

# Police Powers and Responsibilities (Jack's Law) Amendment Bill 2022

## Statement of Compatibility

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, Mark Ryan, Minister for Police and Corrective Services and Minister for Fire and Emergency Services, make this statement of compatibility with respect to the Police Powers and Responsibilities (Jack's Law) Amendment Bill 2022 (the Bill).

In my opinion, the Bill is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

### Overview of the Bill

The primary objective of the Bill is to extend and expand the trial of hand held scanner provisions to detect unlawfully possessed knives beyond the Surfers Paradise and Broadbeach safe night precincts (SNPs).

The Bill will achieve this objective by amending the *Police Powers and Responsibilities Act 2000* (PPRA) to:

- extend the expiry date of the scanning provisions to 30 April 2025;
- increase the scope of prescribed public areas for scanning to include all 15 SNPs and all public transport stations, including public transport vehicles; and
- strengthen the criteria that a senior police officer must consider before authorising the use of a hand-held scanner device.

### Human Rights Issues

#### Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

In my opinion, the human rights that are relevant to the Bill are:

- Recognition and equality before the law – (section 15(3) of the *Human Rights Act 2019* (HRA));
- Right to life – (section 16 of the HRA);
- Freedom of movement – (section 19 of the HRA);
- Freedom of thought, conscience, religion and belief – (section 20 of the HRA);
- Property rights – (section 24 of the HRA);
- Privacy and reputation – (section 25 of the HRA);
- Protection of families and children – (section 26(2) of the HRA); and
- Cultural rights – (section 27 of the HRA).

The amendments to the PPRA aimed at expanding the scope of hand held scanning provisions to all SNP and public transport stations, including public transport vehicles, promote the right to life (section 16) as they are directed at reducing unlawful knife possession and the potential for the commission of life threatening offences, that can and have resulted in homicides in such locations.

#### Recognition and equality before the law (section 15 of the HRA)

The right to recognition and equality before the law reflects that every person has the right to recognition as a person before the law, that every person is equal before the law and that laws should not be discriminatory.

This right may be limited with the extension and expansion of the trial to detect unlawfully possessed knives using hand held scanners beyond the Surfers Paradise and Broadbeach SNPs for a further two years. This will allow police to randomly stop and scan people without reasonable suspicion in public places in SNPs and public transport stations and public transport vehicles where prior evidence-based authorisation has been granted to scan in those areas.

#### Freedom of movement (section 19 of the HRA)

The right to freedom of movement protects a person's right to move freely within Queensland, enter and leave it, and choose where to live if they are lawfully within Queensland.

This right may be limited as police will have the power to stop a person and require them to submit to the use of a hand held scanner, to ascertain if the person has a knife in their possession. The right may be further limited should police form a reasonable suspicion that the person unlawfully has a weapon or knife. Police may then engage stop and search powers under sections 29 and 30 of the PPRA to search the person for a weapon or knife.

Additionally, if a knife is found to be illegally possessed by a person in a SNP, police may issue a banning notice excluding the person from entering or remaining in a public place within a SNP for up to one month after the day the notice takes effect. The banning notice may be extended for up to three months by a police officer of the rank of at least senior sergeant.

#### Freedom of thought, conscience, religion, and belief (section 20 of the HRA)

The right to freedom of thought, conscience, religion, and belief, provides the freedom for every person to think and believe what they want and includes being able to practice their religion publicly and privately as an individual or a group. A person must not be coerced or restrained in a way that limits his or her freedom to have or adopt a religion or belief. The essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious beliefs by worship and practice or by teaching and dissemination. However, the concept means more than that. 'Freedom means that, subject to such limitations as are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others, no one is to be forced to act in a way contrary to

his beliefs or his conscience.<sup>1</sup> Freedom of religion has been recognised as being ‘of the essence of a free society’.<sup>2</sup>

Knives are an important religious symbol for some faiths. For example, baptised Sikhs are required to carry a kirpan, which is generally a small, blunted object resembling a dagger. The proposal may have a particularly intrusive impact on devout Sikhs and therefore interfere with freedom of religion and potentially cultural rights (section 27 of the HR Act).

#### Property rights (section 24 of the HRA)

This right protects all people’s right to own property alone or with others and that a person should not be unlawfully or arbitrarily deprived of the person’s property. In the human rights context, arbitrarily is taken to mean capricious, unpredictable, unjust, and unreasonable in the sense of not being proportionate to a legitimate policy objective. This right does not include a right to compensation if a person is deprived of their property.

A persons property rights may be limited as the scanning for a knife by police may lead to the confiscation and forfeiture of an unlawfully possessed knife.

#### Privacy and reputation (section 25 of the HRA)

The right to privacy and reputation protects a person’s right not to have their privacy and reputation unlawfully or arbitrarily interfered with. The nature of the right to privacy and reputation is very broad. Protection against a person’s privacy is limited to unlawful or arbitrary interference. The notion of arbitrary interference extends to lawful interferences, which are also unreasonable, unnecessary, or disproportionate.

The concept of lawfulness in the context of the right to privacy means that no interference can occur except in cases envisaged by the law. Interference authorised by states can only take place based on law, and the law must be adequately accessible and precise so a person can regulate their conduct. These are concepts that are consistent with the rule of law principles. The idea of arbitrariness in the context of the right to privacy carries a human right meaning of capriciousness, unpredictability, injustice and unreasonableness – in the sense of not being proportionate to the legitimate aim sought.

A person’s right to privacy and reputation may be limited if they are selected by police to be scanned for a knife as this procedure may interfere with their dignity and bodily integrity.

#### Protection of families and children (section 26 of the HRA)

Every child has the right, without discrimination, to the protection that is needed by the child, and is in the child’s best interests because of being a child.

This right may be limited with an extension and expansion of the trial to detect unlawfully possessed knives using hand held scanners in public places in all SNPs and public transport infrastructure for a further two years. Police have the power to stop and scan children, which may increase the interactions children have with police.

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<sup>1</sup> *R v Big M Drug Mart Ltd* [1985] 1 SCR 295, 336-7, 351.

<sup>2</sup> *Church of the New Faith v Commissioner of Pay-roll Tax (Vic)* (1983) 154 CLR 120, 130.

### Cultural rights (section 27 of the HRA)

All persons with a particular cultural, religious, racial, or linguistic background must not be denied the right, in a community with other persons of that background, to enjoy their culture, to declare and practice their religion, and to use their language.

### **If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)**

On 30 April 2021, the *Youth Justice and Other Legislation Amendment Act 2021* commenced, enacting amendments to numerous statutes including the PPRA. The PPRA amendments, in part, allow police to use hand held scanners to detect unlawfully possessed knives in the Surfers Paradise and Broadbeach SNP as part of a trial.

The primary goal of the trial was to detect and deter the unlawful possession of knives in those areas. This provided public safety benefits by reducing the opportunity for serious violent offending involving knives and other bladed weapons.

After a 12 month review, the trial is to be extended and expanded to capture public places in all SNPs and all public transport stations and public transport vehicles where prior evidence based authorisation from a senior police officer has been granted. Scanning can be conducted for 12 hours in those authorised areas. The legislation will expire on 30 April 2025.

Safe night precincts are prescribed in the *Liquor Act 1992* and are characterised by the presence of licensed premises and concentrations of pedestrian traffic, particularly in the evenings and weekends. The boundaries of the SNPs are also defined in the *Liquor Act 1992*. These areas tend to function as entertainment precincts and can result in the congregation of large numbers of people. The concentration of people in these areas mean the risk of harm being caused through the carriage of weapons is elevated and warrants particular attention.

The reason for expanding the trial to also capture areas of public transport infrastructure is to provide the public safety benefits of reduced unlawful knife possession and the consequent reduced potential for offences involving a weapon in those public transport areas, including the areas that a person carrying a knife may be travelling to.

In 2022, a 20-year-old male was charged with murder after stabbing a 24-year-old man in the neck with a pair of scissors in the Fortitude Valley Metro Shopping Centre approximately 75 meters from the Fortitude Valley Railway Station and within the Fortitude Valley SNP. In 2021, a 14-year-old youth was charged with grievous bodily harm after stabbing a 16-year-old youth at Coomera Railway Station.

The screening of individuals for knives in areas which have been identified as high-risk operate to both remove knives from the environment and dissuade individuals from entering these areas while carrying a knife.

The 12-month trial of scanning powers in the Surfers Paradise and Broadbeach SNPs uncovered an array of concealed weapons resulting in 68 bladed articles being seized, 53 weapons offences detected, and 101 other offences detected while scanning for knives. Of those weapons seizures, eight were household knives, 59 were other types of knives, and one was an axe. Other weapons seized included a replica handgun, one baton, two hand tools, five knuckle

dusters, one screwdriver and one other tool. Police also seized one acoustic and one electric antipersonnel device while scanning.

The amendments in the Bill are likely to achieve the purpose of reducing the prevalence of knife crime in these areas and consequently ensure the safety of other individuals in the community. The proposed amendment is rationally connected to the legitimate ends identified above and therefore satisfies section 13(2)(c) of the HRA.

*Expand hand held scanner provisions to detect unlawfully possessed knives in public places in safe night precincts and public transport stations and public transport vehicles*

(a) the nature of the right

The proposed amendment will give police a power to stop and scan people for knives in public places in all SNP areas, public transport stations and public transport vehicles where prior evidence based authorisation has been granted. This will potentially interfere with people's freedom of movement (section 19 of the HRA). It might be thought that a person who is stopped will also be deprived of their liberty (section 29 of the HRA), but in human rights discourse the relevant right is more likely to be characterised as the right to freedom of movement. Accordingly, the proposal limits freedom of movement, but not the right to liberty.

The power to scan a person may be deemed to interfere with a person's dignity and bodily integrity, and therefore limits the right to privacy (section 25(a) of the HRA).

Section 15(3) of the HRA protects equality before the law. That right guards against arbitrary application of the law. The proposal would allow police officers to randomly select people to stop and scan without any basis, such as a reasonable suspicion. Accordingly, the right in section 15(3) may be engaged.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation includes the following:

- minimising the risk of physical harm caused by knife crime in SNPs and public transport stations and public transport vehicles by removing knives from individuals in these areas; and
- ensuring the safety of others in the community by reducing knife crime.

It is clear that those purposes are proper purposes under section 13(2)(b) of the HRA.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The proposed action of scanning individuals for knives in prescribed public areas that, in the previous 6 months, have evidence of an offence committed by a person armed with a knife or other weapon; or an offence under the Criminal Code involving violence against a person punishable by at least 7 years imprisonment; or multiple unlawful knife or weapons possession offences, will operate to remove knives from that area and dissuade individuals from entering those areas with a knife. As such, it is likely to achieve the purpose of reducing the prevalence of knife possession and associated knife crime and further strengthen community safety.

The proposed amendment is rationally connected to the legitimate ends identified above and therefore satisfies section 13(2)(c) of the HRA.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

The following alternatives were considered:

- requiring a police officer to hold a suspicion or reasonable suspicion before stopping and scanning a person;
- requiring a police officer to be satisfied of some lower state of satisfaction before stopping and scanning a person;
- requiring a police officer to seek a person's consent before scanning the person; and
- excluding children from the persons who may be subject to use of a hand held scanner;

Each of these alternatives would have increased the risk that knives would not be detected until they have placed the community at risk. As such, while those alternatives would be less restrictive measures, they would not be as effective in achieving the purpose.

The legislative scheme introduced in 2021 does not require the senior police officer to consider any evidence base prior to authorising the use of hand held scanners. This is because the existing evidence base in the Surfers Paradise SNP had already been established regarding knife crime violence and unlawful knife possession.

In recognising that the scope of the scanning provisions contained in the Bill have been expanded to capture all SNPs, public transport stations and public transport vehicles, the authorisation requirements in the Bill have been strengthened. Clause 4 of the Bill provides that the senior police officer may only give the authorisation if any of the following happened at the relevant place in the previous 6 months:

- at least 1 offence committed by a person armed with a knife or other weapon;
- at least 1 offence involving violence against a person punishable by 7 years imprisonment or more under the Criminal Code; or
- more than 1 offence against section 50(1) (Possession of weapons) or section 51(1) (Possession of a knife in a public place or school) of the *Weapons Act 1990*.

The senior police officer must also consider the use of hand held scanners is likely to be effective to detect or deter the commission of an offence involving the possession or use of a knife or other weapon. Also, the senior police officer must consider the effect that scanning may have on any lawful activity at the relevant place, and whether previous authorisations in the relevant area identified persons carrying knives or other weapons.

The requirement that the senior police officers takes into account any lawful activity at the relevant place, is intended to ensure that the human rights of persons who are not subject of scanning are not unnecessarily interfered with. For example, a scanning authorisation may be restricted to time frames or locations that ensure the free movement of the public during peak hour travel.

The amendments in the Bill do not change the current definition of a senior police officer who is a police officer of at least the rank of inspector, or a police officer of at least the rank of senior sergeant authorised by the commissioner to give an authorisation to use hand held scanners.

Consequently, the requirement that a senior police officer provide prior authorisation is now based on evidence of offending that suggests a heightened risk of weapons possession in the area. The authorisation requirement is aimed at ensuring that scanning only occurs in SNPs or public transport areas that require it.

Another alternative was to limit the scope of the relevant places to public transport infrastructure that is in close proximity to all SNPs. While this is likely to decrease knife crime in those areas, it may have the effect of causing displacement of knife crime and would limit the opportunity to promote community safety across the broader public transport network. The application of an evidence based approval lens capturing past weapons and violence related offences in the relevant public place will ensure any potential limitation of the person's human rights is justified.

The provisions in Chapter 2, Part 3A of the PPRA are otherwise tailored to only limit human rights to the extent necessary to deal with the prevalence of knives. Scanning for knives is intended to be quick and non-invasive. It does not require the names of individuals who are scanned to be provided, thus reducing any limitation of an individual's privacy, and reducing the time during which an individual's movement is limited.

Section 39H contains police officer safeguards with respect to these powers. These are:

- requiring the police officer to exercise the power in the least invasive way that is practicable in the circumstances;
- allowing the police officer to detain the person for only so long as is reasonably necessary to exercise the power;
- requiring the police officer to provide their name, rank, and station if requested;
- requiring the police officer to inform the person to be scanned that they are required to allow the officer to use a hand held scanner to determine whether the person is carrying a knife or other weapon;
- requiring the police officer to offer to give the person to be scanned a notice (and to give that notice if that offer is accepted) that states:
  - the person is in a public place in a safe night precinct or at a public transport station or on a public transport vehicle within 1 scheduled stop of a particular public transport station;
  - the police officer is empowered to require the person to: stop and allow, or allow again, the use of a hand held scanner in relation to the person or their belongings to determine whether the person is carrying a knife or other weapon; and
  - produce a thing that may be causing the scanner to indicate the presence or likely presence of metal; and it is an offence for the person not to comply with the requirement unless the person has a reasonable excuse; and
- requiring the police officer to be, if reasonably practicable, the same sex as the person being scanned.

Safeguards are also provided in section 51 of the *Weapons Act 1990*, which provides a reasonable excuse for a person to physically possess a knife:

- to perform a lawful activity, duty, or employment; or
- to participate in a lawful entertainment, recreation, or sport; or
- for lawfully exhibiting the knife; or
- for use for a lawful purpose.

Section 51 of the Weapons Act also provides that it is a reasonable excuse to physically possess a knife for a genuine religious purpose and gives the example that a Sikh may possess a knife known as a kirpan in a public place to comply with the person's religious faith.

Another safeguard in the operation of the scanning powers is the current requirement in police policy that police officers allocated a body worn video camera are to commence a recording as soon as practicable after an officer reasonably believes they may exercise a police power under legislation. This is the current practice when police conduct hand held scanning under Chapter 2, part 3A of the PPRA.

The Bill also adds a layer of public transparency by requiring that the Police Commissioner must publish notice about each hand held scanner authority on the police service website within 2 months after the authority was issued. This will ensure that the public can see the name of the SNP or public transport station for which a hand held scanner authority was issued. It will state the day and time the authority started, and information about the offences relied upon and considerations of the senior police officer when making the authorisation.

Adding to the public transparency of the scanning provisions is the requirement in the Bill that the police service's annual report must include information about the number of hand held authorities issued during the financial year and the names of the relevant SNPs and public transport stations. Information must also be provided about the number of people that were required to be scanned, the number of knives or other weapons detected, and the number and type of charges made against persons as a result of scanning.

The Police Commissioner will also provide written directions to police on how the provisions contained in the Bill are to be carried out. Police officers will continue to be provided appropriate training on their powers and responsibilities when undertaking hand held scanning.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The expanded use of hand held scanners in safe night precincts and public transport infrastructure limits several human rights, in particular the right to equality before the law, freedom of movement and the right to privacy. The highest impost on human rights is that police can arbitrarily stop and scan a person, in the absence of any reason other than that authorisation has been provided by a senior police officer. Without further safeguards, the impact of these provisions may not be compatible with human rights. However, it is noted that the limits on freedom of movement and the right to privacy are 'perhaps not at the gravest end

of such interferences'.<sup>3</sup> Persons attending concerts, sporting events, airports and some government buildings can be subjected to scanning for illegally held knives and other illegal items. The power is also designed to be exercised non-intrusively and for the shortest period possible, with no ancillary power to request a person's name. On balance, the need to detect knives in safe night precincts and public transport stations/vehicles is to support community safety and this outweighs the limitation of the rights to the individuals screened.

(f) any other relevant factors

A consequence of being detected illegally in possession of a knife is the ability for police to issue a banning notice from the SNP. This limitation is consistent with a free and democratic society as the banning notice regime has several legislative safeguards to ensure the limitation is reasonable and demonstrably justified namely:

- the notice is limited to one month from time of service (section 602D of the PPRA);
- the notice must be explained by police to the respondent (section 602E of the PPRA);
- the notice does not prohibit the respondent from entering or remaining in their residence, place of employment or place of education (section 602J of the PPRA);
- the notice does not apply to a juvenile (section 602C of the PPRA);
- only a police officer of at least the rank of senior sergeant may decide to extend the banning notice for up to three months after considering the respondent's:
  - relevant behaviour including any additional offences committed, previous banning notices, court banning orders or special bail conditions;
  - personal circumstances;
  - other matters the officer reasonably considers are related to the relevant behaviour (section 602F of the PPRA);
- a respondent for a police banning notice may apply to the Commissioner to amend or cancel the notice on the grounds that the notice:
  - prevents them from entering, remaining in, or using a mode of transport to travel to their residence, place of employment or education; or
  - is causing, or will cause, undue hardship to the respondent or a member of the respondent's family (section 602N of the PPRA);
- a respondent may apply to the Queensland Civil and Administrative Tribunal for a review of the Commissioner's decision if it relates to an extended police banning notice (section 602P of the PPRA).

A review on the operation of the 12 month scanning trial was conducted by the Griffith Criminology Institute and a report furnished (the Griffith Report). The Griffith Report made several findings and suggestions. One suggestion requiring legislative change is the consideration of an evidence based authorisation requirement should scanning be extended past its sunset clause. As discussed, clause 4 of the Bill has provisions around strengthening senior police officer authorisations for scanning.

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<sup>3</sup> *R (Roberts) v Commissioner of Police of the Metropolis* [2015] UKSC 79; [2016] 1 WLR 210, 213 [3].

## Conclusion

In my opinion, the Police Powers and Responsibilities (Jack's Law) Amendment Bill 2022 is compatible with human rights under the *Human Rights Act 2019* because it limits a human right only to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality, and freedom.

**Mark Ryan MP**  
**Minister for Police and Corrective Services and**  
**Minister for Fire and Emergency Services**

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