Police Powers and Responsibilities (Jack's Law) Amendment Bill 2022

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QUEENSLAND COUNCIL FOR CIVIL LIBERTIES
Protecting Queenslanders' individual rights and liberties since 1967

Acting Committee Secretary
Community Support and Services Committee

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Dear Madam

POLICE POWERS AND RESPONSIBILITIES (JACK'S LAW) AMENDMENT BILL 2022

Please accept this submission on behalf of the QCCL in relation to the above bill

Under these provisions a senior police officer may authorize police officers for a period of 12 hours to search members of the public in a safe night precinct or on a public transport station (and on a vehicle travelling between one station on either side) with a handheld metal detector, for the purpose of ascertaining whether the person has a knife. There will be no need for a police officer to suspect the person of having committed an offence or of carrying a knife. The officer may then require a person to produce anything that is detected by the metal detector.

Under section 39C(2) prior to issuing an authorization:

A. there must have been committed within the previous 6 months, at the place, an offence involving a knife or violence or certain breaches of the *Weapons Act*

B. the authorizing officer must consider that the use of the device is likely to be effective in detecting or deterring the commission of offences involving a knife or other weapon

C. the authorizing officer must consider the effect of the use of the device on the use of the place and whether, if the scanners had been used previously, they had identified people carrying a weapon.

These provisions expire, under the current legislation, after two years.

This law, like many tough on crime measures has been introduced in response to a most tragic situation. However as is always the case public policy has to have regard to a broad range of considerations no doubt including but extending beyond the circumstances of any single case no matter how tragic.

Astonishingly, when the government announced these laws, it relied upon a review of the trial of this system as justifying their introduction. As this submission will demonstrate, to the contrary, that report justified the criticisms which have been made of this type of law.

Section 39C(2) is presumably intended to address concerns about these laws and to implement the recommendation of the Review[1] of the trial of these devices and laws that "there is limited justification for the intrusiveness of wanding in areas without evidence of higher than usual counts of weapons crime. In the future, wanding should only be used in places where the evidence suggests weapons are more likely to be carried."

The limitations do not make these laws any less repugnant.

[1] Ransley et al *Review of the Queensland Police Service Wanding Trial*. August 2022 Griffith Criminology Institute at page 83

Moreover, as we interpret the Review's comments the section does not implement the recommendation that there be evidence of "higher than usual counts of weapons crime". It is our view that on its face one offence in the previous 6 months does not meet this criterion.

This legislation authorizes mass, suspicion less, warrantless magnetometer searches.

The traditional requirement that before a search can proceed there must be a reasonable suspicion that a crime has been committed or a weapon found is a bulwark protection of our liberty. Such a requirement is essential to being able to prevent arbitrary searches or searches based on bias[2]. The granting of such powers will inevitably result in unwarranted invasions of privacy.

The police have made it clear that they will be exercising a discretion as to who is searched - they will be "judicious" and elderly people will have nothing to fear[3]

Research from Australia and overseas indicates that police assessments of whom to search or question are often based on generalisations and negative stereotypes that are in part attributable to ethnic bias[4].

The Review found that the use of unwarranted generalisations and stereotypes is what happened during the trial:

> *Of more concern are the informal 'rules of thumb' used by officers to select who will be wanded. While in crowded SNPs it is not practical to wand every individual, so the variation and inconsistency in who gets selected was considerable. Much of this seemed to lack any evidence base related to actual offending patterns among different groups at different places, and to vary across different groups of officers. Most concerning is that a small number of officers indicated that non-offending behaviours, such as being in a group or just hanging out, guide their selections of who to wand. The wide discretion afforded officers in selecting people for wanding leaves considerable room for decisions based on stereotypes and discrimination[5].*
>
> *Key Finding 9. Given the increased number of drug detections linked to wanding in Surfers Paradise, care needs to be taken to ensure that wanding does not lead to a by-passing of reasonable suspicion safeguards, and net-widening among minor offenders who are not carrying weapons, but nevertheless come to police attention purely because of wanding practices. The entry of larger numbers of these individuals into formal criminal justice processes could have many adverse flow-on effects[6].*

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[2] In this regard, we note that the American Supreme Court has accepted that in certain very narrow circumstances a suspicion less search may not violate the fourth amendment to the American Constitution. However, none of those exceptions would apply in the circumstances being considered under this Bill *Vernonia Sch. Dist. 47J v. Acton*, 115 S Ct 2386 at 2400 (almost all the exceptions are outside the criminal law context). See also *Bourgeois v. Peters*, 387 F. 3d 1303 for a law similar to this, which was struck down

[3] Acting Deputy Police Commissioner Mark Wheeler quoted in the Guardian on 9 November 2022 https://www.theguardian.com/australia-news/2022/nov/09/queensland-police-jacks-law-random-stop-scan-search-powers

[4] Thomas Crofts and Nicolette Panther *Changes to Police Stop and Search Laws in Western Australia: what decent people have to Fear* (2010) 1 The Western Australian Jurist 57 at page 65

[5] Ransley opcit page 73

[6] Ransley opcit page v

the wanding process is being used to specifically target males under 18[7]

The fact that the search takes place in public does not make it any less an invasion of privacy.

Even a once over with a metal detector in the context of a night out with friends or family or on a train has the capacity to cause an individual a deal of embarrassment. Further, given that most people carry metal objects a high proportion of people are likely to be subjected to further, more invasive searches. The Review at page 54 says that devices in use are sufficiently sensitive to pick up the smallest items of metal, including syringes.

It is quite possible that we would be safer if police were permitted to stop and search anyone they wanted, at any time, for no reason at all. Insisting on a requirement that there be a reasonable suspicion before a search can occur will hopefully prevent us from gradually trading ever-increasing amounts of freedom and privacy for extra security.

The Review provides clear evidence that the police are already abusing this lack of restraint on their powers. On page 50 of the Review the authors say they have found evidence of Police using the power as a mechanism to detect other offences and collect information. On page 51 of the Review a police officer is quoted as acknowledging the power is being used to get around other limitations on police power

There is no analogy with walking through a metal detector in an airport because of the following combination of factors that apply in that situation:

1. at the airport everyone must walk through a metal detector[8] and there is no reason for a person to wonder why they have been asked to do so and hence no stigma.

2. suspicion-based searches of airport passengers' carry-on luggage are impractical because of the great number of plane travelers

3. passengers can usually make use of other means of transport[9] and

4. even one undetected instance of wrongdoing could have catastrophic consequences for a great number of people.

Finally, there is no evidence these types of powers will reduce knife crime.

In 2012, the Victorian Office of Police Integrity produced a report on Victorian “stop and search” powers which were also introduced to reduced knife crime. That report entitled “Review of Victoria Police use of “stop and search” powers” reviewed research from the United Kingdom in relation to the effectiveness of such powers. At page 40 of the report, the Office stated that the research “found the relationship between incidence of knife crime and the rates of “stop and search” is at best unclear.” Whilst some research indicated that stopping members of the public, with or without searching, deterred crime, there was “no significant and consistent correlation between searches and crime levels a month later”. The report said, “a review of the “stop and search” reporting data over six months compared to crime statistics

[7] Ransley opcit page 83

[8] We wish to make it clear even-handed treatment (ie searching everyone) is no substitute for the individualized suspicion requirement. It would be intolerable and unreasonable if police were authorized to search everyone due to the inconvenience and indignity of such a search. Blanket searches represent a greater threat to liberty than suspicion-based ones.

[9] by itself forcing someone to submit to a search in order to use a plane clearly involves an element of coercion to which we would normally object

for the same period showed no relationship between increased searches and a decrease in knife crime."

These findings have been confirmed by the Review[10], in the following terms:

> *Key Finding 3. While wanding has been useful to better detect weapons (in one site only),* ***there is no evidence as yet of any deterrent effect,*** *given that there has been an increase in detections at one site, and no change at the other…*
>
> *Key Finding 4. There is also no evidence to suggest any significant effect from wanding on various non-weapons offence types, including crimes of violence, apart from an increase in detected drug offences in the Gold Coast SNP. There is also no evidence of displacement of offending to other parts of the Gold Coast, or of any diffusion of the benefits of wanding beyond the Gold Coast SNP. While more knives have been detected in Surfers Paradise, as yet this has not led to a statistically significant drop in violent crime during the trial period.*[11]

The Scrutiny Panel of the Metropolitan Police in the UK found, aside from the shame and humiliation associated with searches, disproportionate stop and search practices can also cause people to feel a diminished sense of belonging, fear, insecurity, disempowerment, anxiety, intimidation and helplessness[12].

We strongly oppose these provisions. The requirement for searches by law enforcement only to be carried out when there is a reasonable suspicion is a fundamental protection of basic liberties. It is astonishing that the government is supporting this policy by reference to a Review which has not only found that the measure is ineffective but has justified all the concerns which have been expressed about the prospect that the powers will be abused and used arbitrarily. This is not to mention the fact that in our view any departure from this fundamental norm will lead to further erosion of that norm.

If the law is to proceed, then at the very least, section 39C (2) should be amended to reflect the recommendation of the Review.

We trust this is of assistance to you in your deliberations

Yours Faithfully

[redacted]

Michael Cope
President
For and on behalf of the
Queensland Council for Civil Liberties
12 January 2023

[10] Ransley opcit page iv
[11] In the light of the evidence someone may well seek to argue before a Court that any opinion formed by a senior officer under section 39C(2)(b) could not be held at all by a reasonable decision maker and hence the authorisation is invalid- *Minister for Immigration and Multicultural Affairs V Eshetu* (1999) 162 ALR 577 paras 130-137 per Gummow J
[12] quoted in Crofts and Panther opcit at page 64