Parliamentary Committees



Inquiry into Police Powers and Responsibilities and Other Legislation Amendment Bill 2023

Report No. 46, 57th Parliament

Legal Affairs and Safety Committee

April 2023

Legal Affairs and Safety Committee

Chair	Mr Peter Russo MP, Member for Toohey
Deputy Chair	Mrs Laura Gerber MP, Member for Currumbin
Members	Ms Sandy Bolton MP, Member for Noosa
	Ms Jonty Bush MP, Member for Cooper
	Mr Jason Hunt MP, Member for Caloundra
	Mr Jon Krause MP, Member for Scenic Rim

Committee Secretariat	
Telephone	+61 7 3553 6641
Email	lasc@parliament.qld.gov.au
Technical Scrutiny Secretariat	+61 7 3553 6601
Committee webpage	www.parliament.qld.gov.au/LASC

Acknowledgements

The committee acknowledges the assistance provided by the Queensland Police Service (QPS) and the Queensland Fire and Emergency Services (QFES).

All web address references are current at the time of publishing.

Contents

Abbreviations

AMAQ	Australian Medical Association Queensland
ATSILS	Aboriginal and Torres Strait Islander Legal Service (Qld)
Bill	Police Powers and Responsibilities and Other Legislation Amendment Bill 2023
committee	Legal Affairs and Safety Committee
Criminal Code	*Criminal Code 1899*
DMA	*Drugs Misuse Act 1986*
FES Act	*Fire and Emergency Services Act 1990*
FES Regulation	*Fire and Emergency Services Regulation 2011*
FLP	Fundamental legislative principles
HRA	*Human Rights Act 2019*
LAQ	Legal Aid Queensland
LSA	*Legislative Standards Act 1992*
Minister	Hon Mark Ryan MP, Minister for Police and Corrective Services and Minister for Fire and Emergency Services
PDDP	Police Drug Diversion Program
PPRA	*Police Powers and Responsibilities Act 2000*
PSAA	*Police Service Administration Act 1990*
QFES	Queensland Fire and Emergency Services
QFES commissioner	Queensland Fire and Emergency Services commissioner
QHRC	Queensland Human Rights Commission
QLS	Queensland Law Society
QMHC	Queensland Mental Health Commission
QNADA	Queensland Network of Alcohol & Other Drugs Agencies Ltd
QPS	Queensland Police Service
YJA	*Youth Justice Act 1992*

Chair's foreword

This report presents a summary of the Legal Affairs and Safety Committee's examination of the Police Powers and Responsibilities and Other Legislation Amendment Bill 2023.

The war on drugs has failed and as a responsible government we must find other ways to deal with the use of drugs in our community. To continue doing the same thing and expecting a different result is not the smartest way forward in relation to this social issue.

Having practiced in law, mainly criminal defence work, I have always believed that drug abuse was a health issue rather than a criminal law issue. My belief was confirmed after repeated evidence given to the committee. I personally express my gratitude to all the organisations and individuals who gave evidence, either through written submissions or at the public hearing.

The Queensland Mental Health Commissioner referred to the work of the Mental Health Select Committee, specifically the *Inquiry into the opportunities to improve mental health outcomes for Queenslanders* report (report).

Recommendation 13 of the report recommended reviews into illicit drug diversion initiatives, including the Police Drug Diversion Program and the Illicit Drugs Court Diversion Program, to identify opportunities to strength these initiatives. This Bill does exactly that, strengthening the processes that divert people who encounter the criminal justice system away from the courts and into the health system.

It was noted by the Queensland Mental Health Commissioner that the police play a vital role in shifting the issue from a criminal justice response to a health-based response. I couldn't agree more.

Many years ago, one of my staff introduced me to Johann Hari's work, *Chasing the Scream: The First and Last Days of the War on Drugs*. I encourage all those interested in an informed discussion on drug reform to read this great work. For those of us who are time poor, I recommend you listen to Johann's Ted Talk, I'm sure it will encourage you to read the book.

On the basis of all evidence submitted, the committee is satisfied the Bill will achieve its policy objectives. The committee recommends the Bill be passed.

On behalf of the committee, I again thank those individuals and organisations who made written submissions on the Bill or appeared as witnesses at the public hearing. I also thank our Parliamentary Service staff, the Queensland Police Service and the Queensland Fire and Emergency Service.

I commend this report to the House.

Peter Russo MP

Chair

Recommendations

Executive Summary

The Police Powers and Responsibilities and Other Legislation Amendment Bill 2023 (Bill) was introduced into the Legislative Assembly by the Honourable Mark Ryan MP, Minister for Police and Corrective Services and Minister for Fire and Emergency Services, and referred to the Legal Affairs and Safety Committee (committee) on 21 February 2023.

Summary of the Bill

The objective of the Bill is to promote the efficiency of the Queensland Police Service (QPS) and the Queensland Fire and Emergency Services (QFES) through a range of amendments that will deliver operational or administrative improvements.

In relation to QPS, amendments in the Bill will:

- enhance the Police Drug Diversion Program (PDDP) by introducing drug diversion warnings, allowing an eligible person an opportunity to participate in a subsequent drug diversion assessment program, and expanding minor drug offences to include the possession of prescribed quantities of any type of dangerous drug and certain pharmaceuticals
- allow for the appointment of a person as an executive officer rather than to an executive officer position which will allow executive officers (that is, Assistant and Deputy Commissioners) to be appointed generically to their respective rank or to the particular position that they will fill
- introduce a circumstance of aggravation for the offence of evading police under s 754 of the *Police Powers and Responsibilities Act 2000* (PPRA).

The Bill will make minor amendments to legislation administered by QFES by:

- confirming any request or application made under ss 64 'Prohibition by commissioner against lighting of fires' and 65 'Granting of permits' of the *Fire and Emergency Services Act 1990* (FES Act) must contain the information prescribed by regulation and, in the case of a request under s 64, be made in the way prescribed by regulation
- introducing the new s 150BA 'Assault of persons performing functions or exercising powers' of the FES Act and making consequential amendments to the offence outlined in s 150C 'Obstruction of persons performing functions' of the FES Act.

The Bill will also increase the maximum penalty under s 5 'Trafficking in dangerous drugs' of the *Drugs Misuse Act 1986* (DMA) from 25 years imprisonment to life imprisonment to reflect the serious nature of this offence.

Key issues examined

The key issues raised during the committee's examination of the Bill included:

- the expansion of the PDDP
- the introduction of drug diversion warnings and forfeiture of drugs
- appointment of executive officers to a position or rank
- introduction of a circumstance of aggravation for the offence of evading police
- requirements about making request or application under ss 64 and 65 of the FES Act
- assaulting a person performing functions or exercising powers under the FES Act
- increasing the maximum penalty under s 5 of the DMA
- compliance of the Bill with the *Legislative Standards Act 1992* (LSA)

- compliance of the Bill with the *Human Rights Act 2019*.

Conclusion

The committee recommends that the Bill be passed.

The committee has made 2 further recommendations to ensure that the Bill is implemented in a manner that achieves its objectives.

1 Introduction

1.1 Policy objectives of the Bill

The Police Powers and Responsibilities and Other Legislation Amendment Bill 2023 (Bill) was introduced into the Legislative Assembly by the Hon Mark Ryan MP, Minister for Police and Corrective Services and Minister for Fire and Emergency Services (Minister) on 21 February 2023. It was referred to the Legal Affairs and Safety Committee (committee).

In his introduction speech on 21 February 2023, the Minister stated 'The amendments in this Bill have been requested by the Queensland Police Service (QPS) and implement a common-sense change to the criminal justice response to minor illicit drug use in Queensland'. He quoted Commissioner Katarina Carroll, who had stated 'research shows that if you divert people early to health and education services they are less likely to reoffend'. [1]

The objectives of the Bill for QPS are to:

- enhance and expand the PDDP and eligible persons
- allow for the appointment of a person as an executive officer rather than to an executive officer position
- introduce a circumstance of aggravation for the offence of evading police under s 754 of the PPRA.

The objectives of the Bill for the Queensland Fire and Emergency Services (QFES) are to:

- confirm any request or application made under s 64 'Prohibition by commissioner against lighting of fires' and s 65 'Granting of permits' of the *Fire and Emergency Services Act 1990* (FES Act) must contain the information prescribed by regulation and, in the case of a request under s 64, be made in the way prescribed by regulation
- introduce the new s 150BA 'Assault of persons performing functions or exercising powers' of the FES Act and make related amendments to the offence outlined in s 150C 'Obstruction of persons performing functions' of the FES Act.

The Bill will also amend the maximum penalty for trafficking in dangerous drugs under s 5 of the *Drugs Misuse Act 1986* (DMA) from 25 years imprisonment to life imprisonment to reflect the serious nature of this offence.[2]

1.2 Legislative compliance

Our deliberations included assessing whether or not the Bill complies with the Parliament's requirements for legislation as contained in the *Parliament of Queensland Act 2001*, *Legislative Standards Act 1992* (LSA) and the *Human Rights Act 2019* (HRA).

1.2.1 Legislative Standards Act 1992

We considered the application of fundamental legislative principles (FLPs) contained in Part 2 of the LSA to the Bill. We are satisfied that the Bill has sufficient regard to individuals' rights and liberties and the institution of Parliament.

1 Queensland Parliament, Record of Proceedings, 21 February 2023, p 60.

2 Explanatory notes, p 1.

In reaching this conclusion, we paid particular attention to the following:

- whether the penalties increased, amended or created by the Bill are proportionate to the relevant offences and consistent with other penalties in legislation[3]
- whether delegations of legislative power relating to the lighting of fires[4] and the quantity of drugs or medicine that constitute a 'minor drugs offence'[5] have sufficient regard to the institution of Parliament.

Further discussion of these issues is included in the relevant parts of section 2, below.

Explanatory notes

Explanatory notes were tabled with the introduction of the Bill. We are satisfied that the explanatory notes contain the information required by Part 4 of the LSA and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

1.2.2 Human Rights Act 2019

We considered the Bill's compatibility with the HRA. We find the Bill is compatible with the HRA.

In reaching this conclusion, we paid particular attention to whether the following aspects of the Bill are consistent with the HRA:

- the proposal to increase the maximum penalty for trafficking in dangerous drugs from 25 years to life imprisonment[6]
- the proposal to create a new offence of assaulting a person performing functions or exercising powers under the FES Act[7]
- the proposal to create a new circumstance of aggravation for the offence of evading police[8]
- the application of the PDDP to children, including the proposal to give police a greater degree of discretion when dealing with children suspected of minor drug offences (compared to adults).[9]

Further discussion of these issues is included in the relevant parts of section 2, below.

A statement of compatibility was tabled with the introduction of the Bill as required by s 38 of the HRA. We are satisfied the statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

1.3 Should the Bill be passed?

The committee is required to determine whether or not to recommend that the Bill be passed.

Recommendation 1

The committee recommends the Police Powers and Responsibilities and Other Legislation Amendment Bill 2023 be passed.

3 Bill, cls 4, 10 and 15.

4 Bill, cls 8 and 9.

5 Bill, cl 22.

6 Bill, cl 4.

7 Bill, cl 10.

8 Bill, cl 15.

9 Bill, cl 32.

2 Examination of the Bill

This section discusses key issues raised during the committee's examination of the Bill. It does not discuss all consequential, minor or technical amendments.

The committee invited stakeholders and subscribers to make written submissions on the Bill. The Inquiry received 15 submissions (see **Appendix A** for a list of submitters).

The committee received a written briefing on the Bill from QPS on 7 March 2023. The committee also received advice from QPS and QFES responding to the submissions on 16 March 2023.

As part of the Inquiry, the committee held a public hearing on 20 March 2023 in Brisbane with stakeholders (see **Appendix B** for a list of witnesses) and a public briefing with QPS and QFES on 24 March 2023 (see **Appendix C** for a list of witnesses).

The submissions, correspondence from QPS and QFES, and transcripts of the briefing and hearing are available on the committee's webpage.

In its examination of the Bill, the committee considered all the material before it. This section discusses key issues raised during the committee's examination of the Bill.

2.1 Overview of the Police Drug Diversion Program

2.1.1 Background

The PDDP, legislated under s 379 of the PPRA, is a drug diversion program. It allows police to offer an eligible person the opportunity to participate in a drug diversion assessment program, as an alternative to prosecution.[10] It is only available for minor drug offences.

At present, Schedule 6 of the PPRA limits the PDDP to minor drug offences involving cannabis.

Schedule 6 of the PPRA states that a 'minor drug offence' means an offence against ss 9, 10(1) or 10(2) of the DMA involving either or both of the following:

(a) possession of not more than 50g of cannabis

(b) possession of a thing for use, or that has been used for, smoking cannabis.

However, a minor drug offence does not include offences involving the production, supply or trafficking of cannabis.

The PDDP aims to address the personal use of illicit drugs through a health-based approach that better addresses the underlying causes of drug offending.[11] The Minister stated that 'statistics clearly show that PDDPs result in the majority of those individuals never again having contact with police'.[12] The Minister also provided the following information about support for the program:

> It is an evidence-based approach that has broad support from those who know best. The concept of diversion is supported by health experts, including the Australian Medical Association Queensland. The AMAQ has publicly called for the expansion of the police drug diversion program and has taken the position that substance use should be treated as a health issue to address the underlying causes of substance use and encourage help-seeking behaviours. The expansion of the police drug diversion program is also supported by Dr Erin Lalor of the Alcohol and Drug Foundation and Rebecca Lang of the Queensland Network of Alcohol and Other Drug Agencies.[13]

[10] Queensland Police, Police Drug Diversion Program, https://www.police.qld.gov.au/drugs-and-alcohol/police-drug-diversion-program.

[11] Explanatory notes, p 1.

[12] Queensland Parliament, Record of Proceedings, 21 February 2023, p 60.

[13] Queensland Parliament, Record of Proceedings, 21 February 2023, p 61.

At the public briefing, QPS explained the rationale behind drug diversion programs:

> Drug diversion provides an opportunity to connect the users of illicit drugs with information and, most importantly, treatment. That is not only important for the individual and their health; it is also an opportunity to mitigate the impacts of illicit drug use on the community.[14]

QPS also provided the following information about the effectiveness of the current drug diversion program in Queensland:

> Drug diversion is not a new concept in Queensland. Queensland police have been diverting people for cannabis possession for over 20 years. We know that that program is effective. We know that the current policing drug diversion program has diverted more than 158,000 people from the criminal justice system and into a health intervention since the program began in 2001. The most recent analysis of drug crime recidivism among drug diversion recipients shows that 72 per cent of those who completed drug diversion did not reoffend for a drug related offence during the four-year evaluation period. That is consistent with other evaluations of drug diversion programs conducted in other Australian jurisdictions. Importantly, diversion has operational benefits for police. It saves police and court resources and time. It allows police resources to be focused in areas where they can have a greater impact on community safety.[15]

2.1.2 Bill proposal

Currently, police can only offer the PDDP to eligible persons being, along with other criteria, a person possessing less than 50 grams of cannabis and/or things used in connection with cannabis. The only option available for police for minor drug possession offences involving any other type of dangerous drug or for the unlawful possession of pharmaceuticals is to commence formal court proceedings.[16]

Clause 378B of the Bill proposes to expand the 'minor drugs offence' (as defined in Schedule 6 of the PPRA) to include:

- an offence against s 9 of the DMA involving possession of not more than the prescribed quantity of a 'dangerous drug'.[17] The relevant quantity of illicit drugs will be prescribed under the *Police Powers and Responsibilities Regulation 2012*.
- an offence against ss 10(1)-(2), 10(4), 10(4A), 10A(1)(a)-(c) of the DMA involving possession of a thing used for administering, consuming or smoking of a dangerous drug
- an offence against s 34(1) of the *Medicines and Poisons Act 2019* involving possession of not more that prescribed quantity of an S4[18] or S8[19] medicines.[20]

---

14 Public briefing transcript, Brisbane, 24 March 2023, p 2.

15 Public briefing transcript, Brisbane, 24 March 2023, p 2.

16 Explanatory notes, p 2.

17 A 'dangerous drug' is defined in s 4 of the DMA and includes a thing stated in Schedule 1, *Drugs Misuse Regulation 1987*. Examples include cocaine, heroin, methyl amphetamine, trenbolone and oxymetholone.

18 An 'S4 medicine' is 'a substance to which the Poisons Standard, Schedule 4 applies': *Medicines and Poisons Act 2019,* s 11. Poisons Standard means the current Poisons Standard within the meaning of s 52A(1) of the *Therapeutic Goods Act 1989* (Cth). Examples include adrenaline, codeine, cortisone, diazepam, and methamphetamine (Poisons Standard, Schedule 4).

19 An 'S8 medicine' is 'a substance to which the Poisons Standard, schedule 8 applies': *Medicines and Poisons Act 2019,* s11. Examples of S8 medicines include cocaine, morphine, pethidine and oxycodone (Poisons Standard, Schedule 8).

20 Explanatory notes, p 2; proposed s 378B of the PPRA.

A 'minor drug offence' does not include the above listed offences if the possession is related to the production, supply or trafficking of dangerous drugs or S4 and/or S8 medicines.[21] A zero-tolerance approach will be maintained by police to the suppliers and producers of illicit drugs.[22]

Further, a person will be ineligible for the PDPP if the person has previously been sentenced to a term of imprisonment for an offence against ss 5, 6, 8 or 9D of the DMA or the person has committed another indictable offence in circumstances that are related to the minor drugs offence (for example, burglary of a home to obtain money to buy drugs).[23]

Under the provisions proposed in the Bill:

- a person will be eligible for diversionary action under the PDDP if the police officer reasonably believes the drug matter is for personal use[24]
- an eligible person (who is an adult) arrested for, or questioned about, a minor drugs offence, must be offered a drug diversion warning in relation to the offence[25]
- a person must agree to participate in any diversionary action, either by agreeing to be given a drug diversion warning or by agreeing to participate in a drug diversion assessment program[26]
- a person who agrees to diversionary action must forfeit the drugs and anything used for ingesting the drugs.[27]

A person will not be eligible for a drug diversion warning if the person has previously been offered either a drug diversion warning or the opportunity to participate in a drug diversion assessment program.[28] However, a person who has previously been offered a drug diversion warning, but not an assessment program, must be offered such a program (see Table 1, on the next page).

2.1.3 Application to children raises human rights issues

The Bill proposes to amend the *Youth Justice Act 1992* (YJA) to provide discretion and clarify the alternatives to prosecution available to a police officer in response to a minor drugs offence committed by a child. In such a case, a police officer will be able to:

- take no action
- caution the child under the YJA
- refer the child to a restorative justice process
- offer the child a drug diversion warning or the opportunity to participate in a drug diversion assessment program.[29]

If a child accepts a drug diversion warning or agrees to participate in a drug diversion assessment program, drug matter in their possession is forfeited to the state for destruction.[30]

---

21 See proposed ss 378B (2) and 378(3) of the PPRA.

22 Explanatory notes, p 2.

23 Proposed s 378A of the PPRA.

24 Proposed s 378A(1)(D) of the PPRA.

25 Proposed s 378C(2) of the PPRA. Police will have greater discretion when dealing with child offenders. See Table 1.

26 Proposed ss 378C(6) and 379AB of the PPRA.

27 Proposed ss 378C(7) and 379AB(5) of the PPRA.

28 Proposed s 378C(1) of the PPRA.

29 Explanatory notes, p 3.

30 See Bill, cl 32.

The Bill potentially enables a child to be treated more harshly than an adult for committing a minor drugs offence, which, if it were to occur, could constitute a breach of the HRA. This possibility arises because under the provisions proposed in the Bill, a child could be prosecuted for a first minor drugs offence whereas an adult could not be prosecuted for committing the same offence for the first time (as detailed in Table 1, below).

In addition to an adult simply being warned on the first occasion, an adult would be given opportunities to participate in a drug diversion assessment program and a subsequent drug diversion assessment program. In contrast, it is possible under the Bill that a child would not be given the same warning and opportunities.

Table 1 – Proposed provisions applicable to children give police greater discretion

Adult		Child	
Section 378C(2)	Police officer **must** offer drug diversion warning (if not previously offered warning or assessment program)	Section 378C(3)	Police officer **may** offer drug diversion warning (if not previously offered warning or assessment program)
Section 379(2)	Police officer **must** offer drug diversion assessment program (if offered warning but not previously offered assessment program)	Section 379(3)	Police officer **may** offer drug diversion assessment program (if offered warning but not previously offered assessment program)
Section 379AA(2)	Police officer **must** offer subsequent diversion assessment program (if previously offered diversion assessment program under s 379 but not previously offered under s 379AA)	Section 379AA(3)	Police officer **may** offer subsequent diversion assessment program (if previously offered diversion assessment program under s 379 but not previously offered under s 379AA)

Note: References are to provisions of the PPRA proposed in cl 22 of the Bill.

The concerns raised by stakeholders in relation to this issue, and the response from QPS, are discussed in more detail in sections 2.1.4 and 2.1.5, respectively.

2.1.4 Stakeholder views

Most of the submitters supported in general the proposal to expand the diversionary options for minor drug offences under the Bill.[31] The Queensland Network of Alcohol & Other Drugs Agencies Ltd (QNADA), for example, considered the proposed expansion of the PDDP as 'an important step toward reducing the potential for harms associated with [alcohol and other drug] use in Queensland'.[32]

While supportive of the expansion of the diversionary options for minor drug offences, the Queensland Human Rights Commission (QHRC) raised concerns about the use of the phrase 'reasonably believes' in s 378A(d) as it may result in an 'unequal application of this provision'.[33]

In additional to supporting the Bill, the Australian Medical Association Queensland (AMAQ) submitted that any savings realised by criminal justice agencies through the expanded PDDP should be reallocated to Queensland Health, general practice and community alcohol and other drug treatment services that deliver drug diversion programs to support this vital reform.[34] The Queensland Mental

[31] See, for example, Queensland Human Rights Commission, submission 5; Australian Psychedelic Society, submission 6; Queensland Network of Alcohol and Other Drugs Agencies Ltd, submission 7; Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd, submission 9; Legal Aid Queensland, submission 10.

[32] Submission 7, p 3.

[33] Submission 5, p 3.

[34] Submission 2, p 2.

Health Commission (QMHC) also submitted that savings from the criminal justice responses outlined in the Bill be re-invested into harm reduction and treatment programs.[35]

Some submitters questioned the benefit to the community of the proposals. Drug Free Australia raised concerns that the Bill will undermine the deterrence effect of existing laws as potentially only on the fourth time a person is caught with drugs 'are police required to issue a person with a court notice to appear on a charge of possession'.[36] Leyland Barnett stated that the laws should reflect 'the seriousness of dangerous drug use' and queried why serious drugs being used by an offender should be treated as minor drug offences.[37]

Others including QHRC, QNADA, Harm Reduction Australia and Queensland Law Society (QLS) expressed concerns regarding the issue of police discretion to use the diversionary process for juvenile offenders and raised the potential risk of inequality and inconsistency.[38] The concern is around the language used under the proposed legislation, which is detailed in Table 1 (on the previous page).[39]

In this regard, the QLS further submits:

> … the Society takes this opportunity to note the disparity in proposed sections 378C (2) and 378C (3).
>
> When read in the context of the well-established jurisprudence and statutory bias issues surrounding children and the law, proposed section 378C (3), as currently drafted, is not immune to being applied by police in a discretionary manner which has the unintended consequence of circumventing diversionary options in favour of prosecutorial action. That said, the Society presumes that the discretion afforded to police by the word 'may', confers to police, a discretionary power designed to enable police to not take any action against the child, or alternatively, less onerous or therapeutic measures such as those available under the Act.
>
> Proposed sections 378C, 379, 379AA and 379AB of the PPRA Bill, as currently drafted, are in conflict with the non-doctrinal criminal justice decision making principles that apply to children. That is, that children in the criminal justice system should not be treated more harshly than adults. In this regard, it would be anomalous for there to be provisions that provide two mandatory diversion opportunities for an adult but not for a child, so as to result in the child offence being dealt with more harshly than the adult.
>
> The Society submits that section 379C (3) should be clarified by way of statutory words that make clear that the discretion, that is to not issue a diversionary drug warning to a child on first and second contact, only be exercised if the police elect to proceed with a lesser recourse such as those described in the Act.[40]

2.1.5 Department response

QPS responded that the amendments to the PDDP proposed in the Bill represent a 'shift from the current punitive approach to minor drug offending to a health-based approach'.[41]

In response to the submissions opposed to the proposal to expand the PDDP, QPS clarified that the 'new drug diversion program does not decriminalise the possession of dangerous drugs in Queensland'.[42]

In response to submitters' concerns regarding the operation of the PDDP in relation to children, QPS stressed the importance of retaining flexibility and discretion when police deal with children. It explained:

---

35 Submission 14, p 5.

36 Submission 3; p 1.

37 Submission 4, p 2.

38 Submission 5, pp 4-5; submission 7, pp 5-6; submission 15, p 3; submission 13, p 2.

39 Proposed ss 378C, 379, 379AA and 379AB of the Bill.

40 Submission 13, p 2.

41 QPS and QFES, correspondence, 16 March 2003, attachment, p 2.

42 QPS and QFES, correspondence, 16 March 2003, attachment, p 4.

> The *Youth Justice Act 1992* (YJA) is the primary legislation governing the exercise of police discretion when dealing with children.
>
> The amendments in the Bill provide that where an adult meets the eligibility criteria for a minor drugs offence, the application of the scheme is mandatory. Applying the framework in a mandatory way to children would constrain the ability of police officers to use the existing diversionary options in section 11 of the YJA. For that reason, the Bill makes the use of drug diversion warnings and drug diversion assessment programs, in relation to children, discretionary.
>
> Section 11 of the YJA requires police officers to consider the most appropriate way of dealing with a child before commencing proceedings. That section currently provides a range of diversion options, for example: taking no action, administering a caution or – in the case of a minor drug offence – drug diversion. Under the YJA the Children's Court has the discretion to dismiss charges if the court is satisfied police should have initiated a diversionary option rather than charging a child (see ss 21 and 24A of the YJA).
>
> When dealing with a child for a minor drugs offence, a police officer must still consider the range of diversionary options delineated in s 11 of the YJA. The Bill will amend the YJA to include a drug diversion warning as well as a drug diversion assessment program as diversion options available to police when dealing with a child for a minor drugs offence.[43]

At the public briefing, QPS further explained why the Bill treats children and adults differently:

> The offer of drug diversion to adults who are eligible is mandatory. This is not the case for children. The Youth Justice Act is the primary act that governs the way that police deal with children. There is already a mandatory legislative requirement under the Youth Justice Act for police officers to consider the diversion options in section 11 of that act before commencing proceedings against a child. To treat children in the same way as adults would lock them into a linear progression compelling them to go to court once they had progressed through the three tiers of drug diversion. The bill recognises that it may be more appropriate to deal with children by way of a diversion option in those instances where a child comes to police attention on more than three occasions for a minor drugs matter. It also recognises that diversion options other than drug diversion may be more appropriate in the unique circumstances of a child who is being diverted.[44]

2.1.6 Delegation of legislative power raises FLP issues

To have sufficient regard to the institution of Parliament, the Bill must delegate legislative power only in appropriate cases and to appropriate persons, with their exercise of power remaining sufficiently subject to the scrutiny of the Legislative Assembly.[45]

As noted above, the Bill provides that the quantity of illicit drugs to be considered a 'minor drugs offence' will be prescribed under the *Police Powers and Responsibilities Regulation 2012*.[46] The explanatory notes explain that the Bill's definition of minor drugs offence would provide that a regulation can define 'the prescribed quantity of a dangerous drug or S4 or S8 medicine to refer to an amount a police officer reasonably believes is for the personal use of the person in possession of the drug or medicine'.[47]

The quantities proposed to be included in regulation were not included in the documents tabled with Bill or in the Minister's introductory speech. However, in their written brief to the committee, QPS and QFES detailed the quantities that are proposed to be prescribed in the regulation.[48]

---

43 QPS and QFES, correspondence, 16 March 2003, attachment, pp 5-6.

44 Public briefing transcript, Brisbane, 24 March 2023, p 3.

45 LSA, s 4(4)(a), (b).

46 Bill, cl 22.

47 Explanatory notes, p 17; Bill, cl 22 (new s 378B of the PPRA).

48 QPS and QFES, correspondence, 7 March 2003, attachment 2, p 14.

The quantities to be prescribed under regulation are significant because a person will face different consequences depending on the quantity of drugs in their possession. For example, a person who is arrested for, or is being questioned by a police officer about, a minor drugs offence may be given a drug diversion warning or offered an opportunity to participate in a drug diversion assessment program.[49] A person possessing a quantity of drugs greater than that prescribed for a minor drugs offence may possibly face imprisonment.[50]

There is precedent for prescribing quantities for drugs in regulation. The *Drugs Misuse Regulation 1987*, for example, sets out specified quantities for particular dangerous drugs in schedule 3 for certain purposes of the Act, including offence provisions.[51]

The relevant regulations will be required to be tabled in the Legislative Assembly, where they will be subject to scrutiny, including disallowance.

Committee comment

We note the general support from a majority of the submitters concerning the overall intent of the Bill in relation to the expansion of the PDDP.

The committee is aware that the expansion of the PDDP will involve a major cultural shift for QPS from a policing model to a medical model. The committee wishes to ensure that QPS reviews its training processes to ensure the amendments to the PDDP are adequately implemented (see Recommendation 2).

We also note the concerns regarding the operation of the proposed changes to the PDDP in respect of children. We are satisfied with the response from QPS, which makes it clear that the Bill is not intended to result in children being treated more harshly than adults. We have therefore recommended (as part of Recommendation 2) that QPS's review of training processes assess whether any changes are required to ensure that the Bill is implemented in a manner that reflects this intent.

We note from correspondence from QPS in response to the submissions that there will be an independent evaluation of the PDDP provided to the Queensland Government after 2 years of the program's operation that will identify any need to boost funding or make any changes to the program. We consider it important that the Legislative Assembly be informed about the progress of this evaluation (See Recommendation 3).[52]

We are satisfied that the delegation of the power to prescribe the quantity of illicit drugs to be considered a 'minor drugs offence' is appropriate in the circumstances and remains subject to sufficient scrutiny by the Legislative Assembly.

49 Provided certain other criteria are also met: see Bill, cl 22 (PPRA, new ss 378A, 378C, 379, 379AA, 379AA).

50 See, for example, DMA, s 9.

51 See, for example, DMA, ss 8, 9.

52 QPS and QFES, correspondence, 16 March 2003, attachment, p 2.

Recommendation 2

The committee recommends the Queensland Police Service review their training processes to ensure the amendments to the Police Drug Diversion Program proposed under the Police Powers and Responsibilities and Other Legislation Amendment Bill 2023 are adequately implemented.

This review should include an assessment of whether any changes to current training processes are required to ensure that the greater discretion afforded to police when dealing with children suspected of minor drug offences does not result in them being treated more harshly than if they had been adults.

Recommendation 3

The committee recommends that the Queensland Government reports to the Legislative Assembly within 24 months of the Act commencing on its progress regarding the independent evaluation of the Police Drug Diversion Program's operation.

2.2 Increasing the maximum penalty for trafficking in dangerous drugs

2.2.1 Bill proposal

Clause 4 of the Bill proposes to increase the maximum penalty for s 5 of the DMA from 25 years imprisonment to life imprisonment to reflect the significant risks and harm that unlawful trafficking in dangerous drugs has on the community. An increase in the maximum penalty for this offence target offenders who seek to profit from the illicit drug market and provides a strong deterrence to this activity.[53]

2.2.2 Increased penalty raises FLP and human rights issues

To be consistent with FLPs, legislation must have sufficient regard to rights and liberties of individuals, including by ensuring that its consequences are relevant and proportionate. This means that the increased penalty for trafficking in dangerous drugs should be proportionate to the offence, and consistent with other penalties in legislation.[54]

The increased penalty also engages several of the rights protected by the HRA, including:

- the right to liberty and security of person[55]
- rights in criminal proceedings[56]
- the rights of families and children to protection[57]
- the rights of children in the criminal process.[58]

The statement of compatibility tabled with the Bill asserts that any limitation of human rights by the increased penalty for trafficking in dangerous drugs is reasonable and justified in the circumstances:

53 Explanatory notes, pp 6 and 9.

54 Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental legislative principles: the OQPC notebook*, 2008, p 120. See also LSA, s 4(2)(a).

55 HRA, s 29.

56 HRA, s 32.

57 HRA, s 26

58 HRA, s 33.

> [T]he offence of trafficking in dangerous drugs involves a considered decision of the offender to carry on a business which seeks to profit from the supply of dangerous drugs to the community. Trafficking generally involves a demonstrable regularity of drug dealing sufficient to establish it has occurred on the course of a business, and the harmful impact of supplying these drugs, particularly to vulnerable members of the community, is well known. No right is inalienable, and the proposed penalty of trafficking in dangerous drugs accurately reflects the harm caused by the offence. Due to the strong financial incentive of committing the offence, a proportionately strong deterrence is required to combat the illegal trafficking in dangerous drugs within Queensland.[59]

As discussed in more detail below, several stakeholders expressed the view that the increased penalty is excessive and disproportionate, particularly when compared to non-drug related offences.

In response, QPS stressed the seriousness of the offence, noting new penalty aligns with penalties for similar offences in other Australian jurisdictions.

As Table 2 illustrates, several other Australian jurisdictions impose maximum penalties of life imprisonment for the most serious drug offences.

Table 2 – Maximum penalties for most serious drug offences across Australia

Jurisdiction	Legislative Provision	Offence/when maximum penalty applies	Maximum penalty
Queensland **(proposed)**	*Drugs Misuse Act 1986,* s 5 as amended by the Bill	Trafficking in dangerous drugs	Life imprisonment
Victoria	*Drugs, Poisons and Controlled Substances Act 1981,* s 71	Trafficking large commercial quantities	Life imprisonment
New South Wales	*Drug Misuse and Trafficking Act 1985*, Division 2, s 33	Trafficking large commercial quantities	Life imprisonment
Western Australia	*Misuse of Drugs Act 1981,* ss 6(1) and 34(1)(a)	Offences concerned with prohibited drugs (manufactures, sells or supplies etc) involving a trafficable quantity of methylamphetamine	Life imprisonment
South Australia	*Controlled Substances Act 1984,* s 33(1)	Manufacture large commercial quantity of a controlled drug for sale	Life imprisonment
Tasmania	*Misuse of Drugs Act 2001,* s 12	Trafficking in controlled substance	21 years imprisonment
Northern Territory	*Misuse of Drugs Act 1990,* ss 5B, 6E	Supply of a commercial quantity of a Schedule 1 drug to a child Manufacture of a commercial quantity of a Schedule 1 drug	Life imprisonment
Australian Capital Territory	*Criminal Code 2002,* s 603	Trafficking large commercial quantities	Life imprisonment

[59] Statement of compatibility, pp 4-5.

2.2.3 Stakeholder views

The proposal to increase the maximum penalty for trafficking in dangerous drugs was not popular with a number of submitters.[60]

For example, Legal Aid Queensland (LAQ) submitted:

> LAQ does not support broad-brush approaches to increasing maximum penalties. Such increases are often promoted as a basis for providing a 'strong deterrent' to offenders; as is the case in relation to increasing the maximum penalty for s 5 *Drugs Misuse Act 1986* (Qld), and implicitly in relation to the introduction of the circumstance of aggravation for the evasion offence contained in s 754 *Police Powers and Responsibilities Act 2000* (Qld). However, deterrence is just one purpose for which a sentence may be imposed, and the weight to be given to any particular purpose of sentencing depends on the individual case.[61]

LAQ further noted:

> LAQ considers the existing provisions already allow for the imposition of a sentence which is reflective of the relative commercial nature of the offence where the defendant is a 'Mr Big' or a person who makes their living out of other people's misery. To raise the tariff as a whole will unjustifiably effect those involved in trafficking dangerous drugs who, themselves, are vulnerable and disadvantaged, who often experience drug addiction themselves, and who don't necessarily seek to profit from the illicit drug market, but rather feed any profits back into their own addiction.[62]

Harm Reduction Australia were strongly opposed to the proposal to increase the maximum penalty and were 'extremely concerned about matters of proportionality in relation to Australian drug laws and non-drug related offences'. Harm Reduction Australia advocated for this provision to increase the maximum penalty for trafficking in dangerous drugs to be removed from the Bill.[63]

The QMHC was also concerned with the following caution regarding increasing the penalty for trafficking in dangerous drugs, stating:

> In regard to the proposed changes related to trafficking, threshold quantities need to align with contemporary evidence on drug use patterns and possession practices. This includes considerations of people who engage in drug supply without reward of a commercial nature, to not be considered as drug traffickers.[64]

The QHRC requested additional information be provided to demonstrate that the increased penalties for trafficking dangerous drugs will achieve their intended purpose of deterrence.[65]

2.2.4 Department response

In relation to opposition from submitters to the increased maximum penalty for an offence for trafficking in dangerous drugs, QPS responded:

> QPS remains focussed on the investigation and prosecution of drug producers, suppliers and traffickers. Trafficking in dangerous drugs under s 5 of the DMA is the most serious form of drug offending in the DMA and justifies strong deterrent criminal sanction. The proposed increase in the maximum penalty for trafficking to life imprisonment, will broadly align the maximum penalty with other serious drug offences in Australian jurisdictions.[66]

---

60 See, for example, Legal Aid Queensland, submission 10; QMHC, submission 14; Harm Reduction Australia, submission 15.

61 Submission 10, p 2.

62 Submission 10, p 5.

63 Submission 15, pp 3-4.

64 Submission 14, p 4

65 Submission 5, p 5.

66 QPS and QFES, correspondence, 16 March 2003, attachment, p 11.

Committee comment

We note the concern from some submitters about the increase in the maximum penalty for trafficking in dangerous drugs from 25 years imprisonment to life imprisonment. We note the response from QPS in relation to this matter.

We are satisfied that there is a genuine need for this increase given the significant risks and harm that unlawful trafficking in dangerous drugs has on the community.

We note that the changes proposed by cl 4 do not include the prescription of a mandatory minimum sentence, meaning courts will retain the discretion to take into account the personal circumstances of the offender, including their age, subject to the provisions of the *Penalties and Sentences Act 1992*.

We also consider that the proportionately of the increased penalty, and its impact on human rights, should be assessed in context. That is, the increased penalty for the serious offence of trafficking in dangerous drugs is being introduced as part of a broader change that will also expand alternative, health-based responses to minor drug offences.

In light of the matters discussed above, we are satisfied that the increased penalty is proportionate and consistent with other penalties in the DMA. We are also satisfied that the increased penalty for drug trafficking limits human rights in a manner that is reasonable and justified in the circumstances.

2.3 Introduction of circumstance of aggravation for evading police offence

2.3.1 Bill proposal

Evasion of police offences are an issue of significant community concern. These offences are generally committed in concert with a range of other traffic offences such as speeding, driving dangerously or driving without due care to other road users. The consequences of committing these offences can be catastrophic, as evident from recent cases which resulted in fatalities.[67]

Although already carrying significant penalties and policing strategies (including impounding and forfeiture of motor vehicles), these offences continue to occur. Queensland has the third highest recidivism rates in the country at 69 per cent, with the national average at 59 per cent,[68] highlighting the need to create a greater deterrent.[69] Of particular concern are perpetrators who place the community at significant risk of harm and recidivist offenders who through their actions demonstrate a repeated failure to comply with traffic laws, a continued disregard for authority and an intention to persistently engage in offending behaviour.[70]

Amendments in the Bill reflect youth crime initiatives designed to target violent juvenile car thieves, recidivist offenders and dangerous drivers.

Clause 5 of the Bill proposes that the maximum penalty under s 754 of the PPRA be increased to 5 years imprisonment and 300 penalty units if this offence is committed in the following circumstances:

- the offence is committed at night
- the driver of the motor vehicle uses or threatens violence
- the driver of the motor vehicle is armed or pretends to be armed
- the driver of the motor vehicle is in company

67 Explanatory notes, p 4.

68 Australian Government Productivity Commission, 'Australia's prison dilemma Research Paper' (October 2021), p 42.

69 Explanatory notes, p 8.

70 Explanatory notes, pp 4 and 8.

- the driver of the motor vehicle damages or threatens to damage any property, or
- the driver of the motor vehicle has previously been convicted of an offence under:
    - s 754 of the PPRA
    - s 408A of the Criminal Code
    - s 427 of the Criminal Code, or
    - s 328A of the Criminal Code.

The Bill proposes a maximum penalty of 200 penalty units or 3 years imprisonment for evasion offences not covered by the above circumstances.[71]

2.3.2 New circumstance of aggravation raises FLP and human rights issues

To be consistent with FLPs, legislation must have sufficient regard to rights and liberties of individuals, including by ensuring that its consequences are relevant and proportionate. This means that the penalties associated with the new circumstance of aggravation for evading police should be proportionate to the offence, and consistent with other penalties in legislation.[72]

The new circumstance of aggravation also engages several of the rights protected by the HRA, including:

- the right to liberty and security of person[73]
- rights in criminal proceedings.[74]

QPS's position is that any limitation of these rights by the new circumstance of aggravation for evading police is reasonable and justified in the circumstances.[75]

The statement of compatibility justifies the need for an increased penalty associated with the new circumstance of aggravation on the basis that the offence is still occurring despite the existing significant penalty, and poses a significant risk to the community. While admitting that 'it is not possible to quantify or guarantee the effectiveness of increased penalties in deterring future criminal activity', it ultimately concludes that the benefits to the community far outweigh any limitations of human rights.[76]

2.3.3 Stakeholder views

A number of submitters raised concerns about the proposed amendments to the evasion offence under s 754 of the PPRA.

ATSILS, in its submission, stated that it did not support the proposed amendments in the Bill which seek to increase the penalties and maximum terms of imprisonment for evasion offences. ATSILS submitted:

> Whilst we would not support this proposed amendment – we would in particular reference our disagreement that 'night-time' or 'being in company' of themselves, should be a feature of aggravation.[77]

ATSILS also submitted:

---

71 Bill, cl 15(1)(b).

72 Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental legislative principles: the OQPC notebook*, 2008, p 120. See also LSA, s 4(2)(a).

73 HRA, s 29.

74 HRA, s 32.

75 Statement of compatibility, pp 5-8.

76 Statement of compatibility, p 7.

77 Submission 9, p 4

> Increasing jail times for offenders has been proven not to work in reducing recidivism and, in fact, may increase the likelihood of recidivism. We anticipate that, similar to other 'tough on crime' approaches, the proposed amendments to the Evasion offence will disproportionately affect Aboriginal and/or Torres Strait Islander individuals and particularly young persons who are already amongst the most vulnerable in our community. Consistent with our advocacy position over many years, we reiterate that evidence-based, community-led prevention and early intervention initiatives that address the root causes of youth offending is the correct way to address the current youth justice crisis along with impactful investment in housing, employment, education and health to address the upstream drivers of offending behaviour and the related social and economic iniquities that Aboriginal and Torres Strait Islander families face.[78]

LAQ also did not support the introduction of circumstances of aggravation to the evasion offences. LAQ contended that the proposal will have significant and disproportionate implications for child offenders. LAQ further submitted:

> Of particular concern is clause 15(2)(b)(v), which provides for the increased maximum penalty to be applied to persons who have relevant prior convictions. Unlike offences such as contravention of a domestic violence order, contained in s 177 *Domestic and Family Violence Protection Act 2012* (Qld), which provide for the circumstance of aggravation to apply in circumstances where the previous conviction occurs within 5 years before the commission of the current offence, the proposed circumstance of aggravation does not provide for a like condition.
>
> LAQ submits the provisions as currently drafted are inconsistent with the *Criminal Law (Rehabilitation of Offenders) Act 1986 (Qld)*, which provides for a rehabilitation period of 5 or 10 years and infringes upon a persons' rights to recognition and equality before the law and not to be tried or punished more than once.
>
> LAQ remains concerned that the proposed circumstance of aggravation will have significant and disproportionate implications in relation to child offenders, including in increased rates of detention, where conditions have been, at times, described as 'cruel, inappropriate, and have served no rehabilitative effect'.[79]

In its submission, the QHRC recommended that more information be provided to demonstrate that the increased penalties for evasion offences will achieve their intended purpose of deterrence.[80]

2.3.4 Department response

In relation to opposition from submitters to the introduction of a circumstance of aggravation for evasion offences, QPS pointed out that various incidents involving deaths and serious harm associated with unlawful use of a motor vehicle continue to raise community concern. In its response to submissions, QPS noted:

> Between 2018 and 2022 there have been consistently more than 5,000 police evasion offences record across the State. However, police apprehend far fewer offenders. In 2022, the number of reported offenders totalled 1,711 compared with 5,410 reported offences.[81]

At the public briefing, QPS provided the following additional information:

> The proposed amendments to section 754 of the Police Powers and Responsibilities Act create a circumstance of aggravation to the evasion offence, supporting the Queensland government's commitments to reducing road trauma by tackling hooning offences, dangerous driving and the unlawful use of motor vehicles. Every year there are over 5,000 recorded evasion offences under section 754. Offenders who evade police not only demonstrate a disregard for the safety and welfare of the community but also undermine the capacity of police to enforce the law. The bill addresses this issue by creating an aggravated offence which targets recidivist offenders and offenders who place the

78 Submission 9, pp 7-8.

79 Submission 10, p 5.

80 Submission 5, p 6.

81 QPS and QFES, correspondence, 16 March 2003, attachment, p 11.

community at significant risk of harm. Where the circumstance of aggravation applies, an offender will face a maximum penalty of five years imprisonment.[82]

Committee comment

We note the concerns of a number of submitters about the changes to the evasion of police offences, including their concerns that the increased penalty associated with the new circumstances of aggravation may have a disproportionate effect on certain groups. We also note the response from QPS in relation to the seriousness of evasion of police offences and the widespread harm that they cause.

Evading police can result in tragic consequences for those in the vehicle, pedestrians and other road users. Reducing the number of evade police incidents would be beneficial for all members of society.

On balance, we conclude that the amendments under the Bill relating to the evading police offence are appropriate in the circumstances and have sufficient regard to the rights and liberties of individuals. In light of the matters discussed above, we are also satisfied that creation of the new circumstance of aggravation for evading police limits human rights in a manner that is reasonable and justified in the circumstances.

2.4 Appointment of Executive Officers

QPS recruits and selects personnel under s 5.2 of the *Police Service Administration Act 1990* (PSAA).

Historically, QPS has invited applications and made appointments, on the merits of applicants to the generic rank and not to a particular position.[83] The decision of *Lewis v Commissioner of the Queensland Police Service* [2021] QSC 169 highlighted a technical issue with the appointment process outlined in s 5.2 and found a distinction between the rank of a police officer and a 'police officer position'.[84]

The proposed amendment in cl 30 will amend s 5.2 of the PSAA to allow a person to be appointed as a police recruit or an executive officer or to a police officer position.[85] The proposed amendment will allow a person to be appointed as an executive officer either through the person's rank or position while maintaining the government's commitment to the merit principle in the appointment of its employees.[86]

QPS provided the following additional information concerning these amendments at the public briefing:

> The bill also contains amendments that change the way that executive officer appointments can be made within QPS. It has become clear from a judicial review decision that section 5.2 of the Police Service Administration Act does not enable QPS to appoint police officers generically to a rank. That is, a specific position must be advertised and appointments can only be made to the specific position advertised. Amendments in this bill facilitate the appointment of deputy commissioners and assistant commissioners to a generic rank rather than a specific position. With respect to these ranks, which have managerial responsibility for significant components of the organisation, a degree of flexibility is required in the appointment process to manage the strategic needs of our organisation.[87]

2.5 Requirements about making request or application under ss 64 and 65 of the FES Act

Chapter 3, Part 7 of the FES Act provides a framework for the control and prevention of fires. Its core provisions are detailed in Table 3.

---

82 Public briefing transcript, Brisbane, 24 March 2023, p 3.

83 Explanatory notes, p 4.

84 Explanatory notes, p 4.

85 Explanatory notes, p 8.

86 Explanatory notes, p 4.

87 Public briefing transcript, Brisbane, 24 March 2023, p 3.

Table 3 – Core provisions of the framework for the control and prevention of fires

Provision	Summary
Section 62 *Offence to light unauthorised fire*	It is an offence to light an unauthorised fire
Section 63 *Authorisation of fires by commissioner*	Provides that the Queensland Fire and Emergency Services commissioner (QFES commissioner) may, by gazette notice, authorise the lighting of fires
Section 64 *Prohibition by commissioner against lighting of fires*	Provides that the QFES commissioner may prohibit the lighting of all or particular fires on land by giving a prohibition notice to the occupier of the land, and if requested by the land occupier, consider giving notice to the owner of adjoining land to prohibit the lighting of fires
Section 65 *Granting of permits*	A person may apply to the QFES commissioner (either orally or in writing) for a permit to light a fire on any land, the QFES commissioner may grant or refuse the application
Section 67 *Occupier to extinguish fire*	The occupier of land must take all reasonable steps to extinguish or control an unauthorised fire and must report the fire to specified officers

Source: Explanatory notes, p 8.

Under s 4 of the *Fire and Emergency Services Regulation 2011* (FES Regulation), there is provision that a request made under s 64(2) of the FES Act must be made to the QFES commissioner in writing and must contain specific information. Under s 5 of the FES Regulation, there is provision that an application for a permit to light a fire under s 65 of the FES Act must contain specific information.[88]

However, s 64 of the FES Act does not provide for a regulation to prescribe requirements about how a request must be made. Further, ss 64 and 65 do not expressly provide that a regulation may prescribe information required for a request that a prohibition notice be given or an application for a permit to light a fire. Clauses 8 and 9 propose to amend ss 64 and 65 of the FES Act to include that the regulation may prescribe information required.[89]

QFES provided the additional information concerning these amendments at the public briefing:

> The bill proposes amendments to sections 64 and 65 of the Fire and Emergency Services Act which form part of the framework the act provides for the control and prevention of fires. The act allows the QFES commissioner to prohibit the lighting of all or particular fires on land by giving a prohibition notice to the occupier of the land. A notice can be given, including following a request made by an occupier of adjoining land. The act also provides that persons may apply to the QFES commissioner for permits to light fires. The Fire and Emergency Services Regulation then provides for a number of matters relating to these applications and requests, including how they are to be made and the information that must accompany them. The amendments to sections 64 and 65 will ensure that the provisions of the regulation that stipulate these matters have an explicit head of power in the primary legislation.[90]

2.5.1 Delegation of legislative power raises FLP issues

To have sufficient regard to the institution of Parliament, the Bill should delegate legislative power only in appropriate cases and to appropriate persons, and ensure their exercise of delegated power remains subject to the scrutiny of the Legislative Assembly.[91]

88 Explanatory notes, p 5.

89 Explanatory notes, pp 5, 8.

90 Public briefing transcript, Brisbane, 24 March 2023, p 3.

91 LSA, s 4(4)(a), (b).

As set out above, the Bill would allow a regulation to prescribe the information required in a request for the issue of a prohibition notice and in an application for a permit to light a fire. The regulation could also provide for the way in which a request for issue of a prohibition notice must be made.[92]

The explanatory notes identify flexibility as a key reason why these matters are to be prescribed by regulation.[93]

The relevant regulations will be required to be tabled in the Legislative Assembly, where they will be subject to scrutiny, including disallowance.

Committee comment

The committee considers that the matters in the Bill able to be prescribed by regulation under the FES Act appear appropriate for delegation, and will be subject to parliamentary scrutiny. In light of this, the committee is satisfied that the relevant amendments have sufficient regard to the institution of Parliament.

2.6 Assaulting a person performing functions or exercising powers under the FES Act

It is an offence under s 150C of the FES Act to obstruct an authorised person in the performance of a function under the FES Act without reasonable excuse. Further, if a person is obstructing an authorised person in the performance of a function under the FES Act, s 150C(2) provides that the authorised person must give the other person a warning that it is an offence to obstruct the authorised person and that the authorised person considers the person's conduct to be obstructive. For the purposes of s 150C, 'obstruct' includes abuse, assault, hinder, resist, threaten and attempt or threaten to obstruct.[94]

It is not considered necessary that a person performing a function under the FES Act should be required to give a warning to another person that an assault would be considered an obstruction and would constitute an offence.[95] Therefore, cl 10 amends the FES Act to add new s 150BA providing specifically for assault and that a person must not assault another person performing a function or exercising power under the FES Act.[96] The word 'assault' has the same meaning as in s 245 of the Criminal Code. Clause 11 removes the reference to 'assault' in s 150C(3).[97]

QFES provided the additional information concerning these amendments at the public briefing:

> QFES officers and volunteers play a crucial role in safeguarding persons, property and the environment including in situations of fire and emergency. Therefore, it is necessary that the legislation supports those officers and volunteers by ensuring they can perform the functions conferred on them by this parliament and that the community expects of them without fear of assault or, at the very least, confident that there will be appropriate consequences in circumstances of an assault being committed.[98]

2.6.1 New offence raises FLP and human rights issues

The new offence of assaulting a person performing functions or exercising powers under the FES Act engages the right to liberty and security of the person, which is protected in s 29 of the HRA.

QFESs position is that any limitation of this right is reasonable and justified in the circumstances. To support this position, QFES pointed to:

92 Bill, cls 8 and 9.

93 Explanatory notes, p 10.

94 Explanatory notes, pp 5, 6, 9.

95 Explanatory notes, p 6.

96 Explanatory notes, pp 6, 9.

97 Explanatory notes, p 6; Bill, cls 10 and 11.

98 Public briefing transcript, Brisbane, 24 March 2023, p 4.

- the critical role that persons acting under the FES Act play in safeguarding the community, property and the environment
- the fact that the new offence imports the Criminal Code definition of assault, which provides sufficient, and appropriate, defences or excuses for assaults
- the reasonableness of removing the warning requirement, given that a person considering an assault on someone who is performing functions or exercising powers under the FES Act will know that criminal sanction will attach to such an action regardless of whether they have been warned.[99]

The new offence also raises FLP issues, as to have sufficient regard to rights and liberties of individuals, the consequences of legislation should be relevant and proportionate. A penalty should be proportionate to the offence, and penalties within legislation should be consistent with each other.[100]

The maximum penalty for the proposed offence of assaulting a person performing or exercising functions under the FES Act is 100 penalty units ($14,375)[101] or 6 months imprisonment.[102]

This penalty is the same as that for the offence of obstructing a person performing a function or exercising a power under the FES Act.[103] However, it is significantly lower that the penalty for common assault in the Criminal Code, which is 3 years imprisonment.[104]

The explanatory notes provide the following justification for the size of the penalty:

> The penalty… is considered consistent with similar penalties applying across Queensland legislation. It is also considered appropriate given the importance of ensuring that persons performing functions or exercising powers under the Act, including those relating to safeguarding persons, property and the environment can do so without fear of obstruction or assault.[105]

The explanatory notes also cite a recent report from the Queensland Sentencing Advisory Council, which stresses the importance of retaining provisions that provide separate levels of offences for the same forms of criminal behaviour, to ensure that individuals are not subject to more severe penalties for actions that are relatively minor.[106]

Committee comment

The committee notes that the proposed change is designed to separate, clarify and align the existing offence in s 150C with commensurate offence provisions in other legislative schemes.[107] It does not increase the custodial penalties associated with assault in these circumstances, nor does it remove the warning and reasonable excuse features of the existing obstruction offence in s 150C.

---

99 Statement of compatibility, pp 8-10.

100 Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental legislative principles: the OQPC notebook*, 2008, p 120. See also LSA, s 4(2)(a).

101 The value of a penalty unit is currently $143.75: *Penalties and Sentences Regulation 2015*, s 3; *Penalties and Sentences Act 1992*, ss 5, 5A.

102 Bill, cl 10.

103 See FES Act, s 150C; Bill, cl 11.

104 Criminal Code, s 335.

105 Explanatory notes, p 11.

106 Queensland Sentencing Advisory Council, *Penalties for assaults on public officers,* 2020 cited in Explanatory notes, p 11

107 For example, s 790 of the PPRA creates the offence of assaulting or obstructing a police officer in the performance of the officer's duties, which has a maximum penalty of 40 penalty units or 6 months imprisonment. This penalty increases to 60 penalty units or 12 months imprisonment if the offence is committed within, or in the vicinity of, licensed premises.

The committee considers that the intent of the new offence is to protect persons (including volunteers) performing functions or exercising powers under the FES Act. In our view, these functions and powers are integral to ensuring public safety.

The committee also notes that the Queensland Sentencing Advisory Council supports provisions such as this that provide separate levels of offences for the same forms of criminal behaviour.

On this basis, the committee is satisfied that new offence in the FES Act has sufficient regard to rights and liberties of individuals and is compatible with the HRA.

Appendix A – Submitters

Sub #	Submitter
001	Death in Custody Watch Group – Far North Queensland
002	Australian Medical Association Queensland
003	Drug Free Australia
004	Leyland Barnett
005	Queensland Human Rights Commission
006	Australian Psychedelic Society
007	Queensland Network of Alcohol and Other Drug Agencies Ltd
008	Unharm
009	Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd
010	Legal Aid Queensland
011	Youth Advocacy Centre Inc
012	Alcohol and Drug Foundation
013	Queensland Law Society
014	Queensland Mental Health Commission
015	Harm Reduction Australia

Appendix B – Witnesses at public hearing

Queensland Human Rights Commission

- Ms Heather Corkhill, Senior Policy Officer
- Ms Bree Callanan, Senior Lawyer

Queensland Mental Health Commission

- Mr Ivan Frkovic, Queensland Mental Health Commissioner
- Mrs Anita Krug, Program Manager

Australian Medical Association Queensland

- Dr Brett Dale, Chief Executive Officer

Drug Free Australia

- Mr Gary Christian, Research Director

Alcohol and Drug Foundation

- Mr Martin Milne, State Manager
- Mr Robert Taylor, Knowledge Manager

Queensland Law Society

- Ms Rebecca Fogerty, Vice President
- Mr Damian Bartholomew, Chair, Children's Law Committee

Youth Advocacy Centre Inc

- Ms Katherine Hayes, Chief Executive Officer

Unharm

- Dr Will Tregoning, Chief Executive Officer

Australian Psychedelic Society

- Dr Samuel Douglas, President
- Dr Simon Beck, Secretary

Queensland Network of Alcohol and Other Drug Agencies Ltd

- Ms Rebecca Lang, Chief Executive Officer
- Ms Susan Beattie, Director, Policy and Systems

Private capacity

- Mr Leyland Barnett

Appendix C – Officials at public briefing

Queensland Police Service

- Mr Mark Wheeler, Acting Deputy Commissioner, Regional Operations
- Ms Margo Watson, Acting Inspector, Drug and Alcohol and Coordination Unit, Police and Performance Division
- Senior Sergeant Andrew Wilson, Legislation Branch, Police and Performance Division

Queensland Fire and Emergency Service

- Ms Jane Houston, Acting Executive Director, Strategy Directorate
- Ms Carly Osborne, Acting Director, Strategic Policy and Legislation

Statements of Reservation

Statement of Reservation – Laura Gerber MP, Deputy Chair, Member for Currumbin and Jon Krause MP, Member for Scenic Rim

The primary objective of the Bill, as set out in the Explanatory Notes, is "to promote the efficiency of the Queensland Police Service (QPS) and the Queensland Fire and Emergency Services (QFES) through a range of amendments that will deliver operational or administrative improvements."

In relation to the QPS it is proposed that this be done through:

- Enhancements to the Police Drug Diversion program involving prescribed quantities of any type of dangerous drug and certain pharmaceuticals;
- Changes in the method of appointment of Executive Officers; and
- Introduce a circumstance of aggravation for the offence of evading police.

The Opposition has no complaint with those proposals designed to amend QPS administrative arrangements (the second factor above) or strengthen laws relating to criminal activity (the third factor above).

The Opposition has no issue with other elements of the Bill involving the QFES or the proposal to amend the maximum penalty to life imprisonment in relation to the *Drugs Misuse Act 1986*.

However, the proposal in relation to drug diversion has the potential to create doubt and uncertainty within the broader community and should be rejected at this time.

The proposal risks conveying mixed messages in relation to the Parliament's determination to authorise the strongest possible action against those involved in the drugs trade. It is incongruous that the Bill contains provisions to account for what the Explanatory Notes at page 6 categorise as:

> *The distribution and subsequent use of dangerous drugs is a major factor in anti-social behaviour, family and domestic violence, property crime and violence related offences and causes significant risk to road safety. Increases in the maximum penalty for this offence by amendments in the Bill target offenders who seek to profit from the illicit drug market and provides a strong deterrence to this activity.*

On the other hand, the bill envisages a drug diversion program which is the antithesis of this determined approach. This is clearly a confused and confusing response to a significant social problem which is deserving of a consistent and effective approach.

Such an approach is not evident from this Bill.

The Opposition does not believe that this inconsistent response is in the community interest and raises significant concerns which have yet to be addressed.

It is equally concerning that these amendments are justified as a means "to provide police efficiency" (Explanatory Notes, page 1). While there will always be a need to promote police efficiency, it is critical that any such initiatives do not conflict with the need to maintain a sensible and measured response to illegal behaviour. Simply removing significant sanctions against certain

activities in the name of efficiency will not always bring the desired result. The simple assertion of the need for efficiency is no substitute for a considered response to a significant social problem.

The practicalities of the changes suggested raised serious questions as to their effectiveness. The Minister for Police and Corrective Services and Minister for Fire and Emergency Services indicated that 17,000 minor drug offenders will be eligible for the new police drug diversion program in its first year of implementation (*Hansard*, 21 February 2023, page 60).

Beyond claiming the necessary funds to accommodate these offenders will be drawn from the existing QPS budget, without a need for supplementation, there is no commitment that sufficient funds, resources, staff and outside providers will be available to undertake the necessary work to make the program effective. It appears to be relying upon a leap of financial faith to believe this program will be able to be delivered in the way the government believes. Unfortunately, the present government has an unenviable record when it comes to matching financial expectations with financial reality.

There needs to be a significant amount of evidence produced to support the contention that the program will be a success. This evidence has not been forthcoming.

In respect of an eligible drug offence for drug diversion, the Bill also proposes to remove from the *Police Powers and Responsibilities Act 1997* ('PPRA') the type of drug and the eligible quantity and instead prescribe these by regulation. This is of great concern to the Opposition. Regulations can be changed by ministerial arrangement and do not need to go through parliamentary scrutiny. Placing the drug type and the eligible quantity in the Regulation removes parliamentary scrutiny should changes be made to either the type of drug that is eligible for drug diversion or the prescribed quantity. The Opposition believes these should remain in the PPRA to avoid being easily altered and allow for parliamentary scrutiny should changes wish to be made.

The Opposition is concerned at the limited amount of consultation behind this initiative. At page 11 of the Explanatory Notes it is revealed that:

> *No external consultation was undertaken during development of the Bill.*

The conclusion to be drawn from this disturbing statement is that the government spent time talking to itself but felt no obligation to take the community into its confidence. The diversionary measures contained in the Bill constitute a significant change from existing arrangements and the government, to meet its obligations to the community, should have engaged in genuine consultation. Our criminal law is the ultimate statement of what is, and is not, acceptable conduct and activity in Queensland – and the government is changing this baseline standard with these drug measures without any type of broader conversation with the community. Paradoxically, some in government claim these measures will see drug use being treated more as a health issue than a criminal one – and yet this bill was introduced by the Minister for Police, and officials from that department, not Queensland Health, appeared before the committee. Just like the diversion measures, this incongruity looms large and sends mixed messages about what the government is really trying to achieve.

The fact that no external consultation occurred raises doubts as to the government's bona fides in trying to create a solution which enjoys community support and acceptance.

In terms of broader consultation, the timeframe for public consultation during the committee's examination of the Bill was completely inadequate given the importance of the bill and the lack of external consultation during the development of the Bill.

It is for this combination of reasons that the Opposition has serious doubts as to the efficacy of those parts of the Bill relating to drug diversion. The government should review these provisions, give adequate time for genuine community input and endeavour to craft an effective response to the significant drug threat to our society.

Laura Gerber MP
Deputy Chair
Member for Currumbin

Jon Krause MP
Member for Scenic Rim