



Honourable Yvette D'Ath MP
Attorney-General and Minister for Justice
Leader of the House

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6 JAN 2020

Mr Neil Laurie
The Clerk of Parliament
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Laurie ^{Neil}

I refer to e-Petition 3212-19 tabled in the Legislative Assembly on 26 November 2019 titled *Protestors to be prosecuted*.

The petitioners specifically ask for law reform regarding the right to protest and its impact on freedom of movement. I thank the petitioners for raising this important issue.

The Palaszczuk Government acknowledges that the right of peaceful assembly is fundamental to a democracy and 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* (Peaceful Assembly Act) and is also acknowledged at section 22 of the *Human Rights Act 2019* and in the implied freedom of political communication established by the Australian Constitution.

The implied freedom of political communication exists to ensure that Australians are able to exercise a free and informed choice as electors in a representative and responsible system of government. It is not a personal right of free speech, but a constraint on legislative power. This means the Constitution prohibits Commonwealth, state and territory governments from passing legislation that unjustifiably limits political communication.

In Queensland, under the Peaceful Assembly Act, a person has a right to assemble peacefully with others in a public place. However, the right to peaceful assembly is not an absolute right and is subject to restrictions that are necessary and reasonable in a democratic society in the interests of public safety, public order, or the protection of the rights and freedoms of other persons. The Peaceful Assembly Act sets out a process for approval of an authorised public assembly.

There are a range of existing offences with strong penalties that may apply to protestors depending on the particular circumstances, including, for example, the offences of riot and wilful damage under the Criminal Code, as well as trespass, unlawful assembly and public nuisance under the *Summary Offences Act 2005* (Summary Offences Act).

(2)

Most relevantly, section 236 of the *Transport Operations (Road Use Management – Road Rules) Regulation 2009* (Transport Regulations) deems it an offence for a pedestrian to cause a traffic hazard by moving into the path of a driver or by unreasonably obstructing the path of a driver. The maximum penalty for this offence is 20 penalty units (\$2,669).

Police officers also have powers under section 48 of the *Police Powers and Responsibilities Act 2000* (PPRA) to give a person or group of persons in certain circumstances (as defined in sections 46 and 47 of the PPRA) any direction that is reasonable. A direction may include, for example, requiring a person to leave the regulated place and not return within a stated time of not more than 24 hours. However, a police officer must not give a direction under this section that interferes with a person's right of peaceful assembly unless it is reasonably necessary in the interests of public safety, public order or the protection of the rights and freedoms of other persons. Contravening a requirement or direction given under the PPRA without a reasonable excuse is an offence under section 791 of the PPRA, carrying a maximum penalty of 40 penalty units (\$5,338) or 60 penalty units (\$8,007) depending on the circumstances involved.

The Government has also noted community concern about the use of potentially dangerous tactics by a small cohort of protestors, and has responded with the *Summary Offences and Other Legislation Amendment Act 2019* (the Act), which commenced on 30 October 2019. The Act (amongst other things) creates an offence for the use of a dangerous attachment device to disrupt lawful activities. A person subject to the offence may be liable up to 50 penalty units (\$6,672.50) or two years imprisonment, depending on the circumstances.

Parliament has determined the maximum penalty for all of the offences I have referenced above, however, it is for the courts to exercise their judicial discretion and determine what sentence to impose in the particular circumstances of each case. In doing so, the court takes into account many competing factors, such as, the person's cooperation with the administration of justice, the community's expectations, and the need to deter the person and others from future offending. The website of the independent Queensland Sentencing Advisory Council contains further information on the sentencing process in Queensland which may be of interest to the petitioners: <https://www.sentencingcouncil.qld.gov.au/>

The Government will continue to monitor the effectiveness of the relevant legislation to ensure it remains responsive.

I thank the petitioners for bringing their concerns to the attention of the House.

Yours sincerely



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