



FROM THE PERMANENT REPRESENTATIVE

AUSTRALIAN PERMANENT MISSION
GENEVA

4 February 2020

Ms Beatriz Balbim
Chief
Special Procedures Branch
Office of the High Commissioner for Human Rights
United Nations Office at Geneva
Palais Des Nations
1211 Geneva 10
Switzerland

Dear Madam

Re: Joint Communication of 3 December 2019 from Special Procedures on the *Summary Offences and Other Legislation Amendment Act 2019* (Queensland)

I refer to the joint communication dated 3 December 2019 from the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on the situation of human rights defenders.

The Australian Government notes the concerns expressed in the joint communication and provides the following information in response to the two points included on page four of the communication.

The Queensland Government supports the right of peaceful assembly and other fundamental rights such as the freedom of expression and freedom of association. The Queensland Government recognises the importance of these rights and that they are central pillars of a democratic society. For instance, the importance of the right to peacefully assemble has been recognised in such Queensland legislation as the *Peaceful Assembly Act 1992* (the Peaceful Assembly Act) and the *Human Rights Act 2019* (the HR Act).

In Queensland, under the Peaceful Assembly Act, a person has a right to assemble peacefully with others in a public place. One of the objects of this Act is to ensure that the exercise of this right to participate in public assemblies is subject only to such 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.

The enactment of the HR Act demonstrates the Queensland Government's resolute commitment to upholding and protecting human rights.

The HR Act establishes and consolidates statutory protections for 23 human rights recognised under international law, including those drawn from the International Covenant on Civil and Political Rights, the rights to health services and education drawn from the International Covenant on Economic, Social and Cultural Rights, and property rights reflected in the Universal Declaration of Human Rights.

In relation to the specific concerns raised, the HR Act (which commenced on 1 January 2020) protects the right of freedom of expression, the right of peaceful assembly and freedom of association, and the right of taking part in public life. The ability of Queenslanders to exercise these rights and lawfully protest is of great importance to the Queensland Government. All citizens are considered to have equal rights under the HR Act and other legislation in Queensland.

The HR Act seeks to ensure that public functions are exercised in a way that is compatible with human rights, and promotes a dialogue about the nature, meaning and scope of human rights in Queensland. The HR Act empowers the newly tasked Queensland Human Rights Commission to provide a dispute resolution process for dealing with human rights complaints, and seeks to promote an understanding, acceptance and public discussion of human rights.

The HR Act acknowledges however, that human rights are not absolute and may be subject under law to reasonable limits that are justified in a free and democratic society based on human dignity, equality and freedom. In Queensland, this means that the human rights protected by the HR Act are not absolute and may be balanced against the rights of others, public safety and public policy issues of significant importance.

While the HR Act was not in force at the time the *Summary Offences and Other Legislation Amendment Act 2019* (SOOLA Act) was debated and enacted in Queensland Parliament, it is the Queensland Government's considered position that these laws strike an appropriate balance between the rights of citizens to peacefully protest and have a voice, and the rights of emergency services personnel and members of the general community to be safe.

The purpose of the SOOLA Act is 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. These types of devices represent a real risk of injury or death to protesters, emergency service workers and the public, as a misstep in the device's disassembly or an inherent risk arising from the device's location, such as a train line, may lead to disastrous consequences.

When these devices are reinforced with metal, wire or glass – fragments that can become projectiles – they can injure police, emergency services workers or members of our community. It is only those dangerous attachment devices that the Government is targeting. Indeed, the measured and proportionate laws contained in the SOOLA Act will not impact our citizens' right or ability to peacefully assemble and protest – non-violent peaceful protest remains enshrined in law and is encouraged in Queensland. It is only the specific use of life endangering attachment devices that has been restricted through this legislation.

Importantly, the provisions in the SOOLA Act were specifically drafted to ensure only the use of dangerous attachment devices would be captured in the new offences. The definition of

dangerous attachment devices is detailed and specific, with a clear focus on the prevention of injury to protestors and emergency services personnel. A dangerous attachment device is defined in the SOOLA Act as a device that 'reasonably appears to be constructed or modified to cause injury to a person who attempts to interfere, or interferes with the device and incorporates a dangerous substance or thing'. The definition also includes four specifically named types of device and examples of items that are not attachment devices.

The restriction of dangerous attachment devices, limited to the specific types of device defined in the SOOLA Act, is proportionate to the risk of harm they engender. The impact of the new laws is further constrained as the provisions only make it unlawful to use a dangerous attachment device to disrupt lawful activities, unless a person has a reasonable excuse. The provisions do not create an offence for merely possessing a dangerous attachment device, or parts thereof. You note the definition of 'reasonable excuse' is broad and open to interpretation, however this term is commonly used throughout Queensland's criminal laws and its application is well understood across Queensland's legal system.

Important safeguards have also been included for the related police search and seizure powers introduced in the SOOLA Act. This includes that police are required to record prescribed information in an enforcement register after a search is conducted. The Police Commissioner will provide this information in an annual report that will be tabled in the Legislative Assembly within 14 sitting days after its receipt by the Minister for Police and Minister for Corrective Services. This reporting shows a continued commitment to remain accountable and transparent to the people of Queensland.

The HR Act also places important obligations on various branches of Government in respect of the interpretation and exercise of laws.

The HR Act requires all Courts and Tribunals to interpret all statutory provisions in a way that is compatible with human rights, to the extent possible that is consistent with the purpose of the legislative provision. This interpretative command will apply to the legislative provisions introduced under the SOOLA Act. A declaration of incompatibility may be made by the Supreme Court or the Court of Appeal if the Court is of the opinion that a statutory provision cannot be interpreted in a way that is compatible with human rights.

The HR Act also provides that it is unlawful for a public entity (which includes the Queensland Police Service) to act or make a decision in a way that is not compatible with human rights, or when making a decision to fail to give proper consideration to human rights relevant to the decision. This obligation will apply to Queensland Police Service officers at all times when they are carrying out their duties, including when exercising the additional powers provided to them under the SOOLA Act to enforce the laws.

If an individual believes that a public entity has breached this obligation, they may make a human rights complaint. The complaint must first be made to the relevant public entity who has 45 business days to respond, after which the complaint can be made to the Queensland Human Rights Commission for consideration and resolution.

I note your concern 'about the short time period allocated for scrutiny and adoption of the above-mentioned SOOLA Act, which curtailed prior consultation'. During 2019 an increasing number of protests were being organised, many in contravention of the *Peaceful Assembly Act 1992* and featured, in growing numbers, dangerous lock-on devices similar to those defined in

the SOOLA Act. The increasing risks of these escalating protests and use of dangerous attachment devices to public safety persuaded the Government to bring forward debate of the Bill in the Queensland Parliament to the sitting week commencing 22 October 2019 before anyone was injured or worse.

The Government acknowledges that by bringing forward debate, the timeframe available for the Parliamentary Committee process was compressed. However, this did not halt the public and stakeholder consultation process, whereby the Legal Affairs and Community Safety Committee received 212 written submissions from the public and key stakeholders as part of their examination of the then Summary Offences and Other Legislation Amendment Bill 2019 (the Bill). The public hearings also included witness testimony from 15 key external stakeholders. The Committee provided its final report on 21 October 2019 and concluded the Bill was consistent with legislative principles and that it be passed.

Finally, all Australian citizens have an implied freedom of political communication which is 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 and any person can legally challenge the validity of legislation on that basis.

I trust the above information will be of assistance to the Special Procedure mandate holders. I reiterate the Australian Government's longstanding commitment to cooperating with the United Nations and the Australian Government's strong human rights record.

Yours sincerely

A handwritten signature in black ink, reading "S. Mansfield." The signature is written in a cursive, flowing style.

Her Excellency
Sally Mansfield
Ambassador and Permanent Representative
Australian Permanent Mission to the Office of the United Nations and Conference on
Disarmament