslanders. For example, some people have held assemblies about:

- coal mining - in regional communities such as the Bowen area and at the Galilee basin;
- the treatment of animals - at a variety of farms and associated abattoirs; and
- climate change – in metropolitan areas such as the Brisbane CBD.

On occasion, some people have adopted tactics designed to maximise the disruption that may be caused to members of the public. These tactics involve using everyday items such as glue, rope, chains or padlocks to secure themselves to a fixture, moveable item or place in a manner that interferes with the conduct of lawful business or prevents a person from doing something that they are lawfully entitled to do. For example, a person may glue their hands to the bitumen on a public road. For the safety of the person and other road users, this may cause the road to be closed while the person is freed from the roadway. During this time, members of the public are prevented from using the road to conduct their lawful business.

Some people have also made use of bespoke items that have been constructed or designed to defeat attempts to remove them. Examples of these devices include a ‘sleeping dragon’ and a ‘dragon’s den’. A ‘sleeping dragon’ is usually a section of tubular steel with a connection pin or attachment point located towards its centre. Persons using this device may secure themselves to an object or each other by reaching into the tube and connecting to the pin by rope, chains or handcuffs. A variation of the ‘sleeping dragon’ is the ‘dragon’s den’ which is constructed by concreting a ‘sleeping dragon’ within a 44-gallon drum. These devices are designed to prevent police from easily reaching either the connection pin or the rope, chains or handcuffs used to prevent the person from being safely removed from the device.

Safely extricating a person from these devices is difficult and dangerous and may require an assortment of tools ranging from hand tools such as cold chisels and hammers, to specialised equipment such as angle grinders, cold cut saws, hydraulic cutters, hammer drills and jack hammers. The use of such equipment or tools in such close vicinity to a person’s body represents a real risk of injury. For example, specially trained police officers may need to employ circular saw blades and grinding discs rotating at thousands of revolutions per minute within millimetres of the person. Great care needs to be taken by attending police to avoid any injury to any person. Injuries that could conceivably be caused in these circumstances range from severe lacerations, burns and crushing injuries.

Alarmingly, 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. It has been reported some people have claimed that they have placed glass or aerosol cannisters inside devices such as ‘sleeping dragons’ and metal fragments have been used to lace the concrete found in ‘dragon’s dens’. This increases the likelihood that injuries may be caused when trying to disassemble these devices as the equipment used by police may fail. A grinding disc on an angle grinder may break or shatter whilst in operation, causing disc fragments to become projectiles causing severe lacerations. Similarly, a cold cut saw may kickback striking the protester or its operator. Additionally, a person could use material in constructing these devices that represent a danger to a person if that material is disturbed, such as asbestos.

People have also suspended themselves on poles, ‘tripods’ and platforms above or near transport infrastructure such as a train line or attached themselves to heavy machinery causing the normal operation of transport infrastructure or the legitimate use of heavy machinery to be halted. These devices may become unstable when being disassembled and may also have been

constructed with ropes or cables that have been placed under tension. Disassembling these devices requires great care to ensure the device doesn't collapse on another person, or that the person suspended doesn't plummet to the ground or a person is not struck by a cable or rope suddenly released from tension.

These types of devices (dangerous attachment devices) represent a real risk of injury or death to a person, emergency service workers and the public as the incorrect disassembly or removal of these devices may lead to serious injuries, not only for the person attached to the device but anyone in the vicinity.

As the health and safety of Queensland's first responders including police officers and Fire and Emergency Services personnel is paramount, all reasonable measures to mitigate the risks presented by dangerous attachment devices is considered appropriate.

In addition to the potential risk of injury or loss of life that may result from the use of these dangerous attachment devices, the direct and indirect costs caused by persons who block major transport routes or impact upon vital infrastructure can have a major effect upon individual businesses and the community generally. For example, a person using an attachment device cost freight company Aurizon \$1.3 million dollars in April this year, when that person delayed five coal trains at the Port of Brisbane for 14 hours. Similarly, traffic disruption to thousands of commuters as a result of protests held in the Brisbane CBD caused direct costs through delays in services, business deliveries etc. and social costs by adversely impacting on people's quality of life.

Disruptions to transport infrastructure also hampers the ability of emergency services to provide support to the community. For example, the Queensland Ambulance Service may be delayed from transporting a person in need of urgent medical attention if a person uses a dangerous attachment device to block major roads. Similarly, fire officers and police officers may also be unable to respond to urgent calls for service.

The employment of dangerous attachment devices exacerbates the potential disruptions that may be caused to the community as greater care must be taken in safely extricating a person from the device. This disruption surpasses the inconveniences to the public traditionally caused by lawful assembly activities and encroaches into civil disorder and disarray. 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.

The Bill introduces a range of measures to deter people from using dangerous attachment devices that endanger themselves, emergency services workers and members of the public and to assist police officers in minimising the disruption caused to the community through the employment of these devices.

Achievement of policy objectives

The Bill achieves its objectives by amending the following legislation:

- the *Summary Offences Act 2005*;
- the *Police Powers and Responsibilities Act 2000*; and
- the *State Penalties Enforcement Regulation 2014*.

Summary Offences Act 2005 (SOA)

The Bill defines an attachment device to mean a device that reasonably appears to be constructed or modified to anchor a person at a place or to a thing so that the person can resist being safely removed or safely separated from the place or thing. To remove any doubt things

such as glue or a bike lock are provided as examples of things that are not, by themselves, attachment devices.

The Bill provides a further definition of a dangerous attachment device to mean an attachment 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;
- incorporates a dangerous substance or thing such as asbestos or poisons; or
- a ‘sleeping dragon’, ‘dragon’s den’, ‘monopole’ or ‘tripod’.

The Bill will introduce two offences under the SOA designed to address the use of a dangerous attachment device to disrupt lawful activities.

Section 14C(1) prohibits a person from using a dangerous attachment device to unreasonably interfere with the ordinary operation of transport infrastructure unless the person has a reasonable excuse. This offence provision will carry a maximum penalty of 50 penalty units or 2 years imprisonment.

Section 14C(2) prohibits a person, who without reasonable excuse, from using a dangerous attachment device to:

- stop a person from entering or leaving a place of business; or
- cause a halt to the ordinary operation of plant or equipment because of concerns about the safety of any person.

Section 14C(2) does not apply to a ‘monopole’ or ‘tripod’ unless it incorporates a dangerous substance or thing. This offence carries a maximum penalty of 20 penalty units or 1 years imprisonment.

Police Powers and Responsibilities Act 2000 (PPRA)

The Bill amends the PPRA by:

- authorising a police officer to search without warrant:
 - a person, if the person is reasonably suspected by a police officer of possessing a dangerous attachment device that has been used or is to be used to disrupt a relevant lawful activity; and
 - a vehicle, if the police officer reasonably suspects that there is a dangerous attachment device that has been used or is to be used to disrupt a relevant lawful activity in the vehicle.
- allowing a police officer who finds a dangerous attachment device that has been used or may be used to disrupt a lawful activity to:
 - deactivate or disassemble the device as considered reasonably necessary; or
 - seize and dispose of the dangerous attachment device or parts thereof as considered reasonably necessary.

This seizure and forfeiture power may be considered to be a preventative measure that allows police officers to intervene before dangerous attachment devices are deployed thereby minimising the risk of harm to persons and disruptions to the community.

State Penalties Enforcement Regulation 2014 (SPER)

The Bill will allow penalty infringement notices to be issued for the new offences of using a dangerous attachment device. The fines payable for penalty infringement notices for offences under sections 14C(1) and 14C(2) of the SOA will be 5 penalty units and 2 penalty units respectively. This amendment will add the issuing of penalty infringement notices to the variety of measures that may be used by police when responding to protests.

Alternative ways of achieving policy objectives

There are no alternative means of achieving the policy objectives other than by legislative reform.

Estimated cost for government implementation

Any costs arising from the implementation of the Bill are expected to be minimal and will be met from existing budgets.

Consistency with fundamental legislative principles

The amendments have been drafted with due regard to the *Legislative Standards Act 1992* and with consideration to the principles of the HRA. While some of the proposals may be considered contrary to intent of those principles, they are considered necessary to promote the safety of Queenslanders and to minimise unreasonable disruptions to the community.

Use of a dangerous attachment device

The right to peaceful assembly is recognised through Article 21 of the International Covenant on Civil and Political rights and enshrined in Queensland through the PAA. Peaceful assembly is also acknowledged in section 22 of the HRA. The right to peacefully assemble is fundamental to our society as it is closely enmeshed with other rights such as the freedom of expression and the freedom of association.

The introduction of new offences under the SOA to prohibit the use of a dangerous attachment device may impact on those persons who wish to use these devices when exercising their right to peacefully assemble.

However, this right has to be balanced against considerations about public order and safety and the rights and freedoms of others affected by the assembly. As previously outlined in these explanatory notes, these dangerous attachment devices may cause a real risk of injury or death to a person or persons using the device, emergency service workers and the public when attempts are made to disassemble these devices.

Additionally, the use of dangerous attachment devices may lead to significant disruptions to individuals and to the community generally. For example, roadways and railways may be closed to traffic to allow authorities to safely extricate a person from a dangerous attachment device. This may cause great financial cost to other individuals who are prevented from conducting their lawful business and many others may be curtailed from exercising their own individual rights such as the right to enjoy public spaces. Further, the ability for emergency services to provide services to the community may be hampered.

These offences are justified as the consequences of the employment of these dangerous attachment devices greatly outweigh any argument in support for their use.

Any concerns about this offence provision is further mitigated as the offences only target the small cohort of persons who use dangerous attachment devices when espousing their cause or ideology. It will not apply to a person or assembly that is otherwise engaging peacefully under the PAA. Also, these offence provisions do not impose strict liability. Persons charged with these offences may be excused from criminal liability if they satisfy a court that their actions when using a dangerous attachment device were reasonable in the circumstances.

Search a person or vehicle without a warrant

The Bill will amend sections 30 (Prescribed circumstances for searching persons without warrant) and 32 (Prescribed circumstances for searching vehicle without warrant) of the PPRA.

This will allow police to stop and search a person or vehicle where the police reasonably suspect the person has, or a vehicle contains, a dangerous attachment device that has been used or is to be used to disrupt a relevant lawful activity. Searches conducted by police may find dangerous attachment devices before these devices have been deployed preventing safety issues from arising and disruptions being caused to the community.

While the new search powers may be considered to impinge on the rights and liberties of the person, the consequences of the deployment of a dangerous attachment device including the potential harm it can cause to the health of a person and the disruption that may be caused to the community outweigh this concern.

Usual safeguards that relate to searches of a person or vehicle under the PPRA will apply. For example, sections 624, 625, 626, 629-632 and 637 of the PPRA will apply to a search of a person. This includes ensuring minimal embarrassment to the person, taking reasonable care to protect the dignity of the person and, unless urgent, the search being conducted by a police officer of the same sex as the person being searched.

Usual safeguards in sections 627 'General provision about searches of vehicles' and 628 'Dealing with persons who obstruct search of person or vehicle' of the PPRA will also apply in relation to any searches conducted on a vehicle.

Finally, a search of a person or vehicle is an enforcement act under the PPRA. This safeguard requires an officer to record prescribed information about the search in an enforcement register as soon as reasonably practicable after the search was conducted. This accountability measure further any mitigates concerns about this issue.

The seizure and automatic forfeiture of dangerous attachment devices

It may be argued that the automatic forfeiture of property is an unreasonable impact upon a person's property rights.

However, the Bill limits the seizure and forfeiture to dangerous attachment devices found on a person or in a vehicle by a police officer who reasonably suspects the dangerous attachment device has been used or may be used to disrupt a relevant lawful activity. The amendment provides options to police dealing with these items. Police may opt not to seize the device and instead deactivate or disassemble the device to ensure that it cannot be deployed. Alternatively, police may seize these items, and if so, the item is taken to be forfeited to the State.

This amendment is justifiable as the inherent characteristics of dangerous attachment devices represent a danger to persons using such a device, emergency workers and the public when attempts are made to extricate a person from the device.

Similar to searches conducted under these amendments, the seizure of a dangerous attachment device is an enforcement act under the PPRA. This allows the usual safeguards under the PPRA to apply to any property seized. This includes requiring the officer to issue a receipt to the person from whom the dangerous attachment device is seized and recording prescribed information about the seizure in an enforcement register. These accountability measures assist in the minimisation of concerns about this issue.

Consultation

Consultation was undertaken with the:

- Queensland Council of Unions and member Unions;
- Queensland Council of Civil Liberties;
- Queensland Law Society;

- Queensland Bar Association;
- Australian Conservation Foundation; and
- Queensland Resources Council.

Consistency with legislation of other jurisdictions

The Bill amends legislation that is specific to the State of Queensland and is not part of uniform national legislation.

Notes on provisions

Part 1 Preliminary

Clause 1 Short title

Clause 1 states that, when enacted, the Bill may be cited as the *Summary Offences and Other Legislation Amendment Act 2019*.

Part 2 Amendment of Police Powers and Responsibilities Act 2000

Clause 2 Act amended

Clause 2 provides that this part will amend the *Police Powers and Responsibilities Act 2000*.

Clause 3 Amendment of s 30 (Prescribed circumstances for searching persons without warrant)

Section 29 (Searching persons without warrant) of the PPRA authorises a police officer to stop, detain and search a person without warrant if the officer reasonably suspects any of the prescribed circumstances outlined in section 30 (Prescribed circumstances for searching persons without warrant) of the PPRA exist.

Clause 3 inserts the new section 30(k). This amendment will authorise a police officer to stop, detain and search a person and anything in the person's possession if the officer reasonably suspects that the person is in possession of a dangerous attachment device that has been used or is to be used to disrupt a relevant lawful activity.

This clause also outlines that a relevant lawful activity is disrupted by using a dangerous attachment device if the use:

- unreasonably interferes with the ordinary operation of transport infrastructure. Examples of this would include placing an obstacle on a railway that stops the passage or rolling stock or obstructing a road to the extent that all travel in one direction is impeded;
- stops a person from entering or leaving a place of business; or
- causes the ordinary operation of equipment or a plant to be halted due to the safety concerns of a person.

Clause 4 Amendment of s 32 (Prescribed circumstances for searching vehicle without warrant)

Section 31 (Searching vehicles without warrant) of the PPRA authorises a police officer to stop, detain and search a vehicle without warrant if the officer reasonably suspects that any of the prescribed circumstances outlined in section 32 (Prescribed circumstances for searching vehicle without warrant) of the PPRA exist.

Clause 4 insert the new section 32(1)(p). This amendment will authorise a police officer to stop, detain and search a vehicle and anything in it if the officer reasonably suspects that there is a dangerous attachment device that has been used or is to be used to disrupt a relevant lawful activity in the vehicle.

This clause also provides that, for the new section 32(1)(p), a relevant lawful activity is disrupted by using a dangerous attachment device if the use:

- unreasonably interferes with the ordinary operation of transport infrastructure. Examples of this would include placing an obstacle on a railway that stops the passage or rolling stock or obstructing a road to the extent that all travel in one direction is impeded;
- stops a person from entering or leaving a place of business; or
- causes the ordinary operation of equipment or a plant to be halted due to the safety concerns of a person.

Clause 5 Insertion of new s 53AA

Clause 5 inserts the new section 53AA (Seizure and disposal of dangerous attachment devices). This section will operate where a police officer finds a dangerous attachment device that the officer reasonably suspects has been used or is to be used to disrupt a relevant lawful activity.

Section 53AA(2) outlines that a relevant lawful activity is disrupted by using a dangerous attachment device if the use:

- unreasonably interferes with the ordinary operation of transport infrastructure. Examples of this would include placing an obstacle on a railway that stops the passage or rolling stock or obstructing a road to the extent that all travel in one direction is impeded;
- stops a person from entering or leaving a place of business; or
- causes the ordinary operation of equipment or a plant to be halted due to the safety concerns of a person.

The meaning of transport infrastructure is found within schedule 6 (Dictionary) of the *Transport Infrastructure Act 1994* and includes air, busway, light rail, public marine, rail or road transport infrastructure as well as transport infrastructure relating to ports and active transport.

The new section 53AA allows a range of measures to be adopted by police dealing with dangerous attachment devices. A police officer may do 1 or more of the following:

- deactivate or disassemble the dangerous attachment device to the extent the officer considers reasonably necessary;
- seize the dangerous attachment device and dispose of the device as the officer considers reasonably necessary; or
- seize parts of the dangerous attachment device and dispose of the parts as the officer considers reasonably necessary.

This section may be considered to be a preventative measure designed to minimise or eliminate the risk of harm to persons and the disruptions to the community that may arise through the deployment of dangerous attachment devices.

Clause 6 Amendment of s 720 (Application of div 7)

Division 7 (Dealing with forfeited things) of Chapter 21 (Administration) of the PPRA outlines how property that is forfeited to the State may be dealt with. This division is comprised of two sections namely section 720 (Application of div 7) and section 721 (Dealing with forfeited things).

Section 720 outlines that this division applies to a thing in the possession of the police service that is forfeited to the State only after all proceedings that relate to the offence or suspected offence for which the thing was forfeited are finally decided, unless the thing is forfeited under division 6 of the PPRA.

Section 721(1) provides that, upon forfeiture, the thing becomes the property of the State and may, subject to any direction given under section 4.6 of the *Police Service Administration Act 1990* be dealt with by the Commissioner as the Commissioner considers appropriate. Without limiting this subsection, this includes the Commissioner destroying or disposing of the thing or organising its sale by auction.

Clause 6 amends section 720 by clarifying that division 7 of Chapter 21 will apply to a dangerous attachment device.

Clause 7 Amendment of sch 6 (Dictionary)

Clause 7 inserts a new definition of dangerous attachment device into schedule 6 (Dictionary) of the PPRA.

Part 3 Amendment of State Penalties Enforcement Regulation 2014

Clause 8 Regulation amended

Clause 8 provides that this part will amend the *State Penalties Enforcement Regulation 2014*.

Clause 9 Amendment of sch 1 (Infringement notice offences and fines for nominated laws)

Clause 9 amends schedule 1 of the SPER so that a penalty infringement notice imposing a fine of 5 penalty units and 2 penalty units may be issued by a police officer in relation to an offence against sections 14C(1) and 14C(2) (Use of dangerous attachment device to disrupt lawful activities) of the SOA respectively.

Part 4 Amendment of Summary Offences Act 2005

Clause 10 Act amended

Clause 10 provides that this part will amend the *Summary Offences Act 2005*.

Clause 11 Insertion of new pt 2, div 2A

Clause 11 inserts the new part 2 Division 2A (Offence involving use of dangerous attachment devices) which is comprised of the new sections 14A (What is an *attachment device*), 14B (What is a *dangerous attachment device*) and 14C (Use of dangerous attachment device to disrupt lawful activities).

The new section 14A defines an ‘attachment device’ to mean a device that reasonably appears to be constructed or modified to enable a person using to device to resist being safely removed from a place or safely separated from a thing. To remove any doubt, the Bill clarifies that glue, a bike lock, a padlock, a rope or a chain by itself, are not attachment devices.

The new section 14B provides that a ‘dangerous attachment device’ is an attachment 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;
- incorporates a dangerous substance or thing such as asbestos or poisons that could injure a person attempting to disassemble the device; or

- is a ‘sleeping dragon’, ‘dragon’s den’, ‘monopole’ or ‘tripod’.

This section further defines the terms ‘sleeping dragon’, ‘dragon’s den’, ‘monopole’, ‘tripod’ and ‘dangerous substance or thing’.

A ‘sleeping dragon’ is defined as an attachment device which a person may affix themselves to by holding, binding or locking onto an anchor point that is encased by an outer casing. To assist in understanding, an example of a ‘sleeping dragon’ is provided. This example outlines that a ‘sleeping dragon’ may consist of two large steel pipes welded together at an angle with a thick pin in the centre.

A ‘dragon’s den’ is defined as an attachment device that incorporates 1 or more ‘sleeping dragons’ or tubes within a further outer casing. An example outlines that a ‘dragon’s den’ may consist of a ‘sleeping dragon’ that is encased in concrete inside a 44-gallon drum.

A ‘monopole’ is defined as an attachment device that is a single pole stabilised by chains, cables or ropes which would cause injury to a person suspended from it if it was to fall and the device reasonably appears to be set up to fall if another person interferes with the support riggings for the device.

A ‘tripod’ is defined as an attachment device that is large enough to suspend a person off the ground and would cause injury to the person if the device was to collapse and it reasonably appears to be set up to collapse if another was to interfere with the legs of the device or any support riggings for the device.

Finally, a ‘dangerous substance or thing’ is defined to mean:

- anything likely to explode when struck or compressed causing injury to a person;
- anything 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 up the thing.

The new section 14C(1) prohibits a person from using a dangerous attachment device to unreasonably interfere with the ordinary operation of transport infrastructure without a reasonable excuse. This offence provision carries a maximum penalty of 50 penalty units or 2 years imprisonment.

The new section 14C(2) prohibits a person, who without reasonable excuse, uses a dangerous attachment device to:

- stop a person from entering or leaving a place of business;
- cause a halt to the ordinary operation of plant or equipment because of safety concerns for any person.

The new section 14C(2) carries a maximum penalty of 20 penalty units or 1 years imprisonment. This section does not apply to a ‘monopole’ or ‘tripod’ unless it incorporates a dangerous substance or thing.

The new section 14C(4) provides that the meaning of transport infrastructure is found within schedule 6 ‘Dictionary’ of the *Transport Infrastructure Act 1994*. Transport infrastructure is defined to include air, busway, light rail, public marine, rail or road transport infrastructure as well as transport infrastructure relating to ports and active transport.