

# QUEENSLAND COUNCIL FOR CIVIL LIBERTIES

Protecting Queensland's individual rights and liberties since 1967

*Watching Them While They're Watching You*

Acting Research Director  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
Brisbane Qld 4000

**By Email: [lacsc@parliament.qld.gov.au](mailto:lacsc@parliament.qld.gov.au)**

Dear Madam/Sir

Since 1967 the QCCL has existed to defend the rights of Queenslanders from attack by the state.

In our society every person has a right to liberty. Additionally, every person is presumed innocent. We would also argue that a proper principle in a society committed to liberty, is that everyone is ought to be presumed to be harmless.

The presumption of innocence means that a person is not to be treated as guilty until that finding has been made. It is a very odd then that this proposed law, and existing law, subject accused persons to detention to prevent future crimes, without proof that the accused person would, if free commit any offence, let alone a finding that they have committed the one with which they have been charged. In addition, the accused person is deprived of their liberty on a different standard of proof from that which will apply at their trial

In our submission, bail serves two legitimate purposes. Firstly, to secure the attendance of the accused person before the court at trial. The second is to prevent any interference with the course of justice particularly, interference with witnesses. The case for these can be made on the purely pragmatic basis that these things are necessary for the functioning of the judicial system. These decisions are usually made by reference to the past conduct of the individual in either failing to appear or making threats.

By way of contrast, the decision to refuse bail person on the basis that they might commit further offences has no foundation what so ever. None of the statistics indicate that if bail is allowed further offending is more probable not, even where the person has previous convictions.<sup>1</sup>

Once again, the situation might be different if the person has previously committed offences whilst on bail. It might also be different where the person is charged with a serious offence and has a previous

---

<sup>1</sup> Ashworth and Zedner *Preventive Justice* Oxford University Press, 2014 page 69

[qccl.org.au](http://qccl.org.au)



[@LibertyQld](https://twitter.com/LibertyQld)

conviction for a similar serious offence. However, we do not see those situations as justifying the reversal of the onus of proof. The same comments apply in relation to the offences subject of this Bill.

In short, we see no basis in principle for the amendment to section 16 of the *Bail Act*.

We have no in principle objection to proposed sections 4B, 11 C and 11D. However, we would express concern about the clauses permitting disclosure to individuals who assert a fear in the absence of being the victim or a relative of the victim. Similar concerns arise in relation to section 320 and 324A. It is a normal principle of privacy law that when personal information is disclosed about a person, that person should be told, absent some specific compelling reason relating to safety or security. We submit that legislation should provide that the fact that information has been disclosed should be made known to the prisoner or accused person, in the absence of specific compelling circumstances.

It follows from our previous position, that we also oppose proposed sections 19C and 19D.

Finally, we turn to the provisions allowing for the tracking of persons on bail. The provision clearly contemplates the person has established they are entitled to bail. Whilst of course, a tracking device is preferable to being detained, the fact remains that the person is presumed to be innocent. We have not been able to undertake detailed research into whether these sort of devices are effective in reducing offending whilst people are on bail. However, even if there were such evidence, given the presumption of innocence and of harmlessness, it is difficult to see why police should be entitled to know every movement of that person. It would constitute a substantial violation of the right to privacy of innocent persons.

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

Yours faithfull

Michael Cope  
President  
For and on behalf of the  
Queensland Council for Civil Liberties  
27 February 2017