



Law Society House, 179 Ann Street, Brisbane Qld 4000, Australia  
GPO Box 1785, Brisbane Qld 4001 | ABN 33 423 389 441  
P 07 3842 5943 | F 07 3221 9329 | [president@qls.com.au](mailto:president@qls.com.au) | [qls.com.au](http://qls.com.au)  
Office of the President

17 July 2019

Our ref: LP-CrLC

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

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

Dear Committee Secretary

**Weapons and Other Legislation (Firearms Offences) Amendment Bill 2019  
(Private Member's Bill)**

Thank you for the opportunity to provide comments on the Weapons and Other Legislation (Firearms Offences) Amendment Bill 2019 (the **Bill**). The Queensland Law Society (**QLS**) appreciates being consulted on this important piece of legislation.

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

This response has been compiled by the QLS Criminal Law Committee who have substantial expertise in this area.

**1. Key issues and preliminary comments**

With respect to the Bill we raise the following key issues:

- the need for new offences and higher penalties to be supported by evidence of the current law not meeting the needs of the community
- the breadth of power being conferred on a non-judicial officer, being the police commissioner, to impose firearm prohibition orders (**FPOs**)
- inconsistency of some aspects of the Bill with fundamental legislative principles.

*New offences and higher penalties*

In addition to the new offences created in relation to FPOs, the Bill proposes new charges relating to:

- discharging a firearm or other loaded arms with intent to resist arrest
- use or possession of an offensive weapon or instrument with intent to resist arrest or prevent investigation
- firing at dwelling houses, buildings or vehicles
- possession of digital blueprint and device for manufacture of firearms.

**Weapons and Other Legislation (Firearms Offences) Amendment Bill 2019  
(Private Member's Bill)**

New offences should only be created where there is evidence that existing laws are inadequate. There are existing provisions in Queensland law applicable to the conduct intended to be addressed by the above proposed new offences and some of the new offences relating to FPOs (so far as that conduct is undertaken by persons who are not appropriately licensed). QLS is not aware of any evidence to suggest that new specific offences are required. Additional offences will complicate the statute book and add complexity to the work of the police.

If the concern is that existing laws do not contain sufficient penalties to account for specific aggravating circumstances (such as participation in a criminal organisation), then amendment of the existing provisions would be a more appropriate course. In any event, whether introducing new offences or amending the penalties for existing offences, parliament must ensure that penalties are proportional to the conduct being punished and that the law allows appropriate scope for the court to take into account the facts of each case. There are several instances within the Bill where the proposed maximum penalties may be excessive in the absence of evidence suggesting that existing penalties are not properly reflecting community expectations or acting as a sufficient deterrent. QLS urges that any changes to offences and penalties be based on appropriate evidence.

*Commissioner's powers*

QLS is concerned that the proposed discretion conferred on the commissioner to impose FPOs is very broad and will allow the commissioner to impose FPOs on persons other than the 'high-risk individuals' referred to in the explanatory notes. The conferral of power on the commissioner, a non-judicial officer, to impose orders based on the undefined notion of 'not fit, in the public interest' or their opinion that the person is a participant in a criminal organisation is not consistent with the rule of law or fundamental legislative principles, which require legislation to have proper regard to the rights and duties of individuals.<sup>1</sup>

QLS is of the view that, if an FPO regime is to be introduced, and FPO ought to be imposed by a judicial officer at the request of police, supported by appropriate evidence.

*Inconsistency with fundamental legislative principles*

There are multiple other instances within the Bill of inconsistency with the fundamental legislative principle that legislation must have sufficient regard to the rights and liberties of individuals. These include lack of review, unclear drafting, lack of reasonable excuse provisions, inappropriate formulation of criminal offences that is tantamount to a reversal of the onus of proof, and potential compulsory acquisition of property without fair compensation. Further, some aspects of the Bill will simply be unworkable for the police officers tasked with enforcing them and insufficient consideration has been given to the possibility that further amendments will need to be made.

---

<sup>1</sup> *Legislative Standards Act 1992* (Qld) section 4

**Weapons and Other Legislation (Firearms Offences) Amendment Bill 2019  
(Private Member's Bill)**

**2. Specific comments on the Bill**

***Amendment of the Criminal Code***

*Clause 3 – insertion of sections 317AA and 317AB into the Criminal Code*

Clause 3 proposes the creation of two new crimes in the Criminal Code, being:

- Section 317AA Discharging firearm or other loaded arms with intent to resist arrest
- Section 317AB use or possession of offensive weapon or instrument with intent to resist arrest or prevent investigation

As set out above, new offences should only be created where there is evidence that existing laws are inadequate. There are other provisions in Queensland law applicable to assaulting or obstructing police officers carrying out their duties and to the misuse of weapons. QLS is not aware of any evidence to suggest that new specific offences are required to address the conduct. If, however, parliament is minded to enact the new offences, QLS offers the following comments.

It is unclear why the language in relation to arrest in the proposed paragraph 317AB(1)(a) 'lawful apprehension or detention' is different to both the name of the section and to the proposed section 317AA, which both refer to 'arrest'. Drafting should be consistent unless there is a reason for the use of different language.

The penalty for the proposed new 317AA (maximum penalty 25 years imprisonment) is very high and brings the offence within the highest category of maximum sentences in the Criminal Code apart from life imprisonment. It also brings the offence within the category of offences that fall within the exceptions to double jeopardy. Parliament needs to carefully consider whether the maximum sentence is proportional to the crime.

The maximum penalties for the proposed new section 317AB (15 years imprisonment or 18 years if committed in company of 1 or more persons) are not in line with any other maximum sentences in the criminal code. Parliament ought to carefully consider whether the maximum sentences should align with other crimes of similar seriousness.

*Clause 4 – increase in penalty for stealing firearm or ammunition*

Clause 4 proposes that clause 15 of the special cases for section 398 be amended to increase the maximum penalty for stealing firearms or ammunition from 10 years to 14 years. This change would render the maximum sentence in relation to stealing firearms or ammunition identical to the maximum sentence for stealing a firearm intending that it be used to commit an indictable offence (clause 14 of the special cases for section 398).

Parliament ought to carefully consider whether there should be differentiation between the maximum sentences for the two special cases of stealing. If parliament considers that an identical punishment is appropriate, clause 14 of the special cases ought to be removed as it will be redundant.

**Weapons and Other Legislation (Firearms Offences) Amendment Bill 2019  
(Private Member's Bill)*****Amendment of Police Powers and Responsibilities Act 2000 (PPRA)****Clauses 6 and 7 – changes to prescribed circumstances triggering warrantless search powers*

These clauses amend subparagraph 30(a)(i) and 32(1)(a) of the PPRA to include reference to a person the subject of an FPO. The effect of this is to trigger the powers under sections 29 and 31 for police to search the person or their vehicle, respectively, without a warrant if the police officer reasonably suspects that the person has something that may be a weapon, knife or explosive the person may not lawfully possess under the FPO.

While QLS advocates that police powers to stop and search without a warrant should be granted only where necessary, it appears in this case that, if FPOs are to be introduced, the proposed amendments to warrantless search powers are in line with existing powers and appropriate to meet the policy goals. QLS notes in particular that the 'suspicionless search' concerns presented by the NSW FPO provisions<sup>2</sup> are not relevant here given the existing limits on sections 29 and 31.

*Clause 8 – review of additional powers for firearm prohibition orders*

QLS is supportive of the review of the additional powers for FPOs contemplated by proposed new section 808AA. The requirement for review ought to be accompanied by a requirement that an accurate register recording the use of the powers be established and maintained.

***Amendment of Weapons Act 1990******Clause 11 – increased penalties for particular prohibited conduct involving a weapon in a public place***

The clause proposes that maximum penalties for:

- subsection 57(3) carrying, in a public place, a loaded firearm or weapon capable of being discharged, or;
- subsection 57(4) discharging a weapon in, into, towards, over or through a public place,

be increased from 120 penalty units or 2 years imprisonment and 200 penalty units or 4 years imprisonment, respectively, to 10 years imprisonment.

This is a significant increase in penalty where no justification has been given in the explanatory notes to suggest that the existing penalties have been inadequate. Further, removal of the court's ability to impose a fine is a significant change that has not been sufficiently justified.

***Clause 12 – new offence of firing at dwelling houses, buildings or vehicles***

---

<sup>2</sup> <http://classic.austlii.edu.au/au/journals/CICrimJust/2017/5.html>

**Weapons and Other Legislation (Firearms Offences) Amendment Bill 2019  
(Private Member's Bill)**

This clause proposes a new section 57A. Our comments above in relation to new offences apply.

Once again, QLS is not aware of any evidence to suggest that further laws are required where there are already laws in place regarding misuse of firearms. The conduct intended to be addressed by the proposed new law is already unlawful according to section 56 to 58 of the *Weapons Act*, though amendment would be required if parliament is concerned about increasing penalties for conduct committed in particular circumstances.

In terms of drafting, QLS queries the use of 'fire a firearm' given that the term used throughout the *Weapons Act* is 'discharge'. Clarity would be promoted by the consistent use of language. QLS is also concerned about the inclusion of 'reckless disregard for the safety of any person' given that 'reckless disregard' is an undefined concept within the criminal law in Queensland.

QLS notes that the proposed maximum penalties are particularly high compared to others in the *Weapons Act*. We reiterate that punishments must be proportional to the proscribed conduct.

Clause 13 – new offence of possession of digital blueprint and device for manufacture of firearms

Clause 13 proposes a new offence in relation to possession of digital blueprints and devices capable of manufacturing firearms. QLS notes that it is already an offence for a person who is not a licensed armourer to manufacture a weapon (section 68).

The proposed offence is committed merely by possessing both the blueprint and the means of manufacture, without any element of knowledge or intent and without a reasonable excuse qualification. While the proposed defence in new section 67B does take account of the possibility that the defendant was not aware that they possessed the digital blueprint, this places the onus on the defendant to prove a lack of knowledge. QLS considers that it would be more consistent with fundamental legislative principles for the offence to include knowledge and intent as elements to be proved by the prosecution.

The proposed offence carries a high maximum penalty of 14 years imprisonment. If the new offence is to be enacted, its penalty should be proportional to the conduct committed and to the penalties provided for similar charges. In circumstances where the most serious manufacture of a weapon offence under section 68 carries a maximum penalty of 10 years imprisonment or 500 penalty units, a maximum penalty of 14 years imprisonment for mere possession of the means to manufacture a weapon is excessive.

Clause 14

*New section 141C – new Part 5A Firearms Prohibition Orders*

QLS notes that the intent of the Bill in respect of FPOs is to prevent high-risk persons from acquiring, possessing or using firearms.

The Bill provides for a new section 141C by which the commissioner of the police service may make an FPO against a person if, in the opinion of the commissioner:

- (a) the person is not fit, in the public interest, to have possession of a firearm; or

**Weapons and Other Legislation (Firearms Offences) Amendment Bill 2019  
(Private Member's Bill)**

(b) the person is a participating in a criminal organisation within the meaning of the *Penalties and Sentences Act 1992* or is subject to a control order under that Act.

QLS notes that the phrase 'not fit, in the public interest' has been adopted from the New South Wales *Firearms Act 1996*. The phrase is not commonly used and appears to be peculiar to that particular item of legislation. QLS queries why the more common formulation of 'not fit and proper' or 'not in the public interest' (as are used elsewhere in the *Weapons Act*) have not been adopted.

QLS also queries the inclusion of 'is subject to a control order under that Act' in paragraph (b) given that being subject to a control order is a matter of fact, not opinion. QLS considers that the preferred drafting would be:

(1) The commissioner may make an order (a **firearms prohibition order**) against a person if:

(a) the person is subject to a control order under the *Penalties and Sentences Act 1992*; or

(b) in the opinion of the commissioner:

(i) the person is not a fit and proper person to have possession of a firearm and it is not in the public interest for the person to have possession of a firearm; or

(ii) the person is a participant in a criminal organisation within the meaning of the *Penalties and Sentences Act 1992*.

The proposed wording above is aimed at making the Bill more workable if parliament elects to enact it and is not an endorsement of the proposed FPOs. As referred to above, QLS does not support the conferral of such a broad power on the commissioner.

#### *New section 141D – effect of firearms prohibition orders*

The proposed section 141D sets out a range of offences with lengthy prison sentences. Once again, the need for new offences ought to be based on evidence and parliament ought to carefully review and consider the proposed maximum penalties in light of the policy objectives of the Bill and comparable offences. We specifically address problems with some subsection below. Our lack of comment in relation to the remaining subsection is not to be seen as an endorsement of the contents of those subsections.

In terms of drafting, subsection 141D(3) provides that if an FPO comes into effect against a person (which occurs when the FPO is served) a person subject to an FPO must immediately surrender to a police officer all firearms, prohibited things and ammunition for any firearm in possession of the person. The requirement to surrender the things *immediately* is not practicable if the person is not served at their home or other place at which they store firearms. QLS proposes that the more appropriate wording would be 'as soon as practicable but no longer than one day'<sup>3</sup> unless the person is served at home, in which case the requirement to surrender immediately is appropriate but should also make allowance if the person has a reasonable excuse for not doing so.

---

<sup>3</sup> As is used in paragraph 29B(3)(c) of the *Weapons Act* where a licence is suspended or revoked.

**Weapons and Other Legislation (Firearms Offences) Amendment Bill 2019  
(Private Member's Bill)**

Provision needs to be made for the fate of the surrendered weapons or other things. FPOs may be imposed on persons with appropriate licences who have acquired weapons lawfully and who have not necessarily committed an offence. Requiring that the weapons be forfeited for no compensation is an arbitrary deprivation of lawfully acquired property. The potential imposition on individual rights is potentially even more egregious if the person subject to the FPO earns their living in some way related to weapons and has previously been appropriately licensed to do so but is then served with an FPO.

The offence contained in proposed subsection (6) is committed by a person the subject of an FPO if a firearm, prohibited thing or ammunition for a firearm is kept or found on premises at which the person the subject of an FPO is residing. The imposition of strict liability offences such as this must be carefully considered.

There is no knowledge requirement and no reasonable excuse qualifier. Lack of knowledge founds a defence under paragraph (7)(a) but, similar our comments regarding clause 13 above, the proper formulation of a criminal offence ought to include the knowledge element rather than imposing the requirement to prove lack of knowledge upon the defendant.

Paragraph 141D(7)(b) provides a further defence to the offence in subsection (6), being that the person the subject of the FPO took reasonable steps to prevent the firearm, prohibited thing or ammunition from being on the premises. QLS is concerned that there may be unintended consequences of this defence in that it may encourage inappropriate disposal of firearms, prohibited things or ammunition. The inclusion of a reasonable excuse qualifier in the offence would be a better way to deal with the situation in which the person the subject of the FPO could not prevent the firearm, prohibited thing or ammunition from being on the premises.

**Clause 15 – right to apply for review of decisions**

QLS recognises that clause 15 proposes to insert a new paragraph (g) into subsection 142(1) of the *Weapons Act* which will allow a person aggrieved by the imposition of an FPO to apply to the Queensland Civil and Administrative Tribunal (**QCAT**) for review of the decision. QLS agrees that this is an appropriate review mechanism and notes that designating the decision as a reviewable decision means that those persons served with FPOs must also receive an information notice stating the reason for the decision to impose the FPO.

**Clause 16 – prohibition on applicant carrying on a business pending review if subject to FPO**

The proposed insertion of subsection (2) into section 145 will prevent a person carrying on a business from continuing to do so pending review of a decision to refuse renewal of a licence or revoke a licence if the person is the subject of an FPO.

While QLS recognises that FPOs are only intended to be imposed on perceived 'high risk individuals' who, in most cases, would presumably not have been granted a dealer's licence, armourer's licence or theatrical ordnance supplier's licence, the inability of these people to carry on business while awaiting review if they are served with an FPO has a significant effect on their rights. This reinforces the need for proper oversight of the imposition of FPOs, including by ensuring that the drafting of FPO powers is clear and that FPOs are granted by

**Weapons and Other Legislation (Firearms Offences) Amendment Bill 2019  
(Private Member's Bill)**

judicial officers. Proper provision also needs to be made for the status of surrendered property.

**3. Additional comments*****FPOs in instances where person holds a licence pursuant to the Weapons Act***

Further consideration needs to be given to whether any consequential amendments need to be made in the case of licensees who become subject to FPOs. There is no clause in the Bill specifically addressing the effect of an FPO on an existing licence. The Bill should be amended to make the impact on existing licenses and the existence of any review rights in relation to existing licenses clear.

***Review rights and removal of FPOs***

While the imposition of FPOs is subject to review by QCAT and an FPO can be removed by the commissioner at any time, there are no provisions allowing for:

- expiry of the FPO
- removal of the FPO where its imposition was based on a control order being in place and the control order has lapsed (control orders lapse after 5 years)
- removal of the FPO based on being a participant in a criminal organisation and the person ceases to be a participating in a criminal organisation
- removal of the FPO on application of the person to which it applies.

It is an unreasonable imposition on individual rights for an FPO to be imposed with no end date and no ability to seek its removal.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our policy team by phone on [REDACTED] or by email to [REDACTED]

Yours faithfully



Bill Potts  
President