



PUBLIC INTEREST MONITOR

**ANNUAL REPORT
2021 - 2022**

31 October 2022

The Honourable Shannon Fentiman MP
Attorney-General and Minister for Justice, Minister for Women
Minister for the Prevention of Domestic and Family Violence
1 William Street
BRISBANE QLD 4000

Dear Attorney General

I am pleased to submit for presentation to the Parliament the Annual Report 2021-22 for the Public Interest Monitor.

This report complies with the requirements of the *Crime and Corruption Act 2001*.

This report also fulfils the requirements of section 363(1) of the *Police Powers and Responsibilities Act 2000* with respect to the QPS.

In accordance with s 743(3C) of the *Police Powers and Responsibilities Act*, the parts of the report relating to official warnings for consorting and public safety orders are provided to you as the Minister responsible for administering the *Criminal Code* and the *Peace and Good Behaviour Act 1982* respectively.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David Adsett', written in a cursive style.

David Adsett
Public Interest Monitor

31 October 2022

The Honourable Mark Ryan MP
Minister for Police and Corrective Services
Minister for Fire and Emergency Services
1 William Street
BRISBANE QLD 4000

Dear Minister

I am pleased to submit for presentation to the Parliament the Annual Report 2021-22 for the Public Interest Monitor.

This report complies with the requirements of the *Police Powers and Responsibilities Act 2000*.

This report also fulfils the requirements of section 363(1) of the *Police Powers and Responsibilities Act* with respect to the QPS.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David Adsett', with a stylized flourish at the end.

David Adsett
Public Interest Monitor

Contents

List of abbreviations.....	1
PIM's overview	2
About the Public Interest Monitor.....	3
Current office holders.....	3
Reporting requirements.....	4
Warrants issued.....	5
Warrant outcomes.....	7
Warrant records and inspections	9
Preventative detention orders	10
Control orders	11
Official warnings for consorting.....	12
Public Safety Orders.....	20

List of abbreviations

Term	Notes
CCA	<i>Crime and Corruption Act 2001 (Qld)</i>
CCC	Crime and Corruption Commission
HRA	<i>Human Rights Act 2019 (Qld)</i>
LEA	law enforcement agency
OMCG	outlaw motorcycle gang
OWFC	official warning for consorting
PGBA	<i>Peace and Good Behaviour Act 1982 (Qld)</i>
PIM	public interest monitor
PPRA	<i>Police Powers and Responsibilities Act 2000 (Qld)</i>
PPR Regs	<i>Police Powers and Responsibilities Regulations 2012 (Qld)</i>
QPS	Queensland Police Service
TPDA	<i>Terrorism (Preventative Detention) Act 2005 (Qld)</i>

PIM's overview

The purpose of the PIM is to monitor compliance by law enforcement agencies with the legal obligations associated with applications for and use of invasive surveillance powers.

Throughout 2021-22 my activities and those of the Deputy PIMs were aimed at achieving this result. We liaised closely with QPS and CCC lawyers to ensure applications and the resulting warrants were compliant with legal requirements. We also closely monitored warrant outcomes in accordance with the applicable legislation to ensure procedures were observed and warrant conditions consistently complied with.

Rightly, the executive government and the Queensland public expect law enforcement agencies to operate with a compliance culture, especially where invasive surveillance powers are used. Our activities were directed to ensuring that, within the scope of the PIM's functions, this occurred in practice. While some breaches of warrant conditions occurred in 2021-22, these were exceptions. My observations confirm a commitment at both the QPS and the CCC to a compliant operating environment.

Achievements in 2021-22 included:

- *Record retention project* – Arising from last year's inspections, QPS undertook a project to review retention practices relating to restricted records. As a result of the project, records that were no longer permitted to be retained were destroyed.
- *Revision of procedures* – in 2021-22 it was recognised that internal procedures were not always consistent with the technology used in surveillance device warrant execution. Revised internal procedures were issued by QPS to better recognise current technology.
- *More focused review of records* - part of the PIM role includes review of QPS records. In 2021-22 I undertook a more focused review of records relating to the issue of official warnings for consorting (OWFC). This included:
 - inspection of a range of records associated with this power including training materials and procedural documents; and
 - review of a range of statistical data.

I thank the Deputy PIMs for their support and commitment. I also thank the legal and administrative staff of the QPS and CCC for their cooperation with us.

David Adsett
Public Interest Monitor

About the Public Interest Monitor

Purpose

The PIM and DPIM roles assist to ensure:

- the public interest is considered in applications for the exercise of intrusive surveillance and control;
- law enforcement agencies comply with the law in making applications to exercise these powers.

Vision

Queensland law enforcement agencies make applications for the exercise of intrusive powers according to law, and public interest issues are properly put before the entity determining the application.

Objectives

- Effective advocacy on behalf of the public interest in applications for the exercise of intrusive powers.
- Ensure Queensland law enforcement agencies comply with the laws regulating applications for the use of intrusive powers and retain appropriate records.
- The public is informed about the operation of the legislative schemes that permit the exercise of intrusive powers.

Performance indicators

- Application materials meet statutory requirements or deficiencies have been advised to the agency and the issuer of the proposed warrant or order.
- When applications for warrants and other orders are made, evidence is scrutinized for sufficiency to ground the warrant or order and the public interest is addressed in any submissions to the decision maker.
- On identification of non-compliance during warrant execution, relevant Judges, Ministers and CEOs are appropriately informed.
- QPS maintains adequate records and is advised of deficiencies in a timely manner.
- Statistics are gathered and an Annual Report presented.

Current office holders

David Adsett - Public Interest Monitor

David has been admitted as a barrister since 1986. He currently practises at the Queensland Bar. He has worked as a legal practitioner in Brisbane, Sydney and Perth with a focus on federal criminal law. He was appointed Public Interest Monitor in 2020. His current term as PIM expires in December 2025.

Patricia Kirkman-Scroope - Deputy Public Interest Monitor

Patricia has been admitted as a barrister since 2005. She practises at the Queensland Bar in a wide variety of general practice areas. She has been a deputy PIM since 2014. Her current deputy PIM appointment expires in December 2025.

Gail Hartridge - Deputy Public Interest Monitor

Gail has been a barrister since 1985. She has extensive experience in government legal practice and currently practises at the Queensland Bar in a range of areas including public, administrative, commercial and taxation law. Gail has been appointed as a deputy PIM since 2018. Her current deputy PIM appointment expires in December 2025.

Reporting requirements

This is the annual report of the Public Interest Monitor (PIM) as required by the *Police Powers and Responsibilities Act 2000* (Qld) (PPRA) and the *Crime and Corruption Act 2001* (Qld) (CCA).

Under the PPRA and the CCA, I must report in relation to 5 separate matters:

- (1) surveillance device warrants and covert search warrants issued to the QPS and the CCC;
- (2) preventative detention orders issued under the *Terrorism (Preventative Detention) Act 2005* Qld (TPDA);
- (3) control orders issued under the *Criminal Code* (Cth) relating to Queensland residents or issued by Courts in Queensland;
- (4) official warnings for consorting issued by QPS officers; and
- (5) public safety orders made by QPS commissioned officers under the *Peace and Good Behaviour Act 1982* (PGBA).

The report must not contain information that discloses or may lead to the disclosure of the identity of any person who has been, is being, or is to be, investigated or contain information that indicates a particular investigation has been, is being, or is to be conducted.

This report also fulfils the requirements of section 363(1) of the PPRA with respect to the QPS. That provision requires that I must report every 6 months on inspections I have carried out to examine the extent of compliance by the QPS with the record keeping requirements relating to surveillance device warrants.

Warrants issued

Section 743 of the PPRA provides that I must report on the use of covert search warrants under the PPRA. Section 328 of the CCA provides that I must report on the use of surveillance device warrants and covert search warrants for the previous year.

Data

Surveillance device warrants and covert search warrants		2021-22
QPS		
covert search warrants issued		0
surveillance device warrants issued		38
extensions and/or variations of surveillance device warrants		4
retrieval warrants issued		3
emergency authorisations issued		0
CCC		
covert search warrants issued		4
surveillance device warrants issued		9
extensions and/or variations of surveillance device warrants		2
retrieval warrants issued		1
emergency authorisations issued		0

Devices

	QPS	CCC
Listening devices	68	8
Optical surveillance devices	16	0
Tracking devices	20	1
Combination devices	19	7
Data surveillance devices	0	0

Warrant applications

The PIM made written submissions in all surveillance device and covert search warrant applications brought by the QPS and the CCC. Those submissions addressed legislative compliance and issues relevant to the exercise of the Judge's or Magistrate's discretion.

In several cases, prior to the application, there was discussion between the PIM and the lawyer representing the QPS or CCC applicant about either the form of the warrant or the sufficiency of the material to be presented in the application hearing. On most occasions, the discussion resulted in satisfactory resolution of the issue, either by alteration of the form of the draft warrant including amendment of draft warrant conditions or amendment of the application material. If an issue could not be resolved, it became the subject of submissions to the Judge or Magistrate during the application hearing and the issue was resolved by the Judge or Magistrate.

No applications for warrants were opposed outright. Conditions sought were modified on several occasions. All applications were granted.

Human Rights

When considering applications for a surveillance device warrant or a covert search warrant a Judge or Magistrate is acting in an administrative capacity and, in this capacity, is a public entity under the *Human Rights Act 2019* (Qld) (HRA).

The human right that is most significantly affected by the issue and execution of a surveillance device warrant or a covert search warrant is the right to privacy. Under the HRA, a person has the right not to have their privacy, family or home unlawfully or arbitrarily interfered with. The PPRA and CCA provide important safeguards of this right. The Acts provide that, when considering a surveillance device warrant application, a Judge or Magistrate must be mindful of the highly intrusive nature of a surveillance device warrant and must, amongst other things, have regard to the extent to which the privacy of any person is likely to be affected by the warrant.

In considering an application for a covert search warrant a judge must, similarly, be mindful of the highly intrusive nature of such a warrant. Where, after taking all the relevant considerations into account, a Judge or Magistrate decides to issue a warrant, the warrant will authorise activities that will interfere with individuals' privacy and, in some cases, potentially, that of their family and home.

During the reporting period, the PIM and Deputy PIMs routinely considered the compatibility of applications made by law enforcement entities with the HRA. At the warrant application hearings, the PIM and Deputy PIMs brought relevant HRA considerations to the attention of the Judge or Magistrate in their submissions.

Extra judicial tracking devices

Chapter 13 of the PPRA provides that a senior officer of the QPS at or above the rank of Inspector may authorise the use of a tracking device for no longer than 48 hours where it is assessed that taking a person into custody involves a serious risk to safety. The authorisation may only be given in circumstances where the use of the tracking device will help minimize the risk associated with taking the person into custody.

Data

Tracking device authorisations		2021-22
QPS		
Tracking device authorisations issued		5
Number of extensions to tracking device authorisations		1

Records must be kept of the grounds for giving the authorisation and the date and time of commencement of the authorisation. Satisfactory records were kept in respect of all the authorisations given in 2021-22.

Warrant outcomes

On the expiration of a surveillance device warrant, the QPS or CCC officer must supply a report to me or the Deputy PIMs in the form of a compliance affidavit. The report must contain details of the execution of the warrant. Significantly, these details must include details of the benefit to the investigation of the use of the device and details of the general use made of the evidence or information obtained using the device.

For warrants issued in the reporting period, in a clear majority of cases, the use of the device authorised by the warrant was reported to have been of benefit to the investigation. This was the case for warrants issued in respect of both QPS and CCC investigations. In a very small number of cases, the report disclosed that the device authorised by the warrant was not installed. In some other cases, again a small number, the device was installed and operated but failed to provide information or evidence that was of benefit to the investigation.

Breaches of warrant conditions

There were some concerns throughout the reporting period with respect to compliance with the conditions of warrants.

In the case of warrants issued to CCC officers, there was one breach of a surveillance device warrant condition.

Breach – CCC

Before being reviewed, a CCC monitor circulated a synopsis of a conversation subject to legal professional privilege to investigators. Upon review 2 days later, it was confirmed that the conversation was subject to legal professional privilege. All recipients were directed to purge the email. An audit was conducted to confirm the purging had occurred. All records of the conversation were quarantined from the investigation team. All CCC monitors underwent a refresher legal training session with a lawyer to remind them of their obligations with respect to conversations containing legal content.

In the case of the QPS, 4 breaches of warrant conditions were reported. Particulars of those breaches were:

Breach 1 - QPS

A condition of a warrant required no conversations subject to legal professional privilege were to be monitored or recorded. A conversation between a person and their lawyer occurred. It was not monitored but was inadvertently recorded. The recording was marked and not accessed during the investigation. The recording was subsequently quarantined and not further accessed.

Breach 2 - QPS

A recording was made contrary to QPS standard operating procedures. The breach was investigated and found to be caused by an equipment malfunction. On detection this was remedied. The recording made in breach of procedures was quarantined.

Breach 3 - QPS

A tracking device in a vehicle was removed without authorisation. Surveillance devices may be removed during the currency of a warrant. They may also be removed pursuant to a retrieval warrant.

In this instance the warrant had expired and no retrieval warrant had been issued. The vehicle was intercepted by police and searched. An officer removed the tracking device during the search, suspecting it was a concealment device or a component of a concealment device. The item was later analysed and identified as a tracking device.

Breach 4 - QPS

A recording was made contrary to QPS standard operating procedures. On detection the recording was marked and quarantined.

Both the CCC and the QPS readily identified and disclosed breaches of warrant conditions and the instances where standard operating procedures were not adhered to. These were disclosed in a timely way in compliance affidavits supplied after the warrants were executed.

Interference with third party property rights

During the reporting period there were 4 occasions where access to an adjoining property was required. On all 4 occasions the extent of interference with property rights was minimal and permissible under the terms of the warrants and the applicable legislation.

Operating procedures

During 2021-22 the QPS enhanced training and procedures for surveillance device warrant execution. Last year's PIM report identified issues with device configuration that prevented recording being stopped and started remotely. During 2021-22 procedures were introduced to better address this issue including revision of procedures and enhanced training. A new internal instruction was issued dealing with technical issues. Reference to the changed procedures was incorporated into warrant application materials.

Authorised officers

In late 2021 the PPRA and the PPR Regs were amended to expand the categories of people who may be involved in the monitoring of surveillance devices.¹ Prior to the amendment, only police officers could be authorised to monitor surveillance devices. While assistants who were not police officers (e.g. interpreters) could assist, they had to be accompanied by a police officer. The amendment allows authorised non-police personnel such as civilian QPS employees and contracted translators to monitor surveillance devices without constant police officer supervision. This is the same as the existing laws with respect to the monitoring of intercepted telecommunications.

¹ *Police Powers and Responsibilities and Other Legislation Amendment Act 2021*

Warrant records and inspections

Record destruction project

Inspections of QPS records conducted in 2020-21 revealed record retention practices could be improved. During 2021-22 QPS undertook a project to identify and destroy records that were no longer required. The relevant legislation requires that restricted records obtained by using surveillance devices must be destroyed when they are no longer required for a permitted purpose. The project was successful in identifying restricted records for destruction and many records, some dating back over a decade, were destroyed. The QPS has committed to periodically carrying out similar reviews in the future.

6 monthly report on QPS inspections

Under chapter 13 of the PPRA I am the inspecting entity for the QPS. As inspecting entity, I must, from time to time, inspect the records of the QPS to decide the extent of compliance with chapter 13 by the QPS and law enforcement officers of the QPS. At 6 monthly intervals I must report to the Minister for Police on the results of those inspections. In the 6 months ended 30 June 2022, I conducted inspections of QPS records. As a result of those inspections, I report that the QPS and law enforcement officers of the QPS have complied with chapter 13 record keeping requirements.

Preventative detention orders

Preventative detention orders are made under the *Terrorism (Preventative Detention) Act 2005* (Qld) (TPDA). The stated purpose of the TPDA is to -

‘allow a person to be taken into custody and detained for a short period of time in order to—

- (a) prevent a terrorist act that is capable of being carried out, and could occur, in the near future from occurring; or
- (b) preserve evidence of, or relating to, a recent terrorist act’

The TPDA provides that senior QPS officers may apply to an issuing authority (a judge or retired judge appointed for this purpose by the Minister) for a preventative detention order or a prohibited contact order where certain criteria are met. The PIM has a role in applications for such orders.

Reporting requirements

Under section 743 of the PPRA I am required to provide a report in respect of orders under the TPDA during the year ended 30 June 2022. The report is to include the following matters:

- the number of initial or final orders made during the year;
- whether a person was taken into custody under each of those orders and, if so, how long the person was detained for;
- particulars of any complaints about the detention of a person under a preventative detention order made or referred during the year to the ombudsman or the CCC;
- the number of prohibited contact orders made during the year;
- the use of preventative detention orders and prohibited contact orders generally.

Data

Preventative detention orders 2021-22	
a) initial or final orders made	0
b) persons taken into custody under initial or final orders	0
c) prohibited contact orders made	0

Control orders

Division 104 of the *Criminal Code* (Cth) establishes procedures for control orders to be issued. A control order allows obligations, prohibitions and restrictions to be imposed on a person for one or more of the following purposes:

- (a) protecting the public from a terrorist act;
- (b) preventing the provision of support for or the facilitation of a terrorist act;
- (c) preventing the provision of support for or the facilitation of the engagement in a hostile activity in a foreign country.

A senior member of the Australian Federal Police, with the relevant federal Minister's consent, may apply to an issuing court (the Federal Court of Australia or the Federal Circuit and Family Court of Australia) for the issue of an interim control order. If the interim control order is made, subsequent applications may be made to the issuing court to vary, confirm or revoke the order. Where the person in relation to whom an order is sought is a resident of Queensland or the issuing court that is requested to make the order is in Queensland, the PIM has a role in the application. During 2021-22 the AFP Commissioner confirmed he would notify the Queensland PIM as required by the legislation if such an order was sought.

Both houses of federal parliament recently passed legislation to allow control orders to be made until 7 December 2023.²

Reporting requirements

I am required under section 743 of the PPRA to provide a report in respect of control orders under the *Criminal Code* (Cth) involving the public interest monitor during the year ended 30 June 2022. The report is to include the following matters:

- the number of control orders confirmed, declared void, revoked or varied during the year;
- the use of control orders generally.

Data

Control orders 2021-22	
Control orders involving Qld PIM confirmed, declared void, revoked or varied	0

² *Counter-Terrorism Legislation Amendment (AFP Powers and Other Matters) Bill 2022*

Official warnings for consorting

The PPRA provides that, in certain circumstances, a QPS officer may give a person an official warning for consorting (OWFC). The warnings may be given if the person is consorting with a recognised offender. According to the *Criminal Code* (Qld) definitions:

- 'a person consorts with another person if the person associates with the other person in a way that involves seeking out, or accepting, the other person's company';
- a 'recognised offender' is 'an adult who has a recorded conviction, other than a spent conviction, for a relevant offence';
- a 'relevant offence' is an indictable offence for which the maximum penalty is at least 5 years as well as a series of other specific criminal offences and equivalent interstate and foreign offences.

An OWFC may be given orally or in writing. If given orally, a written warning must be provided within 72 hours. The written warning must be in an approved form. The PPRA provides that before giving the warning, a police officer 'must consider whether it is appropriate having regard to the objective of disrupting and preventing criminal activity by deterring recognised offenders from establishing, maintaining or expanding a criminal network.'

Officers issue the warning from a hard copy pre-printed book of forms or a word-processed document prepared from a template. The template is available to police from QLite (iPad) devices.

The OWFC warns the person that consorting with the named recognised offenders on further occasions may lead to the commission of the offence of habitually consorting. The police officer issuing the warning may issue a consorting prevention direction which directs the person receiving the notice to leave a place for up to 24 hours. If the person who receives the OWFC disobeys it and further consorts with at least 2 of the named recognised offenders, whether together or separately, and at least one of those occasions of consorting happens after that person had been given the OWFC, the person commits the offence of habitual consorting.

Reporting requirements

I am required under section 743 of the PPRA to provide a report in respect of official warnings for consorting during the year ended 30 June 2022. The report is to include the following matters—

- the number of OWFCs given during the year;
- the number of times the giving of an OWFC led to a person committing an offence against:
 - section 790 PPRA (assault or obstruct police officer); or
 - section 791 PPRA (contravene direction or requirement of police officer);
- the extent of compliance by the QPS with chapter 2, part 6A of the PPRA; and
- the use of OWFC generally.

Sub-section 743(3C) of the PPRA requires that this part of the annual report must be given to the Attorney-General as the Minister administering the *Criminal Code* (Qld).

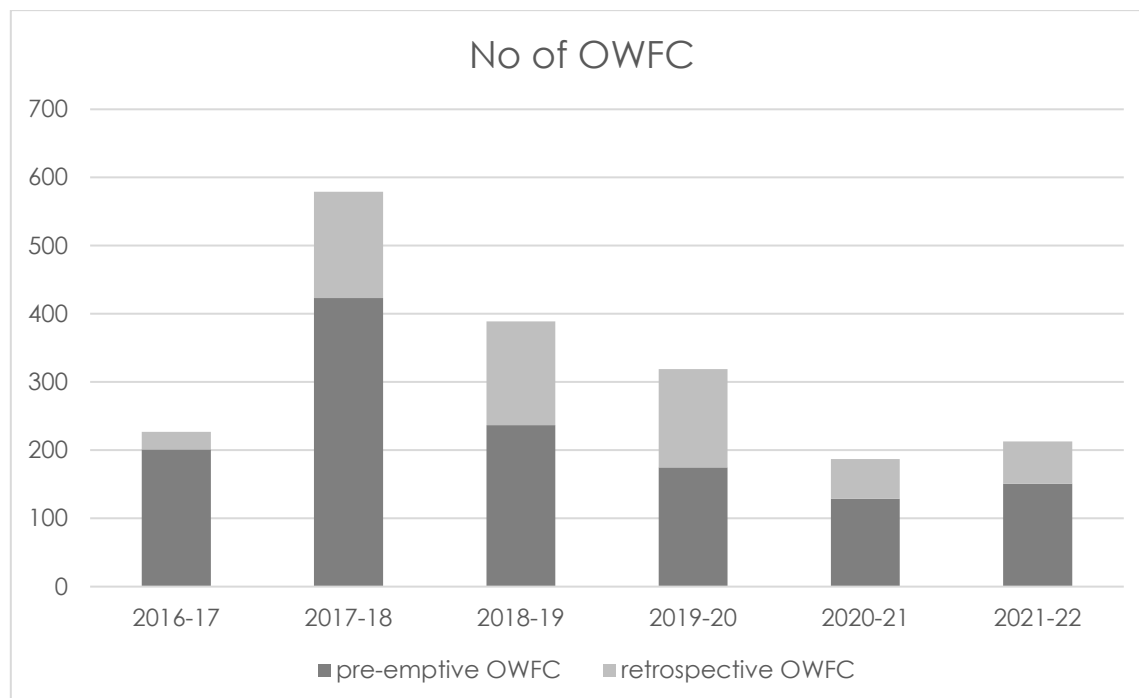
Data

Official warnings for consorting		2021-22
a)	official warnings for consorting given	211
b)	times the giving of an official warning for consorting led to a person committing an offence against section 790 of the PPRA (assault or obstruct police officer)	0
c)	times the giving of an official warning for consorting led to a person committing an offence against section 791 of the PPRA (contravene direction or requirement of police officer)	0

The habitual consorting offence and the power for police officers to issue OWFCs came into operation in March 2017. Since that date over 1900 OWFCs have been issued.

The QPS divide OWFCs into 2 types – pre-emptive warnings and retrospective warnings. Pre-emptive warnings are issued before an individual associates with the named recognised offenders to prevent future consorting behaviour. Sometimes these are served on prisoners prior to release to prevent them from associating with recognised offenders after release. Retrospective warnings are issued when officers encounter individuals associating with recognised offenders and issue an OWFC to disrupt that consorting and also to prevent future consorting behaviour.

The number of each type of OWFC issued increased in 2021-22.



In 2021-22, 16 individuals who had been served with OWFC went on to be charged with the offence of habitually consorting.

Compliance with chapter 2 part 6A

The PPRA and PPR Regs provide that:

- if practicable, the giving of an OWFC must be electronically recorded;
- the giving of an OWFC is an ‘enforcement act’; and
- specific details about each OWFC must be included in the Register of Enforcement Acts.

I inspected QPS QPrime records (i.e. the QPS business management system and Register of Enforcement Acts) and reviewed data to check compliance. The following compliance matters were noted:

1. **Age of person receiving notice**
I found one OWFC was issued in 2021-22 to a child aged 17. An OWFC may not be given to a child.³ QPS investigated the issue of this notice, cancelled it and took steps to inform the subject of the notice (now an adult) in writing that the OWFC was invalid and to disregard it. The legislation makes it clear that an OWFC may only be issued to an adult. This is also emphasised in internal QPS procedural documents and training materials. In investigating the circumstances of the issue of the notice, QPS noted it was due to officer error. As a result of this incident, QPS will review the design and delivery of training material and methods.
2. **Incorrectly labelled records**
Two records were found where incidents were mislabelled. Each incident was recorded in QPrime as an instance where an OWFC was issued. On further investigation it was noted that neither incident involved the issue of an OWFC notice and that incorrect information had been entered into the QPrime system. The records were corrected.
3. **Reason warning was given**
This was not always recorded. It was either absent entirely or insufficient detail was provided.
4. **Apparent demographic category of person given the warning**
This was not always recorded. If recorded, it was not always a complete demographic record. There was also a lack of uniformity in the recorded categories. In one instance there was contradictory demographic information in two separate records about an individual.
5. **Duration of notice**
Several instances where expiration date was not completed.
6. **Workflow**
On creation of the consorting occurrence on QPrime, an automatic workflow commences. The occurrence is forwarded to an Information Release Unit, where each person’s recognised offender status is verified. This was noted as completed in all cases reviewed.
7. **Recognised offender status**
On the QPrime system potential recognised offenders are flagged with a warning that that person is a possible recognised offender. An OWFC is not issued in relation to a recognised offender unless that flag is in existence. Internal procedures contain at least 2 checks of recognised offender status, one by the workflow described above and one by the issuing

³ Section 53AB PPRA.

officer's supervisor. These procedures were found effective in ensuring the validity of the recognised offender status.

8. **Electronic recording**
Section 53BAC PPRA provides that, if practicable, the giving of an official warning for consorting must be electronically recorded. Two records checked did not include an electronic recording of the giving of the OWFC. In one instance the Register noted that the giving of the notice had been recorded by video but the recording could not be located.
9. **Copy of notice**
There was one instance where a copy of the notice was not uploaded to the QPrime system.
10. **Training and procedures**
The QPS has detailed internal procedures relating to consorting, including coverage of the issue of OWFC. There is also an online training module. I reviewed both of these resources and found them fit for purpose

Duration of OWFCs

An OWFC has statutory effect until the stated person stops being a recognised offender. Apart from this, there is no statutory expiration date for an OWFC. However, the QPS Operating Procedures Manual provides that a notice should be of 12 months duration. It provides that, when entering a consorting event in QPrime, the officer making the entry is to 'set the expiry for 12 months from the date of issue for the warning'. There is a field for recording the expiry date of the notice in the QPS QPrime records. Further, the manual provides that a habitual consorting charge should not be commenced where there is more than 12 months from the first and last consorting events.

When there is no expiry date noted on the OWFC notice, a person given an OWFC has no way of knowing the duration of the warning they must comply with. An OWFC is a curtailment of a person's freedom of association and the person served with the notice is entitled to know the period of time the authorities will regard the notice as operational. An OWFC notice should include an expiration date. If a notice is ineffective in disrupting criminal consorting events during the 12 months after it is issued and consorting events continue after that, another OWFC notice can be issued.

Reasons for issue

In August 2022, the Supreme Court decided that the QPS must, if requested, provide reasons for the issue of an OWFC.⁴

The case arose when a person who had been given an OWFC requested a written statement of reasons for the issue of the notice under the *Judicial Review Act 1991*. The QPS declined to give a statement of reasons on the basis that the issuing of an OWFC was a decision relating to the administration of criminal justice, a specific category of decision where a statement of reasons need not be supplied. The person who had been given the OWFC applied to the Supreme Court for an order that the QPS supply a statement of reasons. The Court ruled that the decision to issue an OWFC was not a decision relating to the administration of justice and a statement of reasons under the *Judicial Review Act* must be supplied.

After the decision, QPS put in place procedures for the issue of statements of reasons where they are requested.

⁴ *Forbes v Wilmot* [2022] QSC 168.

Use generally

I undertook a review of OWFC statistics for 2021-22. I specifically reviewed the demographic data collected when OWFCs are issued. The requirement to collect demographic data arose from a recommendation of the Taskforce on Organised Crime Legislation. The Taskforce Report noted that when an OWFC is issued:

‘... there should be a positive legislative obligation upon police officers to record basic antecedents and demographical information (including whether or not a person identifies as Aboriginal or Torres Strait Islander) as well as the location of the incident, police observations at the time, the nature of convictions of all persons involved in the consorting, etc.’⁵

2021-22 OWFC data

Table 1: QPS region where issued

QPS region including (police district)	Number	Percentage
Far northern (Far North)	2	1%
Northern (Townsville, Mount Isa)	24	11%
Central (Mackay, Capricornia)	8	4%
North coast (Wide Bay Burnett, Sunshine Coast, Moreton)	31	15%
Southern (Ipswich, Darling Downs, South West)	33	16%
Brisbane (North Brisbane, South Brisbane)	85	40%
South-eastern (Logan, Gold Coast)	28	13%
Total	211	

⁵Taskforce on Organised Crime Legislation, Queensland Government, 2016, page 198.

Table 2: Apparent ethnic group: ⁶

Ethnic group	Number⁷	Percentage
Aboriginal	9	5%
African	37	18%
Asian	2	1%
Caucasian	106	51%
European	10	5%
Middle Eastern	19	9%
Pacific Islander	12	6%
Not recorded	9	4%
Total	204	

Table 3: Indigenous status ⁸

Indigenous status	Number	Percentage
Indigenous	11	6%
Non-indigenous	191	93%
Not stated	2	1%
Total	204	

Table 4: Age

Age⁹	Number	Percentage
Under 18	1	0%
18 to 25	59	29%
26 to 35	77	38%
36 to 45	46	23%
46 and over	21	10%
Total	204	

⁶ This is based on the perception of the officer, not how the person self-identifies.

⁷ Number is a unique person count. A person with more than one OWFC notice issued is counted once in the breakdown.

⁸ This is based on self identification.

⁹ Age is calculated as at the date the OWFC was issued.

Effectiveness of OWFC

The legislative object of OWFC is 'disrupting and preventing criminal activity by deterring recognised offenders from establishing, maintaining or expanding a criminal network'. One particular area where criminal gangs are noted to be active is outlaw motorcycle gangs (OMCGs). The Taskforce which led to the enactment of the consorting laws in their present form found that the power for police to issue OWFCs was part of 'firm but fair laws to deal with organised crime including OMCGs'.¹⁰

The fact that the issue of OWFC notices led to 16 individuals in 2021-22 being charged with consorting offences indicate some people issued with the notices disregard them. This figure may also indicate that the notices are, in most cases, effective, in that only a small proportion of those served with a notice go on to commit the offence of habitually consorting.

Police collect statistics on gang affiliation. Two types of gang affiliation are recorded – street gangs and OMCGs. Over half the OWFC issued in 2021-22 were given to people with one of these forms of gang affiliation recorded.

Table 5 Proportion of 2021-22 OWFC where recipient had a gang affiliation

	Number	%
OWFC notices where recipient had street gang affiliation	26	13
OWFC notice where recipient had OMCG affiliation	87	43

Table 6 Proportion of 2021-22 OWFC where at least one recognised offender named had a gang affiliation

	Number	%
OWFC notices where recognised offender had street gang affiliation	29	14
OWFC notice where recognised offender had OMCG affiliation	96	47

Comparison of data in tables 5 and 6 shows that, in relation to both street gangs and OMCGs, some notices were issued where the recipient did not have a gang affiliation but the recognised offender named on the notice did. This indicates use of OWFCs in circumstances where a person without a recorded gang affiliation is associating with a person with recognised offender status and a gang affiliation. This could be indicative of OWFC notices being used to prevent and disrupt gang recruitment activities.

¹⁰ Taskforce on Organised Crime Legislation, Queensland Government, 2016, page 401.

QPS view of OWFCs

QPS noted that increased offending in the last 12-18 months, across crime types, had been identified within specific groups. This necessitated a targeted response, which included the use of consorting laws to disrupt the cohorts.

In 2022 the QPS commenced Taskforce Uniform Knot, targeting emerging criminal street gangs. Another investigation was commenced in 2022 following intelligence in relation to violence between two rival criminal gangs and then a further operation followed to investigate public acts of violence including numerous firearm offences, affray and other crime types.

The QPS stated it will continue to use available legislation to proactively target members of gangs and address the threat of serious and organised crime with the primary aim of disrupting and preventing criminal activity. The QPS noted that the increases in offending by these specific groups is similar to the position in other jurisdictions, particularly Sydney and Melbourne.

I have been informed that operational police regard the OWFC legislation as effective in that it significantly disrupts the capacity of OMCGs in particular to 'market their brand' and attract new members. There is a belief amongst police involved in enforcing the consorting legislation that OWFCs are an effective tool in disrupting gang activity and that OWFCs prevent gangs from gathering *en masse* in public.

Public Safety Orders

The main object of the *Peace and Good Behaviour Act 1982* (Qld) (PGBA) is:

‘to protect the safety, welfare, security, and peace and good order of the community from risks presented by people engaging in antisocial, disorderly or criminal conduct.’

Under the PGBA, commissioned QPS officers may issue a public safety order of up to 7 days duration in relation to a person or group of persons where the commissioned officer is satisfied certain conditions are met. The stated object of a public safety order issued in this way is to prevent a person, or group of persons, from doing specific things such as entering an area or attending premises or an event.

Reporting requirements

I am required under section 743 of the PRRA to provide a report in respect of public safety orders made by commissioned officers under the PGBA during the year ended 30 June 2022. The report is to include the following matters—

- the number of public safety orders made by commissioned officers during the year;
- the extent of compliance by the QPS with the PGBA, part 3, division 2;
- the use of public safety orders generally.

Data

Public safety orders 2021-22	
Number of public safety orders made by commissioned officers	0

Part 3, division 2 of the PGBA requires the QPS to keep certain records in relation to public safety orders issued by commissioned officers. During my inspection of QPS records I noted that, while no orders were issued, the QPS business management system, QPrime, has specific capability in place to keep the required records.

Sub-section 743(3C) of the PRRA requires that this part of my annual report must be given to the Attorney General as the Minister administering the PGBA.