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Queensland Community Safety Bill 2024

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Community Safety and Legal Affairs Committee
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Community Safety and Legal Affairs Committee

Chair	Mr Peter Russo MP, Member for Toohey
Deputy Chair	Mr Jon Krause MP, Member for Scenic Rim
Members	Ms Sandy Bolton MP, Member for Noosa
	Mr Mark Boothman MP, Member for Theodore
	Ms Jonty Bush MP, Member for Cooper
	Mr Jason Hunt MP, Member for Caloundra

Committee Secretariat

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

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

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Chair's foreword

This report presents a summary of the Community Safety and Legal Affairs Committee's examination of the Queensland Community Safety Bill 2024 (Bill).

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

This Bill is about making our communities safer. All Queenslanders have the right to feel safe in their homes, workplaces, schools and neighbourhoods.

In recognising the multi-faceted approach that is required to address community safety issues, the Bill proposes to amend 14 pieces of legislation. Such amendments range from 'front-end' preventative strategies aimed at reducing offending behaviour, to the introduction of new offences and penalties to respond to acts that compromise community safety.

The firearm prohibition order scheme proposed in the Bill would ensure that police officers are able to target dangerous individuals and provide a framework to minimise their access to deadly weapons.

The expansion of the Jack's Law handheld scanning trial to shopping centres and other high patronage venues is intended to further minimise the risk of unlawful knife crime in the community.

The committee heard about the prevalence of content depicting criminal acts being circulated online, particularly via social media. I applaud the approach contained in the Bill to empower authorised police officers to direct online publishers, such as social media companies, to remove such conduct, and the inclusion of offences and penalties concerning the publication of this material.

If passed by the Queensland Parliament, I believe this Bill will greatly enhance community safety in Queensland.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill. I also thank our Parliamentary Service staff and the Queensland Police Service, Queensland Corrective Services, Department of Justice and Attorney-General, Department of Youth Justice and Department of Transport and Main Roads.

I commend this report to the House.

Peter Russo MP

Chair

Recommendations

The committee recommends the Queensland Community Safety Bill 2024 be passed.

Executive Summary

On 1 May 2024, the Hon Mark Ryan MP, Minister for Police and Community Safety, introduced the Queensland Community Safety Bill 2024 (Bill) into the Queensland Parliament. The Bill was referred to the Community Safety and Legal Affairs Committee (committee) for detailed consideration.

The primary objective of the Bill is to implement law enforcement and crime prevention strategies and interventions over various statutes to enhance community safety.

Stakeholders and subscribers were invited to make written submissions on the Bill and the committee received 250 submissions including 6 form submissions from 44 submitters.

The committee received a written briefing on 13 May 2024 and public briefing on 24 May 2024 from the Queensland Police Service in conjunction with the Department of Youth Justice, the Department of Justice and Attorney-General and the Department of Transport and Main Roads.

On 24 May 2024, the first public hearing and briefing were held in Brisbane to speak with stakeholders and departmental representatives.

Along with the extension of the reporting date, as approved by the Committee of the Legislative Assembly, the committee held a second public hearing with invited stakeholders and a public briefing with departmental representatives on 10 June 2024.

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

- the impact of amendments to youth justice principle 18 on the levels of children currently in detention in Queensland
- the criteria to be satisfied for the issuance of a firearm protection order and the breadth of search powers given to police officers in respect of compliance with firearm protection orders
- the impacts of the changes to knife related offences to persons who carry knives lawfully for employment reasons
- the licensing implications on both individuals and weapons dealers due to changes in the 'fit and proper person' test in the *Weapons Act 1990 Qld*
- the availability of online licence verification systems for sellers of small arms ammunition in regional and remote areas
- clarification on the offending intended to be targeted by the amended spectator offence for hooning activities
- the effectiveness of the current Jack's Law hand held scanning trial
- the evidence supporting expansion of electronic monitoring of children on bail
- the 'glorification' prerequisite for online content offences and the new online content removal scheme
- the safeguards in place for the recording of phone calls from youth detention centres
- informed consent in the context of electronic service of documents.

The committee is satisfied that the Bill gives sufficient regard to the rights and liberties of individuals and the institution of Parliament, and that any limitations of human rights, as set out in the *Human Rights Act 2019*, are reasonable and justifiable.

The committee recommends the Bill be passed.

1 Introduction

1.1 Referral and reporting period

On 1 May 2024, the Hon Mark Ryan MP, Minister for Police and Community Safety, introduced the Queensland Community Safety Bill 2024 (Bill) into the Queensland Parliament. The Bill was referred to the Community Safety and Legal Affairs Committee (committee) for detailed consideration with a reporting date of 14 June 2024.

Numerous stakeholders raised concerns regarding the length of the submission period (13 days). To address this, the committee resolved to consider submissions received after the closing date and to seek an extension from the Committee of the Legislative Assembly (CLA) to the reporting date for the inquiry. On 23 May 2024, the CLA extended the reporting date to 2 August 2024.

1.2 Background

On 30 April 2024, the Queensland Government released its *Community Safety Plan for Queensland* (Plan).[1] The Plan included evidence-based prevention and intervention services which focussed on 5 key pillars which involved: supporting victims, delivering for frontline workers and services, detaining offenders to protect the community, intervening when people offend and preventing crime before it occurs.[2] The Police Commissioner, Mr Steve Gollschewski APM, noted that the Bill was introduced to 'enhance community safety through initiatives outlined in the *Community Safety Plan for Queensland*'.[3]

The Bill specifically responds to:

- recommendations from the Queensland Audit Office report, *Regulating firearms (Report 8: 2020-21)* (QAO Report), as tabled in the Parliament on 27 November 2020, regarding the review of the *Weapons Act 1990* (Weapons Act) to allow for greater efficiencies and consideration of community safety[4]
- recommendation 22 of the *A Call for Change* report of the Independent Commission of Inquiry into Queensland Police Service (QPS) responses to domestic and family violence (DFV) in respect of amendments to the *Domestic and Family Violence Protection Act 2012* (DFVP Act) to allow for the electronic service of police protection notices (PPN) and domestic violence temporary protection orders (TPO) in particular circumstances[5]
- recommendations 87, 143 and 149 of the *Hear Her Voice – Report Two – Women and girls' experiences across the criminal justice system* prepared by the independent Women's Safety and Justice Taskforce in respect of amendments to the *Youth Justice Act 1992* (YJ Act).[6]

1.3 Policy objectives of the Bill

The overarching objective of the Bill is to enhance community safety through amendments to various statutes that deal with issues related to criminal justice, youth justice, public safety, law enforcement,

1 Queensland Government, *Community Safety Plan for Queensland,* 2024.

2 Queensland Government, 'Miles Government releases Community Safety Plan for Queensland', media release, 30 April 2024.

3 Public briefing transcript, Brisbane, 24 May 2024, p 2.

4 Explanatory notes, p 3; Queensland Audit Office, *Regulating firearms (Report 8: 2020-21)*, 27 November 2020, p 4.

5 Explanatory notes, p 7; Commission of Inquiry into Queensland Police Service responses to domestic and family violence, *A Call for Change*, 14 November 2022, p 24.

6 Explanatory notes, p 15; Women's Safety and Justice Taskforce, *Hear Her Voice – Report Two – Women and girls' experiences across the criminal justice system*, 1 July 2022, pp 25, 33, 34.

sentencing, transport, firearms and weapons in Queensland. The Bill includes the implementation of both preventative and responsive measures relevant to these areas.

The Bill proposes to achieve its objectives through amendments to various Acts including:

- enabling certain persons and the media to be present at some Childrens Court criminal proceedings
- expanding the trial of hand held scanner provisions in public places in the *Police Powers and Responsibilities Act 2000* (PPRA) (Jack's Law)[7]
- introducing a firearms prohibition order scheme in Queensland[8]
- introducing a new verification process for purchasing small arms ammunition[9]
- implementing recommendations from the QAO Report[10]
- increasing the maximum penalty for possessing a knife in a public place or school[11]
- allowing the removal of criminal online content and advertising offences[12]
- increasing the maximum penalty for dangerous operation of a vehicle causing death or grievous bodily harm, and inserting a new circumstance of aggravation[13]
- creating offences for damaging or unlawfully possessing an emergency vehicle, and driving a motor vehicle in a way that could injure or endanger the safety of a police officer[14]
- removing parent-minor child relationships from DFV responses, allowing them to be dealt with under child harm or youth justice provisions[15]
- enabling a court hearing a DFV matter on appeal to make a TPO to protect the victim-survivor[16]
- allowing for a trial of arrangements for corrective services officers to serve prescribed DFV documents on prisoners in corrective facilities in prescribed circumstances[17]
- modernise document authentication and service requirements[18]
- extending the offence of 'unlawful conduct associated with commission of racing, burn out or other hooning offence' to include a person who merely spectated a hooning activity without reasonable excuse[19]
- rewording youth justice principle 18 to state a child should be detained in custody, where necessary, including to ensure community safety, where other non-custodial measures of

7 Explanatory notes, pp 1-2.

8 Explanatory notes, pp 2-3.

9 Explanatory notes, p 3.

10 Explanatory notes, pp 3-4.

11 Explanatory notes, p 4.

12 Explanatory notes, pp 4-5.

13 Explanatory notes, p 5.

14 Explanatory notes, pp 5-7.

15 Explanatory notes, p 7.

16 Explanatory notes, pp 7-8.

17 Explanatory notes, p 8.

18 Explanatory notes, pp 8-10.

19 Explanatory notes, p 11.

prevention and intervention would not be sufficient, and for no longer than necessary to meet the purpose of detention[20]

- increasing the number of participants in the electronic monitoring trial by expanding the list of prescribed indictable offences and expanding the criteria for electronic monitoring to include children who have been charged with a prescribed indictable offence in the preceding 12 months[21]
- enabling the recording of detainees' phone calls in certain circumstances[22]
- removing any doubt that participation in a program or engagement in a service by a detainee while remanded in custody cannot be used in evidence in any civil, criminal or administrative proceedings relating to the offence for which the child has been remanded in custody. [23]

1.4 Consultation

According to the explanatory notes, consultation occurred when drafting the proposed amendments with a wide range of stakeholders including legal, media, youth, child protection and victims' advocacy stakeholders, as well as the judiciary.[24]

1.5 Legislative compliance

The committee's 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).

1.5.1 *Legislative Standards Act 1992*

Fundamental legislative principles require that legislation has sufficient regard to the rights and liberties of individuals and the institution of Parliament.[25]

The committee's assessment of the Bill's consistency with the LSA considered potential issues relating to the following fundamental legislative principles raised by the Bill:

- regarding rights and liberties of individuals:
  - restriction on ordinary activities
  - reasonable and fair treatment
  - search powers
  - retrospectivity
  - penalties being proportionate to the offence
  - principles of natural justice
  - administrative power
  - reversal of onus of proof

20 Explanatory notes, p 12.

21 Explanatory notes, p 13.

22 Explanatory notes, p 14.

23 Explanatory notes, p 16.

24 Explanatory notes, pp 52-53.

25 *Legislative Standards Act 1992* (LSA), s 4(2).

- immunity from proceeding or prosecution
- sufficient regard to the institution of Parliament:
  - delegation of powers.

Committee comment

We are satisfied the Bill gives sufficient regard to the rights and liberties of individuals and the institution of Parliament. Any relevant considerations of fundamental legislative principles are discussed throughout sections 2-10 of this report.

1.5.2 *Human Rights Act 2019*

A law is compatible with human rights if it does not limit a human right or limits a human right only to the extent that is reasonable and demonstrably justifiable.[26]

The HRA protects fundamental human rights drawn from international human rights law.[27] Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The committee's assessment of the Bill's compatibility with the HRA considered the potential issues and limitations relating to the following human rights raised by the Bill:

- recognition and equality before the law
- right to life
- freedom of movement
- freedom of expression
- peaceful assembly and freedom of association
- property rights
- privacy and reputation
- protection of families and children
- right to liberty and security of person
- fair hearing
- rights in criminal proceedings
- right not to be tried or punished more than once
- right not to be subject to retrospective increases in penalties
- rights of children in criminal proceedings
- right to access health services.

[26] *Human Rights Act 2019* (HRA), s 8.

[27] The human rights protected by the HRA are set out in sections 15 to 37 of the HRA. A right or freedom not included in the HRA that arises or is recognised under another law must not be taken to be abrogated or limited only because the right or freedom is not included in the HRAt or is only partly included; HRA, s 12.

Committee comment

The committee is satisfied that any potential limitations on human rights proposed by the Bill are demonstrably justified. Any relevant considerations of human rights issues are discussed in sections 2-10 of this report.

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

1.6 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 Queensland Community Safety Bill 2024 be passed.

The following sections of this report set out the key issues raised during the committee's examination of the Bill in more detail. It does not discuss all consequential, minor or technical amendments.

2 Amendments to the Childrens Court Act 1992

Criminal proceedings against children are currently open to the public where they are heard on indictment or by a Supreme Court judge.[28] For Childrens Court proceedings that fall outside of these categories, the *Childrens Court Act 1992* (Childrens Court Act) mandates that the court must exclude all persons from the courtroom who are not (amongst others):

- the subject child in the proceeding[29]
- the parent or adult family member of the child[30]
- the victim or the representative of the victim (although the Court still has the discretion to exclude these persons if the court deems that the person's presence would be prejudicial to the interests of the child)[31]
- a witness giving evidence.[32]

The Bill proposes to extend the persons who may be present in the court under section 20 of the Childrens Court Act (for criminal proceedings only) to also include persons who have 'a proper interest in the proceeding', accredited media entities and representatives from child safety or youth justice.[33] The Bill also proposes to enable the court to exclude particular persons from the courtroom if, after considering prescribed matters, the court is satisfied it is necessary:

- 'to prevent prejudice to the administration of justice' (Justice Ground), or
- 'for the safety of any person, including the child' (Safety Ground).[34]

In respect of the making of an exclusion order, the Bill proposes to impose mandatory factors which the court must consider in this process:

Factors for consideration in the making of an exclusion order in the Childrens Court[35]
The primacy of the principle of open justice
The public interest
The youth justice principles under the YJ Act
The age of the child
Any special vulnerabilities of the child
Whether the child is unable to meaningfully participate in the proceeding because of the presence of the person proposed to be excluded by the exclusion order
The seriousness of the offence alleged to have been committed by the child
Any cultural considerations relating to the child
Whether the presence of the person proposed to be excluded by the exclusion order may prejudice any future court proceedings

28 Queensland Police Service (QPS), correspondence, 13 May 2024, p 17.

29 *Childrens Court Act 1992* (Childrens Court Act), s 20(1)(a).

30 Childrens Court Act, s 20(1)(b).

31 Childrens Court Act, ss 20(1)(c), 20(2).

32 Childrens Court Act, s 20(d).

33 Bill, cl 112 (amend ss 20(1)(c), 20(1)(g), Childrens Court Act).

34 Bill, cl 112 (amend s 20(2), Childrens Court Act).

35 Bill, cl 112 (new s 20(2A), Childrens Court Act).

Factors for consideration in the making of an exclusion order in the Childrens Court[35]
Any submissions made by a party to the proceeding, a person proposed to be exclusion and any other person permitted to access the proceedings under new section 20(1) of the Childrens Court Act
Any other matter the court considers relevant

If the proceeding is being heard under the *Mental Health Act 2016,* the Bill proposes to maintain the court's mandate to exclude those individuals 'unless the court is satisfied it is in the interests of justice' to allow them to remain.[36]

The overarching policy justification for this amendment, as outlined in the explanatory notes, is to enable criminal proceedings in the Childrens Court to become more 'open'.[37] The proposed amendment reverses the currently prohibitive position in terms of consideration of whether certain categories of persons are to be allowed in the court.

2.1 Stakeholder views

The Youth Advocacy Centre (YAC) maintained that the current operation of section 20 of the Childrens Court Act was appropriate. YAC proposed that the court also be able to make an exclusion order in relation to both victims and their families, particularly in circumstances where confidential information concerning the child would be raised in the course of the proceeding.[38]

YAC noted that, in circumstances where a courtroom is opened to additional persons, a child may be less likely to disclose sensitive matters relevant to the proceeding which may have serious consequences for the administration of justice.[39] YAC also highlighted the potential impacts of increased media reporting of Childrens Court matters, in particular an exacerbation of the recent 'sensationalist and dramatic' reporting of youth crime issues in Queensland.[40]

Both the Bar Association of Queensland (BAQ) and the Queensland Law Society (QLS) opposed the amendments to the Childrens Court Act.[41] In particular, the QLS noted that victims are already permitted to attend the Childrens Court as a part of restorative justice processes (which include adequate supports). In their view, the 'opening' of the court to the media may 'cause further harm and vigilantism within the community' where the identity of a child could be inadvertently disclosed.[42]

The BAQ also opposed the amendments and noted that the introduction of exclusion orders may cause a further administrative burden on magistrates required to hear applications to exclude in the majority of Childrens Court matters.[43]

Conversely, Australia's Right to Know (ARTK) supported the amendment in principle but raised concerns that a reliance on the Justice Ground and Safety Ground in applications for exclusion orders, coupled with the requirement for the court to take into account all matters with equal weight, would cause journalists to be excluded from proceedings on a regular basis.[44] Accordingly, ARTK proposed

36 Bill, cl 112 (amend s 20(3A), Childrens Court Act).

37 Explanatory notes, p 1; QPS, correspondence, 13 May 2024, p 17.

38 Submission 125, p 3.

39 Submission 125, p 4.

40 Submission 125, p 6.

41 Public hearing transcript, Brisbane, 24 May 2024, p 33; Submission 211, p 8.

42 Submission 211, p 8.

43 Public hearing transcript, Brisbane, 24 May 2024, p 36.

44 Submission 89, pp 5-6.

that new section 20(2A) be revised so that the principle of open justice and the public interest be the only mandatory factors required to be taken into account by the court.[45]

2.2 Departmental response

The Department of Justice and Attorney-General (DJAG) highlighted at the public briefing that the ability of a prescribed person to access Childrens Court proceedings under amended s 20 of the Childrens Court Act is limited to the extent that, upon application by a party in the proceedings or by the court's own motion, they are able to be excluded from the proceedings.[46] Further, it was noted that 'accredited media entities' were limited to those listed in the relevant Supreme Court practice direction.[47]

In response to the opposition raised by the QLS, DJAG highlighted those pre-existing restrictions regarding the publication of identifying information of child defendants remain operational.[48]

Regarding ARTK's concerns about the factors to be considered in the making of an exclusion order, DJAG noted that the amendments require the court to make an exclusion order only if necessary and requires the court to already consider the 'primacy' of the principle of open justice.[49] If an application was made to exclude an accredited media entity from the court, that entity also would have the ability to make submissions as to why the order should not be made.[50]

2.3 Compatibility with human rights

All persons, including children, have the right to equality before the law[51] and the right to privacy and reputation.[52] In respect of human rights as they apply to children, the HRA also states that a child has the right to:

- protection that is needed and is in the child's best interests[53]
- a procedure in criminal matters that takes account of the child's age and for the purpose of promoting the child's rehabilitation[54]
- be treated in criminal proceedings in a way that is appropriate for the child's age.[55]

The proposed amendments in the Bill are set to enlarge the categories of persons presumed to be granted access to observe criminal proceedings in the Childrens Court.

Firstly, in respect to the general rights to equality before the law and privacy, the statement of compatibility acknowledges that Aboriginal and Torres Strait Islander children may be disproportionately impacted by the amendments, despite their equal application to all children regardless of race.[56] Further the statement of compatibility highlights that with the presence of more people in the courts, and the ability for such people to then report on the contents of such hearings,

45 Submission 89, p 8.

46 Public briefing transcript, Brisbane, 24 May 2024, p 5.

47 Public briefing transcript, Brisbane, 24 May 2024, p 5; QPS, correspondence, 6 June 2024, p 3.

48 QPS, Department of Justice and Attorney-General, Department of Youth Justice and Department of Transport and Main Roads (Department), correspondence, 21 May 2024, p 235.

49 Department, correspondence, 21 May 2024, p 80; Public briefing transcript, Brisbane, 24 May 2024, p 6.

50 Public briefing transcript, Brisbane, 24 May 2024, p 6.

51 HRA, s 15(3).

52 HRA, s 25.

53 HRA, s 26(2).

54 HRA, s 32(3).

55 HRA, s 33(3).

56 Statement of compatibility, p 14.

it is likely the personal information of children will be disseminated to an extended category of people.[57]

Secondly, in respect of the rights of children alone, the statement of compatibility acknowledges that the amendments may hinder the court's ability to administer the proceedings for the purpose of the child's rehabilitation and in the child's best interest where additional persons would be present in the courts which could result in undue levels of publicity and identification being levied on a child.[58]

The statement of compatibility notes that the purpose of the proposed amendments to the Childrens Court Act is 'to support the rights of victims of crime, the principle of open justice and transparency, enhance public confidence in the justice system and promote informed scrutiny of existing laws'.[59] The statement of compatibility notes there is no less restrictive alternative measure for achieving such purpose and that 'the impacts on a child's human rights are outweighed by the importance of supporting victims of crime and promoting open justice and transparency'.[60]

Committee comment

The committee acknowledges the concerns raised by various stakeholders of the impact of the permissive, as opposed to prohibitive, approach to attendance at prescribed Childrens Court hearings, particularly as children are uniquely vulnerable in the criminal justice system and may be impacted by the increased attendance at hearings and their ability to participate and give evidence in such proceedings. However, it is the committee's view that in circumstances where a free and democratic society values the principle of open and transparent criminal justice systems, the limitations which may be imposed on children who are the subject of Childrens Court proceedings may be justified to the extent that:

- the ability of the victims and their families, along with the media, to access prescribed criminal proceedings in the Childrens Court is in the remit of the public interest
- safeguards are incorporated into the proposed amendments in the Bill to minimise the detrimental impact for young people in the criminal justice system, particularly where applications for exclusion orders may be made in circumstances where it would be prejudicial to the proper administration of justice to allow certain persons access,[61] and
- existing provisions in respect of powers to exclude for contempt of court, closure of proceedings for special witnesses and offences for the publication of prohibited identifying information of children remain and will act in tandem with the proposed amendments.

On this basis, the committee is satisfied that any limitation on the rights of child in clause 112 of the Bill is reasonable and demonstrably justifiable.

57 Statement of compatibility, p 14.

58 Statement of compatibility, p 15.

59 Statement of compatibility, p 15.

60 Statement of compatibility, p 17.

61 Bill, cl 112 (amend s 20(2), Childrens Court Act).

3 Youth justice reforms

It is widely accepted that children who become subject to the criminal justice system ought to be treated differently than adults due to their inherent vulnerabilities. The YJ Act regulates the administration of youth justice in Queensland and provides statutory guidelines for the judiciary in dealing with children who have committed criminal offences.[62]

3.1 Amendment to 'detention as a last resort' principle in youth justice principles and sentencing principles

The charter of youth justice principles underlies the operation of the YJ Act.[63] Currently, youth justice principle 18 provides that a child should only be detained in custody for an offence 'as a last resort and for the least time that is justified in the circumstances'.[64]

Beyond the application of the youth justice principles in the operation of the YJ Act generally, when the court or a police officer is required to make a decision about whether or not to release a child charged with an offence with or without bail, the YJ Act explicitly states that the court or police officer may have regard to principle 18 in the making of this decision.[65]

The Bill proposes to reword principle 18 to clarify that a child should be detained:

- where necessary, including to ensure community safety and where other non-custodial measures of prevention and intervention would not be sufficient, and
- for no longer than necessary to meet the purpose of detention.[66]

The Bill intends to correct a 'misrepresentation' that, in accordance with the current version of principle 18, courts are unable to impose detention if there are other penalties or measures that could be imposed by the court.[67] The amendment to principle 18 is proposed to 'make plain' that detention as a penalty can be imposed where other penalties are inappropriate and to reinforce the ability of the courts to make decisions regarding detention of children in the interest of community safety.[68] The statement of compatibility states that the amendments to principle 18 are to clarify its intention and 'are not intended to change the law'.[69]

The Bill also proposes consequential amendments to the 'Notes' as contained in the power of police to arrest children without warrant to refer to the amended version of principle 18.[70]

3.1.1 Stakeholder views

Some submitters voiced their opposition to the amendment of youth justice principle 18.[71]

In particular, submitters noted the following concerns and unintended consequences that may flow from the proposed amendments:

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62 *Youth Justice Act 1992* (YJ Act), s 2.

63 YJ Act, s 3 (2).

64 YJ Act, sch 1.

65 YJ Act, s 48AA(4)(b)(i).

66 Bill, cl 132 (amend sch 1, YJ Act).

67 Explanatory notes, p 12; QPS, correspondence, 13 May 2024, p 21.

68 Explanatory notes, p 12; Record of Proceedings, 1 May 2024, p 1368.

69 Statement of compatibility, p 12.

70 Bill, cls 114 (amend s 365(3), *Police Powers and Responsibilities Act 2000* (PPRA)), 116 (s 13(1)(a), YJ Act).

71 Aboriginal and Torres Strait Islander Legal Service (ATSILS), submission 35, p 4; YAC, submission 125, p 8; Queensland Mental Health Commission (QMHC), submission 126, p 3; Queensland Council of Social Service (QCOSS), submission 129, p 2; Legal Aid Queensland, submission 132, p 6.

- the court failing to expressly consider alternative sentences for offending, and ordering detention as the first option[72]
- an increase in incarceration of children, particularly Aboriginal and Torres Strait Islander children (noting Queensland currently has the highest rates of youth detention in Australia)[73]
- an increase in length of custodial sentences for children and young people[74]
- additional children becoming traumatised by contact with the criminal justice system leading to further criminality[75]
- a failure to reduce youth offending on the basis that evidence has shown that detention of children and young people does not reduce related crime rates[76]
- while detention as a last resort is retained for adult offenders in accordance with section 9(2)(a) of the *Penalties and Sentences Act 1992*, children are subject to a higher standard[77]
- the rights of the child in accordance with the United Nations (UN) Rights of the Child and the HRA being impinged.[78]

The Queensland Human Rights Commission (QHRC) noted:

> [T]he principle of detention as a last resort is central to Queensland's youth justice legislation. It must remain in place to uphold obligations under the *United Nations Convention on the Rights of the Child* and to prevent children from becoming entrenched in the criminal justice system, thereby undermining community safety in the long term.[79]

YAC also noted that the proposed amendment would result in Queensland being the only state to approach sentencing of youth offenders in this way, in particular:

> [N]o state has the positive obligation imposed by the phrase 'a child should be detained in custody where necessary', even with the caveat of the insufficiency of other measures. Every other state and territory in Australia either has detention as a last resort, or provides that detention is 'only' available if other lesser options are not appropriate.[80]

Mr Keith Hamburger AM submitted that the detention ought to be 'an option of first resort' for repeat juvenile offenders. He added, however, that the current model of youth detention in Queensland was not working and needed to be reformed in the vein of a 'therapeutic assessment centre' to develop a holistic rehabilitation plan based on each child's specific needs.[81]

PeakCare supported the proposed amendment on the basis that the clarification does not appear to fundamentally change the effect of youth justice principle 18, and may assist the court in respect of its decision-making on sentences.[82]

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72 YAC, submission 125, p 9.

73 ATSILS, submission 35, pp 4-5; YAC, submission 125, p 8; QCOSS, submission 129, p 2.

74 YAC, submission 125, p 9.

75 ATSILS, submission 35, p 5.

76 ATSILS, submission 35, p 5; YAC, submission 125, p 10.

77 Legal Aid Queensland, submission 132, p 6.

78 Legal Aid Queensland, submission 132, p 6; Justice Reform Initiative (JRI), submission 133, p 11.

79 Submission 212, p 20.

80 Submission 125, p 9.

81 Public hearing transcript, Brisbane, 24 May 2024, p 1.

82 Submission 128, p 10.

3.1.2 Departmental response

In terms of current rates of young people in detention, the Department of Youth Justice (DYJ) confirmed:

- the average daily number of young people in custody is up by 92 young people in the last 5 years (310 in the 12 months to 31 March 2024)
- the average length of time spent in custody by a young person has increased by 13 days in the last 5 years (to 31 March 2024).[83]

DYJ repeatedly noted that the amendments to youth justice principle 18 are 'clarifying provisions' only to correct the incorrect perception that principle 18 (as it is currently drafted) prevents the court from ordering detention as a penalty for youth offenders where other penalties are available.[84]

The explanatory notes draw attention to precedent from the Queensland Court of Appeal,[85] which holds that once the court has considered all options reasonably available for sentencing, and no alternate options are appropriate in the circumstances, the court may impose a period of detention.[86]

In response to concerns regarding the number of children held in detention in Queensland (particularly watchhouses), DYJ clarified its intention to have children in watchhouses for the shortest time possible. It stated that the government is increasing capacity of youth detention centres (particularly at the Wacol Youth Remand Centre and new therapeutic centres at Woodford and Cairns).[87]

Further, DYJ provided information of the impact on the inclusion of the 'detention as a last resort' principle on the number of children sentenced to detention orders in Queensland:

> … detention as a last resort was not within the Youth Justice Act … for a period from around March 2014 to about the beginning of 2016. From memory, the number of young people sentenced to a detention order was 232 the year before it was introduced. It rose to 241, then 238, and the year it was removed was 232. There are so many variables in terms of offending behaviour. While detention as a last resort was removed in that period, very small numbers of young people in detention—it is a small population.[88]

3.1.3 Compatibility with human rights

The HRA contains specific provisions in respect of the rights of children who are the subject of criminal proceedings.[89] The clarification of the principle of 'detention as a last resort' raises issues regarding the ability of the court to serve the best interests of the child and ensure the rehabilitation of the child is promoted in the course of the proceedings.

Further, section 29(3) of the HRA provides that a person must not be deprived of their liberty except on grounds, and in accordance with procedures, established by law. The amendment to the sentencing provisions contained in the Bill may result in a child being detained in contravention of human rights conventions, both domestic and international.

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83 Department, correspondence, 6 June 2024, pp 4-5.

84 Department, correspondence, 21 May 2024, pp 11-12, 133-135, 143-144; Public briefing transcript, Brisbane, 24 May 2024, p 8; Public briefing transcript, Brisbane, 10 June 2024, pp 4-6.

85 *R v SDW* [2022] QCA 241.

86 Explanatory notes, p 12. See also public briefing transcript, Brisbane, 10 June 2024, p 3.

87 Department, correspondence, 21 May 2024, p 144.

88 Public briefing transcript, Brisbane, 24 May 2024, p 8.

89 HRA, ss 26(2), 32(3), 33(3).

Committee comment

The committee notes the position of several submitters that the amendments to principle 18 have the effect in the submitters' view of removing the principle of 'detention as a last resort' in its entirety.

Whether it is clarifying the law or changing the law, there appears to be agreement that the effect of the amendment may allow for detention to be ordered in circumstances other than where there are no other reasonable options available. Although it may impinge on the rights of the child, it is the view of the committee that it is arguably justified as it takes into consideration the rights of the child, other non-custodial factors, and community safety concerns.

It is noted that the department stated this was a clarifying provision and therefore the statement of compatibility did not contain an assessment of the amendments for consistency with human rights. Given the contentious issues raised by the amendments, the committee is of the view that submitters would have benefited from the statement of compatibility containing a more comprehensive explanation of the limitations on the rights of the child impacted by these amendment as opposed to a blanket statement that the amendments were a 'clarifying provision' and did not invoke the requirement to consider the human rights implications.

3.2 Change to process for transfer of 18 year old detainees to adult custody

In 2023, the *Strengthening Community Safety Act 2023* amended the process for the transfer of youth offenders from detention centres to adult correctional facilities on turning 18 years old.[90] In particular, as it currently stands, a young person who is remanded in custody who is at least 17 years and 10 months and has no future court date, or does not have a court date within the next 2 months, can be issued with a transfer notice to be moved to an adult correctional facility on any day that is on or after the young person turns 18 years old.[91]

The policy consideration underpinning this proposed amendment was that a young person should not be subjected to a transfer where their matter was likely to be finalised and they may be released in the short term.[92] However, the statement of compatibility notes that the court date prerequisite proved ineffective in circumstances where a young person has a court date within the 2 month period (therefore making them ineligible for transfer) but that court date is procedural in nature and would not result in their release.[93]

Accordingly, the Bill proposes to alleviate this issue by retaining some aspects of the current model and changing others. In particular, the 'new model' would involve young persons being transferred to adult correctional facilities within one month of turning 18 years old, unless the chief executive (in their discretion) deems otherwise.[94]

The chief executive may have regard to the 'special circumstances' of the detainee and other relevant factors in the making of their decision to delay or otherwise not give the transfer order.[95]

A person subject to a transfer order may also apply to review the chief executive's decision or apply to the court for a delay to the transfer for a maximum period of 6 months.[96]

The Bill also expressly states that a young person of at least 18 years and 6 months (who may have been subject to a delay in their transfer) ought to be detained in an adult corrective facility on the

90 Explanatory notes, p 36.

91 YJ Act, s 276H(1).

92 Explanatory notes, pp 13-14.

93 Statement of compatibility, p 77.

94 Bill, cl 126 (new s 276B(1), YJ Act); explanatory notes, p 36.

95 Bill, cl 126 (new s 276C(3), YJ Act).

96 Bill, cl 126 (new ss 276J, 276P YJ Act).

basis that this approach 'is in the best interests of the welfare of all detainees at the detention centre'.[97] To that end, an application for review or delay cannot be made if the applicant is 18 years and 6 months or older (and any current application on foot will lapse at that time as well).[98]

3.2.1 Stakeholder views

The Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP) raised concerns that the transfer of persons on remand to adult custody may undermine the presumption of innocence and the factors to be taken into account when deciding to make a transfer order do not adequately deal with the potential cognitive and familial vulnerabilities of a child.[99]

YFS Legal noted that the amendments to the transfer provisions also fail to limit the contact between youth offenders and adult offenders in circumstances where children are still held in adult watchhouses where most contact (and risk) occurs. YFS Legal further noted that these amendments do not impact the pattern they have experienced in relation to police waiting to charge a person until they turn 18 years old in order to 'side-step' the youth justice system and its restrictions.[100]

The QHRC supported the retention in the Bill of particular 'safeguards' regarding the transfer decision process including 'notices of decision, arranging consultation with a lawyer, providing for review and reasons by the chief executive, review of the chief executive's decision by the Childrens Court, and automatic stay of transfer while review processes are ongoing'.[101]

3.2.2 Departmental response

DYJ noted that the amendments proposed by the Bill implement the general policy principle that only adults should be held in adult custody subject to special considerations to be taken into account by the chief executive.[102]

Further, the chief executive is not limited in the matters that can be taken into account in making a determination in respect of a transfer of a young person.[103] This flexibility, coupled with the availability of a merits review of a decision and access to legal advice, ensures that the process is able to operate effectively.[104]

3.3 Recording of phone calls in youth detention centres

Currently, all phone calls between a young person in youth detention and 'someone else' are not able to be recorded by the chief executive or any detention centre employee.[105]

Feedback from intelligence officers in youth detention centres indicated that 'offences are being committed or the safety of other detainees or staff are being compromised via phone calls'.[106] Accordingly, the Bill proposes to allow staff to record such calls by creating an exemption to the prohibition on phone call recording in circumstances where:

97 Bill, cl 126 (new s 276Y(1), YJ Act).

98 Bill, cl 126 (new s 276Y(2), YJ Act).

99 Submission 207, p 7.

100 Submission 118, p 5.

101 Submission 212, p 14.

102 Department, correspondence, 21 May 2024, p 63.

103 Department, correspondence, 21 May 2024, p 227.

104 Department, correspondence, 21 May 2024, pp 227-228.

105 YJ Act, s 263A(4).

106 Explanatory notes, p 14.

- the recording of the conversation is for a purpose, and in accordance with the requirements, prescribed by regulation, and
- the conversation is not between the young person and one of the prescribed persons outlined in section 263A(3) of the YJ Act. [107]

Prescribed persons in section 263A(3) of the YJ Act (as amended)
The child's lawyer
An officer of a law enforcement agency
The Ombudsman
A community visitor (child)
A child advocacy officer
The Public Guardian
A person who is: • a member of the UN subcommittee, or • accompanying the UN subcommittee as a UN expert, interpreter or other person assisting the subcommittee
The Inspector of Detention Services
The Human Rights Commissioner under the *Anti-Discrimination Act 1991* [108]

The framework for the recording of phone calls will be contained in the *Youth Justice Regulation 2016*.[109]

3.3.1 Stakeholder views

The QHRC raised concerns in relation to the recording of detainee's phone calls, except where there are 'compelling reasons to justify it' such as evidence of breaches of domestic violence orders or using calls to intimidate witnesses.[110] The QHRC also highlighted the need for a human rights certificate to accompany any amending regulation in respect of the operation framework for the recording of calls as well as consultation with key stakeholders in the preparation of such framework.[111] To that end, Ms Fulton of the QHRC stated:

> We would certainly need very close scrutiny of any procedures that were implemented around that to ensure children were not disconnected from their families and their friends.[112]

The QHRC supported the amendment proposed in the Bill to exempt calls between detainees and the Human Rights Commissioner. However, the QHRC recommended that the words 'under the *Anti-Discrimination Act 1991'* be deleted from amended s 263A(3)(i) to avoid this exemption being construed too narrowly.[113]

The QLS raised concerns about the current ambiguity regarding how recordings will be used, particularly if they may be used against children in criminal proceedings where children are, due to

[107] Bill, cl 125 (amend s 263A(4), YJ Act).

[108] Bill, cl 125 (insert new s 263A(3)(i), YJ Act).

[109] Explanatory notes, p 37.

[110] Submission 212, pp 18-19.

[111] Submission 212, p 19.

[112] Public hearing transcript, Brisbane, 24 May 2024, p 47.

[113] Submission 212, p 19.

their age and relevant level of maturity, unaware of the impact and consequences of their words. Further, the QLS holds concerns that, despite the Bill maintaining conversations between detainees and their legal representatives are exempt from recording, conversations containing information subject to legal professional privilege may still be recorded in other conversations (which may compromise a detainee's legal proceeding).[114] In respect of this concern, the QLS sought confirmation in its submission from DYJ that section 29 of the YJ Act (which mandates that a support person must be present for a statement in relation to an indictable offence by a child to be admissible in court) applies to calls recorded as proposed by the Bill.[115]

The Office of the Information Commissioner (OIC) also noted that, in the development of a framework in the regulations to govern the recording of phone calls, the OIC would welcome being consulted. The OIC noted that safeguards should also include 'robust operational policies and procedures, training for youth detention centre staff and auditing to prevent unauthorised access to or misuse of personal information collected through the recordings'.[116] It was also highlighted by the OIC that a person's right to privacy is not precluded by whether or not they are in detention.[117]

3.3.2 Departmental response

DYJ noted that 'over the last three or four years there have been over 80 instances where we have seen intelligence reports where young people have been involved in criminal behaviour' which formed the basis for the proposed recording scheme.[118]

DYJ also clarified that a privacy impact statement will be undertaken[119] and it intends to consult with a range of stakeholders in the development of the framework for the operation of the phone call recording powers.[120]

In respect to the application of section 29 of the YJ Act to recorded calls from or to a youth detention centre (as queried by the QLS), DYJ noted:

> Section 29 applies only to 'a statement made or given to a police officer'. However, section 29(4) provides that section 29 does not limit the common law under which a court in a criminal proceeding may exclude evidence in the exercise of its discretion.[121]

3.3.3 Compatibility with human rights

The proposed enlargement of powers to record phone calls between detainees and persons not protected under section 236A(3) of the YJ Act raises multiple humans rights considerations.[122]

In particular, while the provision preserves confidentiality in conversations between a detainee and their legal representative (for example), phone calls to family members, friends and other persons in the detainee's community would be subject to recording. This may result in an invasion of privacy (for both the young person and the other party) and may inhibit the young person's ability to remain connected to their community where they are conscious conversations are being recorded, which may result in limited information being exchanged. The ability of a child to raise complaints about

114 Submission 211, p 9.

115 Submission 211, p 10.

116 Submission 2, pp 1-2; public hearing transcript, Brisbane, 10 June 2024, p 7.

117 Public hearing transcript, Brisbane, 10 June 2024, p 6.

118 Public briefing transcript, Brisbane, 24 May 2024, p 3.

119 Department, correspondence, 21 May 2024, p 224.

120 Department, correspondence, 21 May 2024, p 240.

121 Department, correspondence, 21 May 2024, p 236.

122 HRA, ss 21(1), 22(2), 25(a), 26(1), 26(2), 28(2)(c), 30(1), 32(3), 33(3).

maltreatment within the youth detention centre may also be inadvertently censored, and further human rights infringements may continue in the course of the young person's detention.

These limitations of rights are acknowledged in the statement of compatibility.[123] The statement of compatibility notes:

> Should the regulation-making power under the Bill be exercised, a thorough human rights assessment will also be contained in the human rights certificate for the amendment regulation to address the impacts of the proposed provisions and safeguards.[124]

Committee comment

The committee recognises the concerns raised by submitters, particularly the QHRC and the QLS, in respect of the proposed recording of phone conversations between young people detained in youth detention centres and other persons (subject to exclusions).

In respect of children engaging in conversations with other people, in particular their family, friends and other support systems, it is possible that relationships between young offenders and their community outside of detention may be impacted by recordings.

It is the view of the committee that the limitations proposed by the Bill are reasonable and justifiable having regard to the intention to prevent serious crime and the incorporation of safeguards in relation to exemptions for particular conversations between young people and prescribed persons. However, the committee also notes there is difficulty in assessing the reasonableness and justification of the limitation of human rights raised by this amendment on the basis that the framework which will regulate the operation of the recording power is yet to be determined.[125]

The committee strongly supports ongoing consultation with key stakeholders, in particular the OIC and the QHRC, in the development of the framework for the operation of the phone call recording scheme to ensure regulations will minimise the impact of the program on the rights of young people while still achieving the policy objective.

3.4 Expansion of electronic monitoring trial for children on bail

Currently, the YJ Act provides that if a child is released on bail, and the court or police officer is satisfied that there is a risk that the child will commit an offence that endangers the safety of the community or another person, the court may impose on the grant of bail the condition that the child must wear an electronic monitoring (EM) device in prescribed circumstances.[126]

This EM provision was added to the YJ Act in 2021, and contained the criteria to be applied by the court in the granting of the bail condition.[127] In particular, the criteria included the requirement that the offence to which bail is being granted is a prescribed indictable offence (which is limited to serious, violent offences such as life offences or those involving the serious injury of another person) and the child has been found guilty of committing at least one indictable offence previously.[128] This provision was also temporary and due to expire, on its sunset date, on 30 April 2025.[129]

The Bill proposes to increase the number of children who may become subject to electronic monitoring by:

123 Statement of compatibility, pp 80-81.

124 Statement of compatibility, p 81.

125 Statement of compatibility, p 78.

126 YJ Act, ss 52A(2), 52AA(1).

127 *Youth Justice and Other Legislation Amendment Act 2021*, ss 25, 26.

128 YJ Act, ss 52AA(1)(b), (c).

129 YJ Act, s 52AA(10).

- expanding the list of prescribed indictable offences in relation to which bail is being granted[130]
- amending the requirement that the child has been previously found guilty of an indictable offence to also include children that have been charged, but not convicted, of a prescribed indictable offence that has not been discontinued and does not otherwise arise out of the same factual circumstances in respect of the current charge.[131]

The intention of the amendment is to widen the sample size to support reliable conclusions about the effectiveness of the trial in reducing recidivism amongst children on bail while managing the risk of individual children who may become serious repeat offenders.[132]

3.4.1 Stakeholder views

The QLS noted that the fitting of an EM device on a child would identify them as a person who has engaged with the criminal justice system (whether or not their criminal proceedings have been finalised).[133]

Further, as noted by the BAQ, due to the age and maturity of those fitted with EM devices in the trial, a young person may not understand the requirements of the condition (such as charging of the device), which may lead to an increase in breach of bail offences and further criminalisation of young people due to breach of bail offences.[134]

PeakCare raised concerns in respect of the inclusion of children in the EM trial who have been charged with, but not convicted of, a prescribed indictable offence and its detrimental impact on the child's right to the presumption of innocence. PeakCare also noted that, based on the current results of EM of young people, there is no reasonable evidence to support a further expansion of the trial.[135]

QATSICPP also queried the effectiveness of the trial in circumstances where there is no evidence that EM is going to substantially impact community safety, although noted that the imposition of EM as a condition of bail would be 'the least worse of two bad options' compared with ordering a period of detention.[136]

3.4.2 Departmental response

In respect to concerns regarding the lack of evidence to support an expansion of the trial and potential further stigmatisation of children fitted with EM devices as having contact with the criminal justice system, QPS's response included the following:

- 'Children undergo suitability assessments before being placed on electronic monitoring, and receive intensive bail support. The trial will inform decisions about the future use of the technology. It is up to the court to ensure the condition is appropriate in the circumstances.'[137]
- 'Consistent with the Statement of Compatibility, the purpose of expanding the trial is to determine whether electronic monitoring reduced offending among certain children who appear to be serious repeat offenders and therefore whether electronic monitoring is an effective alternative to detention in the Queensland context.'[138]

130 Bill, cl 119 (amend s 52AA(11)(c), YJ Act).

131 Bill, cl 119 (amend s 52AA(1)(c), YJ Act).

132 Statement of compatibility, p 77.

133 Submission 211, pp 8-9.

134 Public hearing transcript, Brisbane, 24 May 2024, pp 34-35.

135 Submission 128, p 11; Public hearing transcript, Brisbane, 24 May 2024, p 21.

136 Public hearing transcript, Brisbane, 24 May 2024, p 26.

137 Department, written correspondence, 21 May 2024, p 82.

138 Department, written correspondence, 21 May 2024, pp 82, 120.

- 'A safeguard has been included in the proposed amendments to require the removal of an electronic monitoring condition in circumstances where the charge has been withdrawn, dismissed or resulted in an acquittal.'[139]
- 'QPS acknowledges the high rate of contact First Nations children experience in the criminal justice system. It is possible the use of electronic monitoring could result in opportunities for First Nations young people to stay out of custody and to be monitored without the need for intrusive curfew compliance checks by police.'[140]

At the first public briefing, QPS also noted that there were, at that time, 46 EM devices for children in operation in Queensland and, due to the current, small sample size, it is 'equivocal' as to whether EM devices 'work'.[141] On this basis, QPS noted an expansion of the trial would be beneficial to answering this issue.

3.4.3 Compatibility with human rights

The statement of compatibility acknowledges that the expansion of the EM provisions for children on bail would limit human rights.[142] Beyond the interrelated rights of children specifically and the consideration of their age and rehabilitation in criminal proceedings,[143] the expansion of the EM monitoring trial would involve more children being surveilled, which would impinge on their right to privacy.[144] Further, the amendments proposed in the Bill would capture children charged, but not convicted, of a relevant offence being monitored, which potentially undermines the presumption that a child is innocent and should not be subject to punitive measures on this basis.[145]

However, as contended in the statement of compatibility, the amendments do not mandate the imposition of EM conditions on a grant of bail. The availability of EM may mean that a child does not need to be held in detention, and children under 15 years old would be ineligible for EM.[146]

Further, the expansion of the trial may also have some benefits to human rights such as reducing detention being ordered by the court and the number of intrusive police checks at a young person's home while on bail.[147]

Committee comment

The committee considered the human rights implications of the expansion of the EM trial for children on bail and recognises the concerns raised by several submitters about the stigma that may be experienced by young people in the community who are fitted with visible EM devices.

While the committee is mindful of the particular vulnerabilities of children, it is satisfied that the expansion of the trial, as proposed in the Bill, is compatible with human rights on the basis that the limitation of rights that may be experienced by children (in particular their right to privacy) is reasonable and justifiable where EM provides a viable alternative to orders of detention and is only to be ordered by the courts in circumstances where it is appropriate to do so.

139 Department, written correspondence, 21 May 2024, p 13.

140 Department, written correspondence, 21 May 2024, p 121.

141 Public briefing transcript, Brisbane, 24 May 2024, p 17.

142 Statement of compatibility, p 77.

143 HRA, ss 26(2), 32(3), 33(3).

144 HRA, s 25(a).

145 HRA, s 32(1).

146 Statement of compatibility, pp 83-84.

147 Statement of compatibility, p 84.

3.5 Temporary transfer of children from watchhouses to youth detention centres

The explanatory notes recognise the criticism received in respect of children being detained in watchhouses throughout Queensland, in particular, the difficulty in providing age-appropriate programs to children in watchhouse due to 'the watchhouse built environment and the need for specialised staff'.[148]

While there is no framework in the current legislation,[149] the Bill proposes to introduce a framework to allow children held in watchhouses (either after being sentenced or on remand) to be temporarily transferred to a youth detention centre for the purpose of participating in therapeutic or educational programs and physical activity.[150] It is intended that:

- children would be transferred to the youth detention centre and returned to the watchhouse in the same day (unless there are unforeseen circumstances)[151]
- the availability of the transfer framework would be subject to the capacity of the youth detention centre to facilitate the program and the availability of youth detention centres that are in a reasonable radius from the watchhouse.[152]

A child's participation in the transfer program is also subject to the child's agreement and the child's needs and circumstances.[153]

3.5.1 Stakeholder views

Several submitters noted their opposition to children being held in watchhouses, however supported the temporary transfer program in principle.[154] In particular, the Queensland Indigenous Family Violence Legal Service (QIFVLS) noted its support for the program to allow children to have access to daylight and education services.[155]

However, submitters also noted that:

- children who are located in regional and remote areas may not have adequate access to the program[156]
- there could be further scope for the program to be expanded to leaves of absence for reasons other than participation in programs (such as attendance at funerals or other cultural events)[157]
- data should be collected and reported in respect of participation in the scheme to evaluate its impact (and this should be enshrined in the YJ Act itself)[158]

148 Explanatory notes, p 14.

149 Explanatory notes, p 14.

150 Bill, cl 120 (new s 56A, YJ Act).

151 Bill, cl 120 (new s 56A(2), (6), YJ Act).

152 Explanatory notes, p 37; Bill, cl 120 (new s 56A(4)(b), YJ Act).

153 Bill, cl 120 (new s 56A(3)(a), (4) YJ Act).

154 ATSILS, submission 35, p 7; YFS Legal, submission 118, p 5; Office of the Public Guardian (OPG), submission 189, p 2; QHRC, submission 212, p 11.

155 Public hearing transcript, Brisbane, 10 June 2024, p 16.

156 OPG, submission 189, p 2; QATSICPP, submission 207, p 9; Queensland Indigenous Family Violence Legal Service (QIFVLS), submission 210, p 12; QLS, submission 211, p 9.

157 QLS, submission 211, p 9; ATSILS, submission 35, p 7; YFS Legal, submission 118, p 5.

158 QHRC, submission 212, p 11; QLS, submission 211, p 9.

- the resourcing of staff and programs available at youth detention centres are already at capacity or are not occurring consistently to support the implementation of the program[159]
- other issues which impact capacity in youth detention centres, which may result in children being held in detention, ought to be considered (including raising the minimum age of criminal culpability and alternatives to detention).[160]

3.5.2 Departmental response

DYJ made the general comment, in response to concerns raised by submitters about children currently held in watchhouses throughout Queensland, that '[t]he Government is committed to having children in watchhouses for the shortest time possible'.[161] At the first public briefing, the Police Commissioner stated that 'we [QPS] would like to have no children in watchhouses'.[162]

At the same public briefing, the Police Commissioner noted that QPS is working collaboratively with DYJ to carry out the temporary transfer program.[163] It was also confirmed that:

- DYJ would be responsible for the transportation of children from watchhouses to youth detention centres in accordance with the proposed amendments in the Bill[164]
- the programs that would be delivered to children temporarily transferred into youth detention centres would include 'all services available—primary health assessments, mental health, secondary health assessments, our ability to do speech and language assessments, psychological assessments, to attend programming, school programming and recreational activity'.[165]

Regarding barriers that may be faced by children wanting to access the program who are held in remote watchhouses, DYJ acknowledged that that these children may not have the benefit of the program. However, its introduction 'does not make those children worse off than they currently are'.[166]

At the second public briefing, it was highlighted by DYJ that the involvement of children in decision-making impacting their participation in programs is required by the youth justice principles in the YJ Act and staff members are appropriately trained to have conversations with young people to determine whether they have capacity to agree to the transfer at that point in time.[167] Further, if a child was to not agree to the transfer, family members or other representatives would be involved to help explain to the child the benefits of agreement to the transfer for their rehabilitation.[168]

DYJ also noted that data is consistently collected about youth justice without the need for this to be provided in statute insofar as it relates to the operation of the proposed temporary transfer scheme.[169]

159 QATSICPP, submission 207, p 9.

160 Public hearing transcript, Brisbane, 24 May 2024, p 2; YFS Legal, submission 118, p 5.

161 Department, correspondence. 21 May 2024, pp 13, 99, 123, 133, 134, 144, 209, 222, 223, 239.

162 Public briefing transcript, Brisbane, 24 May 2024, p 16.

163 Public briefing transcript, Brisbane, 24 May 2024, p 16.

164 Public briefing transcript, Brisbane, 24 May 2024, p 16.

165 Public briefing transcript, Brisbane, 24 May 2024, p 19.

166 Department, correspondence, 21 May 2024, p 223; Public briefing transcript, Brisbane, 10 June 2024, p 6.

167 Public briefing transcript, 10 June 2024, p 5.

168 Public briefing transcript, 10 June 2024, p 6.

169 Department, correspondence, 21 May 2024, p 239.

3.6 Photographing detainees and parts of a detention centre

The Bill proposes to introduce a new offence under the YJ Act for photographing, or attempting to photograph, a child in a youth detention centre or any part of a youth detention centre.[170] The maximum penalty for the offence is 100 penalty units ($16,130)[171] or 2 years imprisonment.[172]

There are exceptions to this offence where the photograph is taken by a prescribed person, or with the written approval of the chief executive of DYJ.[173] The Bill also proposes to include a non-exhaustive list of factors that the chief executive may take into account when determining whether to grant the relevant approval.[174]

3.6.1 Stakeholder views

The QHRC raised concerns regarding the framing of the prohibition on taking photographs inside a detention centre as a criminal offence.[175] In particular, it was noted that while the amendment may promote the privacy of individual children, it may also hinder the ability of children and other persons to provide evidence of wrongdoing in youth detention centres.[176] This concern was also echoed by the QLS.[177]

The QHRC accordingly opposed the introduction of the offence in its current form and noted that, if it were to be introduced, exceptions to the offence ought to be considered to avoid conflict with human rights.[178]

3.6.2 Departmental response

In response to concerns raised about the introduction of the offence hindering transparency and accountability regarding the operation of youth detention centres in Queensland, DYJ noted that decisions to charge an individual under the new provision would be made in accordance with the HRA and subject to oversight by the relevant statutory authorities.[179]

DYJ also advised that, in accordance with new section 279B(2)(j), the chief executive of the department would not unreasonably refuse requests made to take photographs within youth detention centres.[180]

Committee comment

The committee notes the new provisions exempt categories of persons from being subject to the prohibition, including persons who are approved by the chief executive. In circumstances where a person is authorised to take photographs of children in detention as proposed in the Bill, there is no requirement that the child being photographed gives informed consent for the image to be taken or has the ability to object to the chief executive's approval for the photograph to be taken. This raises potential issues in respect of their right to privacy and protection by virtue of being a child. Further,

170 Bill, cl 127 (new s 279B, YJ Act).

171 From 1 July 2024, the value of a penalty unit in Queensland is $161.30: *Penalties and Sentences Regulation 2015* (Penalties Regulation), s 3.

172 Bill, cl 127 (new s 279B(1), YJ Act).

173 Bill, cl 127 (new s 279B(2), YJ Act).

174 Bill, cl 127 (new s 279B(4), YJ Act).

175 Submission 212, pp 16-17.

176 Submission 212, p 17.

177 Submission 211, pp 10-11.

178 Submission 212, p 17.

179 Department, correspondence, 21 May 2024, pp 236, 240.

180 Department, correspondence, 21 May 2024, p 240.

the committee notes that the statement of compatibility lacked some detail and could have benefited from a more comprehensive explanation of the limitations on the rights of the child impacted by these provisions, particularly the intent or purpose of the ability for the chief executive to authorise the taking of pictures of children in detention without consent.

However, the committee is satisfied that the limitations imposed on a child's right to privacy raised by clause 127 of the Bill are reasonable and demonstrably justifiable in circumstances where the amendments, on the whole, seek to preserve the child's right to privacy in prohibiting photography in youth detention centres and the chief executive ought to be conferred with the discretion to permit photographs by a person in limited circumstances.

4 Online content

4.1 Removal of online content

In response to a rise in the online sharing of content by offenders relating to criminal conduct, and where the sharing or advertisement of offences online is already an aggravating factor in the sentencing of various offences,[181] the Bill proposes to grant new powers to authorised police officers to issue removal notices to online publishers and social media providers. These notices would require the removal of images or recordings depicting the commission of particular offences (including those involving the operation of a vehicle, breaking and entering property, violence and weapons).[182]

Relevantly, this power is limited to the extent that:

- the authorised officer must only exercise this power if they suspect that the material was posted for the purpose of:
  - glorifying the unlawful conduct,[183] or
  - increasing a person's reputation due to their involvement in the unlawful conduct[184]
- the material was accessed in Queensland, and
- the conduct occurred in Queensland or was posted by someone in Queensland.[185]

A removal notice issued under this scheme is also required to:

- describe the online material in a way that enables the online provider to identify and remove it
- state the time, no earlier than 24 hours from the time the notice is given, by which the material must be removed, and
- warn the provider that, if the provider does not comply with the notice, the Police Commissioner may apply for a civil penalty order.[186]

Should an online publisher fail to comply with a removal notice, the Police Commissioner may apply to the Supreme Court of Queensland for a civil penalty order (as foreshadowed in the removal notice itself) with a maximum penalty of 10,000 penalty units.[187]

Further, the Bill clarifies that a failure of an officer to provide procedural fairness to an online publisher in the course of issuing it with a removal notice, does not affect the validity of the notice itself.[188]

4.1.1 Stakeholder views

ARTK raised concerns that a removal notice could be issued in respect of journalistic and news report material where the provision does not expressly exclude such content.[189] In particular, it was noted that other offences concerning the publishing of images or videos depicting criminal conduct included

181 Explanatory notes, pp 4-5.

182 Bill, cl 4 (new ch 21A, PPRA); explanatory notes, p 23.

183 Bill, cl 4 (new s 745D(1)(c)(i), PPRA).

184 Bill, cl 4 (new s 745D(1)(c)(ii), PPRA); explanatory notes, p 23.

185 Bill, cl 4 (new s 745D(1)(d),(e), PPRA); explanatory notes, p 23.

186 Bill, cl 4 (new s 745D(3), PPRA).

187 Bill, cl 4 (new s 745E, PPRA).

188 Bill, cl 4 (new s 745F, PPRA).

189 Submission 89, p 3; public hearing transcript, Brisbane, 24 May 2024, p 29.

an express exclusion for journalistic material,[190] and therefore a similar exclusion should be inserted in the removal notice provision.[191]

The Free Speech Union of Australia noted concerns about:

- the ability of police officers to determine the intention of the poster of the material (being relevant to whether the material was published for the purpose of glorifying the unlawful conduct) on belief and discretion alone, and
- the absence of judicial oversight in the issuance of removal notices.[192]

PeakCare supported the introduction of a framework for the removal of online content depicting unlawful activity due to its ability to encourage other persons to engage in the same behaviour and the impact on victims being exposed to such material.[193] The Local Government Association of Queensland similarly supported the scheme and recommended that it be reviewed in the future to assess whether it is achieving its policy intent.[194]

4.1.2 Departmental response

QPS advised that:

> The Bill does not create any new concepts in relation to the type of conduct captured. The Bill prescribes a broad set of offences against an Act of Queensland that are covered by the removal of online content scheme. This reflects the position that the distribution of images and recordings of criminal offending online is unacceptable.[195]

It was also highlighted by QPS that content shared for a purpose other than the 'glorification' of the unlawful conduct, such as the sharing of evidence by a concerned citizen or a victim of the unlawful conduct, would likely fall outside the remit of the new online content removal scheme.[196] The definition of 'glorification' would also reflect the ordinary meaning of this word and police officers would be trained accordingly to be able to accurately assess whether the online content meets this threshold.[197]

Further, in response to the concerns raised by the Free Speech Union of Australia, QPS clarified that:

- the purpose element required prior to the issuance of a removal notice sufficiently narrowed the application of the scheme to online content as the officer would need to 'suspect' that the motive for the posting of the material fell into one of the defined categories, and
- a person aggrieved by a removal notice can apply for a statutory review of the decision in accordance with the *Judicial Review Act 1991*.[198]

QPS noted that it was not the intention of the amendment that online material posted by a journalist could be the subject of a removal notice.[199] In any event, the journalist's material would be unlikely

190 Submission 89, p 3.

191 Submission 89, p 4.

192 Submission 111, p 2.

193 Submission 128, p 7.

194 Submission 134, p 2.

195 Department, correspondence, 21 May 2024, p 92.

196 Public briefing transcript, Brisbane, 10 June 2024, p 5.

197 Public briefing transcript, Brisbane, 10 June 2024, pp 7-8.

198 Department, correspondence, 21 May 2024, pp 92, 97.

199 Public briefing transcript, Brisbane, 24 May 2024, p 12.

to meet the requisite criteria for the issuance of a removal notice where it is not glorifying the conduct or increasing another person's reputation because of their involvement in the unlawful conduct.[200]

QPS also confirmed that removal notices can be issued to online publishers (such as social media companies) based outside of Queensland and it had received advice that the notices are enforceable extraterritorially.[201]

4.1.3 Compatibility with human rights

A person has a right to freedom of expression which includes the sharing of information of all kinds in all mediums (which would include online content).[202] This right extends to and encompasses forms of expression that may 'offend, shock or disturb'.[203] Further, a person has a right to not have their correspondence, which can include forms of communications such as social media posts, unlawfully and arbitrarily interfered with.[204] The statement of compatibility notes that censorship and withholding, as is proposed by the new removal scheme in the Bill, would amount to 'interference' on this basis.[205]

The statement of compatibility states that the purpose of the new online removal scheme is twofold:

1. to prevent the glorification and promotion of criminal acts to reduce crime rates in the community, and
2. to protect victims from re-traumatisation.[206]

The statement of compatibility acknowledges that the removal notice scheme will limit human rights, although this is justified when weighed against the policy intentions of the scheme which 'hold significant public interest' and there are no less restrictive alternatives to achieve this intention.[207]

Committee comment

The committee acknowledges submitters' support for police officers being able to remove content from online platforms in the interests of minimising the ability of offenders to promote their unlawful acts. In particular, the committee notes the importance of considering the interests of victims of crime who may be re-traumatised by the publication of material which depicts violent, unlawful acts. The committee is also conscious of the need to weigh such interests and the interests of the wider community, against an individual's right to freedom of expression. The committee is therefore pleased to see training will be provided to officers to assess whether the required threshold is met to ensure content is not unduly censored.

In light of these considerations, the committee is satisfied that the limitations on human rights flowing from the ability of police officers to issue removal notices for online content as proposed in the Bill would be reasonable and demonstrably justifiable.

200 Department, correspondence, 21 May 2024, p 80.

201 Public briefing transcript, Brisbane, 24 May 2024, p 3.

202 HRA, s 21(2).

203 *Handyside v United Kingdom* (1976) 1 EHRR 737 [49].

204 HRA, s 25(a).

205 Statement of compatibility, p 59.

206 Statement of compatibility, p 59.

207 Statement of compatibility, p 59.

4.2 Introduction of new online material offence and aggravating circumstances

Standalone publication offence in the *Summary Offences Act 2005*

The Bill further proposes to introduce a new, standalone offence in the *Summary Offences Act 2005* (Summary Offences Act) for publishing material on a social media platform if the material:

- depicts a 'prescribed offence' (being an offence involving the driving or operation of a vehicle, violence or the threat of violence, damage to or entering of property or a weapon), and
- was published for the purpose of glorifying the conduct or increasing the poster's reputation due to their involvement in the conduct.[208]

The maximum penalty for this new offence is 2 years imprisonment.[209]

The Bill also clarifies:

- this offence does not apply to the publication of material by a journalist in their activities as a journalist,[210] and
- a person cannot be convicted of both the standalone advertising offence and an additional offence with a circumstance of aggravation relating to the publication of material on a social media platform or an online social network (to avoid the potential for double jeopardy).[211]

New aggravating circumstances in the Criminal Code

The posting of material on a social media site to advertise a person's involvement in an offence or the offence itself is also proposed to be added as a circumstance of aggravation in respect of the following offences under the Criminal Code.

Offence	Maximum penalty with aggravating circumstance
Going armed so as to cause fear[212]	3 years imprisonment[213]
Dangerous operation of a motor vehicle[214]	400 penalty units or 5 years imprisonment[215]
Common assault[216]	4 years imprisonment[217]
Assaults occasioning bodily harm[218]	8 years imprisonment[219]
Burglary[220]	16 years imprisonment[221]

208 Bill, cl 7 (new s 26B(1), *Summary Offences Act 2005* (Summary Offences Act)); explanatory notes, pp 23-24.

209 Bill, cl 7 (new s 26B(1), Summary Offences Act); explanatory notes, p 24.

210 Bill, cl 7 (new s 26B(2), Summary Offences Act).

211 Bill, cl 7 (new s 26B(4), Summary Offences Act).

212 Criminal Code, s 69.

213 Bill, cl 12 (new s 69(2A), Criminal Code).

214 Criminal Code, s 328A(1).

215 Bill, cl 13 (new s 328A(1A), Criminal Code).

216 Criminal Code, s 335.

217 Bill, cl 15 (new s 335(1A), Criminal Code).

218 Criminal Code, s 339.

219 Bill, cl 16 (new s 339(1A), Criminal Code).

220 Criminal Code, s 419(1).

221 Bill, cl 18 (new s 419(3A), Criminal Code).

The explanatory notes justify the increase to penalties, and the addition of an aggravating circumstance to new offences, on the basis that they 'reflect the seriousness of this type of offending and the community's denunciation of such conduct'.[222]

4.2.1 Stakeholder views

The QLS noted that, in respect of the new standalone publishing offence, the term 'glorifying' is not defined in the Bill which may cause issues in respect of how the purpose element of the offence can be proved.[223] Further, the QLS opposed the introduction of new aggravating circumstances regarding the publishing of material about prescribed offences and the respective maximum penalties.[224]

PeakCare raised concerns that the increase to penalties in circumstances where a person shares material depicting the prescribed offence do not act as a deterrent to young people committing the offence.[225]

The Queensland Police Union of Employees (Police Union) supported the introduction of the new offence and aggravating circumstances to further criminal offences on the basis that:

> These changes to the Criminal Code and the Summary Offences act arm our judiciary with the tools to consider the seriousness of offending and respond accordingly.[226]

4.2.2 Departmental response

In respect of the QLS's concerns regarding the absence of a definition of 'glorifying' in the Bill, the department has noted that the term will take its ordinary meaning, but QPS will monitor the operation of the clause.[227]

4.2.3 Compatibility with human rights

All people have the right to freedom of expression to impart information and ideas of all kinds in all mediums.[228] As noted above, this includes information that may 'offend, shock or disturb'[229] but does not include expressions which involve violence or property damage.[230]

In respect to both the standalone advertising offence,[231] and the aggravating circumstance in respect of the publishing of material depicting prescribed offences under the Criminal Code,[232] the right of a person to freedom of expression will be limited.

The statement of compatibility also acknowledges that a person's right to liberty will be limited to the extent that the new standalone offence and aggravating circumstances attract a significant maximum penalty which may include a period of imprisonment.[233]

The statement of compatibility notes that the purpose of such provisions is to:

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222 Explanatory notes, p 5.

223 Submission 211, p 2.

224 Submission 211, p 2.

225 Submission 128, p 8.

226 Queensland Police Union of Employees, submission 241, p 5.

227 Department, correspondence, 21 May 2024, p 232.

228 HRA, s 21(2).

229 *Handyside v United Kingdom* (1976) 1 EHRR 737 [49].

230 QHRC, *Right to freedom of expression,* https://www.qhrc.qld.gov.au/your-rights/human-rights-law/right-to-freedom-of-expression.

231 Bill, cl 7 (new s 26B, Summary Offences Act).

232 Bill, cls 12, 13, 15, 16, 18 (new ss 69(2A), 328A(1A), 335(1A), 339(1A), 419(3A), Criminal Code).

233 HRA, s 29(1); Statement of compatibility, pp 54, 56.

- prevent the spread of material online that depicts anti-social behaviour[234]
- minimise the re-traumatisation of victims, and[235]
- denounce the advertising of offences on social media.[236]

While the government considered alternative measures to achieve the policy purpose (including considering such conduct in the sentencing principles or instituting a lesser penalty for such conduct), the introduction of a new offence and aggravating circumstance was considered the most appropriate response to reflect the seriousness of the conduct and its impact on the community.[237]

Committee comment

The committee holds the view that the sharing of material online which promotes and glorifies unlawful conduct, particularly where that conduct involves violence, is abhorrent.

The committee regards the purpose of the introduction of these new offences and aggravating circumstances is to prevent this type of behaviour occurring and leading to the further traumatisation of victims who may view such content. However, the committee has some reservations that, in the absence of the 'glorification' threshold, children and adults who do not intend to promote such conduct, but publish material depicting such conduct for other reasons, may be subjected to unduly harsh penalties The committee is therefore pleased to see the government will monitor the operation of the clause.

Due to their level of immaturity and high level of usage of and access to social media, the committee considers that the rights of children should have been specifically assessed in relation to the proposed new offence and aggravating circumstances. The committee notes the statement of compatibility does not specifically analyse this change in reference to the rights of the child. The committee therefore suggests, for increased transparency, that future statements of compatibility would benefit from greater assessment of the rights of the child for provisions which enliven relevant rights.

234 Statement of compatibility, p 55.

235 Statement of compatibility, p 55.

236 Statement of compatibility, pp 55, 57.

237 Statement of compatibility, pp 55, 57.

5 Prevention of knife related crime

The Bill proposes various amendments to legislation to respond to recent incidences of knife related crime and heightened community awareness of such crimes.[238]

5.1 Expansion of hand held scanner provisions

Since 2021, police officers have been granted temporary powers to use hand held scanners without a warrant in designated Safe Night Precincts (SNPs) to detect unlawfully possessed knives.[239] The introduction of Jack's Law in 2023[240] extended this temporary power to 30 April 2025 and expanded the scope of the scanning provisions to include public transport stations and vehicles.[241]

In response to community concern regarding knife related crime in Queensland, and the number of knives seized in accordance with the Jack's Law framework,[242] the Bill proposes to expand the powers of police officers to operate hand held scanners in other public places.

Additional venues for the operation of hand held scanners under Jack's Law[243]
Shopping centres
Retail premises that are not in a SNP, shopping centre or sporting or entertainment venue, if: • ordinarily, at least 2 days each week, the premises are open for business at a time between midnight and 5.00am, or • in the previous 6 months, at least 2 offences were committed at the premises by a person armed with a knife or other weapon[244]
Licensed premises that are not in a SNP, shopping centre or sporting or entertainment venue, if a senior police officer has reasonable grounds to believe a relevant offence[245] may be committed again at the premises in the next 6 months[246]
Sporting and entertainment venues when an associated event is being held
Queensland Rail trainlines, including Gold Coast Light Rail

The Bill also proposes to extend the operation of the scanning provisions until 30 October 2026.[247]

It is the intention of these proposed amendments to reduce the risk of knife related offences occurring in large public areas.[248]

5.1.1 Stakeholder views

PeakCare noted that there did not appear to be any evidence that 'stop and search' type powers will reduce knife crime (being the primary policy objective of the amendments).[249] PeakCare referenced

238 Statement of compatibility, p 3.

239 Explanatory notes, p 2; *Youth Justice and Other Legislation Amendment Act 2021,* s 6.

240 *Police Powers and Responsibilities (Jack's Law) Amendment Act 2023* (Jack's Law).

241 Jack's Law, s 4 (new pt 3A, PPRA).

242 Explanatory notes, p 2.

243 Explanatory notes, p 17; Bill, cls 27-38 (amend PPRA).

244 Bill, cl 30 (amend s 39C(2)(e), PPRA).

245 PPRA, s 39C(2)(a).

246 Bill, cl 30 (amend s 39C(2)(d), PPRA).

247 Bill, cl 36 (amend s 39L, PPRA); QPS, correspondence, 13 May 2024, p 8.

248 Explanatory notes, p 17.

249 Submission 128, p 6.

the Griffith University review of the results of the current hand held scanning provisions, which found a weapon was discovered in only one per cent of 13,500 people scanned,[250] and 'there is no evidence as yet of any deterrent effect given that there has been an increase in detections at one site, and no change at the other'.[251]

QIFVLS raised concerns that expansion of hand held scanning into more public places may further contribute to 'the historical and present climate of mistrust and fear among First Nations communities and police'.[252] This was echoed by the Queensland Mental Health Commission (QMHC) who felt care should be taken in respect of the exercise of a police officer's discretion to wand individuals and there should be an accountability mechanism 'to ensure that minority groups are not subject to stigma, discrimination and/or bias in police decision-making'.[253]

The Shopping Centre Council of Australia (Shopping Centre Council) strongly supported the expansion of provisions to apply to shopping centres and noted that it intended to work with QPS in respect of the deployment of officers to shopping centres to ensure the users and retailers of shopping centres are safe.[254] However, it also recommended that the definition of 'shopping centre' as contained in section 39A of the PPRA be revised to also include shopping centre car park areas, including their entry and exit areas, to avoid any doubt these areas are covered by the scanning provisions.[255]

5.1.2 Departmental response

QPS noted that the expansion of the hand held scanning trial will allow for 'a fulsome, independent review of the expanded framework'[256] and that the expansion of the trial to encompass shopping centres was developed in consultation with the National Retail Association.[257]

In response to concerns about transparency and accountability for the act of scanning by police officers in additional locations, the department noted that:

- The expansion of the trial was 'location based rather than people based' and is to be randomised in respect of the people chosen for scanning at relevant venues and premises.[258]
- An officer is required to offer to give a person subject to a scan, an information notice containing prescribed information about the power being exercised and give the notice to the person if requested.[259]
- The use of a scanner is not a 'search' on the basis that the person is not touched by the scanner. However, if the scanner registers metal and the officer reasonably suspects a person has refused to produce the metal object (after being directed to do so), the police officer may then submit the person to a search of their person without a warrant.[260]

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250 Public hearing transcript, Brisbane, 24 May 2024, p 22.

251 PeakCare, submission 128, p 6; Griffith University, *Review of the Queensland Police Service Wanding Trial*, August 2022, Key Finding 3, p iv.

252 Submission 210, pp 4-5.

253 Submission 126, p 5.

254 Submission 127, p 1; public hearing transcript, Brisbane, 10 June 2024, p 1.

255 Submission 127, p 3.

256 Public briefing transcript, Brisbane, 24 May 2024, p 3; QPS, correspondence, 21 May 2024, p 140.

257 Public briefing transcript, Brisbane, 10 June 2024, p 11.

258 Public briefing transcript, Brisbane, 10 June 2024, p 11.

259 Department, correspondence, 21 May 2024, p 136.

260 Department, correspondence, 21 May 2024, pp 136-137.

- QPS currently employs liaison officers to maintain positive relationships between officers and First Nations people.[261]

In response to the recommendation of the Shopping Centre Council regarding the expansion of the definition of 'shopping centre', QPS noted that the Bill introduces a new definition of shopping centre which includes a public carpark adjacent to the shopping centre and a public place adjacent to the entry and exit to the shopping centre.[262]

5.1.3 Consistency with fundamental legislative principles and human rights

The statement of compatibility notes that the expansion of the Jack's Law hand held scanning trial to additional premises was borne out of the intention of the Bill to reduce knife related crime in a broad range of venues.[263]

The ability of a police officer to conduct a search of a person without their consent is likely to impinge on that person's:

- right to liberty (even for a limited amount of time)[264]
- right to not be arbitrarily detained (on the basis that a police officer is not required to hold a reasonable suspicion prior to selecting a person to be scanned)[265]
- right to personal privacy (in that a police officer has the ability to search what is on your person).[266]

If a person is also found to be carrying an unlawful knife, and that knife is accordingly confiscated by police, their right not to be deprived of their personal property may also be impacted.[267]

The statement of compatibility reasons that the above limitations on human rights are reasonable and justifiable to the extent that the expansion of the trial is to venues that have a higher degree of risk of a knife related crime occurring and, accordingly, the expansion achieves the policy objective of reducing knife related crime and promoting community safety in this regard.[268]

Committee comment

The committee acknowledges the concerns of submitters in respect of the ability for police officers to select individuals for scanning in expanded locations, for an extended period of time. The committee is particularly aware of the concerns raised surrounding the risk of abuse of powers and unconscious bias, as well as the impacts on ongoing relations between the police service and those from diverse cultural groups and Aboriginal and Torres Strait Islander Peoples.

In that regard, the committee notes the information provided by the Police Commissioner that concerns in respect of the implementation of the trial have been addressed with officers in various training.[269]

261 QPS, correspondence, 21 May 2024, p 226.

262 QPS, correspondence, 21 May 2024, p 139.

263 Statement of compatibility, p 19.

264 HRA, s 29(1).

265 HRA, s 29(2)

266 HRA, s 25(a).

267 HRA, s 24(2).

268 Statement of compatibility, p 19.

269 Public briefing transcript, Brisbane, 24 May 2024, p 13.

The committee is satisfied that, having regard to the policy objectives of the expansion of the trial and the application of safeguards in the PPRA concerning where and how scanning is to be carried out, and the training, that the limitations imposed on human rights by the expansion of the hand held scanning trial proposed by the Bill are reasonable and justifiable.

5.2 Amendments to offences and penalties in Weapons Act

It is an offence under the Weapons Act to possess a knife in a public place or school without reasonable excuse.[270] The current maximum penalty that can be imposed for such offence is 40 penalty units or one year's imprisonment.[271] The Bill proposes to increase the maximum penalty if a person is convicted for this offence to:

- for a first offence, 50 penalty units ($8,065)[272] or 18 months imprisonment[273]
- for a second or later offence, 100 penalty units ($16,130)[274] or 2 years imprisonment.[275]

The Bill also proposes to introduce a new offence for persons who publish material online to advertise their own involvement in the offence or which otherwise advertises the unlawful possession of a knife in a public place.[276] The proposed maximum penalty for this new offence is:

- for a first offence, 100 penalty units ($16,130)[277] or 2 years imprisonment[278]
- for a second or later offence, 150 penalty units ($24,195)[279] or 30 months imprisonment.[280]

These amendments to the Weapons Act are intended to act as a deterrent to offenders and bring Queensland in line with other Australian jurisdictions in respect of responses to unlawful knife possession.[281]

5.2.1 Stakeholder views

PeakCare opposed the amendments on the basis that current section 51 of the Weapons Act is sufficient. It noted that, in respect of knives brought onto school grounds, a school ought to be able to deal with the offending student in accordance with its own policies and guidelines.[282]

The QMHC also noted that an increase to penalties for knife possession offences may 'only further entrench the young person within the youth justice and criminal justice systems'.[283]

The Police Union supported the increase to maximum penalties for such offences.[284]

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270 *Weapons Act 1990* (Weapons Act), s 51(1).

271 Weapons Act, s 51(1).

272 From 1 July 2024, the value of a penalty unit in Queensland is $161.30: Penalties Regulation, s 3.

273 Bill, cl 40 (amend s 51(1), Weapons Act).

274 From 1 July 2024, the value of a penalty unit in Queensland is $161.30: Penalties Regulation, s 3.

275 Bill, cl 40 (amend s 51(1), Weapons Act).

276 Bill, cl 40 (new s 51(1A), Weapons Act).

277 From 1 July 2024, the value of a penalty unit in Queensland is $161.30: Penalties Regulation, s 3.

278 Bill, cl 40 (new s 51(1A)(c), Weapons Act).

279 From 1 July 2024, the value of a penalty unit in Queensland is $161.30: Penalties Regulation, s 3.

280 Bill, cl 40 (new s 51(1A)(d), Weapons Act).

281 Explanatory notes, pp 4, 22-23.

282 Submission 128, p 7.

283 Submission 126, p 5.

284 Submission 241, p 4.

The QHRC recommended that current section 51(5) of the Weapons Act be repealed. (That provision states that genuine religious purposes are not a reasonable excuse to possess a knife in a public place or school.) This would bring the Weapons Act into line with a recent decision of the Queensland Court of Appeal[285] which held that a Sikh person does not commit a criminal offence where they are wear a kirpan at school or in another public place.[286]

AgForce Queensland Farmers Limited (AgForce) noted concerns regarding the carrying of pocketknives on one's belt in public places may lead to inadvertently committing the new knife possession offence.[287] In particular, it was noted that individuals involved in primary production use pocketknives regularly as a part of their trade and they are often family heirlooms.[288]

5.2.2 Departmental response

In response to concerns regarding the increase to the maximum penalties for knife possession offences, QPS noted that the increase was a policy decision of the government.[289]

In response to concerns raised by AgForce and other submitters regarding the carrying of pocketknives or knives used for a legitimate purpose (such as food preparation), QPS noted that a person will only commit the knife possession offence if they possess the knife in a public place or school without reasonable excuse (which includes for use for a lawful practice or activity).[290] QPS stated at the second public briefing, by way of example:

> [I]f a farmer has a knife for legitimate purposes and they happen to be in a public place, there will continue to be a reasonable excuse provision for that. There will be no changes to how it is currently operated in practice.[291]

[285] *Athwal v State of Queensland* [2023] QCA 156 [122].

[286] Submission 212, pp 10-11.

[287] Submission 240, p 3.

[288] Submission 240, p 3; public hearing transcript, Brisbane, 10 June 2024, p 10.

[289] QPS, correspondence, 21 May 2024, p 140.

[290] QPS, correspondence, 6 June 2024, pp 21, 26.

[291] Public briefing transcript, Brisbane, 10 June 2024, p 7.

6 Firearm and weapons reforms

6.1 Introduction of Firearm Prohibition Order scheme

The Bill proposes to introduce a firearm prohibition order (FPO) scheme similar to that in force in other Australian jurisdictions.[292] Currently, Queensland does not operate a FPO scheme.

Issuance of an FPO

The Police Commissioner or the court must only make a FPO if it is in the public interest to do so.[293]

A FPO can be made by:

- the Police Commissioner for a maximum period of 60 days,[294] or
- a court on application by the Police Commissioner (or on its own initiative) for a period of 10 years for an adult or 5 years for a child (or another shorter period if appropriate in the circumstances).[295]

When making a decision to issue a FPO against an adult, the Police Commissioner or a court may take into account various matters.

Relevant factors to consider by the Police Commissioner or court in the making of an FPO[296]
The individual's criminal history
The individual's domestic violence history, including whether the individual: • is or has been subject to a domestic violence order, or • is or has been named as a respondent in an application for a domestic violence order
Whether the individual is or has been a participant in: • a criminal organisation,[297] or • a terrorist organisation[298]
Whether the individual is an associate of a recognised offender,[299] which includes romantic or familial relationships or a person who seeks out or accepts the offender's company, whether the association happens in person or in another way, including, for example, electronically[300]
Whether the individual has communicated in a public forum (such as social media sites or other online forums), or to another person, that the individual intends or wishes to commit a serious offence
Whether the individual is or has been subject to a relevant order made by a court and the circumstances surrounding the making of the order
The individual's behaviour, particularly violent or aggressive behaviour or behaviour involving the use of a weapon

292 Explanatory notes, p 3.

293 Bill, cl 73 (new s 141E(1), Weapons Act).

294 Bill, cl 73 (new s 141G, Weapons Act).

295 Bill, cl 73 (new s 141H, Weapons Act); explanatory notes, p 19; QPS, correspondence, 13 May 2024, p 9.

296 Bill, cl 78 (new s 141E(2), Weapons Act); explanatory notes, p 19; QPS, correspondence, 13 May 2024, p 10.

297 *Penalties and Sentences Act 1992,* s 161O.

298 Criminal Code (Cth), s 102.1(1).

299 Criminal Code, s 77.

300 Bill, cl 78 (new s 141E(4), Weapons Act).

Relevant factors to consider by the Police Commissioner or court in the making of an FPO[296]
The risk the individual poses to public safety or security, and the extent to which making the firearm prohibition order will reduce the risk
Any other matter or information that indicates possession of a firearm or firearm related item by the individual would be likely to pose a risk to public safety or security

In relation to decision-making concerning a child, different considerations may be taken into account, including the age and maturity of the child and the impact of making an FPO on the child's family, education, employment and reputation (among other things).[301] Such orders will also be subject to annual review.[302]

The list of relevant considerations is not exhaustive, and it is not mandatory for the Police Commissioner or court to take into account all of these matters prior to making an FPO.

Further, the Police Commissioner or a court may take into account 'criminal intelligence' in making an FPO.[303]

Impacts of an FPO

The proposed impacts of making an FPO against a person are as follows:

- any firearm related licences or authorities will be immediately revoked[304]
- the person is required to immediately surrender any firearm and firearm related items in their possession to police,[305] and
- police officers are granted powers to conduct warrantless searches of the person, the person's property or the person's vehicle in particular circumstances to check compliance with the FPO (and seize any firearms or firearm related items possess in breach of the FPO).[306]

The Bill also contains amendments to the Weapons Act to introduce significant penalties for breaches of the FPO scheme.

Offence	Maximum penalty
If a person subject to an FPO, acquires, possesses or uses a firearm or attempts to acquire, possess or use a firearm[307]*	500 penalty units or 13 years imprisonment
If a person subject to an FPO, acquires, possesses or uses a firearm related item or attempts to acquire, possess or use a firearm related item[308]*	200 penalty units or 5 years imprisonment
If a person subject to an FPO, attends a prohibited place or event (such as a gun show) due to the risk of a firearm or firearm related item being present[309]	50 penalty units or 12 months imprisonment

301 Bill, cl 78 (new s 141F(2),(3), Weapons Act); explanatory notes, p 20; QPS, correspondence, 13 May 2024, p 10.

302 Bill, cl 78 (new s 141ZI, Weapons Act).

303 Bill, cl 78 (new ss 141E(3), 141F(4), Weapons Act).

304 Bill, cl 78 (new s 141V, Weapons Act); explanatory notes, p 20.

305 Bill, cl 78 (new s 141W, Weapons Act); explanatory notes, p 20.

306 Bill, cl 78 (new ss 141ZD-141ZH, Weapons Act); explanatory notes, pp 20-21.

307 Bill, cl 78 (new s 141Y(1), Weapons Act); explanatory notes, p 21.

308 Bill, cl 78 (new s 141Y(2), Weapons Act); explanatory notes, p 21.

309 Bill, cl 78 (new s 141ZA, Weapons Act); explanatory notes, p 21.

Offence	Maximum penalty
If a person knowingly supplies a firearm to a person subject to an FPO[310]	500 penalty units or 13 years imprisonment
If a person knowingly supplies a firearm related item to a person subject to an FPO[311]	200 penalty units or 5 years imprisonment

* a person will be taken to 'possess' a firearm or firearm related item if that item was in or on a property on which the person resides or a property which the person is in management or control of.[312]

The Bill contains a proposed defence to the possession offences (as noted above) in circumstances where a person subject to an FPO can establish that they did not know, and could not have reasonably known, that a firearm or firearm related product was in their possession.[313]

The explanatory notes advise that the rationale for the introduction of this scheme is to minimise the risk of gun-related crime by 'prohibiting high-risk individuals from using or accessing firearms or firearm related items'.[314] In particular, the explanatory notes report an increase in the number of reported offences involving firearms since 2013 of at least 30 per cent.[315]

Further, the 'strong' penalties imposed for a breach of an FPO 'reflect the seriousness of the offence and… provide a strong deterrent'.[316]

6.1.1 Stakeholder views

The Shooters Union QLD Pty Ltd (Shooters Union) raised the following matters as issues arising from the Bill:

- the difficulty for sellers of antique firearms to verify whether the purchaser is subject to an FPO (which may result in the commissioning of a supply offence)[317]
- there is no immediate right of review for individuals subjected to an emergency FPO issued by a police officer[318]
- impingement on freedom of association where the history and circumstances of another person may be relevant to a determination whether to issue an FPO against a person[319]
- the inclusion of a person's domestic violence history as a factor relevant to the decision to issue a FPO[320]
- the reliance on a person to disclose their FPO status prior to obtaining employment or renting a room in a premises to avoid other persons of being inadvertently liable for firearms supply offences.[321]

310 Bill, cl 78 (new s 141Z, Weapons Act); explanatory notes, p 21.

311 Bill, cl 78 (new s 141Z, Weapons Act); explanatory notes, p 21.

312 Bill, cl 78 (new s 141Y(4), Weapons Act); explanatory notes, p 21.

313 Bill, cl 78 (new s 141Y(5), Weapons Act); explanatory notes, p 21.

314 Explanatory notes, p 18.

315 Explanatory notes, p 3.

316 Explanatory notes, p 21.

317 Submission 114, p 5.

318 Submission 114, p 7.

319 Submission 114, p 8.

320 Public hearing transcript, Brisbane, 24 May 2024, p 9.

321 Public hearing transcript, Brisbane, 24 May 2024, p 8.

The Queensland Council for Civil Liberties raised concerns that:

- the overarching 'public interest' requirement for the making of an FPO may be 'susceptible to the risk of misuse and inconsistent practices and interpretation by police'[322]
- the broad definition of 'associate' as contained in the Bill was 'highly problematic', particularly in circumstances where criminal intelligence (which a person would not be privy to) may have been used in the making of a decision to issue an FPO due to a person's association with an offender.[323]

AgForce raised several concerns regarding the impact of the FPO scheme on primary producers and agricultural businesses, particularly in respect to employment and the current shortage of available farmhand workers.[324] They outlined that the use of firearms is an important aspect of the operation of an agribusiness. AgForce also noted the business disruption that may follow the seizure of all firearms and ammunition from a business premises by police.[325]

Similar impacts on business were noted by the Firearm Dealers Association – Queensland Inc (Firearm Dealers Association) regarding employees of dealers (who would be deemed to be 'dealers associates') becoming subject to an FPO and this impacting on the dealer's ability to continue their business in the absence of key staff members.[326] The Firearms Dealers Association also raised the necessity of prohibiting persons subject to an FPO from possessing replica weapons or gel blasters.[327]

In respect of the impacts of an FPO being issued, AgForce also voiced its support for FPOs being able to be ordered by a court only[328] and, should police-issued FPOs remain, the reinstatement of licences revoked automatically under a temporary, police-issued FPO in circumstances where the 60 day period that the FPO is in effect lapses without extension by court order.[329] In particular, it was noted that licensees would be delayed in obtaining a new licence following the revocation of the existing licence due to processing timeframes in the Weapons Licensing Unit.[330]

Concerns regarding where firearms would be stored in circumstances where a dealer is required to reapply for a firearms licence following the expiration of a temporary, police-issued FPOs were also flagged by the Firearm Dealers Association.[331]

AgForce also referred to findings of an inquiry into the use of FPOs in Victoria which indicated that the effectiveness of the scheme in seizing firearms was limited and misuse of search powers in other states had been reported.[332]

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322 Parliament of Victoria, Legislative Council Legal and Social Issues Committee, *Inquiry into firearms prohibition legislation,* Final report, p 44 cited in Queensland Council of Civil Liberties, correspondence, 6 June 2024, p 3.

323 Queensland Council of Civil Liberties, correspondence, 6 June 2024, p 2.

324 Submission 240, p 3; public hearing transcript, Brisbane, 10 June 2024, p 11.

325 Submission 240, p 3.

326 Public hearing transcript, Brisbane, 24 May 2024, p 10.

327 Submission 115, p 6.

328 Submission 240, p 3.

329 Public hearing transcript, Brisbane, 10 June 2024, p 11.

330 Public hearing transcript, Brisbane, 10 June 2024, p 11.

331 Public hearing transcript, Brisbane, 24 May 2024, p 11.

332 Submission 240, p 4; Parliament of Victoria, Legal and Social Issues Committee, *Inquiry into firearms protection legislation,* November 2019.

6.1.2 Departmental response

QPS stressed that it was the intention of the FPO scheme to target high risk persons and those who are 'most likely to perpetrate violence'.[333] Further, the Police Commissioner noted that those who would most likely meet the threshold requirements for issuance of an FPO would have likely already had their licence cancelled due to their offending behaviour.[334]

QPS also highlighted that the Bill proposes that FPOs may only be issued by officers who hold a rank of at least superintendent in recognition of the importance of this decision-making power.[335]

With respect to the concerns raised by the Shooters Union, QPS noted:

- Regarding inadvertent supply of firearms to persons subject to an FPO, the offence in new section 141Z of the Weapons Act only applies to persons who 'knowingly' supplies a firearm. Therefore, a person who unknowingly supplies a firearm to a person who is subject to an FPO (either by selling to them or providing a firearm to them in the course of their employment) would not commit the new offence.[336]
- Regarding whether a person's association with a registered offender will result in an FPO being issued, a person's relationship with an offender is only one of the factors that 'may' be considered in making an FPO. An FPO 'would not necessarily be made against a person solely because of this connection – as this would unlikely meet the relevant threshold of whether it is in the public interest to make the order'.[337]

In respect of the definition of firearm related items which are prohibited to be possessed by a person subject to an FPO, QPS noted that gel blasters and replicas are captured by this definition due to their ability to be used inappropriately, which may pose a risk to community safety.[338]

QPS also highlighted that the chances that a licensed dealer would be subject to an FPO would be highly unlikely in circumstances where their licence would have already been cancelled due to their unlawful conduct.[339]

QPS confirmed that if a person subjected to a temporary police-issued FPO has their licence revoked, they will be required to reapply for a licence following the expiration of the relevant FPO period, if not otherwise extended.[340] However, the issuance of a temporary FPO alone will not render the person reapplying for a licence as a person disqualified from holding a licence under the Weapons Act.[341]

Finally, QPS noted it was hoped that the changes in the Bill to decision-making regarding the 'fit and proper person' test would help improve efficiency in the Weapons Licensing Branch and it was not anticipated that the introduction of the FPO scheme would impact on licence processing.[342]

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333 Public briefing transcript, Brisbane, 24 May 2024, p 14.

334 Public briefing transcript, Brisbane, 24 May 2024, p 4.

335 Public briefing transcript, Brisbane, 10 June 2024, p 2.

336 QPS, correspondence, 21 May 2024, pp 101-102. This interpretation also appears to be supported by the QLS in its response to a question taken on notice at the first public hearing on 24 May 2024: QLS, correspondence, 10 June 2024, pp 1-2.

337 QPS, correspondence, 21 May 2024, p 109.

338 QPS, correspondence, 21 May 2024, pp 114-115.

339 Public briefing transcript, Brisbane, 24 May 2024, p 9; public briefing transcript, Brisbane, 10 June 2024, p 3.

340 QPS, correspondence, 21 May 2024, p 71.

341 QPS, correspondence, 21 May 2024, p 117.

342 Public briefing transcript, Brisbane, 24 May 2024, p 14.

6.2 Introduction of verification process for purchasing small arms ammunition

Currently, it is an offence under the *Explosives Act 1999* for a seller to sell an explosive (including ammunition)[343] to a purchaser who is not authorised to sell, store or use the ammunition.[344] This authorisation includes the holding of a licence, permit or other authority for the ammunition.[345]

The Bill proposes to introduce a 'safeguard' in the legislation by way of an additional offence for sellers of small arms ammunition who fail to complete a required verification process to ensure that a purchaser holds a valid licence or permit prior to the sale of the ammunition.[346]

The proposed verification process includes:

- the requirement that the seller physically sights the purchaser's licence or authority, and
- a check through a prescribed licence check system to determine the currency and validity of the licence or authority.[347]

The proposed maximum penalty to be imposed for failing to complete this verification process is 140 penalty units.[348]

6.2.1 Stakeholder views

AgForce raised concerns regarding the purchase of ammunition by primary producers, which largely occurs on Saturdays when attending their nearest town to collect supplies.[349] In particular, based on the experience of members, QPS's servers which support the online licence verification platform are often down for maintenance on weekends and access to internet services can be interrupted in regional areas.[350] Where a seller of ammunition is unable to access the online system for the verification of licences at the risk of committing an offence as proposed in the Bill, AgForce noted that primary producers would not be able to purchase the tools required for them to carry out their business.[351] Similar concerns regarding the availability of the licence verification system were echoed by the Firearm Dealers Association.[352]

The OIC highlighted the potential that personal information of buyers, including residential addresses, would be accessed by sellers. The OIC stressed the importance of a communication strategy being implemented by QPS to educate sellers about these privacy issues and to prevent the overcollection of personal data.[353] The OIC advised that it supported the requirement in the Bill that a seller is only required to see the purchaser's licence, not otherwise required to take a copy of it.[354]

343 *Explosives Act 1999* (Explosives Act), sch 2 (definition of 'explosive').

344 Explosives Act, s 42.

345 Explosives Act, sch 2 (definition of 'authority').

346 Explanatory notes, p 3; QPS, correspondence, 13 May 2024, p 9.

347 Bill, cl 42 (new s 43A(2), Weapons Act); explanatory notes, p 21.

348 Bill, cl 42 (new s 43A(2), Weapons Act).

349 Submission 240, p 2; public hearing transcript, Brisbane, 10 June 2024, p 9.

350 Submission 240, p 2.

351 Submission 240, p 2.

352 Submission 115, p 7; public hearing transcript, Brisbane, 24 May 2024, p 10.

353 Submission 2, p 2.

354 Public hearing transcript, Brisbane, 10 June 2024, p 6.

6.2.2 Departmental response

In response to AgForce's submission on how sellers of ammunition should proceed if the online licence verification server is down for maintenance, QPS noted that the requirement in the Bill for the check to be completed by the seller is caveated by whether or not the system is 'available'.[355]

However, if the cause of the inaccessibility of the online licence verification system is due to a third party (such as the internet provider) or natural disaster (being the system is able to be accessed but not just by that seller), QPS confirmed that the online licence verification system would still be deemed available for use and therefore the seller would still be required to conduct the check prior to sale.[356]

Regarding the concerns raised by the OIC about collection of personal information, QPS noted that a privacy impact assessment will be undertaken in the development of the regulations supporting the licence verification scheme. Further, it was confirmed that a communication package would be developed and delivered to relevant stakeholders about the implementation of the online licence check requirement.[357]

6.3 Amendments to 'fit and proper person' test and exclusion periods for firearms licences

In response to the recommendation of the QAO Report, the Bill proposes changes to the regulation of firearm licences in the Weapons Act to 'provide greater focus on public safety'.[358]

Currently, under section 10B of the Weapons Act, a person will automatically not be a 'fit and proper person' to hold a firearms licence if within the 5 year exclusion period immediately prior to the application date for the licence, or the date of the suspension or revocation notice for the licence, a person has been:

- convicted of, or discharged from custody on sentence after the person has been convicted of, an offence using drugs, violence or a weapon, or
- subject to a domestic violence order (other than a temporary order).[359]

Current section 10B(1) of the Weapons Act also notes that the Weapons Licensing Branch is required to consider, when deciding whether to issue, renew, suspend or revoke an applicant's license, a wide range of factors including the mental fitness of the person, whether a domestic violence order or police protection notice has been made (temporary or permanent), criminal intelligence and the public interest (amongst other things).[360]

The QAO noted in particular the potential inadequacy of the term of the current exclusion period, in which persons with a criminal history outside of the current 5 year exclusion period ought to be rejected from obtaining a firearms licence in the interests of public safety. It was recommended that more clarity was needed in decision-making involving licences.[361]

The Bill proposes to expand the current 'fit and proper person' test under the Weapons Act so a person will not be deemed 'fit and proper person' to hold a firearms licence where:

- within the previous 10 years, they have been:
    - convicted of, released from custody after the person has been convicted of, or subject to a supervision order in relation to a class A serious offence (including violent offences such

355 QPS, correspondence, 6 June 2024, p 25.

356 Public briefing transcript, Brisbane, 10 June 2024, p 8.

357 QPS, correspondence, 21 May 2024, p 4.

358 Explanatory notes, p 3.

359 Weapons Act, s 10B(2).

360 Weapons Act, s 10B(1).

361 Explanatory notes, p 3.

as murder, manslaughter and grievous bodily harm) or a class B serious offence (including offences such as attempted murder, torture and sexual offences that indicate a high degree of criminality)[362]

or

- within the previous 5 years, they have been:
  - convicted of, released from custody after the person has been convicted of, or subject to a supervision order in relation to a class C serious offence (including drugs, use of violence and weapons offences that are not already captured in the definition of either a class A or class B serious offence), or
  - subject to a domestic violence order (other than a temporary order).[363]

The Bill also proposes to restrict a 'disqualified person' from ever being deemed a 'fit and proper person' for the purposes of the Weapons Act and holding a firearms licence.[364] A 'disqualified person' is defined as a person who has engaged in 'high-risk' offending behaviour in the past such as convictions for prescribed child sex offences, being subject to a court-issued FPO or prescribed serious violent or sexual offences.[365]

These changes to the 'fit and proper person' test also apply to persons who are associates of licensed firearm dealers, although the 5 year exclusion period, the existence of a domestic violence order and the public interest are also required to be considered.[366]

6.3.1 Stakeholder views

Soroptimist International of Brisbane and the Police Union voiced their support for the proposed amendments to the 'fit and proper person' test in the Bill.[367] The North Queensland Women's Legal Service also specifically supported the expanded definition of class B offences to include those relating to domestic violence and the 5 year exclusionary period applying to those previously subject to final domestic violence orders.[368]

The Shooters Union raised concerns that the breadth of the amended definition of 'disqualified persons' was 'manifestly excessive'.[369] This was also considered by AgForce in respect of the proportionality between the seriousness of an offence that had occurred in the previous 10 years and the potential impact on a person's livelihood should they be deemed not a 'fit and proper person' under the expanded definition.[370]

The Shooters Union also noted that licensed dealership businesses may be unduly impacted in circumstances where a dealer is required to discontinue their association with an associate (whose licence has been revoked) within a 'reasonable time' without any business continuity plan in place.[371] These concerns were also echoed by the Firearm Dealers Association.[372]

362 Bill, cl 58 (amend s 10B(4), Weapons Act).

363 Bill, cl 58 (amend s 10B(5), Weapons Act).

364 Bill, cl 58 (amend s 10B(3), Weapons Act).

365 Bill, cl 56 (new s 5D, Weapons Act).

366 Bill, cl 59 (amend s 10C(3), Weapons Act).

367 Submission 113, p 2; submission 241, p 4.

368 Submission 208, p 2.

369 Public hearing transcript, Brisbane, 24 May 2024, p 7.

370 Submission 240, p 4.

371 Weapons Act, s 27B(2); submission 114, p 6.

372 Submission 115, p 5.

There were also concerns raised by submitters regarding the potential that a person who was subject to a domestic violence order that was not temporary, but was subsequently either withdrawn or cancelled, being deemed not a 'fit and proper person' to hold a weapons license.[373]

6.3.2 Departmental response

QPS highlighted that the amendments to the 'fit and proper person' criteria were for the purposes of enhancing and clarifying decision-making within the Weapons Licensing Branch.[374] It was noted that, operationally, persons convicted of class A or class B serious offences 'would likely have already resulted in any potential applicant with a relevant criminal history in relation to one of these offences from being denied a weapons licence as they would not be considered fit and proper under the current sections 10B and 10C in the Act'.[375]

Regarding concerns about the impact on firearms dealers where an associate is no longer deemed to be 'fit and proper' to be a licensed dealer's associate, QPS noted that section 27B of the Weapons Act requires that a dealer is issued with a notice which outlines QPS's intention to revoke the dealer's licence should they not cease their association with the relevant person and the dealer has an opportunity to make necessary arrangements within a reasonable time prior to any impact on their licence.[376] In determining what is a reasonable time to remove the associate, regard would be had to the following factors:

- the extent of the associate's financial involvement in the business
- the relevant power the associate exercises in the business
- the position the associate holds in the business
- the public interest.[377]

QPS also highlighted that:

- a family member of a licensed dealer would not automatically be rendered an 'associate' for the purpose of section 10C in the Weapons Act[378]
- a person subject to a temporary, police-issued FPO (or a court-ordered FPO that is subsequently revoked or set aside) would not be deemed to be a 'disqualified person' and therefore incapable of being a 'fit and proper' person to hold a weapons licence.[379]

QPS noted that under the current Weapons Act, a person will not be considered fit and proper to hold a licence or be an associate of a licensed dealer if they have been subject to a non-temporary domestic violence order in the preceding 5 years. The new provisions of the Bill do not amend the operation of the Act in this respect.[380] Further, if a person was to appeal the issuance of a domestic violence order under the DFVP Act, and that appeal was successful and the order discharged, for the purpose of the Weapons Act, the domestic violence order is taken to not have been made (and will accordingly not render the person not fit and proper to hold a licence).[381]

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373 Andrew Filewood, submission 36, p 1; Birgit Machnitzke, submission 37, p 1; Anton Jones, submission 38, p 1; Hayden Otto, submission 40, p 1; Ben Davidson, submission 63, p 1.

374 Public briefing transcript, Brisbane, 24 May 2024, p 15.

375 QPS, correspondence, 21 May 2024, p 15; public briefing transcript, Brisbane, 24 May 2024, p 15.

376 QPS, correspondence, 21 May 2024, p 106.

377 QPS, correspondence, 21 May 2024, p 113;

378 QPS, correspondence, 21 May 2024, pp 106-107.

379 QPS, correspondence, 21 May 2024, p 117.

380 QPS, correspondence, 21 May 2024, pp 15-16.

381 QPS, correspondence, 21 May 2024, p 16.

6.4 Confidentiality of 'criminal intelligence' used to make decisions under the Weapons Act

Decisions regarding whether a licensee or a licensed dealer's associate is a 'fit and proper person' under the Weapons Act may involve the consideration of criminal intelligence or other information not available to the public.[382] 'Criminal intelligence' is defined in the Weapons Act as 'any information about the person's connection with or involvement in criminal activity'.[383]

Relevantly, the confidentiality of the criminal intelligence and other non-publicly available information used in such decisions is protected in various provisions under the Bill including:

- in the notice of rejection of application to issue or renew a licence, the officer is entitled to state the reason for the rejection as 'confidential information',[384] and
- in a review of a decision made under the Weapons Act in the Queensland Civil and Administrative Tribunal or the Supreme Court of Queensland, the tribunal or court must ensure it does not disclose the criminal intelligence information and can receive evidence and hear argument in the absence of the reviewing applicant.[385]

Use of criminal intelligence in the new FPO scheme

In respect of decisions to issue an FPO on a person (either an adult or a child), the Bill proposes that the Police Commissioner or the court may have regard to criminal intelligence.[386]

The confidentiality of such criminal intelligence is dealt with in new section 141ZT of the Weapons Act which requires that a court, on application by the Police Commissioner, take steps to maintain the confidentiality of all information classified as 'criminal intelligence' including the hearing of evidence in the absence of the parties to the proceeding and receiving evidence by way of affidavit by an officer of at least the rank of superintendent.[387] The court, in a decision made on the basis of criminal intelligence, may give as the reason that 'the decision was made in the public interest'.[388]

For the purpose of proposed s 141ZT of the Weapons Act, the Bill expands the definition of 'criminal intelligence' to mean criminal intelligence that could, if disclosed, reasonably be expected:

- to prejudice a criminal investigation
- to enable the existence or identity of a confidential source of information to be ascertained
- to endanger a person's life or physical safety
- to prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of an Act
- to prejudice the maintenance or enforcement of a lawful method or procedure for protecting public safety or security.[389]

The explanatory notes outline that the expanded definition is intended to protect information such as 'information received from a confidential source provided to police which outlines a person's misuse

382 Weapons Act, ss 10B(1)(ca), 10C(1).

383 Weapons Act, sch 2 (definition of 'criminal intelligence').

384 Weapons Act, s 19(2).

385 Weapons Act, s 142A.

386 Bill, cl 73 (new ss 141E(3), 141F(4), Weapons Act).

387 Bill, cl 73 (new s 141ZT(2)-(3), Weapons Act).

388 Bill, cl 73 (new ss 141ZT(6), Weapons Act).

389 Bill, cl 73 (new s 141ZT(8), Weapons Act).

of firearms which, if exposed, could reveal the identity of the confidential source and may endanger their personal safety'.[390]

Statement of reasons under the *Judicial Review Act 1991*

The Bill also proposes to amend the *Judicial Review Act 1991* (JR Act) to clarify that a person who makes an application for review of an administrative decision is not entitled to request a statement of reasons for that decision where:

- if the decision is related to whether the person is a 'fit and proper person' to hold a weapons licence under the Weapons Act, it is made on the basis of:
  - criminal intelligence, or
  - other information about the risk of the person to public safety or matters of public interest which are not publicly available[391]
- if the decision is related to the making of an FPO under the Weapons Act, it is made on the basis of criminal intelligence.[392]

6.4.1 Stakeholder views

The Firearms Dealers Association and the Shooters Union raised concerns that the proposed amendments to the JR Act were a breach of a person's right to information.[393]

In its submission, the Queensland Council for Civil Liberties highlighted 2 mitigation measures that were raised in the Victoria's Legislative Council Legal and Social Issues Committee's report into their FPO legislation:

- appellants who seek a judicial review of a decision to issue an FPO (in which criminal intelligence was used) being provided with the service of special counsel appointed to act on their behalf in closed court hearings, and
- the provision of information from closed hearings to the appellant without prejudicing the confidentiality of the criminal intelligence information aired at the hearing using alternate means such as providing individuals with a summary of key evidence without disclosing the specifics of the evidence itself.[394]

6.4.2 Departmental response

In response to concerns regarding the amendments to the JR Act, QPS noted that 'withholding information in relation to criminal intelligence is necessary for several reasons, including protecting the safety of an informant or preventing the disclosure information that may interfere with an ongoing criminal investigation'.[395]

In response to the recommendations made by the Queensland Council of Civil Liberties, QPS noted 'if information remains confidential due to the information being classified as criminal intelligence in proceedings before a court, the court will retain oversight of this information' and the Police

390 Explanatory notes, p 82.

391 Bill, cl 44 (amend sch 2, s 5A(1), JR Act).

392 Bill, cl 44 (amend sch 2, s 5A(2), JR Act).

393 Submission 115, p 7; submission 114, p 7.

394 Submission 130, p 7; Parliament of Victoria, Legislative Council Legal and Social Issues Committee, *Inquiry into firearms prohibition legislation,* Final report, p 56.

395 QPS, correspondence, 21 May 2024, p 115.

Commissioner would have the opportunity to withdraw information from consideration from the court if the court deems that the information has been incorrectly classified as criminal intelligence.[396]

The QPS advised that the Public Interest Monitor would monitor the operation of the FPO scheme as a whole, in particular 'how many orders are made, how many orders are made against children, how many orders have been appealed, and the general use and effectiveness of the scheme'.[397]

396 QPS, correspondence, 21 May 2024, p 150.

397 Public briefing transcript, 10 June 2024, p 3.

7 Penalties and enforcement for drink-driving and hooning offences

The *Transport Operations (Road Use Management) Act 1995* (TORUM Act) regulates the conduct of drivers on Queensland's roads and contains a punitive scheme for drivers who operate vehicles in a dangerous way.[398] In the case of offences related to driving under the influence of alcohol or drugs, fines and licence disqualification are used as deterrents for the relevant offences under the TORUM Act.[399] QPS reports that drink driving is a factor in up to 25 per cent of lives lost on Queensland roads.[400]

The explanatory notes highlight that hooning continues to be a persistent problem in many areas.[401] Offences related to hooning are contained in the Summary Offences Act.

7.1 Expansion of police powers to issue penalty infringement notices (PINs) for low-level drink driving offences

Under the TORUM Act there are a number of offences relating to driving while under the influence of liquor or a drug, with commensurate penalties. For example, it is an offence under the TORUM Act to drive a motor vehicle while a person's blood alcohol concentration is between 0.05 and 0.10 grams of alcohol per 100 millilitres of blood (low-level drink driving).[402] Currently, the maximum penalty which can be imposed is 14 penalty units (being $2,167)[403] or 3 months imprisonment.[404]

Where a person is charged with a low-level drink driving offence, they are currently issued with a notice to appear at court to answer the charge.[405]

The Bill proposes to grant the power to police officers to issue penalty infringement notices (PINs) ('on the spot' fines and disqualifications) to persons who have engaged in low-level drink driving provided:

- it is their first drink driving offence in 5 years
- they hold a current open Queensland driver licence
- they are not an interlock driver, and
- they were not driving or operating a truck, bus, vehicle carrying a load of dangerous goods, tow truck, public passenger vehicle, driver training vehicle or escort vehicle.[406]

The Bill also proposes to introduce a 2 month disqualification period from holding or obtaining a Queensland drivers licence commencing 28 days from the date of the PIN in order to align with the disqualification penalties that may be ordered by a court.[407] The disqualification period would not apply (or immediately end) if the person elects to have the matter heard in court.[408]

The fine to accompany the PIN would be 7.5 penalty units ($1,209.75).[409]

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398 *Transport Operations (Road Use Management) Act 1995* (TORUM Act), s 3.

399 Explanatory notes, p 12.

400 QPS, correspondence, 13 May 2024, p 14.

401 Explanatory notes, p 11.

402 TORUM Act, s 79(2).

403 From 1 July 2024, the value of a penalty unit in Queensland is $161.30: Penalties Regulation, reg 3.

404 TORUM Act, s 79(2); explanatory notes, p 12.

405 Explanatory notes, p 12; TORUM Act, s 79C(2).

406 Bill, cl 96 (new s 79H(1),(2), TORUM Act); explanatory notes, p 33.

407 Bill, cl 96 (new s 79I(2), (3), TORUM Act); explanatory notes, p 35.

408 Bill, cl 96 (new s 79I(4)(a), 5(a), TORUM Act).

409 Explanatory notes, p 33; QPS, correspondence, 13 May 2024, p 15.

The expansion of the PIN regime is intended to reduce the administrative burden on the courts, the Department of Transport and Main Roads, legal aid services and police.[410]

7.1.1 Stakeholder views

The QLS noted that they do not support children receiving PINs on the basis that they can result in mandatory disqualification and, due to their age and limited earning capacity, children would have significant difficulty in paying the accompanying fine.[411]

7.1.2 Departmental response

Based on current modelling, the Department of Transport and Main Roads (DTMR) expects approximately 5,000 offences may be eligible for a drink driving PIN per year.[412] Of these offenders, DTMR anticipates that about two-thirds will comply with the PIN rather than seek an appearance in court.[413]

DTMR advised that it would undertake a review of the new PINs framework for low-level drink driving in one to 2 years to evaluate its operation and effectiveness.[414] This evaluation is also intended to include the impacts of the PIN scheme on the State Penalties Enforcement Registry.[415]

7.2 Increase to maximum penalties for relevant offences

In an effort to encourage persons who have committed a low-level drink driving offence to comply with a PIN (as opposed to electing the matter be heard in court),[416] and to deter future offending conduct,[417] the Bill also proposes to increase penalties on all drink driving offences under the TORUM Act.[418] For example, in respect of the offence of 'mid-level drink driving',[419] the Bill proposes to increase the maximum penalty from 20 penalty units ($3,226)[420] or to imprisonment for a term not exceeding 6 months to 28 penalty units ($4,516.40) or 6 months imprisonment.[421]

The Bill also proposes to increase the minimum driver disqualification period for relevant drink driving offences from one month to 2 months to align with the new PIN regime regardless of whether a person complies with the PIN or challenges the charge in court.[422]

The proposed changes are intended to 'help deter unsafe driving behaviours on our roads, that put the lives of other road users at risk'.[423]

410 QPS, correspondence, 13 May 2024, p 12.

411 Submission 211, p 7.

412 QPS, correspondence, 6 June 2024, p 2.

413 Public briefing transcript, 10 June 2024, Brisbane, p 7.

414 Public briefing transcript, 10 June 2024, Brisbane, p 7.

415 QPS, correspondence, 6 June 2024, p 2.

416 Explanatory notes, p 33.

417 Explanatory notes, p 36.

418 Bill, cl 94.

419 TORUM Act, s 79(1F).

420 TORUM Act, s 79(1F). From 1 July 2024, the value of a penalty unit in Queensland is $161.30: Penalties Regulation, s 3.

421 Bill cl 94 (amend s 79(1F), TORUM Act). From 1 July 2024, the value of a penalty unit in Queensland is $161.30: Penalties Regulation, s 3.

422 Bill, cl 98 (new s 86(2)(eb), TORUM Act).

423 Explanatory notes, p 36.

7.2.1 Stakeholder views

The QLS opposed the increase to the maximum fine and minimum licence disqualification period for low-level drink driving offences proposed in the Bill. It is their position that the current quantum of penalties are sufficient deterrents for these kinds of offences.[424]

7.2.2 Departmental response

In response to concerns regarding an increase in the licence disqualification period, DTMR noted that the increase 'aligns with deterrence-based approaches used successfully to reduce high-risk behaviours on the road'.[425]

7.3 Amendments to hooning offence

In response to concerns regarding hooning and dangerous racing activity in Queensland, a new offence was introduced into the Summary Offences Act to prohibit a person organising, participating in, or taking a photograph or film of a hooning activity.[426]

The explanatory notes state that it was not intended that the offence would only include persons actively encouraging or supporting the hooning offence (such as cheering), but also persons merely spectating.[427] However, the current offence only includes persons who 'willingly participate' which may infer some kind of positive action is necessary to commit the offence.[428]

Accordingly, the Bill proposes to amend the offence to include persons who, without reasonable excuse, are spectating the hooning activity as well as those who organise, participate, promote or encourage the participation in, or spectating of, the hooning activity.[429]

The Bill also clarifies that a person spectating a hooning event will not be committing the offence where they are:

- passing by or through the hooning event and stop momentarily to watch the activity before moving on[430]
- a journalist for the purposes of journalism,[431] or
- gathering information for the purpose of reporting the information to the police.[432]

The explanatory notes advise that the 'amendment aligns with the policy intention of the offence to target the encouragement of hooning behaviour by spectators'.[433]

7.3.1 Stakeholder views

YAC noted that the amendments to the offence may have the unintended consequence of capturing children who are forced to attend, watch and potentially participate in hooning events under the

424 Submission 211, p 7.

425 QPS, correspondence, 21 May 2024, p 235.

426 *Police Powers and Responsibilities and Other Legislation Amendment Act (No. 1) 2023,* s 34 (new pt 2, div 4A, Summary Offences Act,); Police Powers and Responsibilities and Other Legislation Amendment Bill 2022, explanatory notes, p 6.

427 Explanatory notes, p 11.

428 Explanatory notes, p 11.

429 Bill, cl 91 (new s 19C, Summary Offences Act).

430 Bill, cl 91 (new s 19C(4), Summary Offences Act).

431 Bill, cl 91 (new s 19C(3)(a), Summary Offences Act).

432 Bill, cl 91 (new s 19C(3)(b), Summary Offences Act).

433 Explanatory notes, p 32.

control of an adult responsible for their care.[434] To that end, YAC proposes that the word 'willingly' is included in the offence provision to ensure that young people, who are not engaging in the conduct voluntarily, are not prosecuted for the offence.[435]

The Queensland Council for Civil Liberties raised concerns that the revised offence would create 'guilt by association' in circumstances where a person, just by standing at an event, would be deemed guilty of encouraging the criminal act.[436] These concerns in respect of 'guilt by association' were also echoed by the QLS.[437]

The Logan City Council supported the proposed amendments to hooning offences.[438]

7.3.2 Departmental response

QPS reiterated that the proposed amendments to section 19C regarding the offence are not intended to change the underlying policy consideration that persons who watch illegal events (whether or not they outwardly or positively encourage or support the conduct) are partaking in criminal conduct themselves.[439] Rather, the amendment is intended to clarify who is a 'spectator' of a hooning event and therefore committing a hooning offence.[440]

Further, regarding concerns about innocent bystanders being charged with the offence, QPS highlighted that the Bill contains 'safeguards' which expressly exclude persons who are passing by an event or those watching an event for journalistic or reporting purposes from the commission of the offence.[441]

In respect to concerns about the prosecution of children for the amended offence, QPS noted that the police would apply the Director of Public Prosecutions guidelines in making the decision whether or not to charge a child for this offence, and in circumstances where a child was present at a hooning event against their will, it would not be in the public interest to do so.[442] Further, section 11 of the YJ Act requires police officers to consider alternatives (including other restorative justice processes) prior to commencing criminal proceedings against a child.[443]

7.4 Compatibility with human rights

In accordance with the HRA, a person has the right to:

- freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds[444]
- freedom of movement to choose the places they move into and congregate at in Queensland[445]

434 Submission 125, pp 2-3.

435 Submission 125, p 3.

436 Public hearing transcript, Brisbane, 24 May 2024, p 41.

437 Public hearing transcript, Brisbane, 24 May 2024, p 43.

438 Submission 117, p 1.

439 Public briefing transcript, Brisbane, 24 May 2024, p 12.

440 QPS, correspondence, 21 May 2024, p 5.

441 QPS, correspondence, 21 May 2024, p 13.

442 QPS, correspondence, 21 May 2024, p 132.

443 QPS, correspondence, 21 May 2024, p 132.

444 HRA, s 21(2).

445 HRA, s 19.

- peaceful assembly and freedom of association with others, whether physically or online.[446]

The statement of compatibility acknowledges that the amended offence places limits on these rights to the extent that a person would be restricted from taking part in an event with a group of people, and then disseminating material regarding the event.

However, this limitation is based on criminalising a dangerous activity (hooning) and deterring people from participating in, or supporting, that kind of activity.[447] Further, the statement of compatibility states that there are no less restrictive alternatives available to achieve the policy objectives of the provisions and, ultimately:

> On balance, fulfilling the purpose of the limitation outweighs the harm caused to human rights. Hooning poses a danger to drivers, spectators and the community. The disruption to the peaceable enjoyment of the community is to the point of distress for many community members. The presence of an audience at hooning events is a major influencing factor on participants, and measures that discourage drivers and spectators strike a fair balance upon the above identified human rights.[448]

Committee comment

While the committee acknowledges the concerns raised by submitters in regard to the impacts of the amended offence, the committee notes the importance of minimising the encouragement of and participation in the dangerous activity of hooning.

In particular, the committee notes the 'safeguards' contained in the Bill which expressly exclude persons who are passing by an event or those watching an event for journalistic or reporting purposes from the commission of the offence. Such exemptions are intended to ensure that innocent people are not charged with the offence, while maintaining the overarching purpose of the provision to reflect the community's denunciation of hooning activities and those who support it.

In respect of the unique impact such provisions may disproportionately have on children, the committee notes the guidance received by QPS, which states that the DPP guidelines would be used in making a decision whether or not to charge a child for this offence. In circumstances where a child was present at a hooning event against their will, QPS has provided assurance that it would not be in the public interest to progress such charges.

Accordingly, to the extent that the provisions in clause 91 of the Bill limit a person's rights to freedom of expression, freedom of movement and freedom of association and the relevant rights of a child, such limitations are reasonable and justifiable.

446 HRA, s 22.

447 Statement of compatibility, p 71.

448 Statement of compatibility, p 72.

8 Amendments to service and signing of documents by police officers

8.1 Electronic service of documents

To improve the efficiencies of police officers, the Bill proposes to introduce a framework that would allow police officers to serve particular documents (which usually require personal service) using electronic means to a unique electronic address of a person such as email or text message.[449]

Prescribed documents that may be served electronically by police officers[450]
• official warning for consorting • notice to appear • initial police banning notice • application, or a copy of the application, under the DFVP Act, sections 32(1), 86(1), 118(1), 129(1), or 129(2) • police protection notice • statement of matters relating to a police protection notice under the DFVP Act, section 111 • copy of release conditions under the DFVP Act, section 125 • temporary protection order, or a copy of the order, under the DFVP Act • domestic violence order, or a copy of the order, under the DFVP Act • varied order, or a copy of the order, under the DFVP Act • intervention order, or a copy of the order, under the DFVP Act • notice of proceedings under the DFVP Act

The Bill provides that a police officer may serve a prescribed document on a person by electronic communication if:

- the police officer reasonably believes, having regard to the circumstances:
  - the electronic communication will be received by the person within a reasonable time
  - the electronic communication would be readily accessible by the person so as to make the document useable by subsequent reference, and
  - it is appropriate to do so in the circumstances given the purpose and effect of the document
- the police officer has made a reasonable effort to ensure the person understands the purpose and effect of the document
- the person has given consent for service of the document by electronic communication in accordance with the new requirements in the PPRA (informed consent)
- the person's informed consent has not ceased to have effect, and
- the person has nominated the person's unique electronic address for service by electronic communication.[451]

In order for the person to provide informed consent as required by the PPRA, the police officer must have explained to the person, the purpose and effect of the document to be served, the nature of the

[449] Explanatory notes, p 28; Bill, cl 85 (new ch 23, pts 1AA and 1AB, PPRA).

[450] Bill, cl 88 (new sch 5A, PPRA).

[451] Bill, cl 85 (new s 789E(1), PPRA).

consent they are providing and the ability of the person to withdraw consent in writing.[452] If a person gives informed consent to a police officer in accordance with this section, the police officer is required to record details of the explanation required in section 789H, the consent itself, the person's nominated unique electronic address and an acknowledgement from that person of their address.[453]

If a person does not withdraw their consent, their consent would cease to have effect on the earliest of the following:

- 6 months after the day the consent is given
- if the person is detained in a corrective services facility or a detention centre, the day the person is detained, or
- if the person is detained in a mental health facility under the *Mental Health Act 2016,* the day the person is detained.[454]

If a person give informed consent for a prescribed document to be served on them electronically, the Bill proposes that the person will also have been deemed to have given informed consent for the service of any 'related document' (being a document related to a proceeding commenced in relation to the prescribed document or for another matter arising from the same circumstances as the prescribed document which is permitted or required to be served for the proceeding).[455]

The Bill includes safeguards which prohibit a police officer from using electronic methods to serve a document on a person if that person is a child under 16 years of age or has impaired capacity.[456]

Service of an electronic document will be taken to have been effected on the day and at the time the document was sent by electronic communication from the police officer to the relevant recipient unless the contrary is proved.[457]

The electronic service provisions in the Bill are not intended to replace personal service on a person or their legal representative.[458] However, as noted in the explanatory notes, it is expected that the introduction of an electronic service scheme for particular documents would minimise the administrative burden on police officers 'enabling police officers to divert their efforts to responding to calls for service, protecting victims and keeping the Queensland community safe'.[459]

8.1.1 Stakeholder views

QIFVLS raised the issue of the availability of internet service in remote or regional centres noting that until equal and equitable access to internet across all of Queensland is achieved, electronic service of documents cannot be relied upon and would undermine a person's ability to access prompt legal advice regarding their circumstances.[460] QIFVLS was also concerned about an Aboriginal and Torres Strait Islander person, who does not speak English as a first language, receiving an email 'serving' a document and being unaware of its contents or the importance for them to comply or take action by a certain date, which may lead to their legal rights being prejudiced.[461]

452 Bill, cl 85 (new s 789H, PPRA).

453 Bill, cl 85 (new s 789K(2), PPRA).

454 Bill, cl 85 (new s 789J(3), PPRA)

455 Bill, cl 85 (new s 789I, PPRA)

456 Bill, cl 85 (new s 789E(3), PPRA).

457 Bill, cl 85 (new s 789F(2), PPRA).

458 Bill, cl 85 (new s 789E(4), PPRA).

459 Explanatory notes, pp 9, 28.

460 Public hearing transcript, Brisbane, 10 June 2024, p 14.

461 Public hearing transcript, Brisbane, 10 June 2024, p 15.

These concerns were echoed by the Domestic Violence Prevention Centre Gold Coast regarding other culturally and linguistically diverse and vulnerable groups.[462]

YAC also recommended that the minimum age for electronic service be raised from 16 years to 18 years to address the specific vulnerabilities of this group.[463]

The Queensland Council for Civil Liberties recommended that read receipts could be used to minimise the risk that a person does not receive or read the document served electronically and is prejudiced as a result.[464]

8.1.2 Departmental response

In response to concerns about the disadvantage electronic service may cause to vulnerable communities, QPS noted that service of documents electronically would only be able to be effected if a person gives informed consent. The process of obtaining informed consent under the PPRA requires the police officer to ensure the person receiving the document understands the nature and purpose of the document.[465] The recording of this consent by an officer may be satisfied using body worn cameras.[466]

If a police officer is unable to satisfy themself that the electronic service of the document is appropriate in the circumstances (perhaps if the person does not speak or read English), then the document cannot be served electronically under the PPRA and personal service would be made instead.[467]

In response to the recommendation of the Queensland Council of Civil Liberties regarding the use of read receipts, QPS noted that under the provisions proposed in the Bill the document is taken to have been served on the date that the document is sent, and read receipts do not necessarily confirm that the relevant person has opened or read the document.[468] Further, QPS outlined that the reversal of the onus of proof onto the recipient to prove that the document was validly served was necessary because:

- 'police do not have the power to require the person to view the document once electronically transmitted (similarly police cannot compel an individual to read a paper version of a document)'
- 'police may not have access to information determining if and when the person accessed the document'.[469]

QPS also noted that it intends to monitor the effectiveness of the electronic service scheme during its first 12 months of operation to determine whether there is any impact on rates of non-compliance or contraventions with court orders or notices to appear.[470]

462 Submission 119, pp 3-4.

463 Submission 125, p 2.

464 Submission 130, p 4.

465 QPS, correspondence, 21 May 2024, pp 126-127.

466 Public briefing transcript, Brisbane, 10 June 2024, p 9.

467 QPS, correspondence, 21 May 2024, pp 126-127; public briefing transcript, Brisbane, 10 June 2024, p 9.

468 QPS, correspondence, 21 May 2024, pp 147-148.

469 QPS, correspondence, 21 May 2024, p 148.

470 QPS, correspondence, 21 May 2024, p 128.

8.2 Electronic signing of documents

The Bill proposes to allow police officers to electronically sign documents in the course of the performance of their duties as a police officer.[471]This is intended to modernise police processes and improve efficiencies.[472]

According to the explanatory notes, the approval of the method for electronic signing is an internal matter for QPS which will be updated as the relevant technology is updated.[473]

8.2.1 Stakeholder views

Submitters raised concerns regarding the security of electronic signatures and the susceptibility of electronically signed documents to manipulation.[474] One of those submitted that the Police Commissioner may not be the appropriate authority to authorise the electronic signature system where there ought to be a standard, government-wide response to accept the most secure method of verify electronic signatures.[475]

8.2.2 Departmental response

QPS noted that the electronic signature provisions in the Bill were consistent with the Electronic Signature Guidelines (which already apply to all government departments) and section 13A of the *Oaths Act 1867*.[476]

Further, it was noted that the method of electronic signature to be used was required to be approved by the Police Commissioner in order to be adaptable to technological changes and trends.[477] It is also a requirement of the Bill that the identity of the signer of the document is able to be verified, which will minimise the risk of fraud.[478]

8.2.3 Consistency with fundamental legal principles

Legislation will have sufficient regard for the rights and liberties of individuals where the onus of proof in criminal proceedings is only reversed if there is adequate justification to do so.[479]

The new electronic service and signing provisions in the Bill would be a 'significant change to long-standing legal practice' in that:

- for the PPRA and any other Act, if a police officer serves a prescribed document or related document on a person, the document is taken to be personally served on the person on the day and at the time the document was sent by electronic communication to the person's nominated unique electronic address *unless the contrary is proven,*[480] and,
- for the PPRA and any other Act, a document electronically signed by a police officer is taken to be a document signed by the police officer *unless the contrary is proven*.[481]

471 Bill, cl 85 (new ss 789N(1), (2), PPRA).

472 Explanatory notes, p 10; Public briefing transcript, Brisbane, 10 June 2024, p 10.

473 Explanatory notes, p 31.

474 David Ingram, submission 11, p 2; Hayden Spence, submission 83, p 10.

475 David Ingram, submission 11, p 2.

476 QPS, correspondence, 21 May 2024, pp 7-8, 61-62.

477 QPS, correspondence, 21 May 2024, pp 7, 61.

478 QPS, correspondence, 21 May 2024, pp 7-8, 61.

479 LSA, s 4(3)(d).

480 Bill, cl 85 (new s 789F(2), PPRA).

481 Bill, cl 85 (new s 789N(3), PPRA).

Accordingly, the onus to prove either the document has not been served, or the document has not been signed by the relevant police officer, is placed on the recipient of the document.

The explanatory notes contend that the reversal of the onus of proof is necessary because police do not have the power to require the person to view the document once electronically transmitted and may not have access to information showing if and when the person accessed the document.[482]

Regarding the electronic service and signing provisions in the Bill, there is no provision which states that a certificate of service (such as a read receipt or other confirmation of delivery) or certificate of verifying the identity of the signer will be taken as conclusive evidence of such matters.

Committee comment

The committee notes these provisions of the Bill propose to place the onus of proof onto a person to show that a document has not been lawfully served on them by a police officer, and to prove that a document has not been lawfully signed by a police officers.

In terms of the Bill, the amendments seeking to reverse the onus of proof apply 'unless the contrary is proved', which will give the person the opportunity to challenge a fact sought to be proved by the certificate. Generally, for a reversal of onus to be justified, the defendant must be particularly well positioned to disprove guilt or the relevant fact must be something inherently impractical to test by alternative evidentiary means.[483] On balance, given the person's ability to challenge the relevant presumption, the intention to improve the efficiency of service, the various safeguards included in the Bill and the potential increased ability for police officers to respond to calls for service, the committee is satisfied that the Bill's proposed reversal of the onus of proof in respect of the electronic service and signing provisions is justified in the circumstances.

[482] Bill, cl 85 (new s 789N, PPRA); explanatory notes, p 47.

[483] Office of Queensland Parliamentary Counsel (OQPC), '*Fundamental legislative principles: the OQPC Notebook*' (Notebook), p 36.

9 Emergency workers and vehicles

9.1 New offences for damaging emergency vehicles and endangering police officers

9.1.1 Damaging emergency vehicle when operating motor vehicle

The Bill proposes to amend the Criminal Code to insert a new offence for a person who:

- operates a motor vehicle in a way that damages an emergency vehicle[484]
- knows, or ought reasonably to know, the damaged vehicle is an emergency vehicle, and
- intends to damage the emergency vehicle or to injure or endanger the safety of an emergency worker (which can include members of the police service, ambulance officers, fire service officers or SES members)[485] or knows, or ought reasonable to know, the person is operating a motor vehicle in a way that will damage an emergency vehicle.[486]

The definitions of 'emergency vehicle' and 'emergency worker' for the purposes of the Criminal Code are also proposed in the Bill.[487] In respect of the definition of 'emergency vehicle', a person will be taken to have known that a vehicle is an emergency vehicle, unless the contrary is proved, if:

- the vehicle bears the insignia of an emergency services entity or is otherwise clearly marked as a type of emergency vehicle
- the vehicle is displaying flashing blue and red lights or a flashing blue light, or
- a person who is inside, or emerges from, the vehicle identifies themselves as a type of emergency worker.[488]

The proposed maximum penalty for this new office is 14 years imprisonment.[489]

The explanatory notes outline that there have been several incidents in Queensland of 'ramming' of emergency vehicles, which poses a threat to the safety of emergency workers and the ability of emergency vehicles to remain operational.[490] The creation of a new offence that particularly targets this deliberate behaviour is intended to reflect the seriousness of the offence and its impact on community safety.[491]

9.1.2 Endangering police officer when driving a motor vehicle

The Bill also proposes to insert a new offence of endangering a police officer when driving a motor vehicle in the Criminal Code. The new offence would apply if:

- a person drives a motor vehicle towards or near a police officer
- the person knows, or ought reasonably to know, the officer is a police officer
- the officer is acting in the performance of their duties as a police officer, and
- the person:

484 Bill, cl 11 (new s 6A, Criminal Code).

485 Bill, cl 10, (amend s 1, Criminal Code).

486 Bill, cl 14 (new s 328C, Criminal Code).

487 Bill, cls 10, 11 (amend s 1 and new s 6A, Criminal Code).

488 Bill, cl 11 (new s 6A(2), Criminal Code).

489 Bill, cl 14 (new s 328C, Criminal Code).

490 Explanatory notes, p 6.

491 Explanatory notes, p 25.

- intends to injure or endanger the safety of the police officer, or
- endangers the safety of the police officer and knows, or ought reasonably to know, the person is endangering the safety of the police officer.[492]

This offence is intended to apply in respect of federal police officers, as well as officers from any other Australian state jurisdiction.[493] The proposed maximum penalty for this new offence is 14 years imprisonment.[494]

The proposed new offence seeks to address and minimise the risk of police officers being confronted with behaviour by drivers that puts their safety at risk.[495]

9.1.3 Stakeholder views

Submitters, including the QHRC, raised concerns in respect of the potential for persons who unintentionally (or under duress) operate a motor vehicle in a way that damages an emergency vehicle or endangers a police officer being captured by this offence (and become liable for significant maximum penalties).[496]

Legal Aid Queensland noted that the existing offences in the Criminal Code, such as wilful damage or attempted murder, may provide more appropriate coverage as opposed to new, standalone offences.[497] This was echoed by the QLS.[498]

9.1.4 Departmental response

QPS noted that both the standalone 'ramming' offence and the offence of endangering a police officer require an element of intent or knowledge (actual knowledge or that the person ought to have reasonably known) to be established.[499] In circumstances where a person did not intend to do the act, QPS noted that 'it is unlikely that either element would be satisfied'.[500] Further, it was highlighted that the Criminal Code contains provisions that specifically deal with criminal responsibility in circumstances where it is proven that a person is acting under duress.[501]

In respect of the ability of existing offences in the Criminal Code to apply to unlawful conduct concerning emergency vehicles and the safety of police officers, QPS acknowledged that this conduct may be covered but 'it is considered there is a need to provide strong safety protections for emergency workers while they perform vital roles for all Queenslanders'.[502]

9.2 New aggravating circumstances for wilful damage to emergency vehicles and entering or taking an emergency services vehicle

The Bill proposes to increase the maximum penalty for the following offences:

492 Bill, cl 14 (new s 328D(1), Criminal Code).

493 Bill, cl 14 (new s 328D(2), Criminal Code).

494 Bill, cl 14 (new s 328D(1), Criminal Code).

495 Explanatory notes, p 6. See also public briefing transcript, Brisbane, 24 May 2024, p 10.

496 Submission 212, p 13; Hayden Spence, submission 83, p 2.

497 Submission 132, p 1.

498 Submission 211, p 3; Public hearing transcript, Brisbane, 24 May 2024, p 43.

499 QPS, correspondence, 21 May 2024, pp 58-59, 241.

500 QPS, correspondence, 21 May 2024, p 241

501 QPS, correspondence, 21 May 2024, pp 59, 241.

502 QPS, correspondence, 21 May 2024, p 232.

- wilful damage under section 469 of the Criminal Code where the property being damaged is an emergency vehicle, from 5 years to 7 years imprisonment[503]
- unlawful use or possession of a motor vehicle, aircraft or vessel under section 408A of the Criminal Code where the vehicle is an emergency vehicle, from 10 years to 14 years imprisonment[504]
- unlawful entry of a vehicle for the purpose of committing an indictable offence under section 427 of the Criminal Code where the vehicle is an emergency vehicle, from 10 years to 14 years imprisonment.[505]

The explanatory notes outline that damage to emergency vehicles by means other than 'ramming' was still a significant issue for community safety in circumstances where emergency vehicles would not be operational while being repaired.[506]

It was also noted that the purpose of the increased penalty in respect of the entering or taking of emergency vehicles reflects the considerable risk that unlawfully used emergency vehicles cause to public safety – particularly where a person may have access to dangerous equipment stored in vehicles and may cause traffic hazards.[507]

9.2.1 Stakeholder views

The QLS opposed the amendments and noted an increase to maximum penalties for these offences may lead to more young people coming in contact with the criminal justice system for a longer period of time.[508]

9.2.2 Departmental response

In response to the concerns regarding the increase to penalties in aggravating circumstances involving emergency vehicles, QPS noted that this was a policy decision of the government as outlined in the explanatory notes.[509]

9.2.3 Compatibility with human rights

All people have a right to liberty and security, which includes the right not to be arbitrarily arrested or detained.[510] Both the creation of new offences and the introduction of new aggravating circumstances in the Bill for unlawful matters involving emergency vehicles and police officers may limit this right to the extent that the offences include a term of imprisonment as a maximum penalty.

The statement of compatibility notes that the purpose of the introduction of these maximum penalties is to 'signal to the community' that this conduct is not tolerated, and the maximum penalties accordingly reflect the seriousness of the offences.[511] The statement of compatibility states that a term of imprisonment for committing one of these offences, which impinges on the offender's right to liberty, is not arbitrary or unlawful in circumstances where the person has committed an offence

503 Bill, cl 20 (amend s 469, Criminal Code).

504 Bill, cl 17 (new s 408A(1CA), Criminal Code).

505 Bill, cl 19 (new s 427(3), Criminal Code).

506 Explanatory notes, p 6.

507 Explanatory notes, pp 7, 27.

508 Submission 211, p 3.

509 Department, correspondence, 21 May 2024, pp 59, 232.

510 HRA, ss 29(1), 29(2).

511 Statement of compatibility, pp 47, 49, 51, 52.

that puts the safety and property of emergency services at risk.[512] The statement of compatibility also notes that there is no less restrictive alternative to achieve the policy objectives of these provisions.[513]

Committee comment

The committee acknowledges the issues raised by submitters regarding the penalties attached to the new offences and aggravating circumstances regarding emergency vehicles and police officers.

However, the committee also recognises the vulnerable positions emergency services officers put themselves in every day to assist members of the community. The committee applauds action that reduces instances of conduct that endangers the lives of emergency workers and we support measures that enable these officers to undertake their important work.

To that end, the committee notes that deliberate offences which cause damage to emergency vehicles, and puts the safety of workers at risk, are serious and the penalties which attach to such offences should reflect the danger of this activity.

The committee therefore considers, to the extent that the new offences and aggravating circumstances regarding emergency vehicles and police officers proposed in the Bill limit a person's right to liberty, such limitations are reasonable and demonstrably justifiable having regard to the policy objectives of the provisions and the safeguards installed in the Bill.

[512] Statement of compatibility, pp 48, 49, 51, 53.

[513] Statement of compatibility, pp 48, 50, 51-52, 53.

10 Domestic and family violence reforms

The Bill proposes several changes in respect of police and corrective services responses to DFV.[514]

10.1 Clarifying the coverage of parent-minor child relationships under the Domestic and Family Violence Protection Act

Currently, under the DFVP Act, a child under the age of 18 years is included in the definition of a 'family relationship'[515] and therefore conduct between a parent and a minor child may be captured in the definition of 'domestic violence' for the purposes of the DFVP Act.[516]

The explanatory notes advise that, as a result of these relationships being captured by the DFVP Act, QPS is often required to respond to and investigate matters involving disputes between parents and minor children (such as disciplinary matters which fall outside the scope of domestic violence offences) as potential domestic violence incidents.[517]

The Bill proposes to amend the definition of both 'family relationship' and 'relative' under the DFVP Act to replace the words 'child (including a child 18 years or more), stepchild' with 'son, daughter, step-son, step-daughter'.[518] Further, the Bill would clarify that, in respect of the requirement for police to investigate alleged conduct in prescribed relationships as potential 'domestic violence' incidents, any domestic violence that may have been perpetrated in a minor child relationship (which is not otherwise a 'intimate personal relationship' or 'informal care arrangement') may still be able to be investigated and pursued under another Act such as the Criminal Code, *Child Protection Act 1999* or the YJ Act.[519]

The policy objective of these amendments is to direct matters concerning violence perpetrated in parent-minor child relationships to child safety and youth justice responses which may be more appropriate than being dealt with in a domestic violence framework.[520]

10.1.1 Stakeholder views

The Domestic Violence Prevention Centre Gold Coast and Queensland Council of Social Service opposed the amendments to the DFVP Act on the basis that women who are victimised by their children ought to be dealt with, and referred to services which respond to, DFV.[521] The QMHC also raised concerns that the amendments would lead to harsher enforcement against minor children in respect of matters that would otherwise be dealt with as a domestic violence response under the DFVP Act.[522]

Women's Legal Service Queensland noted that while it does not object to the proposed amendments, it remained critical for police officers to use 'a trauma and domestic violence informed approach' when responding to complaints of violence from or about minor children in domestic settings.[523]

514 Explanatory notes, p 7.

515 DFVP Act, s 19(1), (2).

516 DFVP Act, s 8(1), 13(b).

517 Explanatory notes, p 7; DFVP Act, s 100(1).

518 Bill, cl 106 (amend s 19(2), DFVP Act).

519 Bill, cl 107 (amend s 100, DFVP Act).

520 Explanatory notes, p 27.

521 Submission 119, p 3; submission 129, p 2.

522 Submission 126, p 6.

523 Submission 120, p 1.

10.1.2 Departmental response

In respect of concerns raised regarding the risk that particular relationships with minor children (such as parent-minor child relationships) would not be appropriately responded to as domestic violence incidents, QPS noted that:

- police are required to investigate where they have a reasonable suspicion that domestic violence has occurred in a relevant relationship (which presently includes parent-minor child relationships)
- where, in the course of this investigation, there is a behaviour or pattern of behaviour which gives the officer a reasonably belief that domestic violence has occurred, the officer may be able to proceed with an application for a protection order
- currently, section 22 of the DFVP Act states that a child is not to be named in such applications unless the relevant relationship between the child and the adult is an 'intimate personal relationship' or an 'informal care relationship'
- this provides some ambiguity in respect of conduct that may constitute domestic violence in a parent-minor child relationship which falls outside of these definitions, and
- the Bill clarifies that police officers are only required 'to discern in the investigative process if one of these two circumstances exist before having to consider the act of domestic violence and correctively focus their attention on any detectable criminal offending or other necessary actions such as child harm or youth justice approaches'.[524]

It was further highlighted by QPS that the amendments in the Bill do not remove the 'referral or accountability pathways' already available to victims of domestic violence, although the investigation and resulting action may take place under an alternate Act.[525]

10.2 Enabling police to nominate first mention date of police protection notice

In order to provide immediate protection to a victim-survivor of domestic violence, a police officer can issue a PPN against a respondent if (among other things) they hold the reasonable belief that the respondent has committed domestic violence and the PPN is necessary to protect the aggrieved.[526] The standard conditions of a PPN include a requirement that the respondent must not commit domestic violence against the aggrieved.[527]

Issuing a PPN acts as a de facto application to the court for a domestic violence protection order. The PPN is returnable for a first mention at the local magistrates court of the respondent within 5 business days of the PPN being issued (if the local magistrates court sits at last once a week) or otherwise at the next sitting date of the local magistrates court of the respondent.[528]

The Bill proposes to extend this timeframe for the first mention date to within 14 business days of the PPN being issued to the respondent.[529] The purpose of this amendment, as articulated in the explanatory notes, is that the current, shorter timeframe provides 'minimal flexibility' and prevents 'a police officer from producing well-informed material to the court' regarding the application for a protection order.[530] Further, the amendments would provide police officers with greater flexibility to

524 QPS, correspondence, 21 May 2024, pp 125-126, 138-139.

525 QPS, correspondence, 21 May 2024, p 126.

526 DFVP Act, s 101(1).

527 DFVP Act, s 106(a).

528 DFVP Act, s 105(1)(j), (2).

529 Bill, cl 108 (amend s 150(2), DFVP Act).

530 Explanatory notes, p 8.

nominate a first return date based on the processes of the local courthouse to ensure prompt protection of victim survivors.[531]

10.2.1 Stakeholder views

Women's Legal Service Queensland voiced its support in principle for the proposed amendments to the first mention date for PPNs.[532]

TASC Legal and Social Justice Services opposed the amendments to the PPN provisions on the basis that the extension to the timeframe will unnecessarily delay court processes.[533] This issue was also raised by the QIFVLS which noted that delays could be compounded in regional or remote areas where magistrates court sitting days are less frequent, leading to victim-survivors not being granted access to expeditious prosecution of their domestic violence matter (and receipt of long-term protection).[534]

10.2.2 Departmental response

In response to concerns in respect of potential delays to the first mention date, QPS noted that extending the timeframe for the first mention date was beneficial to both the victim-survivor and the police officer prosecuting the protection order. The victim-survivor would have the ability to engage with support services prior to the mention date, and the police officer would be able to provide more 'fulsome' evidence to the court and potentially avoid unnecessary adjournments of the matter which may cause re-traumatisation of the victim-survivor.[535]

10.3 Service of prescribed domestic and family violence documents by corrective services officers

Given prisoners who are currently detained in Queensland Corrective Services (QCS) facilities can be parties to ongoing court processes, police officers are often required to attend corrective services facilities in order to personally serve documents on prisoners, such as DFV documents.[536]

The Bill proposes amendments to the *Corrective Services Act 2006* to allow corrective services officers to serve prescribed DFV documents[537] on prisoners while detained.[538] A corrective services officer would only be permitted to effect personal service of such documents if:

- personal service of the relevant documents by a police officer is required or permitted under the DFVP Act[539]
- the chief executive of Queensland Corrective Services approves the corrective services facility as one in which service of documents by corrective services officers can occur,[540] and
- there is an agreement between the chief executive of QCS and the Police Commissioner regarding the requirements of such service.[541]

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531 Explanatory notes, p 27.

532 Submission 120, p 1.

533 Submission 138, p 5.

534 Submission 210, p 9; public hearing transcript, Brisbane, 10 June 2024, p 13.

535 QPS, correspondence, 21 May 2024, pp 153-154, 167.

536 Explanatory notes, p 8.

537 DFVP Act, ss 34(1), 88(1), 109(1), 133(1), 184(2), 187(4).

538 Bill, cl 81 (new ss 348A, 348B, *Corrective Services Act 2006* (CS Act).

539 Bill, cl 81 (new s348B(1)(a), CS Act).

540 Bill, cl 81 (new ss 348A(1), 348B(1)(b), CS Act).

541 Bill, cl 81 (new s 348B(1)(c), CS Act); explanatory notes, p 27.

These amendments are not intended to supplant the existing ability for police officers to personally serve prescribed DFV documents on prisoners.[542] However, the new service powers for corrective services officers are proposed to be trialled at selected corrective services facilities to 'improve operational efficiencies'.[543] Should a corrective services officer serve a document in accordance with the new service provisions, they would be required to complete a statement of service which would be tendered as evidence that the document was served on the prisoner, unless the contrary is proven.[544]

10.3.1 Stakeholder views

Legal Aid Queensland raised concerns in respect of the training and resources that would be provided to corrective services staff regarding the service of DFV documents on prisoners (including in circumstances where prisoners may require an interpreter or have other cognitive impairments). In particular, it was noted that if a domestic violence order was served on a prisoner by a corrective services officer, and the prisoner subsequently contravened that order, the onus would be on the prosecution to prove that the prisoner had been personally served with the order and told about the conditions of the order. Should the corrective services officer not deliver this explanation at the time of service properly, this could lead to inefficiencies in the court when seeking orders.[545]

The Together Union Queensland noted that involving corrective services officers in the criminal justice process (where a prisoner would likely be the respondent) may erode the rehabilitative function of their role, leading to poor rapport between corrective services officers and prisoners. Additionally, in respect of the practical implementation of the service provisions, the Together Union Queensland highlighted the limited capacity of corrective services officers to take on additional duties.[546]

QIFVLS did not object to the amendments in principle but recommended that a timeframe be instituted in which the prescribed document must be served on the prisoner by corrective services staff to allow time for the prisoner to obtain independent legal advice.[547]

10.3.2 Departmental response

Regarding concerns about the ability of corrective services officers to discharge their obligations to serve documents in accordance with the requirements of the DFVP Act, QCS noted:

- prisoners are assessed upon their admission to custody to identify any vulnerabilities which may impact their management in custody and QCS will engage interpreters and other supports as needed
- on this basis, corrective services officers may be better placed than police officers to serve the prescribed documents on prisoners due to this knowledge
- QCS and QPS will work collaboratively regarding the trial of the new service provisions to ensure service of the prescribed documents is conducted appropriately
- following service of the prescribed document, the corrective services officer would be required to complete the statement of service to verify the details of service and that the relevant conditions of the document were explained to the prisoner.[548]

542 Bill, cl 81 (new s 348B(4), CS Act); Explanatory notes, p 28.

543 Explanatory notes, p 8.

544 Bill, cl 82 (new s 351(3)(j), CS Act); Explanatory notes, p 28.

545 Submission 132, p 5.

546 Submission 175, p 6.

547 Submission 210, p 9; Public hearing transcript, 10 June 2024, p 14.

548 QPS, correspondence, 21 May 2024, p 156.

QCS also acknowledged the concerns raised by the Together Union Queensland and advised that the union would be consulted on the implementation of the new provisions and that the trial of these provisions would only initially apply to one corrective services facility which would inform the implementation and training required for officers should the scheme be extended to other facilities.[549]

QCS highlighted that '[t]he primary considerations for the trial are maintaining staff and prisoner safety, satisfying evidentiary requirements and providing timely service of documents to ensure the safety of victim-survivors of DFV'.[550]

In response to the recommendation from QIFVLS regarding timeframes for service, QCS noted that this matter would be addressed in the framework developed between QPS and QCS for the implementation of the new provisions.[551]

10.3.3 Consistency with fundamental legal principles

Whether legislation has sufficient regard for the rights and liberties of individuals depends, for example, on whether it reverses the onus of proof in criminal proceedings only with adequate justification.[552]

The new scheme allowing for the service of prescribed DFV documents on prisoners by corrective services officers provides that the document is taken to be personally served on the person on the day the document is served, 'unless the contrary is proved'.[553] The statement of service to be completed by the QCS officer may be tendered as evidence of this matter.[554]

Committee comment

The committee notes these provisions of the Bill propose to place the onus of proof on the alleged offender to show that the document has not been lawfully serviced on them by the officer and to disprove any of the specified matters stated in the certificate as part of the proceedings.

As a matter of course, legislation should not provide that it is the responsibility of an alleged offender in court proceedings to prove innocence, for example, by disproving a fact that the prosecution would otherwise be obliged to provide, unless there is adequate justification.

In terms of the Bill, the amendments seeking to reverse the onus of proof apply 'unless the contrary is proved', which will give the person the opportunity to challenge a fact sought to be proved by the certificate. Generally, for a reversal of onus to be justified, the defendant must be particularly well positioned to disprove guilt or the relevant fact must be something inherently impractical to test by alternative evidentiary means.[555] On balance, given the person's ability to challenge the relevant presumption and the intention to improve the efficiency of service, the committee is satisfied that the Bill's proposed reversal of the onus of proof for the service of prescribed DFV documents by QCS officers is justified in the circumstances.

549 QPS, correspondence, 21 May 2024, pp 195-196; QCS, correspondence, 17 June 2024, p 1.

550 QCS, correspondence, 17 June 2024, p 1.

551 QPS, correspondence, 21 May 2024, p 228.

552 LSA, s 4(3)(d).

553 Bill, cl 81 (new s 348B(3), CS Act).

554 Bill, cl 82 (new s 351(3)(j), CS Act).

555 OQPC, Notebook, p 36.

Appendix A – Submitters

Sub #	Submitter
001	Philip Heywood
002	Office of the Information Commissioner
003	Duncan Sheridan
004	Connor Prior-Mead
005	Confidential
006	Name Withheld
007	Name Withheld
008	Confidential
009	Steve Nuttall
010	Matthew Jones
011	David Ingram
012	Jared Cathcart
013	Name Withheld
014	Rene Guhl
015	Christopher Demmel
016	Name Withheld
017	Eric Kerr
018	Adam Hayes
019	Joel Marti
020	Confidential
021	Name Withheld
022	Peter Connolly
023	Sean Cave
024	Rayden Dibbs
025	Name Withheld
026	Ann Robinson
027	Inga Gibson
028	John Said
029	Luke Petersen
030	Glen Cannard
031	Jayson Short
032	Chin Woon
033	Kathryn Dries

Sub #	Submitter
034	Scott Dawson
035	Aboriginal and Torres Strait Islander Legal Service
036	Andrew Filewood
037	Birgit Machnitzke
038	Anton Jones
039	Mick Fuhrimann
040	Hayden Otto
041	Ross Hopper
042	Shaun Moyle
043	Ryan Lucca
044	Elizabeth Anna Robins
045	Mason Feltoe
046	Alana Gregory
047	John Dixon
048	Name Withheld
049	Name Withheld
050	Name Withheld
051	Name Withheld
052	Name Withheld
053	Cameron Dawson
054	Name Withheld
055	Reginald Caillon
056	Gary Harvey
057	Natasha Harvey
058	Sean Richardson
059	Rhys Bosley
060	Ben Kay
061	Richard Brittain
062	Nigel Dullaway
063	Ben Davidson
064	Name Withheld
065	William Buttenshaw
066	Jesse Corcoran
067	Robert Cross

Sub #	Submitter
068	Andrew Dauncey
069	Name Withheld
070	Name Withheld
071	Name Withheld
072	Name Withheld
073	Name Withheld
074	Confidential
075	Daniel Lim Bromilow
076	Lawrence Lyons
077	Name Withheld
078	Name Withheld
079	David Pattel
080	Confidential
081	Daniel Rose
082	Name Withheld
083	Hayden Spence
084	Gavin Organ
085	Aliki Strydom-Hensen
086	James Williamson
087	Name Withheld
088	Aaron Wulff
089	Australia's Right to Know
090	Project Paradigm
091	Michael Peter
092	Kenneth Pitt
093	Scott Bailey
094	James McKenzie
095	Graham Hitchenor
096	Jake O'Connor
097	Mark Egan
098	Michelle Saunders
099	Dave Williams
100	Paul Martin
101	Name Withheld

Sub #	Submitter
102	Daniel Christie
103	Lachlan Campbell
104	Jonathan Foster
105	Michael Hodge
106	Rob McLear
107	Name Withheld
108	Name Withheld
109	John Teitzel
110	Chris Wieden
111	Free Speech Union of Australia
112	Queenslanders with a Disability Network
113	Soroptimist International of Brisbane Inc
114	Shooters Union Qld Pty Ltd
115	Firearm Dealers Association – Qld Inc
116	North Queensland Rifle Association
117	Logan City Council
118	YFS Legal
119	Domestic Violence Prevention Centre Gold Coast Inc
120	Women's Legal Service Queensland
121	Tobias Braxton
122	Chad Monroe
123	Kyl Dunne
124	Tim Pinchers
125	Youth Advocacy Centre
126	Queensland Mental Health Commission
127	Shopping Centre Council of Australia
128	PeakCare Queensland Inc
129	Queensland Council of Social Service
130	Queensland Council for Civil Liberties
131	Uniting Church in Australia Queensland
132	Legal Aid Queensland
133	Justice Reform Initiative
134	Local Government Association of Queensland
135	NIOA Australia and New Zealand

Sub #	Submitter
136	Shooting Industry Foundation Australia
137	Family Responsibilities Commission
138	TASC Legal and Social Justice Services
139	DV Connect
140	Cairns Regional Council
141	Queensland Network of Alcohol and Other Drug Agencies
142	Henk Harms
143	Name Withheld
144	Jenelle Stark
145	Nathan Armstrong
146	Antonia Anning
147	Flynn Griell
148	Christopher Rey
149	Confidential
150	Peter Senior
151	Name Withheld
152	Samara McPhedran
153	Leighton Taske
154	Shannon Blanch
155	Kerry Perkins
156	Adam Burling
157	Name Withheld
158	Christopher Broad
159	Iain Tivendale
160	Name Withheld
161	Confidential
162	Name Withheld
163	Michelle Bailey
164	Robert Tratt
165	Cate McKenna
166	Mark Molachino
167	Christian Bandiko
168	Kelly Hafemeister
169	Rob McLear

Sub #	Submitter
170	Joayn Hahn
171	Benjamin Smith
172	Darren Abbott
173	Queensland Advocacy for Inclusions
174	Ian Simmons
175	Together Queensland
176	Jon Griffiths
177	David Bowling
178	Shannon Beard
179	Anglicare Southern Queensland
180	Kristy Little
181	Luke Little
182	Craig Avenell
183	James Mueller
184	Lia Cragnolini
185	Peter McKenzie
186	Carl Graff
187	Warren Farmer
188	Royce Wilson
189	Office of the Public Guardian
190	Warren Howe
191	WSP Australia Pty Limited
192	Christine Thomson
193	Rebecca Miller
194	Andrew Bartley
195	Paul Hales
196	Natalie English
197	Rob Blomfield
198	Matt Hallas
199	Peter Morton
200	Joseph Ford
201	Cody Mackenzie
202	Che Hartley
203	John Savis

Sub #	Submitter
204	Peter Campbell
205	Mark Browne
206	Jade Phillips
207	Queensland Aboriginal and Torres Strait Islander Child Protection Peak
208	North Queensland Women's Legal Service
209	Stephen Andrew MP, Member for Mirani
210	Queensland Indigenous Family Violence Legal Service
211	Queensland Law Society
212	Queensland Human Rights Commission
213	Julie Inman Grant, eSafety Commissioner
214	Cameron Campbell
215	Dougal Johnston
216	Sean Hinson
217	Stephen Allard
218	Jeremy Starrs
219	Number not allocated
220	Charmaine Harries
221	Paula Leslie
222	Ian Busby
223	knowmore
224	Deborah Cook
225	Sean Campbell
226	David Bond
227	Queensland Family and Child Commission
228	Richard Brooking
229	Steven Hutchison
230	Confidential
231	Russell Howard
232	Jacob Landesmann
233	Ricky Mead
234	Adam Towner
235	Annie Williams
236	Andrew Dauncey
237	Olivia Bell

Sub #	Submitter
238	Joanne Robinson
239	Professor Tamara Walsh
240	AgForce Queensland
241	Queensland Police Union of Employees
242	Spinal Life Australia
243	Form A or Variation of Form A (2 received)
244	Form B or Variation of Form B (24 received)
245	Form C or Variation of Form C (9 received)
246	Form D or Variation of Form D (4 received)
247	Form E or Variation of Form E (2 received)
248	Form F or Variation of Form F (3 received)
249	Mark O'Connell
250	Clive Wall RFD KC

Appendix B – Officials at public departmental briefing

Friday 24 May 2024

Queensland Police Service

- Mr Steve Gollschewski APM, Commissioner
- Mr Tony Brown, Executive Director, Policy & Performance Division
- Mr Michael Shears, Director, Strategic Policy & Legislation, Policy and Performance Division
- Ms Jessica Mudryk, Manager, Strategic Policy & Legislation, Policy and Performance Division
- Mr Jamie Impson, Manager, Strategic Policy & Legislation, Policy and Performance Division
- Ms Andrea Joseph, Manager, Strategic Policy & Legislation, Policy and Performance Division

Department of Youth Justice

- Mr Bob Gee, Director-General
- Mr Michael Drane, Acting Deputy Director-General
- Mr Phil Hall, Director, Youth Justice Legislation

Department of Justice and Attorney-General

- Ms Leanne Robertson, Assistant Director-General, Strategic Policy and Legislation
- Mr Justin O'May, Director, Strategic Policy and Legislation
- Ms Melissa Wilson, Senior Director, Courts Reform – People and Culture, Court Services Queensland

Department of Transport and Main Roads

- Ms Joanna Robinson, General Manager, Land Transport Safety and Regulation

Monday 10 June 2024

Queensland Police Service

- Mr Steve Gollschewski APM, Commissioner
- Mr Tony Brown, Executive Director, Policy & Performance Division
- Mr Michael Shears, Director, Strategic Policy & Legislation, Policy and Performance Division
- Ms Jessica Mudryk, Manager, Strategic Policy & Legislation, Policy and Performance Division
- Mr Jamie Impson, Manager, Strategic Policy & Legislation, Policy and Performance Division
- Ms Andrea Joseph, Manager, Strategic Policy & Legislation, Policy and Performance Division

Department of Youth Justice

- Mr Bob Gee, Director-General
- Mr Michael Drane, Acting Deputy Director-General

Department of Justice and Attorney-General

- Ms Leanne Robertson, Assistant Director-General, Strategic Policy and Legislation
- Mr Justin O'May, Director, Strategic Policy and Legislation
- Ms Melissa Wilson, Senior Director, Courts Reform – People and Culture, Court Services Queensland

Department of Transport and Main Roads

- Ms Nicole Downing, Executive Director, Policy Safety and Regulation, Land Transport Safety and Regulation

Appendix C – Witnesses at public hearing

Friday, 24 May 2024

Voice for Victims

- Ms Trudy Reading, Voice for Victims Advocate
- Ms Lyndy Atkinson, Voice for Victims Advocate
- Mr George Atkinson, Voice for Victims Advocate
- Mr Keith Hamburger AM, Private capacity

Shooters Union of Australia

- Mr Peter Assfalg, Legislation Specialist

Firearm Dealers Association – Qld Inc

- Mr Jade Cleaver, President

Youth Advocacy Centre

- Ms Katherine Hayes, Chief Executive Officer

Queensland Family and Child Commission

- Mr Luke Twyford, Principal Commissioner
- Ms Natalie Lewis, Commissioner

PeakCare

- Mr Thomas Allsop, Chief Executive Officer

Queensland Aboriginal and Torres Strait Islander Child Protection Peak

- Mr Garth Morgan, Chief Executive Officer

Australia's Right to Know

- Ms Gina McWilliams, Senior Legal Counsel, News Corp Australia [via telephone link]

Bar Association of Queensland

- Ms Laura Reece, Barrister
- Ms Charlotte Smith, Barrister

Queensland Council for Civil Liberties

- Mr Michael Cope, President

Queensland Law Society

- Ms Rebecca Fogerty, President [via telephone link]
- Mr Damian Bartholomew, Chair, Children's Law Committee
- Ms Keryn Ruska, Member, First Nations Legal Policy and Human Rights and Public Law Committee

Queensland Human Rights Commission

- Mr Scott McDougall, Human Rights Commissioner
- Ms Sarah Fulton, Principal Lawyer

Monday, 10 June 2024

Shopping Centre Council of Australia

- Mr Angus Nardi, Chief Executive Officer [via video link]

Office of the Information Commissioner

- Ms Joanne Kummrow, Information Commissioner
- Mr Paxton Booth, Privacy Commissioner
- Ms Celica Bojorge, Principal Policy Officer

AgForce Queensland

- Mr Michael Allpass, General Manager – Policy & Advocacy

Queensland Indigenous Family Violence Legal Service

- Ms Thelma Schwartz, Principal Legal Officer [via video link]
- Mr Kulumba Kiyingi, Senior Policy Officer

Statements of Reservation

Statement of Reservation – Community Safety Bill 2024

This Statement of Reservation is to highlight certain areas of concern raised in the inquiry.

Within the Bill there are two major components, firearms and other weapons control, and youth crime laws. Both were areas of contention, with 250 submissions received.

To the first concern, regarding the weapons control amendments, is the increase to the penalty for the offence of 'possessing a knife in a public place or school without reasonable excuse" from $6,000 or one year in prison to $16,000 and two years in prison.

While knife control is vital, as AgForce Queensland pointed out, many workers carry pocket knives in a pouch on a belt and it is a tool-of-trade of our farmers, the definition of a public place is so broad that it includes just about everywhere except a private dwelling, and the "reasonable excuse" clause is open to interpretation meaning many law-abiding citizens are at risk of breaking this law. The Department stated that if a farmer has a knife for a legitimate purpose and they happen to be in a public place that will continue to be a reasonable excuse, however this is subjective and open to interpretation, and this needs clarification.

The new firearm laws introduce sensible reform around Firearm Prohibition Orders (FPO), however as raised by AgForce in the public hearings, has the potential that agribusiness owners may inadvertently and unknowingly engage the services of an employee who is the subject of a FPO, or they may rent out a farmhouse to a person or a family, one of whom is the subject of an FPO. In either scenario, the bill obligates the business owner to remove all firearms and ammunition from the business's property, which given the nature of property work is not tenable, and how will any agribusiness owner become aware that a potential employee is the subject of an FPO?

This amendment should be altered to make it practicable for farmers who struggle as it is without another burden in their efforts of growing our food.

The second concern relates to an element amongst the range of sensible changes regarding youth justice, and that is the clarification on 'detention as a last resort'. This has been the focus of much public debate, yet is the most poorly understood part of the legislation with submissions put forward with opposing views from that it will do nothing at all, to that it will be too far reaching and increase criminalisation.

Currently, in sentencing, judges must take account of the Youth Justice Principles, of which there are 21, with one being detention as a last resort.

However as has been submitted, a judge must take more than those 21 principles into account, which are covered across three pages in section 150 of the Youth Justice Act. These include the nature of the offending, the offending history, the effects on family, mitigating factors, DFV, abuse, disadvantage, and more, and with different criteria for serious repeat offenders focused on community safety.

The changes in this Bill are described as intending to correct a misrepresentation that courts are unable to impose detention if there are other penalties or measures that could be imposed by a court. This by making clear that a court can make decisions regarding detention in the interests of community safety.

However, throughout the Committee's Inquiry there did not seem to be any consensus by submitters on what the impacts of this change would be.

The Queensland Human Rights Commission stated that what was lost in the discussion about detention as a last resort is the implicit recognition in that foundational statement for how we should respond to youth offending, that imprisoning children is inherently harmful. As reported at the public hearing adults still have detention as a last resort in the Corrective Services Act.

The Queensland Bar Association stated that they opposed the changes because they remove the wording in the Convention on the Rights of the Child, and that a concern of the association is that it has more far-reaching impact than parliament intends.

PeakCare said that the provision does not appear to substantively change the provision of detention as a last resort and the clarification being made may support magistrates in their decision making. The Queensland Council of Civil Liberties stated that "we would accept that on the face of it this amendment does not change the law. However, the problem is that whenever Parliament makes an amendment to a statute the Courts feel obliged to say that it must be given a meaning".

This highlights the lack of consensus on how the principle operates and how the changes will impact on court decision making.

Due to this lack of clarity recommendation 51 of the Youth Justice Reform Select Committee Report sought that the Queensland Government immediately review the operation of section 150 of the Youth Justice Act 1992 to determine whether the central principle of community safety is being overshadowed by the principle of 'detention as a last resort', or whether it is other elements such as inconsistency in the use of offender history, or that the four Pillars of the Youth Justice Strategy have been utilised without the framework as intended, which is community safety and confidence.

In addition, recommendation 53 from the inquiry was for Government to immediately expand the scope of serious repeat offender declarations by lowering the threshold at which they can be made. This would give a clear pathway in identifying those who pose a risk to the community, and target these appropriately instead of utilising an approach that is 'broad sweeping' and unable to demonstrate what effect it will have.

A further recommendation number 28 was to review the process for transferring detainees from youth detention facilities to adult prisons after they turn 18. This bill changes that process, and the need to review the outcomes of this process remains, particularly in ensuring that services provided for rehabilitation delivered to a detainee in youth detention smoothly transfer to adult detention. Importantly as per recommendation 36, there needs to be a 12 months exit transition from detention, and this must be applied also to those who have transferred to adult corrections.

During public hearings on this bill, Mr Keith Hamburger AM put forward a proposal for a taskforce to immediately consider a reformed assessment and detention system, and I am pleased that the Government has referred this to the Independent Ministerial Advisory Council for an independent assessment.

Overall, the recommendations of the Youth Justice Reform Select Committee Report represent a list of specific and actionable changes that can be made to improve the youth Justice system and create greater safety for the community, and it is imperative that implementing these recommendations be a priority going forward.

As we saw and heard during the Youth Justice Inquiry, governmental and opposition responses to complex issues impacting our society must move beyond a reactionary response, or a media grab. Honest, open and difficult discussions and decisions must be made, that move beyond an election cycle that contain both immediate actions for greater community safety, as well the much longer term investments to see an end to the contributors to crime, and recidivism.

Thank you to all who contributed to the consideration of this Bill by making submissions or appearing at hearings.

SANDY BOLTON MP
Member for Noosa

Statement of Reservation

The LNP fully supports any legislation designed to protect victims, reduce the number of victims, and provide consequences for the actions of youth offenders because consequences for actions act as a strong deterrent. Unfortunately, this bill falls short.

This bill was not born out of a genuine concern for victims in Queensland, nor to address the issue of the youth crime crisis in Queensland. The government, through indolence and ideology, created the youth crime crisis by watering down the laws in 2015/16, and, in the shadow of an election brought this legislation before the parliament. If the government were genuine, it would have also allowed sufficient time for consultation and submissions on this bill.

In relation to the amendment of the Police Powers and Responsibilities Act 2000, (Chapter 21A Removal of Particular Online content), the LNP members of the committee support measures to curb the promotion and advertising of youth crime exploits, however it must be ensured that this is not used to capture persons in dissent with the government. Concerns have been raised that the legislation in its current drafting could capture innocent people.

It is clear to the LNP members on the committee that the government is philosophically opposed to consequences for actions for youth offenders. Detention as a last resort should be removed from the youth justice principles, but what we have seen from this government in the amendments within this bill, is merely a play on words which does not change the original intent. As stated in the Statement of Compatibility, *"The proposed amendments to s52A(1) of the Youth Justice Act 1992 (YJ Act), and to principle 18 in schedule 1 of the YJ Act, are clarifying provisions and are not intended to change the law."*

The LNP members of the committee note the many concerns of submitters and other stakeholders about the lack of consultation on this Bill regarding amendments to the Weapons Act. In this committee process, these concerns were added to, with various substantial issues being raised by submitters and stakeholders that have not been addressed. This bill also misses an opportunity to provide harsher penalties for criminal activities involving weapons. The opposition will detail additional concerns during the parliamentary debate on the Bill.

Jon Krause MP
Member for Scenic Rim
Deputy Chair

Mark Boothman MP
Member for Theodore