

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

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Queensland  
**Human Rights**  
Commission

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

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Submission to Community Support and Services Committee

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# Introduction

1. Thank you for the opportunity to comment on the Police Powers and Responsibilities (Jack's Law) Amendment Bill 2022 (**the Bill**).
2. The Queensland Human Rights Commission (the **Commission**) is a statutory body established under the Queensland *Anti-Discrimination Act 1991* (**AD Act**).
3. The Commission has functions under the AD Act and the Queensland *Human Rights Act 2019* (**HR Act**) to promote an understanding and public discussion of human rights in Queensland, and to provide information and education about human rights.
4. The Commission also deals with complaints of discrimination, sexual harassment, vilification, and other objectionable conduct under the AD Act.
5. The Commission supports the Bill's purpose of improving community safety and crime prevention, but suggests that the Committee recommend the government commit to an independent review to evaluate if the Bill's purpose has been achieved.

## Application of Human Rights Act

6. The primary purpose of the Bill is to amend the relevant provisions of the Act in order to extend and expand the trial of hand held scanners currently used to detect unlawfully possessed knives to locations beyond the current prescribed areas of Surfers Paradise and Broadbeach safe night precincts. The changes include extending the trial to include public transport stations and vehicles. The Bill would extend the expiry date of the scanning provisions to 30 April 2025.
7. The Bill is named in honour of Jack Beasley and Raymond Harris, both of whom tragically lost their lives to stabbings, and we acknowledge the commitment of their families to prevent further loss of life due to knife crime.
8. Governments have a duty to protect their citizens. The rights of victims of crime, particularly the right to life,<sup>1</sup> is a critically important consideration for government.
9. This duty must be balanced with any limitation of the rights of people in safe night precincts, particularly those who are searched despite not engaging in any conduct that is suspicious or unlawful.
10. The phrase 'compatible with human rights' is defined in section 8 of the HR Act. A limitation on a human right will be permissible if it satisfies section 13 of the HR Act, which sets out relevant factors to be considered when assessing if a

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<sup>1</sup> *Human Rights Act 2019* (Qld) s 16.

limitation on rights is reasonable and proportionate. In relation to this Bill, the Commission considers the particularly important factors to be considered are:

- the nature of the human right (s 13(2)(a))
- the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom (s 13(2)(b)); and
- the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose (s 13(2)(c)).

11. The Statement of Compatibility notes that several provisions limit human rights.<sup>2</sup>

## Power to search

12. The power for a police officer to stop a person, without warrant or reasonable suspicion, and require the person to submit to the use of a hand held scanner is a significant limitation on several rights, as well as being contrary to the common law protection that a person may only be searched where there is a reasonable suspicion.<sup>3</sup> As the Statement acknowledges, people who are required to carry a knife as part of their faith suffer an additional limitation – a limitation on their right to freedom of religion.<sup>4</sup>

13. These limitations are to be balanced against the relatively short period a person is detained for non-invasive scanning. Despite this, the Statement of Compatibility acknowledges the need for safeguards to address the resulting limitation on rights:

The highest impost on human rights is that police can arbitrarily stop and scan a person, in the absence of any reason other than that authorisation has been provided by a senior police officer. Without further safeguards, the impact of these provisions may not be compatible with human rights.<sup>5</sup>

14. The Statement of Compatibility states that the government considered the less restrictive alternative that a police officer be required to hold a level of suspicion to justify the scan. The Statement explains that such an approach was not chosen as it 'would have increased the risk that knives would not be detected until they placed the community at risk', and therefore this approach would not have been as effective in achieving the purpose.<sup>6</sup>

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<sup>2</sup> The more important the right, the more important the purpose will need to be to justify a limitation on it: Explanatory Notes, Human Rights Bill 2018 16-18.

<sup>3</sup> See for example *Ghani v Jones* [1970] 1 QB 69. Also reflected in *Police Powers and Responsibilities Act 2000* s 29 and s 30.

<sup>4</sup> *Human Rights Act 2019* (Qld) s 20.

<sup>5</sup> Statement of Compatibility, Police Powers and Responsibilities (Jack's Law) Amendment Bill 2022 8.

<sup>6</sup> Statement of Compatibility, Police Powers and Responsibilities (Jack's Law) Amendment Bill 2022 6.

15. The Commission is concerned about this rationale, as a similar justification could be used in many other situations involving a risk to public safety to permit a search without warrant or reasonable suspicion.
16. In this case, the purpose of the limitation is clearly an important factor to consider:

The concentration of people in these areas mean the risk of harm being caused through the carriage of weapons is elevated and warrants particular attention. The reason for expanding the trial to also capture areas of public transport infrastructure is to provide the public safety benefits of reduced unlawful knife possession and the consequent reduced potential for offences involving a weapon in those public transport areas, including the areas that a person carrying a knife may be travelling to.<sup>7</sup>
17. Section 13 of the HR Act requires that for the limitation on rights to be compatible with human rights, the limitation must achieve the intended purpose. Proposed s 39C may go some way to addressing this, and provides that a senior police officer may authorise the use of a hand held scanner in a place, if the officer considers the use of the scanner is likely to be effective to deter or detect the commission of an offence involving the possession or use of a knife or other weapon and one of the following has happened in the previous six months:
  - at least 1 offence was committed by a person armed with a knife or other weapon;
  - at least 1 seven year imprisonment offence against the Criminal Code involving violence against a person was committed;
  - more than 1 offence against the *Weapons Act 1990*, section 50(1) or 51(1) was committed
18. The Commission supports the inclusion in s 39C that the police officer must have considered if the previous use of scanners has identified persons carrying knives or affected lawful activity at the place. Important safeguards are also included in the proposed s 39H.

## Griffith review

19. The Griffith Criminology Institution recently undertook a 12-month trial of the existing law (**Griffith review**) and suggested that the government consider an evidence-based authorisation requirement if the scanning trial is extended past its sunset clause.<sup>8</sup> The Statement of Compatibility suggests clause 4 responds to this recommendation by strengthening senior police officer authorisations.
20. However, the Griffith review made other findings that do not appear to have been addressed in the Bill. Firstly, the criteria in s 39C only refer to one offence in the

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<sup>7</sup> Statement of Compatibility, Police Powers and Responsibilities (Jack's Law) Amendment Bill 2022 4.

<sup>8</sup> Statement of Compatibility, Police Powers and Responsibilities (Jack's Law) Amendment Bill 2022 9.

previous six months, while the Griffith review found:

Any continuation of wandering should be targeted at only those areas where data shows a proportionately higher prevalence of knife offences occurring over a sustained period.<sup>9</sup>

21. The Griffith review recommended that:

There is limited justification for the intrusiveness of wandering in areas without evidence of higher than usual counts of weapons crime. In the future, wandering should only be used in places where the evidence suggests weapons are more likely to be carried.<sup>10</sup>

22. Other relevant findings included:

- While wandering 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. A longer term follow up may be needed to better assess these effects.
- In terms of equity, wandering has been inconsistently used across different groups in the community. While the targeting of young people was clearly intended under the legislation, and there is an evidence base for selecting more males than females, there is some evidence of inappropriate use of stereotypes and cultural assumptions by a small number of officers.
- The recording of First Nations status in QPRIME requires attention to ensure that the data better reflects police interactions with Aboriginal and Torres Strait Islander peoples. Consideration might also be given to careful recording of Māori and Pasifika status due to the demographic composition of Queensland.
- Given the increased number of drug detections linked to wandering in Surfers Paradise, care needs to be taken to ensure that wandering does not lead to a bypassing of reasonable suspicion safeguards, and net-widening among minor offenders who are not carrying weapons, but nevertheless come to police attention purely because of wandering practices. The entry of larger numbers of these individuals into formal criminal justice processes could have many adverse flow-on effects.<sup>11</sup>

23. The Commission welcomes confirmation from the Queensland Police Service (QPS) that it will implement the review's suggestion that its training include how wand scanning can impinge on human rights protected under the HR Act.<sup>12</sup> This should include acknowledgement of the potential that bias and stereotyping can consciously or unconsciously guide decision making about who is subject to scanning.

24. The Commission understands from material provided to the Committee that QPS will also develop evidence-based and publicly available guidelines on risk factors

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<sup>9</sup> Janet Ransley et al, 'Review of the Queensland Police Service Wandering Trial' (Review, Griffith Criminology Institute, Griffith University, August 2022), iv.

<sup>10</sup> Janet Ransley et al, 'Review of the Queensland Police Service Wandering Trial' (Review, Griffith Criminology Institute, Griffith University, August 2022), v.

<sup>11</sup> Janet Ransley et al, 'Review of the Queensland Police Service Wandering Trial' (Review, Griffith Criminology Institute, Griffith University, August 2022), iii - iv

<sup>12</sup> Queensland Police Service, Brief to the Community Support and Services Committee, Parliament of Queensland, *Police Powers and Responsibilities and Other Legislation Amendment Bill 2022* (16 December 2022)

for knife carrying to guide the exercise of officers' discretion. This would ensure scanning does not occur based on race or cultural identification alone.<sup>13</sup>

25. The Commission suggests the Committee seeks further information from the government as to how it will respond to the review's other findings and suggestions including the unreliability of data recorded in QPRIME.

## Further evaluation necessary

26. In light of the Griffith review, and that the trial is being expanded, we suggest that the Committee confirm with the government how, prior to the end of the trial, it will assess if the screening of individuals for knives in areas which have been identified as high-risk have been successful in:

- removing knives from the environment and dissuading individuals from entering these areas while carrying a knife;<sup>14</sup>
- minimising the risk of physical harm caused by knife crime in SNPs and public transport stations and public transport vehicles by removing knives from individuals in these areas; and
- ensuring the safety of others in the community by reducing knife crime.<sup>15</sup>

27. Adding public transport to the places where searching may be conducted risks marginalising at-risk groups who rely on public transport to obtain essential services, attend work, and access health care. The extension of the power to search and scan to such situations is likely to limit additional human rights.

28. The government should commission an independent review 12 months after the implementation of this Bill. The Commission suggests that relevant considerations for such a review would be the extent to which the trial has achieved a significant reduction in crimes involving weapons, and if the addition of public transport has had a disproportionate impact on certain groups. Ideally, the government should commit in advance to implementing any advice and recommendations of such a review.

29. Thank you for the opportunity to comment on the Bill.

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<sup>13</sup> Queensland Police Service, Brief to the Community Support and Services Committee, Parliament of Queensland, *Police Powers and Responsibilities and Other Legislation Amendment Bill 2022* (16 December 2022) 7.

<sup>14</sup> Statement of Compatibility, Police Powers and Responsibilities (Jack's Law) Amendment Bill 2022 4.

<sup>15</sup> Statement of Compatibility, Police Powers and Responsibilities (Jack's Law) Amendment Bill 2022 5.