

Police Powers and Responsibilities (Making Jack's Law Permanent) and Other Legislation Amendment Bill 2025

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The Secretary
Justice, Integrity and Community Safety Committee
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Dear Madam

**POLICE POWERS AND RESPONSIBILITIES (MAKING JACK'S LAW PERMANENT)
AND OTHER LEGISLATION AMENDMENT BILL 2025**

Kindly accept this submission on the above Bill.

We have opposed this law at every step, for the following reasons¹:

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 generalizations 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. Then it was extended to shopping centres and recreation venues.

The importance of citizens being free from the arbitrary exercise of powers of search is well recognised in our common law tradition:

'Of great importance to the public is the preservation of this personal liberty; for if once it were left in the power of any, [even] the highest magistrate, to imprison arbitrarily whomever he or his officers thought proper... there would soon be an end of all other rights and immunities, '(Blackstone *Commentaries on the Laws of England*, Volume 1(Oxford, 1765) pp 120-121).

'There is no initial presumption that the State by its law enforcement agencies, will in the use of such measures of crime detection observe some given code of good sportsmanship or of chivalry. It is not fair play that is called in question in such cases but rather society's right to insist that those who enforce the law themselves respect it, so that a citizen's precious right to immunity from arbitrary and unlawful intrusion into the

¹ Our previous submissions setting out our views in detail can be found here:
<https://qccl.org.au/newsblog/queensland-community-safety-bill?rq=Jack's> and here
<https://qccl.org.au/newsblog/ybnw48igfgvnmcfmg9vdj3xps0l3rq>



daily affairs of private life may remain unimpaired, 'Dawson J, High Court of Australia
Cleland v R (1982) 151 CLR 619 at 643

It is also recognized in many human rights instruments such as the *European Convention on Human Rights*. In *Gillan and Quinton v. the United Kingdom*, Application No 4158/05, ECtHR, Merits, 12 January 2010 the Court considered Section 44 of the *Terrorism Act 2000* (UK) which allowed police to search a person without notice or suspicion in 'authorised areas' (much of London was so authorised at the time).

The Court ruled that s 44 of the *Terrorism Act 2000* was in breach of Article 8 of the *Convention for the Protection of Human Rights and Fundamental Freedoms* which protected the right to private life.

The two applicants were a journalist and a protester respectively, searched on their way to attend a demonstration against an arms fair. The Court said:

'The removal of the "reasonable suspicion" requirement, or any other objective basis for the search, rendered the citizen extremely vulnerable to an arbitrary exercise of power, restrained only by the police officer's honesty to divulge what type of incriminating article he was looking for on the occasion in question... There was thus a real risk that the powers might be misused so as to regulate protest or to maintain public order, rather than to counter terrorism. This clearly had far-reaching consequences for civil liberties in the United Kingdom, ' [70]; and:

' In the Court's view, there is a clear risk of arbitrariness in the grant of such a broad discretion to the police officer. While the present cases do not concern black applicants or those of Asian origin, the risks of the discriminatory use of the powers against such persons is a very real consideration... The available statistics show that black and Asian persons are disproportionately affected by the powers... There is, furthermore, a risk that such a widely framed power could be misused against demonstrators and protestors. '[85].

That decision applied article 8 of the European Convention:

Everyone has the right to respect for his private and family life, his home and his correspondence.

Section 25 of the *Human Rights Act* says Queenslanders have the right not to have their "privacy, family, home or correspondence unlawfully or arbitrarily interfered with"

We now face the slow whittling away of a fundamental protection of a basic liberty.

It is proposed to extend the laws yet again to allow a police officer with the authorization of a senior officer to conduct a magnetometer search in a specified area for a period of 12 hours. The senior officer must be satisfied that the use of the scanner is likely to be effective to detect or deter the commission of an offence involving the possession or use of a knife or other weapon.

We oppose the changes proposed.

We oppose the further expansion of the law to other public places. Our reasons for doing so are the same as previously. Once again, we foresee these laws will be used to justify further forms of suspicion less search.

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

It has been found that, 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, anxiety, intimidation and helplessness.

If the law is to proceed, then we recommend the following amendments.

We oppose the repeal of sections 39I and 39J and 39h(1)(e) on the basis that in our view suspicion less search powers are extraordinary, and people ought to be reminded that they are different. Improved efficiency is never a justification for restricting basic rights. Of course they should apply to the new powers

In making a decision the authorising officer should be required to consider the following:

- The concentration of licensed premises in the area.
- Whether there is an elevated concentration of people in the area due to an event
- If the use of handheld scanners had previously been authorised and whether the use of the scanner identified persons carrying knives or other weapon

The bill should be amended to specifically require that the authorizing officer has a reasonable basis for believing that there was a higher than usual counts of weapons crime in the area within the previous six months. This comes from the Griffith University review of the trial of these measures.

Finally, it appears to us that this is the sort of power that could be used to harass peaceful protestors. Therefore, there should be a provision stating that this power cannot be used in respect of any person travelling to attend, attending or leaving a protest which is lawful under the provisions of the *Peaceful Assembly Act*. If the government's position is that this power would never be used those circumstances, it should have no difficulty confirming that in the legislation.

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

Please direct correspondence concerning this letter to [REDACTED]

Yours Faithfully

[REDACTED]

Michael Cope

President

For and on behalf of the

Queensland Council for Civil Liberties

14 April 2025