Queensland Community Safety Bill 2024

Submission No:	130
Submitted by:	Queensland Council for Civil Liberties
Publication:	
Attachments:	No attachment
Submitter Comments:	

The Secretary
Community Safety and Legal Affairs Committee
Parliament House
George Street
Brisbane Qld 4000

CSLAC@parliament.qld.gov.au

Dear Madam

QUEENSLAND COMMUNITY SAFETY BILL

Kindly accept this submission on behalf of the QCCL in relation to the above Bill.

The Council is an organisation of volunteers, which amongst other things seeks the implementation in Queensland of the Universal Declaration of Human Rights

As an organisation of volunteers, our time is limited. As a consequence, this submission will not address every aspect of this Bill. That should not be taken as meaning that we approve or disapprove of those provisions.

We will now address various parts of the Bill.

1. Jack's Law

We have previously made a submission in relation to this law to the Community Support and Services committee. A link to that submission is here.
https://qccl.org.au/newsblog/ybnw48igfgvnmcfmg9vdj3xps0l3rq

We do not intend to restate all the arguments contained in that submission. We oppose this law, for the following reasons:

1. It abrogates a fundamental protection of individual liberty, by removing the requirement of a police officer to have a reasonable suspicion prior to conducting a search of a person.
2. It does so in circumstances where there is no clear evidence that the measure will be effective in reducing crime to any significant degree, if at all.
3. Based on past experience, the power will be abused by police officers who will search people based on prejudices and generalisations about people in the community.
4. The pressure will come on to expand the power. This has already happened. Originally this measure was to be used in safe night precincts. Then it was extended to public transport. Now it is to be extended to shopping centres and recreation venues. We fully expect that the power will never sunset, but that it will be extended to other areas. The next step will be United Kingdom stop and search type powers.

We notice that the police service responded to our submission above in a letter to the Committee.

We standby our view that the contents of the report by the Griffith University at pages 50 and 51 indicate that police officers were abusing this power.

We know that police officers, abuse the powers that they already have. This is illustrated by some recent judgements of His Honour Justice Henry of the Queensland Supreme Court sitting in Cairns including:

1. *R v Aloia* [2022] QSCPR 1https://archive.sclqld.org.au/qjudgment/2022/QSCPR22-001.pdf ;
2. *R v Casemore* [2023] QSCPR 21 https://archive.sclqld.org.au/qjudgment/2023/QSCPR23-021.pdf
3. *R v Paull* [2021] QSCPR 22 https://archive.sclqld.org.au/qjudgment/2021/QSCPR21-022.pdf

The letter to the committee in response to our submission ends with the statement that, "the evaluation[1] had been constrained due to COVID-19". The question that we then ask is, why is the government expanding the powers so extensively on the basis of a study which it says needs more work.

Before that, the letter questions previous assessments of the effectiveness of stop and search powers on the level of crime, particularly from the United Kingdom. It says that the powers in the United Kingdom are quite different from those here.

However, page 54 of the Griffith University report says that the wand in use is capable of detecting metal down to the size of a syringe. Just about everyone would carry with them metal objects larger than the piece of metal in a syringe meaning that the wands are going to find a lot of metal objects and justify lots of searches. So that in our view, the difference between these powers and UK stop and search powers may be very little in practice.

In any event, there are many other reports which argue that there is no evidence to support the proposition that stop and search powers have reduced the level of offending. There is a recent one by Quinton et al *Does more stop and search mean less crime?*[2]. On page 17 it says "the weakest association was found for violent crime. For violent crime to be 2 per cent lower than its predicted level next week in a borough, the level of weapon searches would need to be 200 times higher this week."[3]

In its report, entitled *Stop and think – a critical review of the use of stop and search powers in England and Wales*[4], the United Kingdom Equality and Human Rights Commission cited evidence that, stop and search was estimated to reduce the number of "disruptible"crimes by just, 0.2%[5]. That report produced significant evidence of the disproportionate use of the power as against minority groups. In our view any benefits that may occur from these powers will be outweighed by the impact of them on minority groups.

---

[1] By Griffith University
[2] Matteo Tiratelli, Paul Quinton, Ben Bradford, *Does Stop and Search Deter Crime? Evidence From Ten Years of London-wide Data*, The British Journal of Criminology, Volume 58, Issue 5, September 2018,
Pages 1212–1231 Found here https://library.college.police.uk/docs/college-of-policing/College-of-Policing-does-more-stop-and-search-2017.pdf
[3] we took this statistic on the basis that the object of this legislation is to reduce knife crime
[4] https://www.equalityhumanrights.com/sites/default/files/ehrc_stop_and_search_report.pdf
[5] page 56

2. Children's Court

The changes here are to grant greater access to the Court.

We have no objection to provisions, allowing the victim or a relative or representative of a victim to be present in the Court, subject to the power of the Court, in appropriate circumstances to remove such persons.

However, we object to the media, having a right of access to the Court. In our view, the objective of the youth justice system is rehabilitation. This objective is facilitated by allowing as little information as possible about the child to become public. The law concerning media access to the Court should not be changed from its current situation.

3. Hooning Spectators

This new provision makes it an offence to simply be present at a hooning event.

Traditionally, the Courts have rejected the proposition that mere non accidental presence at the scene during the commission of an offence, is sufficient to establish culpability. That would amount to imposing a duty on the citizen to either leave, or take steps to prevent the offences, which they are witnessing. At a minimum, the common law has required that there be an active encouragement, accompanied by an intention to encourage. It has been held that applause may suffice as encouragement[6].

It is out position that, in order to provide the maximum amount of personal liberty in our society criminal liability should require a guilty mind. The common law principles set out above, in our view, are directed to ensuring that a person cannot be convicted of participating in an offence, without such a mind.

We see no reason to depart from that principle when the evidence necessary to prove the offence is not that difficult to acquire.

4. Youth Justice

We note the amendment to section 150 of the *Youth Justice Act* relating to the principle that detention should be a last resort when it comes to young people. We would accept that on the face of it this amendment does not change the law. However, the problem is that whenever Parliament makes an amendment to a statute the Courts feel obliged to say that it must be given a meaning. To avoid any possible diminution of the principle we submit that this amendment should not be made.

5. Service of Documents

The Council recognises the police should be able to make use of modern technology. However, in the context of dealings by the police, the fact that the adverse consequence of the person not receiving a document is that they may be deprived of their liberty means that the use of that technology must be carefully prescribed.

---

[6] Ashworth and Horder *Principles of Criminal Law* (7th edition) Oxford University Press 2013 pages 424-5

We fully agree with the provisions requiring consent and with the capacity of the person to revoke that consent. We acknowledge that any consent given will last for six months only.

However, even though email is ubiquitous it is beset with a number of issues:

1. Email remains an unreliable source of proven delivery.
2. Network capacity and reliability varies
3. Some people still have to fish important emails out of Junk every week.
4. Consent to receive is one issue but capacity to do so is another. If a recipient travels or is in hospital, they may not see any such email nor be aware of its existence.

In our view, protections along these lines need to be included in the legislation:

1. When sending an email, the police officer must ask for a read receipt
2. If no read receipt is received within 48 hours, the officer should send the email again with another request for a read receipt.
3. If no read receipt is received within another 48 hours or alternatively receipt of the document has not been confirmed by say telephone, then the document must be served personally. We note in this regard that given that the person has consented to the receipt of the email, presumably the police officer will have access to their phone number.
4. Sections 142 and 147A of the *Justices Act* should be amended to make it clear that they apply to any proceedings where service was affected by email. c.f section 388 of the *Police Powers and Responsibilities Act*

6. Firearms Prohibition Order

This part of the submission will deal with the Firearms Prohibition Order law changes contained in the *Queensland Community Safety Bill 2024*.

It is accepted that firearms need to be closely regulated but it is our submission that the *Queensland Weapons Act* and similar legislation around the country adequately and effectively deals with the proper regulation of firearms in Australia.

It is asserted in the Explanatory Notes to the Bill that:

> "*By empowering the Commissioner (or delegated Officer) to issue FPOs, this framework ensures the QPS can quickly and effectively respond to emerging risks and threats, prevent criminal offending, and act in a timely and decisive manner, reducing the ability of high-risk individuals and members of criminal organisations from subverting law enforcement operations.*"[7]

Reading this assertion in isolation suggests that the QPS do not have the power to "*quickly and effectively respond to emerging risks*" at the moment. That assertion is disputed.

It is noted that in relation to criminal organisations, the Victorian Legislative Council Committee observed … "*In Queensland, a person who is a participant in a criminal organisation or subject to a control order under the Penalties and Sentences Act is already subject to an FPO*".[8]

[7] See Explanatory Notes, Page 43

[8] See Report of the Legislative Council Legal and Social Issues Committee (Victoria) November 2019 (hereinafter referred to as Vic Committee Report), Page 59

Hybrid Model

The Explanatory Notes distinguish the proposed Queensland FPO model from some interstate models describing the Queensland model as a 'hybrid model'.

The Explanatory Notes indicate that the new Section 141G in the *Weapons Act* will allow the Commissioner (or delegate) to issue an FPO against what is described as a high-risk individual for up to 60 days if satisfied it is in the public interest to make the order.[9]

The Explanatory Notes go on to observe:

> "*The Queensland FPO scheme is distinct in that it is a 'hybrid' model that empowers the Commissioner to issue an FPO (with a maximum duration of 60 days), providing police with urgent and immediate powers to address an identifiable risk whilst also enabling the Magistrates Court to issue an FPO in relation to a high-risk individual for up to 10 years for an adult".*[10]

The Council's fundamental position is that where the issue of an FPO would have the immediate result of directly impacting an individual's ability to carry on a livelihood occupation, the initial issuing of an FPO should only be done by the Court.

In this regard it is pertinent to point out that there has been a longstanding problem with domestic violence legislation in Queensland where even the issuing of a Temporary Protection Order on an allegation by a partner or spouse that does not even involve a threat of physical violence a Respondent to such an Order has to immediately surrender a firearm in their possession irrespective of the fact that in some situations that can immediately impact on a person's ability to pursue their livelihood.

Many people engaged in the rural sector, particularly farmers and those working in the cattle industry, need a firearm to deal with day to day exigencies such as putting down a wounded or sick animal or dealing with attacks by wild dogs on stock.

One can also point to a person pursuing an occupation such as a security guard who may be licensed and required to carry a firearm who immediately loses their employment on the issue of the Commissioner's FPO Order for 60 days. There are also occupations such as helicopter pilots who are contracted to cull wild animals who require access to a firearm to carry out the tasks of culling wild dogs and the like which are dangerous to the wellbeing of sheep and cattle stock.

It is submitted that where the issue of a Police FPO could result in a person whose firearm is removed from them running the risk of immediately losing their employment, in that situation a Firearm Prohibition Order should only be issued on notice and by a Court. [emphasis added]

Under the current proposed scheme after 60 days the police have to apply to a Court for an order. Even if the affected person appealed to a Court immediately upon being served with a Police issued FPO, it would take some considerable time for an Appeal to be heard in the Magistrates Court during which time the person whose occupation required immediate access

[9] See Explanatory Notes, Page 42
[10] See Explanatory Notes, Page 54

to a firearm would be totally unable to pursue their occupation and thereby would not be able to run their business or earn a livelihood.

Criteria for making an Order

The Explanatory Notes outline the criteria that the Commissioner (or delegate), referred to as the decision maker, may have regard to in issuing an FPO. Some of the relevant criteria are:-

- A person's domestic violence history. In considering the individual's domestic violence history this includes, but is not limited to, whether the individual has been listed as a Respondent in a Domestic Violence Order including an Application for an Order. Other information relating to the individual's domestic violence history may also be considered, for example, reports of domestic violence or suspected domestic violence received from external agencies;

- Whether the individual has communicated in a public forum, or to another person, that they intend or wish to commit a serious violent offence or an offence involving a weapon;

- The individual's behaviour, particularly violent or aggressive behaviour or behaviour involving the use of a weapon. Notably, in listing the types of behaviour this factor relates to, it is not intended to imply any limitation on the behaviour the decision maker may have regard to.[11]

The fact that a person can have a 60 day Police FPO made against them because of "*reports of domestic violence or suspected domestic violence received from external agencies*" is an extraordinary extension of police powers. That appears to envisage that even if there is no intention by police to bring a Domestic Violence Order against a person, a decision maker in relation to a police FPO can have regard to suspected domestic violence information received from unnamed external agencies. This particular extension of power should be rejected.

There can be no objection to a police issued FPO where a person "*sends a text message indicating they intend to use a firearm to shoot another person*".[12]

However, the proposal that a person can be the subject of a police issued FPO on the basis that "*the individual has communicated … to another person that they intend to commit an offence involving a weapon*" is another unacceptable extension of police powers in this Bill.

The situation can easily be imagined where during the course of a breakup of a relationship one party can assert that the other party has threatened to commit an offence involving a firearm where such an allegation is fabricated.

It is also to be observed that the Explanatory Notes provide:

> "*It is also noted that a firearm prohibition order can be made against an individual even if the individual has never acquired, possessed or used a firearm.*"[13]

---

[11] See Explanatory Notes, Pages 73-74 [emphasis added]
[12] See Explanatory Notes, Page 74
[13] See Explanatory Notes, Page 74

The Secrecy Regime – The use of Criminal Intelligence

The Explanatory Notes observe that:

> *"It is additionally noted that an individual's right to natural justice, specifically procedural fairness, is impacted by the confidentiality provisions associated with criminal intelligence relating to applications or proceedings involving FPOs under the new Section 141ZT. This provision adversely impacts the rights of the individual to know the case against them and prepare an appropriate response to an application for an FPO. While the individual's right to be provided all the relevant information relating to the proceedings is impacted, this restriction is necessary and appropriate noting the information is withheld as it may (among other things) enable the existence or identity of a confidential source of information (to be known) or prejudice the effectiveness of a lawful method for preventing contravention of an Act."*[14]

The Explanatory Notes in discussing the concept of 'criminal intelligence' go on to observe:

> *"An example may be information received from a confidential source provided to police which outlines a person's misuse of firearms which, if exposed, could reveal the identity of the confidential source and may endanger their personal safety."*[15]

It can be legitimately asked what constitutes '*misuse of firearms*" and it is also pertinent to observe that disgruntled spouses, neighbours and business associates etcetera can easily fit within the description of "*a confidential source*".

The Victorian Committee noted that in relation to a similar issue of dealing with 'criminal intelligence' in that State's legislation … "*the issue of protected information was addressed in the Statement of Compatibility … (and) the statement canvassed two measures that would have mitigated this limitation, namely:-*

- *The provision for the appointment of a Special Counsel to represent an applicant's interests in a closed hearing, and*

- *Additional means to disclose protected information to an affected party without prejudicing that confidentiality, such as providing them with a summary of credible, relevant and significant information."*[16]

Neither of these protections have even been considered in the *Queensland Community Safety Bill* 2024 Explanatory Notes.

Warrantless Search and Detention Powers

Under the heading "Introducing a Firearm Prohibition Order scheme in Queensland" the Explanatory Notes observe:

> *"The Queensland FPO model broadly aligns with FPO schemes currently utilised throughout Australia. However, in formulating the Queensland model, consideration*

[14] See Explanatory Notes, Page 43
[15] See Explanatory Notes, Page 82
[16] See Victorian Committee Report, Page 56

was given to the learnings and recommendations stemming from reviews and reports in relation to these existing FPO models."[17]

While the Queensland scheme claims to have had regard to the "*learnings and recommendations from reviews (in other States)*" the Explanatory Notes are completely silent in respect of criticisms that have been made in Victoria and New South Wales in relation to warrantless powers of search and detention.

It is proposed that even in relation to the preliminary step of service of a police issued FPO, police will have the power "*to issue a direction to an individual subject to an order to facilitate service of the FPO. The power to issue a direction will allow a police officer to direct a person to confirm their identity (if necessary), remain at an appropriate place, attend a police station, or accompany the police officer to the nearest police station for the purpose of service of the FPO and it is an offence to not comply with (such) a direction."*[18]

It is a completely unacceptable extension of police powers to have a detention regime implemented simply to allow service of a police issued FPO.

A supposed safeguard against misuse of a detention and transportation power simply to serve a document is said to be constituted by requiring a police officer to keep the person appropriately informed and to tell the person they are not under arrest and to set a 2 hour maximum for detention of a person for the purpose of service.[19] This is not much of a safeguard.

There are new and draconian powers of warrantless stop and search once a person is the subject of an FPO.

The Explanatory Notes observe:

> "*The greatest impact on an individual's rights and liberties arising from the new Part 5A is arguably the warrantless search powers which enable a police officer to stop, detain and search an individual subject to an FPO, in addition to searching the individual's vehicle, relevant premises or anything else in their possession, and seizing any prohibited item. These search powers can be utilised whenever reasonably required to ensure the individual's compliance with the FPO and can be conducted without the individual's consent. The threshold for conducting these searches is nationally consistent with similar FPO schemes and is subject to appropriate oversight and accountability measures."*[20]

Further warrantless search and seizure powers are contained in the new Sections 141ZD to 141ZG which provides that a police officer may, without a warrant or consent, exercise a power under this division to search individuals and search anything in their possession and provides a police officer with the power to stop and detain a vehicle and search the vehicle and anything in the vehicle. As well a police officer will have the warrantless power to enter and search premises occupied by an individual subject to a Firearm Prohibition Order and these powers can be utilised immediately upon the Firearm Prohibition Order coming into effect.[21]

---

[17] See Explanatory Notes, Page 18
[18] See Explanatory Notes, Page 20
[19] See Explanatory Notes, Page 20
[20] See Explanatory Notes, Page 43
[21] See Explanatory Notes, Page 80

It has already been observed that while the Explanatory Notes seek to justify the FPO Queensland regime as effectively replicating models that are in operation in other States, the Explanatory Notes have failed to refer to considerable criticism of misuse of these powers by oversight bodies in Victoria and New South Wales.

The following extract from the Victorian Committee's Report is instructive as to the fact that similar powers interstate have been abused:

- "*A number of stakeholders made reference to the 2016 Report of the New South Wales Ombudsman who found there had been misuse of search powers by police officers in that State;*[22]

- *The Committee believes that the FPO search powers should be monitored by relevant authorities … to ensure they are used appropriately, in particular to prevent similar misuse as has been the case in New South Wales. It should be assessed if, and to what extent, police might use FPO search powers to circumvent normal search procedures. … The lower threshold … may allow some officers to bypass the more usual and higher threshold of 'reasonable suspicion' in order to gain initial access to a subject, property or associate for a matter not connected with either a FPO or other offence against the Firearms Act. In the Committee's view, this would constitute a misappropriation of the significant powers granted to the police under the scheme and appropriate steps should be taken to avoid such an occurrence.*"[23]

Monitoring

Monitoring a scheme that gives such wide and untrammelled power to a police officer deciding matters in secret where associated stop and search powers have been found to be misused in other States is inadequately addressed in the *Queensland Community Safety Bill 2024*.

The only monitoring that is proposed is that the Public Interest Monitor is to have the following extremely limited role, namely:-

- *"To support the introduction of an FPO scheme, the Bill expands the Public Interest Monitor's (PIM) functions and responsibilities to provide an appropriate safeguard for the use and exercise of the powers associated with the scheme. In particular, the PIM must gather statistical information in relation to the use and effectiveness of FPOs and report on compliance with the new Part 5A, which includes police use of associated search powers.*[24]

- *The Bill introduces extensive accountability measures for the FPO scheme, including appropriate oversight of the police search powers. This is achieved by, firstly, amending the PPRA to expand the role and responsibilities of the PIM to monitor FPOs. The PIM must gather statistical information about FPOs, monitor compliance by police officers with the new Part 5A …"*[25]

[22] See Vic Committee Report, Page 51
[23] See Vic Committee Report, Page 53
[24] See Explanatory Notes, Page 21
[25] See Explanatory Notes, Page 43

The assertion that the Bill introduces "*extensive accountability*" measures for the FPO scheme is contested. The accountability measures are limited and in no way can they be credibly described as extensive.

Despite the assertion that the Public Interest Monitor will provide an "*appropriate safeguard to the use and exercise of the powers*" and will "*expand the role and responsibilities of the PIM to monitor FPOs"*, it would appear that the PIM's role in fact is going to be limited to gathering statistical information.

There is no indication in the Explanatory Notes as to how the PIM which is a part time role with very limited backup resources is going to carry out this 'oversight role'.

The Council expresses grave reservations that the PIM has been given the statutory powers or the related resources to conduct any meaningful oversight role particularly in respect of abuse of the warrantless stop, search and seizure powers.

In that regard, the Victorian Committee observed:

- "*The Committee believes that because of the significant powers afforded to police under the FPO scheme and the corresponding risk of arbitrary interferences with rights, it is important that the operation of the scheme be subject to review. While the Committee welcomes the safeguards provided by the IBAC review procedures, it notes that they are limited in scope and are not conducted openly or subject to public input or consultation. Nor are detailed findings provided publicly. Given the nature of the IBAC review, the Committee believes an additional open and public review of the operation of the legislation is warranted. Further, the outcome of such a review should be made public to provide an additional layer of oversight to the FPO scheme*.[26]

- *The Committee recommends that the Victorian Government amend the legislation to provide for an additional mechanism to review the operation (of the Act). This review should be undertaken by an appropriate authority (such as the Ombudsman) with capacity to conduct a public, open and consultative review. The review should be conducted two years after the commencement of the amendment, and consider the operation of the scheme since its inception. The terms of reference should include a review of the operation of search powers …*"[27]

Conclusion re: FPO

The Council registers a strong protest against the very short period of time for meeting the deadline of submissions to this Committee. The legislation was introduced on 1 May 2024 and there has been a mere 10 working days to meet the deadline of submissions being put before the Committee.

It is clear that despite assertions in the Explanatory Notes that the proposed Queensland FPO scheme is consistent with other States FPO schemes, the criticisms of the Victorian and New South Wales schemes particularly in relation to warrantless searches have been completely ignored in the assertion in the Explanatory Notes about consistency with other States.

[26] See Vic Committee Report, Page 66
[27] See Vic Committee Report, Page 67

This submission concludes with the observation outlined above that where the issue of a police FPO could result in a person whose firearm is removed from them running the risk of immediately losing their employment, in that situation a Firearm Prohibition Order should only be issued on notice and by a Court. [emphasis added]

7. Material Posted by Offenders

As the Statement of Compatibility notes, these provisions limit freedom of speech.

All laws which impinge upon freedom of speech must be the subject of very careful scrutiny.

The reasons for being able to incite illegal activity or insult or harass individuals are weak in comparison with political speech or non-existent.

The Statement of Compatibility agrees with this proposition when it says on page 55 that it is legitimate to prescribe encouraging people to commit an offence. But what the statement does not deal with is the fact that these laws are not limited in that regard.

The proposed section 745D of the *Police Powers and Responsibilities Act* allows an authorised police officer to direct an online service provider to take down material involving an offence of driving or operating a motor vehicle or entering a property where that officer suspects the person has posted the material for the purpose of " glorifying the conduct or increasing the person's reputation or another person's reputation because of their involvement in the unlawful conduct."

Proposed section 26B of the *Summary Offences Act* makes it an offence for a person to post the type of material described in the above provision on a social media platform.

It seems to us, that these provisions could be used in relation to people participating in political protest. It is not unusual for those participating in political protest to enter onto property in circumstances where they are a trespasser and therefore commit an offence.

Is not a person who posts a video of themselves occupying the foyer of a public building (i.e. trespassing) as part of the Extinction Rebellion or to protest COVID19 lockdown laws, doing so at least in part to celebrate i.e. glorify the act of protest? Could that person not also, at least it might be alleged, do so in order to increase the respect or admiration for themselves or other members of the group i.e. increase their reputation?

Under proposed section 745D, the police officer in question need only "suspect" this to be the case.

Political activity might involve the use of a motor vehicle. If the driver of the vehicle forgets to use their indicator, then they have committed an offence which falls within these provisions.

It is our submission then that these laws are far too broad. A law which in our submission would be an acceptable limitation on free speech would have the following characteristics:

1. It applies only to material posted by the actual offender
2. It is limited to quite specific offences for example breaking and entering domestic dwellings; dangerous driving or driving without due care and attention; violence against people; offences involving significant damage to property[28]
3. The offender has posted the video with the intention of inciting others to commit similar offences

We trust this is of assistance to you in your deliberations.

Please direct correspondence concerning this submission to president@qccl.org.au

Yours Faithfully

[redacted]

Michael Cope
President
For and on behalf of the
Queensland Council for Civil Liberties
16 May 2024

[28]There might be others. We are open to suggestions in this regard.