




Speech By
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MEMBER FOR MAIWAR

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**POLICE LEGISLATION (EFFICIENCIES AND EFFECTIVENESS) AMENDMENT
BILL**

 **Mr BERKMAN** (Maiwar—Grn) (4.35 pm): I rise to make a brief contribution to the Police Legislation (Efficiencies and Effectiveness) Amendment Bill. I will not be opposing this bill which, I believe, mostly contains pretty commonsense provisions around police processes and will improve the operation of the national gun amnesty framework in Queensland. However, I want to take the opportunity to highlight some concerns about the new access order provisions for digital devices. The bill expands the relevant police powers, allowing them to apply to the court for an access order for a digital device, either in a search warrant or after a device has already been seized under a warrant or left at a crime scene. What we are talking about here is basically an order to compel someone to unlock their phone or laptop or face a maximum penalty of five years imprisonment.

The bill would allow police to apply for one of these orders when they seize a device under any provisions of the PPRA if there is a reasonable suspicion that information on the device will be evidence of an offence. Right now, police need to have seized the device either under a search warrant issued by a magistrate or judge or at a crime scene as evidence of a crime scene threshold offence which is an indictable offence with a maximum penalty of at least four years imprisonment or involving deprivation of liberty.

Police have quite broad powers under the PPRA to seize devices, so allowing these access orders beyond search warrants and crime scenes is a fairly significant expansion, I would argue, but I do acknowledge that the latter—that is, expansion of powers in relation to crime scenes—is still confined to crime scene threshold offences plus a few additional offences under the bill; namely, distributing intimate images, observations or recordings in breach of privacy or distributing prohibited visual recordings.

Arguably, the amendments in the bill about accessing digital devices are pretty minor and narrow, and I appreciate that fairly strong safeguards remain, but it is worth highlighting these issues because the persistent creep of ever-expanding police powers is a real problem in this state. It is commonly acknowledged that this only goes in one direction. You will pretty much never see police handing back any of their powers once they have them.

As much as the major parties are still unwilling to admit it, experiences of policing and the criminal system are still very different and often traumatic for marginalised people in Queensland. It is especially the case for First Nations people, LGBTQIA folks and disabled people. This is an institution with an ongoing history of systemic racism and homophobia. It is an institution which has an effective legal monopoly of coercive violence. That is not meant to be an incendiary statement; it is an honest reflection on our system as it stands. It does mean that we must always be critical of where and how police can use their significant powers and how they might be used not just to protect vulnerable people but also to harm them, whether intentionally or otherwise.

The Queensland Law Society, the Council for Civil Liberties and the Youth Advocacy Centre all raised concerns in their submissions about the device access order provisions. The Law Society referred to the argument that, when it comes to police access, our laws should treat mobile phones in a similar way to private homes. That is especially true given the enormous scope of personal and professional information that most of us store on our devices today.

There are some very practical safeguards that the government could put in place to prevent or at least mitigate unreasonable privacy infringements and unintended consequences. The Law Society suggested that detailed records should be kept by police of what information is accessed; that access to the device should be limited to information on the device itself and not, for example, information on cloud services that could be accessed via the device; and that the ability to make a complete copy of information on the device that can be accessed later should be further constrained. The Queensland Council for Civil Liberties recommended greater transparency around how these orders are used to reflect equivalent legislation in other jurisdictions like New South Wales. That could mean a requirement for police to, within a reasonable time, give the court a written report about whether the order was executed and the results.

To reiterate, this is not a bill that I will actively oppose, but I urge the government to consider introducing these safeguards alongside the changes in the bill. When giving police more powers, we must ensure there are additional checks and balances in place to prevent the abuse of those powers.