

# Queensland Community Safety Bill 2024

## Statement of Compatibility

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

In accordance with section 38 of the *Human Rights Act 2019* (HR Act), I, Mark Ryan, Minister for Police and Community Safety make this statement of compatibility with respect to the Queensland Community Safety Bill 2024 (the Bill).

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

### Overview of the Bill

The Bill promotes community safety by implementing comprehensive measures to optimise and strengthen law enforcement capabilities and efficiencies, improve crime prevention strategies, and address key issues affecting public security and wellbeing. Through a combination of proactive strategies and targeted interventions, the proposed measures in the Bill support the Queensland Government's commitment to enhancing public safety and security.

The Bill achieves this by:

- enabling Childrens court criminal proceedings to be more open to victims, the family of deceased victims, victims' representatives and the media;
- expanding and extending the trial of hand held scanners by police officers (known as Jack's Law) to detect unlawfully possessed knives;
- introducing a Firearm Prohibition Order (FPO) scheme in Queensland;
- introducing a requirement upon sellers of small arms ammunition to verify a buyer has a valid licence or authority prior to sale of the ammunition;
- improving the efficiency and effectiveness of firearms regulation as identified in the Queensland Audit Office Report - *Regulating firearms*;
- increasing the maximum penalty for possessing a knife in a public place;
- increasing maximum penalties for dangerous operation of a motor vehicle causing death or grievous bodily harm;
- creating a new circumstance of aggravation for dangerous operation of a motor vehicle causing death or grievous bodily harm where the driver is evading police;
- creating a new offence for ramming emergency vehicles and endangering police officers;
- increasing maximum penalties for damaging emergency vehicles;
- creating further circumstances of aggravation for advertising offending;
- introducing a new scheme for the removal of material depicting prescribed offences from an online service;
- clarifying the definition of a family relationship and relative to ensure that a child will only be named as an aggrieved or respondent where an intimate personal relationship or an informal care relationship exists;

- enabling police officers to nominate a mention date for a Police Protection Notice in accordance with local needs;
- enabling an appellant court to make a temporary protection order when remitting a matter to a lower court;
- modernising document authentication and service requirements by enabling electronic service of prescribed documents and the use of electronic signatures for documents executed by a police officer in the course of their duties;
- allowing authorised corrective services officers to serve domestic and family violence (DFV) documents to prisoners on behalf of police officers;
- introducing penalty infringement notices for low-range drink driving offences and particular hooning offences;
- rewording and clarifying the Charter of Youth Justice Principles (principle 18) in relation to when a child should be detained in custody;
- expanding the current trial of electronic monitoring (EM);
- clarifying bail decision-making processes;
- streamlining transfers of 18 year old detainees to adult custody;
- enabling the temporary transfer of children in watchhouses to nearby youth detention centres (YDCs) during the day for programs and physical exercise;
- establishing a framework for managing photos and video within YDCs;
- creating a head of power for a regulation providing for the recording of detainees' phone calls; and
- implementing the Government response to three Women's Safety and Justice Taskforce (WSJT) recommendations.

In implementing the above initiatives, the Bill amends the following legislation:

- the *Childrens Court Act 1992* (CC Act);
- the *Corrective Services Act 2006*;
- the Criminal Code;
- the *Disaster Management and Other Legislation Amendment Act 2024* (DMOLA Act);
- the *Domestic and Family Violence Protection Act 2012* (DFVP Act);
- the *Explosives Act 1999* (Explosives Act);
- the *Judicial Review Act 1991* (JR Act);
- the *Police Powers and Responsibilities Act 2000* (PPRA);
- the *Police Service Administration Act 2000* (PSAA);
- the *Public Safety Preservation Act 1986*;
- the *Summary Offences Act 2005* (SO Act);
- the *Transport Operations (Road Use Management) Act 1994* (TORUM);
- the *Weapons Act 1990* (Weapons Act); and
- the *Youth Justice Act 1992* (YJ Act).

### **Amendments to the Childrens Court Act 1992**

The Bill amends the CC Act to enable Childrens Court criminal proceedings to be more open to victims, the family of deceased people with a proper interest in the proceedings, victims, victims' representatives, and the media.

### **Expanding the trial of hand held scanner provisions in public spaces in the Police Powers and Responsibilities Act (Jack's Law)**

The possession of knives in public places poses a significant risk to community safety, with the potential for incidents to quickly escalate to the use of the weapon to commit serious and violent crimes. This has been evidenced by recent events in the community which have resulted in the tragic loss of life.

On 30 April 2021, the *Youth Justice and Other Legislation Amendment Act 2021* commenced, enacting amendments to the PPRA to grant police officers with powers to use hand held scanners in specified Safe Night Precincts (SNPs) to detect unlawfully possessed knives and combat increasing knife related crime within those SNPs as part of a 12 month trial.

On 2 April 2023, the *Police Powers and Responsibilities (Jack's Law) Amendment Act 2023* (Jack's Law) increased the scope of prescribed public areas for hand held scanning to include all 15 SNPs and all public transport stations, including public transport vehicles; strengthened the criteria a senior police officer must consider before approving the use of a hand held scanner; and extended the expiry date of the scanning provisions to 30 April 2025.

The Bill amends part 3A of chapter 2 of the PPRA to expand the prescribed public places to which the hand held scanner provisions may apply to include shopping centres and retail premises; sporting and entertainment venues when an associated event is being held; licensed premises; and Queensland Rail trainlines, including Gold Coast Light Rail.

In addition, the Bill extends the expiry date of the scanning provisions to 30 October 2026 to allow the expanded framework to be independently evaluated.

The objective of these amendments is to reduce the unlawful possession of knives and other weapons in public places and the associated risk of knife related crime to promote community safety.

### **Introducing a Firearm Prohibition Order scheme in Queensland**

Despite Australia's robust firearm regulation, significant harm from illegal gun use continues, resulting in the Australian Criminal Intelligence Commission (ACIC) reporting the trafficking and use of firearms as a serious national threat and a significant safety concern for Australia. The ACIC has conservatively estimated there are at least 200,000 firearms in the illicit market with an increasing number of organised crime groups, including outlaw motorcycle gangs, engaging in the trafficking of illicit firearms.

Queensland has experienced an increase of more than 60% in the number of registered firearms within the community since 2013, with the number of registered firearms increasing to over 1 million firearms in early 2024. The increased availability of firearms within the community grants further opportunities for these deadly weapons to be misappropriated. The rate of firearms reported as stolen has also increased by at least 21% within the last decade, with over 779 firearms reported stolen in 2023. Coupled with continuing challenges in recovering stolen firearms and the longevity of a functioning firearm, there is a corresponding increase in the risk that these weapons come into the possession of high-risk individuals and are used in the commission of an offence. The risk to the community is apparent when considering the increased number of reported offences involving firearms in Queensland, which has risen at least 30% in the last decade, with approximately 3,352 reported firearm offences in 2023.

In recognition of this increasing threat, the National Organised Crime Response Plan 2015-2018 proposed each jurisdiction consider introducing a Firearm Prohibition Order (FPO)

scheme to address increasing concerns regarding the rising number of stolen firearms, the use of illicit firearms in the commission of offences, and the impact on the Australian community because of increased firearm-related offending.

This Bill seeks to address the increasing risk of firearm related offences by introducing an FPO scheme in Queensland. An FPO prohibits an individual subject to the order from possessing, using, or acquiring a firearm or firearm related item and empowers police officers to conduct warrantless searches of the individual, their vehicle or residence, to ensure compliance with the order. Under this scheme, an FPO can be issued against high-risk individuals if the decision-maker is satisfied it is in the public interest to make the order. Currently, Queensland is one of the few jurisdictions in Australia that has yet to introduce an FPO scheme.

High risk individuals likely to be subject to such an order may also be involved in a sophisticated criminal or terrorist organisation. Firearms are freely and easily passed amongst members of these organisations in a clandestine manner, which presents significant difficulties for police to ascertain the whereabouts of illicit firearms and seize them. Upon any suggestion of police involvement or suspicion that indicates a search warrant may be sought or executed, weapons are able to be secreted away and passed to another member of the organisation, thus interrupting police operations.

As Queensland is one of the few jurisdictions in Australia without an FPO scheme, it risks creating an environment which encourages the relocation of criminal organisations and activities into the State due to the lack of relevant police powers otherwise available in other jurisdictions such as New South Wales and Victoria. The absence of an FPO framework in Queensland interferes with the nation's otherwise coordinated approach to firearm regulation and potentially incentivises persons subject to an FPO in other jurisdictions to reside in Queensland and 'escape' police interference.

The FPO scheme introduced by this Bill contains more legislative safeguards than any other comparative FPO scheme in Australia. As part of those safeguards, the Bill amends the PPRA to expand the functions of the Public Interest Monitor (PIM) to gather statistical information about the use and effectiveness of the FPO scheme, monitor compliance by police officers with the scheme and report on these matters to the Minister.

### **Introducing a new verification process for purchasing small arms ammunition**

The Bill introduces a safeguard in relation to the sale of small arms ammunition by amending the Explosives Act to introduce a new offence which requires sellers engage in a new verification process to ensure a buyer of small arms ammunition possesses a valid licence or authority to purchase the ammunition. Whilst it is already an offence under section 42 of the Explosives Act to sell an explosive (including small arms ammunition) to an unauthorised person, this provision does not prescribe the steps to be taken to ensure the buyer possesses a valid licence or authority.

The new section 43A in the Explosives Act prohibits the sale of small arms ammunition, unless the seller has physically sighted the buyer's licence or authority and verified the authority through a verification system, if available. A verification system means an electronic system prescribed by regulation, which may include, for example, the online Queensland Weapons Licence Card Status Check, which allows sellers to verify that a purchaser's weapons licence has not been revoked or suspended.

### **Implementing recommendations from the Queensland Audit Office report Regulating firearms (Report 8: 2020-21)**

On 27 November 2020, the Queensland Audit Office (QAO) tabled a Performance Audit report *Regulating firearms* (QAO Report) which identified that the regulation of firearms under the Weapons Act could be more effective, and the community is not as well protected as it should be. The QAO made several recommendations in this report, including that the Queensland Police Service (QPS) review the Weapons Act to identify opportunities for improvement and provide greater focus on public safety, and implement appropriate controls to ensure firearm licence decisions are consistent and made in accordance with relevant standards. The QAO also recommended consideration be given to the appropriateness of the current exclusion period, identifying the Weapons Act does not adequately support the rejection of applications from people with a history of criminal offending outside of the current five year exclusionary period. The QAO identified further clarity and public protection was required to support decision making regarding firearm licences and that a greater focus should be placed on public safety.

In implementing these recommendations, the Bill will improve the efficiency and effectiveness of firearm regulation, in particular by strengthening decision making regarding issuing, renewing, suspending, or revoking a licence by reforming the ‘fit and proper person’ test contained within sections 10B and 10C.

Currently, under sections 10B(2) and 10C(2) of the Weapons Act, a person is deemed not to be fit and proper to hold a licence or be a licensed dealer’s associate, if within the last 5 years, the person has committed a relevant offence, or a domestic violence order (other than a temporary protection order) has been made against them. Whilst an authorised officer has discretionary decision making power regarding licences in other circumstances, the mandatory five year exclusionary period makes clear that persons to which these provisions apply are not fit and proper to possess a licence or be a licensed dealer’s associate.

The amendments in the Bill strengthen this mandatory exclusionary framework by expanding the types of serious offending captured and in certain circumstances extending the exclusionary period to 10 years.

The new sections 5A to 5D introduced into the Weapons Act introduce the following new categories of serious offences:

- a class A serious offence includes murder, manslaughter, grievous bodily harm, wounding, and robbery in circumstances involving a weapon;
- a class B serious offence includes an offence mentioned in the new schedule 1AA. There are a wide range of offences listed in the new schedule 1AA and include offences under the Weapons Act, *Corrective Services Act 2006*, Criminal Code, DFVP Act, *Drugs Misuse Act 1986* and SO Act. Offences mentioned in schedule 1AA involve a high degree of criminality and include, for example, attempted murder, torture, serious sexual offences, and serious offences involving a weapon;
- a class C serious offence includes an offence involving the misuse of drugs, using or threatening violence, or the unlawful use of a weapon. This category incorporates the types of offending captured under the existing section 10B(2)(a), transposing it into the revised operation of section 10B(2).

Under the amended sections 10B and 10C, any person who has within the last 10 years been convicted, released from lawful custody, or subject to a supervision order, in relation to a class A or B serious offence will be considered not a fit and proper person. This same test applies to class C offences, although the exclusionary period is limited to five years.

Additionally, the Bill introduces a new category of disqualified persons who are deemed never to be fit and proper and are therefore prohibited from holding a licence or being a licensed dealer's associate. This category of persons is reserved for the most high-risk individuals within the community and would apply, for example, to a person who has been subject to a court issued FPO or a reportable offender under the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*.

### **Increasing the maximum penalty for unlawful possession of a knife in a public place or school**

Currently, the maximum penalty for the offence in section 51 (Possession of a knife in a public place or a school) of the Weapons Act is 40 penalty units or 1 year imprisonment. The Bill will increase the maximum penalty for this offence to:

- for the first offence – 50 penalty units or 18 months imprisonment; or
- for a second or later offence – 100 penalty units or 2 years imprisonment.

### **Cracking down on serious vehicle offending**

Some drivers show reckless disregard for the directions of police and the welfare of other people in the community. It is very serious offending where this disregard results in the death or grievous bodily harm of another person.

Despite existing penalties, offenders continue to drive dangerously and cause death or grievous bodily harm. This risk-taking behaviour places the offender, emergency workers and the community at risk of serious injury or death. Its consequences create significant devastation for individuals, families and the broader community.

The Bill will increase the existing maximum penalty for offences against Criminal Code section 328A(4)(a) for dangerous operation of a motor vehicle causing death or grievous bodily harm from 10 years imprisonment to 14 years imprisonment. The Bill also amends Criminal Code sections 328A(4)(b) and (c) to fix the maximum penalty as 20 years imprisonment for the offences where the aggravating circumstances apply. This is an increase from the current maximum penalty of 14 years imprisonment where aggravating circumstances apply.

The Bill also seeks to insert a new circumstance of aggravation for dangerous operation of a vehicle where the offender was evading police and causes the death of or grievous bodily harm to another person.

### **Keeping emergency workers safe**

Every day, emergency workers keep Queenslanders safe in challenging situations. Violent and dangerous behaviour by drivers, through ramming emergency vehicles or endangering the safety of police officers, puts emergency workers and other community members at risk.

Emergency workers in Queensland routinely perform their duties in volatile and dangerous situations where they are exposed to an increased risk of violence. There is a need to provide

strong safety protections for emergency workers while they perform vital roles for all Queenslanders, providing ambulance, emergency, fire, policing and protective services to the community.

Emergency workers deserve to be safe at work when they are taking care of Queenslanders. They should be protected from irresponsible, dangerous behaviour.

### **Ramming emergency vehicles**

Ramming an emergency vehicle is a particularly dangerous act with a high risk of causing damage to the vehicle or injuring passengers in, or people near, the vehicle. In Queensland, there have been several incidents involving people intentionally operating vehicles in a way that intentionally causes damage to an emergency vehicle. This act, commonly referred to as “ramming”, has serious impacts on community safety. Injuries suffered by emergency workers, alongside health and personal impacts, mean an emergency worker cannot return to work for some time. Ramming can also cause considerable damage to emergency vehicles, rendering them inoperable until repairs are completed.

The Bill will create a new offence to damage an emergency vehicle when operating a motor vehicle.

### **Endangering police officers**

Police officers frequently work on the roadside or other places where people drive motor vehicles. It is the duty of police officers to attend volatile and dangerous situations. Police officers stay at these situations until they are resolved. While there, they can be exposed to an increased risk of violence. Where a police officer is a pedestrian, they are especially vulnerable to vehicles. This is particularly so where the driver operates the vehicle in a way that deliberately puts the police officer’s safety at risk.

Examples of this dangerous behaviour include:

- deliberately swerving a vehicle towards a police officer on foot;
- deliberately driving at police vehicles in an attempt to ram the vehicle, requiring the officer to conduct emergency driving where they have limited control and are at high risk of suffering injury;
- swerving on the road in an attempt to ram a police vehicle; or
- crashing into a police vehicle that is stationary at a traffic signal.

The Bill will create a new offence to endanger the safety of a police officer when driving a motor vehicle.

### **Protecting emergency vehicles**

To deliver world-class emergency services that keep our communities safe and healthy, emergency workers rely on emergency vehicles to travel around Queensland.

### **Wilful damage of emergency vehicles**

Emergency vehicles can also be damaged through means other than ramming. For example, a person may throw objects (such as rocks) at an emergency vehicle, kick the windows of the vehicle or hit the vehicle with a weapon (such as a bat). This damage, although lesser in

culpability and severity than ramming, still has a significant impact on the community by impeding service delivery while the vehicle is unavailable for use awaiting repairs.

The Bill will increase the maximum penalty for wilful damage where the property is an emergency vehicle.

### **Entering or taking an emergency services vehicle**

Some offenders have unlawfully used police vehicles to commit offences and to evade police.

There are several obligations on road users when they see an emergency vehicle displaying an emergency light including keeping clear of, and giving way to, the emergency vehicle. Although these obligations will not factually arise when a person uses an emergency vehicle when not authorised to do so, there may be an inadvertent and erroneous understanding that they have arisen by other drivers who are not aware that the emergency vehicle is not being operated by an emergency worker. This can create serious safety risks for the community.

There is also a considerable safety risk when a person enters an emergency vehicle without consent to commit offences. This can occur because of being able to access restricted items kept in the vehicle that cannot be lawfully possessed by other people.

The Bill will increase the maximum penalty for:

- unlawful use or possession of motor vehicles, aircraft or vessels where the vehicle is an emergency vehicle;
- unlawful entry of vehicle for committing an indictable offence where the vehicle is an emergency vehicle.

### **Removal of criminal online content and advertising offences**

#### **New standalone advertising offence and creating further circumstances of aggravation for advertising offending**

In 2023, a circumstance of aggravation for publishing images or recordings of offending behaviour on social media platforms was inserted in section 408A of the Criminal Code (Unlawful use or possession of a motor vehicle).<sup>1</sup> The circumstance of aggravation applies where the offender publishes material online to advertise the offender's involvement in the offence, or to advertise the act or omission constituting the offence. The trend of offenders posting images and recordings of their offending online and on social media platforms continues. The distribution of this material online is unacceptable.

By publishing images and recordings of their criminal acts, offenders encourage others, particularly young people, to engage in similar criminal behaviour. The Queensland Police Service has detected that some offenders are engaging in escalating serious offences, motivated by a desire to compete through publishing images and recordings. Further, seeing the material can be re-traumatising for victims and can evoke or perpetuate sentiments of fear among the community resulting in an increased perception of the risk of crime or feelings of unsafety.

The Bill will increase the maximum penalties for a range of offences through the amendment of existing, and introduction of new, circumstances of aggravation where an offender has

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<sup>1</sup> *Strengthening Community Safety Act 2023* section 8.



published material of their offending behaviour on social media. The increases to maximum penalties reflect the seriousness of this type of offending and the community's denunciation of such conduct.

Additionally, the Bill will create a new offence for publishing material depicting a prescribed offence.

### **Introducing a new scheme for the removal of material depicting prescribed offences from an online service**

Once material is published online, it can be difficult to control how it is shared and by whom it may be accessed. The prevalence and rapid spread online of material depicting unlawful conduct, particularly following events of major criminal offending, has highlighted that some social media companies put profits above the community by not consistently self-applying standards relating to content removal. The removal of material becomes untimely, leading to further traumatisation of the community as well as victims and their families.

The Bill will establish a framework for authorised officers to require the provider of an online service to remove material depicting unlawful content from the service.

### **Amendments to the Domestic and Family Violence Protection Act 2012**

#### **Clarify relevant relationship involving a child, family relationship and relative**

The QPS responds to domestic and family violence calls for service involving parent-child disciplinary matters where protective action in the DFVP Act is unable to be taken due to existing provisions in this Act.

The existing protective framework in the DFVP Act provides that a person under 18 years cannot be named as an aggrieved or respondent unless an *intimate personal relationship* or *informal care relationship* exists between the parties. A child under the age of 18 years cannot be named as an aggrieved or respondent where the other party is their parent. In such instances, existing legislation relating to child protection or youth justice will be considered.

The Bill makes a clarifying amendment to the example in section 19 (Meaning of *family relationship* and *relative*) to remove references 'child (including a child under 18 years or more) and stepchild' and replace these words with 'son, daughter, step-son, step-daughter'.

The Bill amends section 100 (Police officer must investigate domestic violence) to clarify that if a police officer reasonably believes domestic violence has been committed but is unable to apply the provisions of the DFVP Act, it does not limit the police officer's ability to take other action. This will direct the police officer's focus to respond to the call for service more appropriately through a range of alternative pathways and retain the appropriate focus and resources to respond to allegations of domestic and family violence where the protective framework under the DFVP Act can be applied.

This amendment does not limit any human rights issues.

#### **Amendment to section 105 (Form of police protection notice)**

Sections 105(1)(j), (l) and (2) of the DFVP Act guide the date and time for the first hearing by a court of an application for a protection order. Section 105(2) provides the date must be: (a) if the local Magistrates Court for the respondent sits at least once a week, within 5 business days after the police protection notice is issued; or (b) otherwise the next sitting date of the local Magistrates Court for the respondent.

To provide flexibility for police officers to accommodate the best interests of victim-survivors, allow the police officer the time required to submit well-informed material to the court and to align with the customs of the local courthouse, the Bill amends section 105(2) to change the timeframe from within 5 business days to within 14 business days after the notice is issued.

This amendment does not limit human rights issues.

### **Enable appellate court to issue temporary protection order**

When a superior court is hearing a domestic and family violence matter on appeal, it can set aside a decision and remit a matter to the original jurisdiction for consideration. However, there is no power for the court to make a temporary protection order to protect the victim-survivor in the period between the remittal and a fresh decision by the inferior court.

The Bill amends section 169 (Powers of the appellate court) to enable a court hearing an appeal to make a temporary protection order when it is necessary or desirable. This will ensure immediate protections can be put in place for the victim-survivor and remove the necessity for further applications to be made and documents served when the matter could be addressed by the appellate jurisdiction while parties are present.

This amendment does not limit any human rights issues.

### **Modernising document authentication and service requirements**

The Bill modernises the arrangements for document authentication and service requirements by establishing a framework for the electronic service of documents and electronic signatures by police officers. The Bill embraces digital technology to provide alternative pathways for document execution, in addition to the ordinary physical approach, which will allow police officers flexibility to choose a method of document execution that best suits the circumstances. The reforms will make it easier for police to make, sign and serve important legal documents.

#### **Electronic service of documents**

The Bill inserts new Chapter 23, Part 1AA (electronic service of documents) and Part 1AB (electronically signing documents) alongside Schedule 5A of the PPRA, which defines the prescribed documents for service by electronic communication.

The amendments allow a police officer, with the consent of the person, to serve a prescribed document or a related document by electronic communication sent to a unique electronic address. The document is taken to be personally served on the person on the day the document was sent to the person's nominated electronic address.

The Bill also contains consequential amendments to section 53BAC(6) and (9), that remove the electronic communication provisions as they are now covered in new Chapter 23 Parts 1AA and 1AB of the PPRA.

## **Electronic signatures**

The Bill inserts a general provision into the PPRA enabling electronic signatures to be affixed to all documents executed by police officers in the course of their duties. To safeguard against fraudulent use of electronic signatures, it is proposed that the method or system used for applying an electronic signature must require user validation.

## **Serving domestic and family violence documents on prisoners in custody**

The Bill amends the CSA to enable a corrective services officer to serve a domestic and family violence document on a prisoner, that would otherwise be required to be served by a police officer, in prescribed circumstances.

The Bill provides that for document service to occur, the DFVP Act must require or permit a police officer to personally serve a document on a person and the person is in a corrective services facility where the chief executive has decided document service can occur. As a prerequisite for document service, the Bill authorises the QCS chief executive to enter into an agreement with the police commissioner for accepting requests to serve documents.

The Bill also provides for service to be established by the provision of an evidentiary certificate by QCS. The certificate will verify that the officer served a stated document on a stated prisoner at a stated corrective services facility on a stated date. The certificate will be taken to be evidence that the document was personally served on the prisoner unless the contrary is proven.

## **Harmonising statutory timeframes**

There are more than 100 reporting requirements that apply to the QPS. Many of these reports are required to be tabled in the Legislative Assembly by the Minister at different times. Some reports have mandated reporting due dates. This can be challenging to manage and is not administratively efficient.

The Bill further amends the PPRA and the *Public Safety Preservation Act 1986* to harmonise timeframes relating to written reports for the QPS to meet statutory reporting obligations.

## **Hooning and low-range drink-driving amendments**

### **Amendments to the Summary Offences Act 2005**

The Bill amends the Summary Offences Act to clarify that not only is it an offence to participate in a group hooning activity, but it is also an offence to spectate at such an event without reasonable excuse. This aligns the offence more clearly with its original intention of targeting those who attend and watch at hooning events, which encourage antisocial behaviour.

### **Amendments to the Transport Operations (Road Use Management) Act 1994**

The Bill amends the TORUM Act to enable the provision of a penalty infringement notice and a two-month administrative licence disqualification for low range drink driving offences. The Bill also increases the minimum disqualification period to two months, for low range drink driving offences heard by a court.

The amendments create efficiencies for police officers by enabling penalty infringement notices to be issued at the time an offence is committed rather than initiating court proceedings through a notice to appear before a court. When a penalty infringement notice is issued, the offender will also be given a notice advising them that an administrative disqualification will start on the day that is 28 clear days after the date of the penalty infringement notice. Unless the person elects to have the matter heard by a court, efficiencies will be realised for the QPS and the judicial system, with an estimated 5,000 first time drink drivers eligible for a penalty infringement notice. The proposed amendments do not make any changes to how roadside testing for alcohol occurs.

The increases to the minimum, court imposed, disqualification period for a low range drink driving offence ensures there is no benefit to a person to elect to have the matter heard by a court, as the minimum disqualification period is the same as the administrative disqualification period. Further, a court may impose a longer disqualification period (up to 9 months) which provides an incentive for those who receive the infringement notice to pay the fine rather than elect to have the matter dealt with by a court.

### **Amendments to the Youth Justice Act 1992**

A number of reforms in the proposed Bill promote human rights under the HR Act. The amendments that respond to WSJT recommendations seek to uphold children's rights to privacy (HR Act, s25(a)) and rights to humane treatment when deprived of liberty (s30), and the protection of families and children (s26). The proposal to facilitate the temporary transfer of children detained in watchhouses to a youth detention centre (YDC) for exercise and to participate in programs is compatible with the HR Act as it provides a child access to programs and physical exercise at YDCs that cannot be facilitated in watchhouses.

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. They do not engage any human rights.

The new framework for managing photos and video in YDCs protects children's rights to privacy (s25(a)). Relevant confidentiality provisions in the YJ Act will apply to Entry Permit Holders (EPHs, who are union officials), and these officials will not be able to interview children in YDCs.

## **Human Rights Issues**

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

In my opinion, the following human rights under the HR Act are engaged (including rights that are promoted or limited) by the provisions in the Bill:

- recognition and equality before the law (section 15);
- right to life (section 16);
- freedom of movement (section 19);
- freedom of expression (section 21);
- peaceful assembly and freedom of association (section 22);
- property rights (section 24);
- privacy and reputation (section 25);

- protection of families and children (section 26);
- right to liberty and security of person (section 29);
- fair hearing (section 31);
- rights in criminal proceedings (section 32);
- right not to be tried or punished more than once (section 34); and
- right not to be subject to retrospective increases in penalties (section 35(2)).

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

**Amendments to the Childrens Court Act 1992**

The Bill amends section 20 of the CC Act to:

- ensure a victim, a relative of a deceased victim, a victim’s representative, an accredited media entity and a person who, in the court’s opinion, has a proper interest in the proceeding can be present during Childrens Court criminal proceedings where a matter is not heard on indictment;
- enable the court to exclude a victim’s representative, an accredited media entity or a person with a proper interest in the proceeding from the courtroom if, after considering prescribed matters, the court is satisfied it is necessary to prevent prejudice to the proper administration of justice or for the safety of any person, including the child;
- provide special protections where a Childrens Court magistrate is dealing with a matter under section 172 (Power to dismiss complaint—unsound mind or unfitness for trial) or section 173 (Power to adjourn hearing of complaint—temporary unfitness for trial) of the *Mental Health Act 2016* to ensure the court is closed except to the people in section 20(1)(c), as amended, where the court is satisfied their presence is in the interests of justice;
- make minor amendments to ensure that representatives of the chief executive (child safety) and the chief executive (youth justice) may be present during proceedings of the Childrens Court and to enable persons undertaking research approved by those chief executives to be permitted access.

These amendments may limit the following rights:

- right to recognition and equality before the law (section 15);
- right to privacy and reputation (section 25);
- the right of children to protection in their best interests (section 26(2));
- the right to a fair hearing (section 31); and
- a child’s right to a procedure that takes account of the child’s age and the desirability of promoting the child’s rehabilitation (section 32(3)).

(a) the nature of the right

*The right to equal protection of the law without discrimination and the right to equal and effective protection against discrimination in (section 15(3) & (4))*

The right to equal protection of the law without discrimination under section 15(3) of the HR Act ensures that all laws and policies provide equal protection for everyone and do not have a discriminatory effect. The right to equal and effective protection against discrimination under

section 15(4) gives people a separate and positive right to be effectively protected against discrimination.

Whilst the amendments will apply equally to all child defendants regardless of race, they will likely have a greater impact on Aboriginal and Torres Strait Islander children and young people. In 2022-23, Aboriginal and/or Torres Strait Islander young people accounted for 53 percent of all distinct defendants across the courts with a proven offence.<sup>2</sup>

Special provision will apply where the magistrate is considering dismissing or adjourning a hearing of a simple offence due to the accused child's unsoundness of mind or unfitness for trial. This treats child defendants who may be of unsound mind or unfit for trial differently to other child defendants.

#### *The right to privacy and reputation (section 25)*

The scope of the right to privacy is very broad. It provides that a person's privacy, family, home and correspondence must not be interfered with. It protects personal information and data collection. It also extends to a person's private life more generally, protecting the individual against interference with their physical and mental integrity, including appearance, clothing, gender and sexuality.

This protection is limited to interference that is unlawful or arbitrary. Unlawful interference means it cannot take place except in cases envisaged by law. An arbitrary interference refers to conduct that is capricious, unpredictable or unjust, as well as interferences that are unreasonable and not proportionate to the legitimate purpose that is sought.

The second limb of this right protects a person against unlawful attacks on their reputation. Reputation in the context of the right refers to one's appraisal by others.

The amendments will likely increase the number of persons present during Childrens Court criminal proceedings, thereby increasing the number of persons who may hear a child defendant's personal information.

The amendments may also increase the reporting of Childrens Court matters where information of the offences alleged to have been committed by a child may be published.

#### *The best interests of the child (section 26(2)) and the right to an age-appropriate procedure that promotes the child's rehabilitation (section 32(3))*

These rights reflect that children are more vulnerable because of their age and are entitled to special protections. 'The concept of the child's best interests is aimed at ensuring both the full and effective enjoyment of all the [child's human rights] and the holistic development of the child.'<sup>3</sup> The content of the best interests of the child is informed by the Convention on the Rights of the Child (UNCRC), in which article 40(1) provides that a child defendant is 'to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others

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<sup>2</sup> Childrens Court of Queensland, *Childrens Court of Queensland Annual Report 2022-23*, page 24.

<sup>3</sup> Committee on the Rights of the Child, *General Comment No 19 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art 3, para 1)*, UN Doc CRC/C/GC/14 (29 May 2013) 2.

and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society'.

Article 40(2)(b)(vii) of the UNCRC further provides that child defendants are guaranteed to have their privacy respected at all stages of the proceedings. The United Nations Standard Minimum Rules for the Administration of Justice (the Beijing Rules) states that this guarantee is 'in order to avoid harm being caused to them by undue publicity or by the process of labelling'.<sup>4</sup> The Beijing Rules further state that, 'In principle, no information that may lead to the identification of a juvenile offender shall be published.'<sup>5</sup>

The amendments will likely increase the number of persons present during Childrens Court criminal proceedings, including in circumstances in which their presence may not be in the child's best interests or conducive to their rehabilitation.

### *The right to a fair hearing (section 31)*

Every person charged with a criminal offence has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. However, a court or tribunal may exclude members of media organisations, other persons or the general public from all or part of a hearing in the public interest or the interests of justice.

The amendments may increase the reporting of Childrens Court matters prior to trial, which may result in the public, and therefore the jury pool, being influenced by media reporting and forming a prejudicial view against the child defendant.

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

The purpose of the amendments 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.

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

The purpose of the amendments will be achieved by enabling greater access to criminal proceedings in the Childrens Court for victims, and their families and representatives, and accredited media entities.

During the course of its inquiry, the former Youth Justice Reform Select Committee heard evidence indicating that 'the transparency of the youth justice system, including its accessibility to victims, has a significant impact on the community's confidence in that system'.<sup>6</sup> The Committee also heard evidence that 'community confidence is critical, both to the

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<sup>4</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice, GA Res 40/33 (adopted 29 November 1985) ('the Beijing Rules') r 8.1.

<sup>5</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice, GA Res 40/33 (adopted 29 November 1985) ('the Beijing Rules') r 8.2.

<sup>6</sup> Youth Justice Reform Select Committee, draft *Interim Report: Inquiry into ongoing reforms to the youth justice system for victims of crime, Report No.1, 57<sup>th</sup> Parliament (April 2024)*, page 97.

sustainability of current programs, and to Queensland's ability to reform of the youth justice system'.<sup>7</sup> Allowing greater access to the Childrens Court for victims of crime and journalists was considered 'a priority area and key to improving community confidence'.<sup>8</sup>

The presence of victims and their families and representatives will assist in providing victims of crime a greater understanding of court processes, the decisions made in respect of an accused's matter, such as the granting of bail, and the progression of the matter. The presence of media will promote open justice and enhance accurate and fair reporting on youth justice matters, such as the granting of bail and sentencing. These in turn can promote public confidence in the justice system and informed scrutiny of existing laws.

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

Less restrictive alternatives include not amending the provision at all and promoting greater understanding of the existing provisions among victims of crime and the community. However, this alternative does not provide a clear right for victims of crime and the families of deceased victims to be present during proceedings, nor does it facilitate the presence of media representatives to fairly and accurately report on youth justice matters.

The amendments are accompanied by a number of safeguards, including:

- that Childrens Court criminal proceedings in relation to matters not proceeding by way of indictment will remain closed to the public;
- the admittance of media organisations is limited to entities listed as an accredited media entity in the Supreme Court's media accreditation policy;
- the court's power to exclude a victim's representative, the media and a person with a proper interest in the proceeding if satisfied it is necessary to prevent prejudice to the proper administration of justice or for the safety of any person. In considering an exclusion order, the court must consider a number of matters, including:
  - the Charter of Youth Justice Principles,
  - the age and any special vulnerability of the child defendant;
  - any cultural considerations relating to the child defendant;
  - whether the child is unable to meaningfully participate in the proceedings because of the presence of certain persons;
  - whether the presence of certain persons may prejudice future court proceedings; and
  - any other matter the court considers relevant;
- the court retaining the power to exclude any person in contempt of court (for example, wilfully interrupting proceedings or wilfully misbehaving in the courthouse under section 26 (Contempt) of the CC Act and section 40 (Penalty for insulting or interrupting justices) of the *Justices Act 1886*);
- the court may still be closed under other provisions, for example, provisions of the *Evidence Act 1977* relating to special witnesses;
- the court retaining the power under section 12 of the *Bail Act 1980* to make an order directing that evidence, information or the reasons given by the court for granting or refusing bail given in a bail application shall not be published;

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<sup>7</sup> Youth Justice Reform Select Committee, draft *Interim Report: Inquiry into ongoing reforms to the youth justice system for victims of crime, Report No.1, 57<sup>th</sup> Parliament (April 2024, page 98.*

<sup>8</sup> Youth Justice Reform Select Committee, draft *Interim Report: Inquiry into ongoing reforms to the youth justice system for victims of crime, Report No.1, 57<sup>th</sup> Parliament (April 2024, page 98.*



- that offences regarding the prohibition of the publication of certain information (including a child's identifying information,<sup>9</sup> information identifying a child subject to a child safety order,<sup>10</sup> and information, evidence and reasons restricted by a court hearing a bail application<sup>11</sup>) will continue to operate.

In addition, special provisions apply where the magistrate is considering dismissing or adjourning a hearing of a simple offence due to the accused child's unsoundness of mind or unfitness for trial. This recognises the special vulnerability of child defendants who may be unsound of mind or unfit for trial and the importance of maintaining the privacy and confidentiality of their personal health information.

There is no less restrictive alternative which would still achieve the purposes of the amendments.

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

It is acknowledged that removing the ability to exclude victims, victims' families, victims' representatives and the media where their presence may prejudice the interests of the child is at odds with the principle that a child's best interests is a primary consideration in actions and decisions concerning children. It is acknowledged that there may be instances in which the presence of victims or a relative of a deceased victim during a Childrens Court criminal proceeding may not be in the child's best interests and could have a negative impact on the child.

However, there is a strong public interest in ensuring that victims of crime are not prevented from attending proceedings to understand the decisions that are made in their accused's matter and are informed of the progression of the matter. There is also a strong public interest in ensuring that the media can attend proceedings to accurately and fairly report on youth justice matters. The amendments support the rights of victims of crime, open justice and transparency, public confidence in the justice system and informed scrutiny of existing laws.

The amendments are supported by appropriate safeguards listed above. In particular, the amendments ensure that the court must consider a range of matters when determining whether to make an exclusion order against certain persons, as well as retain the power to exclude persons in contempt of court. Further, offences for publication of identifying or restricted information will continue to operate.

I consider 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.

- (f) any other relevant factors

Not applicable.

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<sup>9</sup> *Youth Justice Act 1992*, s 301.

<sup>10</sup> *Child Protection Act 1999*, s 189

<sup>11</sup> *Bail Act 1980*, s 12.

**Expanding the trial of hand held scanner provisions in public spaces in the Police Powers and Responsibilities Act (Jack’s Law)**

(g) the nature of the right

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

The amendments limit this right by expanding the existing framework, which allows police officers to stop and scan random individuals without any basis (such as a reasonable suspicion), to additional public places and premises.

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

The amendments limit this right as police will have the power to stop a person and require them to submit to the use of a hand held scanner, to ascertain if the person has a knife in their possession, in a wider range of public places and premises than currently provided for under Part 3A of Chapter 2 of the PPRa.

Property rights protect the right of all persons to own property and provides that people have a right not to be arbitrarily deprived of their property. The right includes the protection from the deprivation of property. The term ‘deprived’ is not defined by the HR Act, however, deprivation in this sense is considered to include the substantial restriction on a person’s use or enjoyment of their property, to the extent that it substantially deprives a property owner of the ability to use his or her property or part of that property (including enjoying exclusive possession of it, disposing of it, transferring it or deriving profits from it). The concept of arbitrariness in the context of the right to property carries a human rights meaning of ‘capriciousness, unpredictability, injustice and unreasonableness – in the sense of not being proportionate to the legitimate aim sought’.

The amendments limit this right as the scanning for a knife by police may lead to the confiscation and forfeiture of an unlawfully possessed knife.

The right to privacy and reputation protects a person’s right not to have their privacy and reputation unlawfully or arbitrarily interfered with. The nature of the right to privacy and reputation is very broad. Protection against a person’s privacy is limited to unlawful or arbitrary interference. The notion of arbitrary interference extends to lawful interferences, which are also unreasonable, unnecessary, or disproportionate. The concept of lawfulness in the context of the right to privacy means that no interference can occur except in cases envisaged by the law. Interference authorised by states can only take place based on law, and the law must be adequately accessible and precise so a person can regulate their conduct. These are concepts that are consistent with the rule of law principles. The idea of arbitrariness in the context of the right to privacy carries a human right meaning of capriciousness, unpredictability, injustice and unreasonableness – in the sense of not being proportionate to the legitimate aim sought.

The power to scan a person may be deemed to interfere with a person’s dignity and bodily integrity, and therefore limits this right.

- (h) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The action of scanning individuals for knives in prescribed public areas that, in the previous 6 months, have evidence of an offence committed by a person armed with a knife or other weapon; or an offence under the Criminal Code involving violence against a person punishable by at least 7 years imprisonment; or multiple unlawful knife or weapons possession offences, will operate to remove knives from those areas and dissuade individuals from entering those areas with a knife. The amendments heighten the threshold for individual licensed premises, which will require the senior police officer to have reasonable grounds to believe these offences may happen again in the next 6 months. The threshold is then further heightened for particular retail premises, which requires the premises to be open for business at a time before 5am or after 12am at least 2 days each week, or for at least 2 of these offences to have happened at the premises in the previous 6 months. As such, the limitations are likely to contribute to achieving the purpose of reducing the prevalence of knife possession and associated knife related crime and further strengthen community safety in the expanded public places and premises.

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

The purpose of the limitations is to reduce the risk of physical harm caused by knife related crime in a broad range of venues and areas, such as as trains or light rail vehicles travelling on a rail line and public transport stations along the line, licensed premises, retail premises, shopping centres and sporting and entertainment venues. This promotes the safety of the broader community by contributing to the reduction of knife related crime.

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

- (j) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose

There are no less restrictive and reasonably available ways to achieve the purpose of the Bill.

A number of options were considered during the development of the proposed expansion of the existing Jack's Law framework to additional public places and premises. Although reasonably available, an arbitrary limitation on the expansion of the existing Jack's Law framework to fewer public places and premises would be inconsistent with the Government's commitment to combatting knife-related crime in all places and keeping the community safe.

- (k) the balance between the importance of the purpose of the limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The existing safeguards within the Jack's Law framework will continue to apply under the expanded framework. Further, the amendments will include additional and further safeguards for individual licensed premises and retail premises. On balance, the need to protect the community from knife and weapons-related crime outweighs the limitation of a person's rights.

- (l) any other relevant factors

Nil.

## **Introducing a Firearm Prohibition Order scheme in Queensland**

The Bill protects and promotes human rights related to public safety and security in Queensland.

The Bill inserts new Part 5A in the *Weapons Act* to introduce the FPO scheme in Queensland. New provision 141C provides that the purpose is to provide for the making of FPOs to:

- promote public safety and security; and
- disrupt and deter firearm related crime, including reducing the risk of firearms being used in the commission of offences.

By facilitating the personal safety and security of others, the amendments protect and promote human rights related to:

- the right to life (section 16 of the HR Act), which may impose positive obligations to address the general conditions in society that may give rise to direct threats to life including where there are high levels of criminal and gun violence.<sup>12</sup>
- right to privacy, family and home (section 25(a) of the HR Act), which extends to a person's physical and mental integrity.<sup>13</sup>
- protection of families and the best interests of the child (section 26(1) and (2) of the HR Act). Under section 26(1), the State has a positive obligation to protect the existence of the family. Under section 26(2), children have a right to protection in their best interests. Protecting children from harm serves to promote this right.
- security of the person (section 29(1) of the HR Act), which encompasses freedom 'from injury to the body and the mind, or bodily and mental integrity'.<sup>14</sup>

Although the Bill protects and promotes these human rights, the Bill also engages or limits a number of other human rights.

## **Considerations for making firearm prohibition orders for adults**

The Bill inserts new section 141E to provide considerations for whether it will be in the public interest for the FPO to be made for an adult, either by the Commissioner or the Magistrates Court. The following considerations may be regarded:

- the person's criminal history;
- the person's domestic violence history;
- whether the person has been a participant in a criminal organisation or a terrorist organisation;
- whether the person is an associate of a recognised offender;
- whether the person has communicated in a public forum (such as social media sites or online forums), or to another individual, that they intend or wish to commit a serious offence;
- whether the person is or has been subject to a relevant order made by a court order and the circumstances surrounding the making of the order;
- the person's behaviour, particularly violent or aggressive behaviour or behaviour involving the use of a weapon;

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<sup>12</sup> UN Human Rights Committee, *General comment No. 36 – Article 6: right to life*, 124th sess, UN Doc CCPR/C/GC/36 (3 September 2019) [26].

<sup>13</sup> Explanatory note, Human Rights Bill 2018 (Qld) 22.

<sup>14</sup> UN Human Rights Committee, *General comment No. 35 – Article 9: liberty and security of person*, 124th sess, UN Doc CCPR/C/GC/35 (16 December 2014) [9].

- the risk the person poses to public safety or security, and the extent the FPO will reduce the risk; and
- any other matter or information that indicates possession of a firearm would be likely to pose a risk to public safety or security.

#### Human rights potentially limited (Part 2, Divisions 2 and 3 Human Rights Act)

These considerations relating to a person's criminal history may engage, but do not limit, the following human rights:

- the right to equality before the law (section 15);
- the right to privacy and reputation (section 25);
- the right not to be tried or punished more than once (section 34); and
- the right not to be subject to retrospective increases in penalties (section 35(2)).

#### *Equality before the law*

Section 15(2) protects a person's right to enjoy their other human rights without discrimination. Section 15(3) provides that every person is entitled to the equal protection of the law without discrimination. Section 15(4) provides that all people have the right to equal and effective protection against discrimination.

In the HR Act 'discrimination' is defined as including direct or indirect discrimination on the basis of one of the protected attributes in the *Anti-Discrimination Act 1991*, such as race and sex. However, even if conviction rates are higher among people of a particular racial background or among people of a particular sex, it is considered that the considerations relating to criminal histories are not unreasonable and do not amount to indirect discrimination on the basis of race or sex.

Because the definition of 'discrimination' in the HR Act is inclusive, it protects against discrimination on additional grounds that are analogous to those protected by the *Anti-Discrimination Act 1991*.<sup>15</sup> Discrimination on the basis of an irrelevant criminal record may be an analogous ground of discrimination.<sup>16</sup> However, a person's criminal history (including their domestic violence history and the existence of any prior court order) will only be considered to the extent it is relevant to an assessment of whether the issuance of the FPO will be in the public interest. Accordingly, it is considered that the considerations relating to criminal histories do not discriminate on the basis of an irrelevant criminal record.

#### *Right to privacy*

These considerations relating to a person's criminal history also engage the right to privacy in section 25(a) of the HR Act because under new sections 141D and 141E, spent convictions (see the *Criminal Law (Rehabilitation of Offenders) Act 1986*) can be taken into account in deciding whether to issue an FPO.

Spent convictions form part of a person's private life and would engage the right to privacy. However, it is likely any interference with privacy would not be unlawful or arbitrary. A

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<sup>15</sup> *Austin BMI Pty Ltd v Deputy Premier* [2023] QSC 95, [317]-[320].

<sup>16</sup> *Thlimmenos v Greece* (2001) 31 EHRR 15, [39]-[49].

person's criminal history (including spent convictions) will only be considered to the extent it is relevant to an assessment of whether making an FPO will be in the public interest.

#### *Right to reputation*

Section 25(b) of the HR Act protects the right not to have one's reputation unlawfully attacked. However, the right to reputation does not protect against the foreseeable consequence of one's own actions, such as the commission of a criminal offence.<sup>17</sup>

#### *Right not to be punished more than once*

Section 34 of the HR Act protects the right not to be tried or punished more than once for an offence in relation to which the person has already been finally convicted or acquitted in accordance with law. The right embodies the principle of double jeopardy. However, 'punishment' means a 'sanction for a criminal offence'; it does not include non-penal consequences such as registration for sex offenders.<sup>18</sup> The purpose of part 5A is to promote public safety and security and disrupt and deter firearm related crime. Accordingly, new section 141E does not limit the right against double punishment in section 34.

#### *Right not to be subject to retrospective increases in penalties*

Section 35(2) of the HR Act provides the right to not be subject to retrospective increases in penalties. For the reasons noted above, namely that the imposition of an FPO is likely not penal, this right is not limited.

Consideration of a person's associations and communications may potentially limit the following human rights:

- freedom of expression (section 21); and
- freedom of association (section 22(2)).

#### *Freedom of expression*

Every person has the right to hold an opinion without interference and the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds (section 21 of the HR Act).<sup>19</sup> Consideration of a person's communications either on a public forum (such as social media sites or online forums) or to another individual may limit the right to freedom of expression.

#### *Freedom of association*

According to the Explanatory Notes for the HR Act, '[w]hile [freedom of association] is important for political purposes and trade unions, it extends to all forms of association with others.'<sup>20</sup>

At the international level, freedom of association under article 22 of the *International Covenant*

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<sup>17</sup> *Matalas v Greece* (2021) 73 EHRR 26, 975-6 [39].

<sup>18</sup> *WBM v Chief Commissioner of Police* (2012) 43 VR 446, 447 [124]-[128] (Warren CJ, Hansen JA agreeing) (in respect of the equivalent right in s 26 of the Victorian Charter).

<sup>19</sup> See further, UN Human Rights Committee, *General comment No. 34 – Article 19: Freedoms of opinion and expression*, 102nd sess, UN Doc CCPR/C/GC/34 (12 September 2011) [12].

<sup>20</sup> Explanatory notes, Human Rights Bill 2018 (Qld) 21.

on *Civil and Political Rights* appears to include both private and public associations.<sup>21</sup> Reading the right broadly, ‘it grants protection against arbitrary interference by the State or private parties when, for whatever reason and for whatever purpose, an individual wishes to associate with others or has already done so’.<sup>22</sup> Consideration of whether a person is an *associate* of a recognised offender, may therefore limit the right to freedom of association.

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

However, any limit on the above human rights is reasonable and justified as follows:

- Nature of the human right – What is at stake in human rights terms is the ability to impart information and ideas of all kinds and to enjoy one’s associations with others without interference.
- Purpose – The purpose is to facilitate the personal safety and security of others. This is a legitimate aim that protects and promotes the human rights of others. The State has a positive obligation to address the general conditions in society that may give rise to direct threats to life including where there are high levels of criminal and gun violence. This is a proper purpose that is consistent with a free and democratic society based on human dignity, equality and freedom.
- Relationship between limitation and its purpose – The provision provides a non-exhaustive list of considerations relevant to whether it would be in the public interest to make the FPO. These considerations include whether the person has associated with another who is a recognised offender under section 77 of the Criminal Code, as well as whether there has been any communication indicating an intention to commit a serious offence. These considerations are effective in achieving the objective.
- Less restrictive alternatives – The provision is necessary to achieve the purpose. In considering the availability of less restrictive alternatives, it is also relevant that the potential limits on human rights are narrowly tailored and subject to safeguards. In particular:
  - a person’s associates (defined within the provision) and their communications with others are part of a broader range of other public interest matters that will need to be considered in assessing whether it is in the public interest for the FPO to be made;
  - the Commissioner (or delegate of at least the rank of superintendent) will be required as a public entity under the HR Act, to give proper consideration to human rights and to exercise their powers in a way that is compatible with human rights under section 58 of the HR Act;
  - the court is provided with the power to make the FPO where it is in the public interest and there is no other FPO scheme in Australia which provides this safeguard;
  - the FPO will operate for a fixed period of time (with the FPO made by the Commissioner to be restricted to a shorter period of time compared to the FPO made by the court);
  - there are avenues for the person subject to the FPO to appeal the decision to

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<sup>21</sup> Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary* (Oxford University Press, 3rd Edition, 2013) [19.13], citing, UN Human Rights Committee, *Views: Communication No 1002/2001*, 80th sess, UN Doc CCPR/C/80/D/1002/2001 (1 April 2004) (*Wallmann v Austria*).

<sup>22</sup> William Schabas, *UN International Covenant on Civil and Political Rights: Nowak’s CCPR Commentary* (NP Engel, 3<sup>rd</sup> ed, 2019) 614 [2].

- make the FPO (new section 141ZO); and
- the FPO scheme will be subject to review by both the public interest monitor and Minister.
- Fair balance – The provision provides guidance as to when the making of the FPO may be in the public interest. It is anticipated that many high risk individuals likely to be subject to the FPO may also be likely to be involved in sophisticated criminal or terrorist organisations or have a history of domestic violence or other antisocial behaviour. The consideration of a person’s associates and communications strikes a fair balance, taking into account the safeguards and also that there are a broad range of other public interest matters that can be considered in assessing the public interest in relation to the making of the FPO.

Any limits on freedom of expression and freedom of association are proportionate and therefore justified. Accordingly, the provision is compatible with human rights.

### **Considerations for making firearm prohibition orders for children**

The Bill inserts new section 141F to provide considerations for whether it will be in the public interest for the FPO to be made for a child, either by the Commissioner or the Childrens Court (constituted by a Childrens Court magistrate).

Under section 141F, the Commissioner or court must consider the following matters in determining whether it is in the public interest to make the FPO against a child:

- the desirability of strengthening and preserving the relationship between the child and their parents and family;
- the desirability of not interrupting or disturbing the child’s living arrangements, education, training or employment;
- the desirability of minimising adverse effects on the child’s reputation that may arise from making the FPO; and
- the age and maturity of the child (noting also that proposed sections 141G-141H preclude children under the age of 14 from the FPO scheme).

The Commissioner or court may also have regard to the following:

- the child’s criminal history;
- the behaviour of the child (particularly violent or aggressive behaviour, behaviour that constitutes domestic and family violence, or behaviour involving the use of a weapon);
- the risk the child poses to public safety or security, and the extent the FPO will reduce the risk; and
- any other matter or information that indicates possession of a firearm would be likely to pose a threat or risk to public safety or security.

### **Human rights potentially limited (Part 2, Divisions 2 and 3 Human Rights Act)**

Similarly, to the human rights considerations relevant to adults, I consider that new section 141F engages, but does not limit the following human rights:

- the right to equality before the law (section 15);
- the right to privacy and reputation (section 25);
- the right not to be tried or punished more than once (section 34); and
- the right not to be subject to retrospective increases in penalties (section 35(2)).



The considerations that are peculiar to the child which must be considered in determining whether it is in the public interest to make the FPO will also engage, but do not limit the right to protection in the best interests of the child (section 26(2) of the HR Act), which ‘is aimed at ensuring the full and effective enjoyment of a child’s human rights and their holistic development (including their physical, mental, psychological and social development)’.<sup>23</sup>

Relevantly, new section 141ZJ requires the Commissioner to apply to a court for review of an FPO against a child, if the FPO has been in force for more than one year or has not been reviewed within the previous year. The court must consider whether the FPO remains appropriate or should be revoked having regard to the risk the child poses to public safety or security. This is an important safeguard for the child’s best interests.

### **Commissioner’s power to make firearm prohibition orders**

The Bill inserts new section 141G to provide for the making of FPOs by the Commissioner. Section 141G will provide the Commissioner with the power to make the FPO prohibiting a person from acquiring, possessing, or using a firearm or firearm related item (including attempts to acquire, possess or use). However, the Commissioner may make the FPO only if they are satisfied it is in the public interest pursuant to proposed sections 141E or 141F. Also, the Commissioner will only have the power to make the FPO where the person is of at least 14 years of age. The FPO may have effect for up to 60 days and may also be revoked at any time.

The Bill will also insert new section 141ZV to provide that despite section 4.10 of the *Police Service Administration Act 1990*, the Commissioner may delegate their power under section 141G to a police officer of at least the rank of superintendent.

### Human rights potentially limited (Part 2, Divisions 2 and 3 Human Rights Act)

The Commissioner’s power to make the FPO may potentially limit the following human rights:

- freedom of expression (section 21 of the HR Act); and
- fair hearing (section 31(1) of the HR Act).

#### *Freedom of expression*

Every person has the right to hold an opinion without interference and the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds (section 21 of the HR Act).<sup>24</sup> There is no opportunity for a person to be heard against the making of the FPO against them. The inability to be heard may limit the freedom to impart information including their ability to express their opinions about the making of the FPO. This right is limited.

#### *Fair hearing*

Section 31(1) provides that a party to a civil proceeding has the right to have the matter decided by a competent, independent and impartial court or tribunal after a fair and public hearing. The

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<sup>23</sup> Committee on the Rights of the Child, General Comment No 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art 3, para 1), UN Doc CRC/C/GC/14 (29 May 2013) 3[4].

<sup>24</sup> See further, UN Human Rights Committee, *General comment No. 34 – Article 19: Freedoms of opinion and expression*, 102nd sess, UN Doc CCPR/C/GC/34 (12 September 2011) [12].

right to a fair hearing is ‘a key element of human rights protection and serves as a procedural means to safeguard the rule of law.’<sup>25</sup>

However, the right to a fair hearing in section 31(1) is engaged where a person is either charged with a criminal offence or a party to a civil proceeding. These are the only two categories.<sup>26</sup> The right to a fair hearing does not extend to a general right to natural justice for any decision made by the executive. There is no general right to natural justice in human rights. Accordingly, I consider that these provisions do not limit the right to fair hearing.

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

However, any limit on the above human rights is reasonable and justified as follows:

- Nature of the human right – What is at stake in human rights terms is the ability to seek, receive and impart information.
- Purpose – The purpose is to enable the Commissioner to respond promptly in issuing the FPO to facilitate the personal safety and security of others. This is a legitimate aim that protects and promotes the human rights of others. The State has a positive obligation to address the general conditions in society that may give rise to direct threats to life including where there are high levels of criminal and gun violence. This is a proper purpose that is consistent with a free and democratic society based on human dignity, equality, and freedom.
- Relationship between limitation and its purpose – The provision enables the Commissioner to respond expeditiously and is an effective way to achieve the purpose.
- Less restrictive alternatives – The provision is necessary to achieve the purpose. In considering the availability of less restrictive alternatives, it is also relevant that the potential limits on human rights are narrowly tailored and subject to safeguards. In particular:
  - the Commissioner (or delegate of at least the rank of superintendent) will be required as a public entity under the HR Act, to give proper consideration to human rights and to exercise their powers in a way that is compatible with human rights under section 58 of the HR Act;
  - the FPO will operate for a fixed period of time but may be revoked by the Commissioner at any time;
  - a person subject to an FPO can appeal (new section 141ZO); and
  - the FPO scheme will be subject to review by both the public interest monitor and Minister.
- Fair balance – The provision enables the Commissioner to respond promptly in issuing the FPO. The FPO scheme is being introduced to address increasing concerns regarding the rising number of stolen firearms, the use of illicit firearms in the commission of offences, and the impact on the community as a result of increasing firearm-related offending. High-risk individuals likely to be subject to the FPO are also likely to be involved in sophisticated criminal or terrorist organisations. The ability for the Minister to respond promptly, strikes a fair balance, taking into account the safeguards that will justify for the FPO to be made for public safety or security.

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<sup>25</sup> Human Rights Committee, *General Comment No 32: Article 14: Right to equality before courts and tribunals and to a fair trial*, 90<sup>th</sup> sess, UN Doc CCPR/C/GC/32 (23 August 2007) 1 [2], quoted in *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 86 [376] (Bell J).

<sup>26</sup> *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 85 [371] (Bell J).

Any limits on freedom of expression are proportionate and therefore justified. Accordingly, the provisions are compatible with human rights.

### **Directions to facilitate personal service of firearm prohibition orders**

The Bill introduces new section 141Q introducing the power to give directions to facilitate personal service of the FPO.

New section 141Q applies where the FPO is made by a court and the individual is not present in court when the order is made, and a police officer reasonably suspects the individual is the named individual subject to the FPO.

The Bill provides that the FPO will not take effect unless it is personally served on the person subject to the FPO (see new provisions 141J and 141P).

To facilitate the personal service of the FPO in accordance with new section 141P, the police officer may do any of the following under new section 141Q:

- if it is necessary to confirm the identity of the individual, direct the individual to provide their name and address (and give evidence of this, if in the circumstances that would be reasonable);
- direct the individual to remain, for a stated period (not exceeding 2 hours), at a stated appropriate place at or near the person's current location;
- direct the individual to attend a stated police station, which must be within a reasonable distance, immediately or within a stated period of time; and
- direct the person to accompany the police officer to the nearest police station or another place, which must be within a reasonable distance.

In giving the direction, the police officer must tell the person:

- why the person is being given the direction;
- if the direction is to accompany a police officer to a place:
  - where the other place is;
  - how the person is to move to the other place, including whether a police officer will remain in their presence;
  - that the person may be searched before being transported to the other location;
  - that the person may be directed to leave, at the person's current location anything found in the search that may be used to cause harm to the individual or another person;
  - that anything found in the search may be seized if the police officer reasonably suspects the thing is evidence of the commission of an offence; and
- that the individual is not under arrest or in custody while complying with the direction.

Proposed section 141S, provides a police officer with further powers, where:

- a person is given a direction to attend or accompany the police officer to a place pursuant to directions under proposed section 141Q(2)(c)-(d); and
- the person is to be transported to that other place.

Before the person is transported, the police officer may:

- search the person for anything in the person's possession that may be used to cause harm;

- if during the search, the police officer finds any such thing, direct the person to leave the thing at their current location before being transported; and
- seize the thing found in the search, that the police officer reasonably suspects is evidence of the commission of an offence.

Proposed section 141U provides that it is an offence to contravene a direction unless the person has a reasonable excuse. Proposed section 141T provides that the police officer must warn the person that non-compliance is an offence and provide them with a reasonable opportunity to comply. This offence provision is considered here, but also further below in conjunction with the other offence provisions to be introduced in part 5A.

### Human rights potentially limited (Part 2, Divisions 2 and 3 Human Rights Act)

The police officer's power to give a direction to facilitate personal service (including the associated search powers) may potentially limit the following human rights:

- freedom of movement (section 19). The purpose of the right to freedom of movement is to protect the individual's right to liberty of movement. It is directed to restrictions on movements which fall short of physical detention coming within the right to liberty in section 29.<sup>27</sup>
- freedom of expression (section 21). The requirement for an individual to provide their name and address may potentially limit the right to freedom of expression in section 21 (which may include the right to say nothing or the right not to say certain things).<sup>28</sup>
- property rights (section 24(2)), which provides that a person must not be arbitrarily deprived of property.
- privacy rights (section 25(a)). The right to privacy is the right 'to be let alone' and 'the right of the individual to determine for himself when, how, and to what extent he will release personal information about himself'.<sup>29</sup> The requirement for an individual to provide their name and address may potentially limit the right to privacy.<sup>30</sup>
- most fundamentally, the right to privacy is concerned with dignity and autonomy.<sup>31</sup> Accordingly, the right to privacy may also be limited through the associated search powers.
- best interests of the child (section 26(2)). Under section 26(2), children have a right to protection in their best interests. 'The concept of the child's best interests is aimed at ensuring both the full and effective enjoyment of all the [child's human rights] and the holistic development of the child.'<sup>32</sup> The provisions apply equally to children who may also be directed and searched where transported.
- right to liberty (section 29(1)). The right to liberty is about 'protect[ing] people from unlawful and arbitrary interference with their physical liberty, that is, deprivation of

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<sup>27</sup> *Re Kracke and Mental Health Review Tribunal* (2009) 29 VAR 1, 124 [558] (Bell J); *DPP (Vic) v Kaba* (2014) 44 VR 526, 560 [118] (Bell J).

<sup>28</sup> *Slaight Communications Inc v Davidson* [1989] 1 SCR 1038, 1080.

<sup>29</sup> *DPP (Vic) v Kaba* (2014) 44 VR 526, 560 [119] (Bell J).

<sup>30</sup> *DPP (Vic) v Kaba* (2014) 44 VR 526, 564 [132] (Bell J).

<sup>31</sup> Explanatory notes, Human Rights Bill 2018 (Qld) 22; *Farm Transparency International Ltd v New South Wales* (2022) 96 ALJR 655, 667 [31] (Kiefel CJ and Keane J), 688 [159] (Gordon J), 698 [225], 700 [234], 701 [237], 703 [247] (Edelman J).

<sup>32</sup> Committee on the Rights of the Child, General Comment No 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art 3, para 1), UN Doc CRC/C/GC/14 (29 May 2013) 3[4].

liberty in the classic sense'.<sup>33</sup> The provision provides that a person is to be told they are not under arrest or custody while complying with the direction. However, a person may be directed to remain at a particular place for not more than 2 hours, where that is reasonably necessary in the circumstances for enabling personal service. Where the physical detention of a person is more than momentary or brief, the right to liberty may be engaged depending on the particular facts and circumstances.<sup>34</sup> The difference between a deprivation of liberty and restriction on freedom of movement is one of degree or intensity.<sup>35</sup>

- right to be presumed innocent (section 32(1)). The offence provision is subject to a reasonable excuse exception. This is intended to impose only an evidential burden on the person to adduce or identify evidence of a reasonable excuse, rather than a legal burden to prove a reasonable excuse on the balance of probabilities. However, placing only an evidential burden on the defendant does not eliminate the limit on the right to be presumed innocent, it simply reduces the limit.<sup>36</sup> The right to be presumed innocent may still be limited.
- right not to incriminate oneself (section 32(2)(k)). On its face, s 32(2)(k) only applies to a person who has been 'charged'. However, there is authority that the right may extend to protect uncharged suspects (although the protection may not crystallise until the point in time that the person is actually charged).<sup>37</sup>

Some of these human rights have internal limitations. The right to property will only be limited if the property is deprived arbitrarily. The right to privacy will only be limited where the interference with privacy is unlawful or arbitrary. Because the Bill authorises any interference, any interference would be lawful. In a human rights context, arbitrary refers to conduct that is capricious, unpredictable or unjust, and also refers to interferences which are unreasonable in the sense of not being proportionate to a legitimate aim sought. If an interference is proportionate under section 13 of the HR Act, it will not be arbitrary. Accordingly, whether the interference with property or privacy is arbitrary will be addressed below when considering the factors in section 13.

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

However, any limit on the above human rights is reasonable and justified as follows:

- Nature of the human right – What is at stake in human rights terms is the ability to keep information to oneself, to be presumed innocent, be free from restrictions on movement, free from intrusions on one's own personal space, to not be arbitrarily deprived of possessions and for the best interests of the child to be protected.
- Purpose – The purpose of the provision is to facilitate the personal service of the FPO made by the court as well as to ensure the FPO takes effect. The FPO imposed by the court may operate for 5 years for a child and 10 years for an adult. The amendments

<sup>33</sup> *Re Lifestyle Communities Ltd [No 3]* (2009) 31 VAR 286, 140 [665]; *DPP (Vic) v Kaba* (2014) 44 VR 526, 558 [110].

<sup>34</sup> *DPP (Vic) v Kaba* (2014) 44 VR 526, 559 [112] (Bell J).

<sup>35</sup> *DPP (Vic) v Kaba* (2014) 44 VR 526, 558 [110] (Bell J).

<sup>36</sup> *Momcilovic v The Queen* (2011) 245 CLR 1, 220 [557] (Crennan and Kiefel JJ); cf *R v DA* (2016) 263 A Crim R 429, 444[48] (Ashley, Redlich, and McLeish JJA).

<sup>37</sup> *Re Application under Major Crimes (Investigative Powers) Act 2004* (2009) 24 VR 415, 452 [161]-[163], 453 [167] (Warren CJ) in relation to the Victorian charter equivalent of s 32(2)(k) of the *Human Rights Act 2019*.

facilitate the right to freedom of expression (section 21) and rights related to fair hearing and criminal proceedings (section 31 and section 32) by informing the person subject to the FPO of its existence, the consequences of the FPO being in place, as well as the associated rights of review and appeal. Ensuring the FPO takes effect also protects and promotes the human rights of others by furthering personal safety and security in the community. The promotion of these human rights is a proper purpose consistent with a free and democratic society based on human dignity, equality and freedom.

- Relationship between limitation and its purpose – The provisions are effective at achieving the objectives.
- Less restrictive alternatives – The provision is necessary to achieve the purposes. In considering the availability of less restrictive alternatives, it is also relevant that the potential limits on human rights are narrowly tailored and subject to safeguards. In particular:
  - the QPS will be required as a public entity under the HR Act, to give proper consideration to human rights and to exercise their powers in a way that is compatible with human rights under section 58 of the HR Act;
  - where an FPO comes into effect in relation to a child, including by personal service further safeguards are incorporated pursuant to new section 141K of the Bill;
  - new section 141R places limits on the direction including limiting the length of time a person may be directed to remain at a place and the place a person may be directed to move;
  - new section 141T provides that the police officer must warn the person being served that non-compliance with the direction is an offence, as well as provide the person with a reasonable opportunity to comply with the direction;
  - the offence provision in new section 141U is subject to a reasonable excuse exception. This is intended to impose only an evidential burden on the person to adduce or identify evidence of a reasonable excuse, rather than a legal burden which reduces the impact on the right to be presumed innocent under section 32(1) of the HR Act; and
  - the FPO scheme will be subject to review by both the public interest monitor and Minister.
- Fair balance – The purpose is to further the human rights of those subject to court ordered FPOs as well as to further the human rights of others by furthering personal safety and security in the community. The ability for the police officer to issue a direction to facilitate personal service to further those aims, strikes a fair balance, taking into account the safeguards that are inherent within the Bill.

As the interference with property and privacy is proportionate and not arbitrary, those rights are not limited by these amendments. The limits on the other human rights are proportionate and therefore justified. Accordingly, these amendments are compatible with human rights.

### **Effect of firearm prohibition orders on licenses, permits, approvals, firearms and firearm related items**

The Bill introduces new sections 141V to 141X dealing with the revocation and surrender of licenses, permits and approvals as well as the surrender of firearms and firearm related items.

New section 141V automatically revokes a licence, permit or approval issued to an individual or body (if the individual is a representative of the body).

New section 141W requires the immediate surrender of a relevant authority (including a licence, permit, or approval), as well as any firearm or firearm related item.

Where a person cannot immediately surrender the required item, a police officer may direct the person to:

- give the thing to a police officer in a specified way and stated time of not more than 24 hours after the direction is given;
- provide information about the location of the thing and any other information necessary to enable a police officer to locate and seize it; and
- accompany a police officer to the location of the item so it can be surrendered.

The individual must comply with the direction given. Non-compliance with the requirement to immediately surrender a relevant authority or a direction given is an offence under this provision. These offence provisions, and others contained within part 5A, are considered separately in this statement of compatibility below.

#### Human rights potentially limited (Part 2, Divisions 2 and 3 Human Rights Act)

Where the revocation of a person's authority (including licence, permit or approval), limits their ability to work, these provisions potentially interfere with property and privacy in sections 24 and 25 of the HR Act. The surrender of property including firearms and firearm related items may also interfere with property rights in section 24 of the HR Act.

The provision of information may also limit the right to freedom of expression in section 21 (which may include the right to say nothing or the right not to say certain things).<sup>38</sup> The requirement to accompany a police officer to the location of the item so that it can be surrendered may also limit freedom of movement in section 19.

The right to property will only be limited if the property is deprived arbitrarily. The right to privacy will only be limited where the interference with privacy is unlawful or arbitrary. Because the Bill authorises any interference, any interference would be lawful. If an interference is proportionate under section 13 of the HR Act, it will not be arbitrary. Accordingly, whether the interference with property or privacy is arbitrary will be addressed below when considering the factors in section 13.

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

However, any limit on the above human rights is reasonable and justified as follows:

- Nature of the human right – What is at stake in human rights terms is the ability to enjoy one's property, to keep information to oneself, to be free from restrictions on freedom of movement and to practice one's profession free from interference.
- Purpose – The purpose is to facilitate the personal safety and security of others. This is a legitimate aim that protects and promotes the human rights of others. This is a proper purpose that is consistent with a free and democratic society based on human dignity, equality and freedom.

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<sup>38</sup> *Slaight Communications Inc v Davidson* [1989] 1 SCR 1038, 1080.

- Relationship between limitation and its purpose – The amendments are effective at achieving the objective as they restrict a person’s access to firearms and firearm related items.
- Less restrictive alternatives – The provisions are necessary to achieve the purpose. In considering the availability of less restrictive alternatives, it is also relevant that the potential limits on human rights are narrowly tailored and subject to safeguards. In particular:
  - the Queensland Police Service will be required as a public entity under the HR Act, to give proper consideration to human rights and to exercise their powers in a way that is compatible with human rights under section 58 of the HR Act;
  - pursuant to new section 141X where a firearm is surrendered to a police officer in accordance with section 141W, there are avenues for a licenced dealer or armourer to collect the firearm; and
  - the FPO scheme will be subject to review by both the public interest monitor and Minister.
- Fair balance – The purpose is to further the human rights of others by furthering personal safety and security in the community. The restrictions imposed on those subject to the FPO, strikes a fair balance, taking into account the safeguards that are inherent within the Bill.

As the interference with property and privacy is proportionate and not arbitrary, those rights are not limited by these amendments. Any limits on the other human rights are proportionate and therefore justified. Accordingly, these amendments are compatible with human rights.

### **New offences in *Weapons Act*, part 5A**

The new part 5A in the Bill introduces a range of new offences into the Weapons Act:

- new section 141U(1), which create an offence of contravening a direction given to facilitate personal service of the FPO with a maximum of 40 penalty units;
- new section 141W(2), which makes it an offence to not immediately surrender a relevant authority (including licence, permit or approval) with a maximum of 50 penalty units or 12-months imprisonment;
- new section 141W(4) and (5), which creates an offence for contravening a direction to surrender a relevant authority (including licence, permit or approval), firearm or firearm related item once the FPO takes effect, with a maximum of 50 penalty units or 12-months imprisonment;
- new section 141Y(1)-(2), which makes it an offence for an individual who is subject to the FPO to acquire, possess or use (or attempt to acquire, possess or use):
  - a firearm—maximum penalty of 500 penalty units or 13 years imprisonment;
  - a firearm related item—with a maximum penalty of 200 penalty units or 5 years imprisonment;
- new section 141Z, under which it is an offence to supply an individual who is subject to the FPO with:
  - a firearm—maximum penalty of 500 penalty units or 13 years imprisonment;
  - a firearm related item—maximum penalty of 200 penalty units or 5 years imprisonment;
- new section 141ZA, which makes it an offence for an individual subject to an FPO to attend particular premises and events, with a maximum penalty of 50 penalty units or 12 months imprisonment; and



- new section 141ZB, under which an individual subject to the FPO commits an offence if the individual does not give the commissioner written notice of a change to their residential address within 24 hours of the change occurring, with a maximum penalty of 100 penalty units.

These new offences do not apply retrospectively. That is, a person will not be found guilty of a criminal offence because of conduct that was not a criminal offence when it was engaged in. Accordingly, these new offences do not limit rights concerning retrospective criminal laws in section 35 of the *Human Rights Act*.

The offence provisions also introduce a number of reverse onus defences. The human rights impacts of these defences are considered separately in the statement of compatibility.

#### Human rights potentially limited (part 2, divisions 2 and 3 Human Rights Act)

The introduction of these new penalties may potentially limit the right to property (section 24 of the HR Act) and right to liberty (section 29 of the HR Act).

The definition of ‘property’ in the *Acts Interpretation Act 1954* includes ‘money’. The imposition of a fine will in principle constitute interference with the right to property as it deprives the person concerned of an item of property, namely the sum that has to be paid.<sup>39</sup>

The right to liberty is about ‘protect[ing] people from unlawful and arbitrary interference with their physical liberty, that is, deprivation of liberty in the classic sense.’<sup>40</sup> Pursuant to section 29(2) a person must not be subject to arbitrary detention.

The prohibition against attending particular premises and events may limit a person’s freedom of association (section 22(2) of the HR Act). The prohibition against residing at particular premises (through the operation of new section 141Y(4)) may interfere with rights related to a person’s home (section 25 of the HR Act) and where a person chooses to reside (section 19 of the HR Act).

The requirement to provide written notice of a change to a person’s residential address may also interfere with a person’s right to privacy (section 25(a) of the HR Act) and freedom of expression (section 21 of the HR Act) which may include the right to say nothing or the right not to say certain things.<sup>41</sup>

Some of these human rights have internal limitations. The right to property and liberty will only be limited if the deprivation is arbitrary. The right to privacy will only be limited where the interference with privacy is unlawful or arbitrary. Because the Bill authorises any interference, any interference would be lawful. In a human rights context, arbitrary refers to conduct that is capricious, unpredictable or unjust, and also refers to interferences which are unreasonable in the sense of not being proportionate to a legitimate aim sought. If an interference is proportionate under section 13 of the HR Act, it will not be arbitrary. Accordingly, whether the interference with property or privacy is arbitrary will be addressed below when considering the factors in section 13.

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<sup>39</sup> *Krayeva v Ukraine* [2022] ECHR 41, [23].

<sup>40</sup> *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 140 [665] (Bell J); *DPP (Vic) v Kaba* (2014) 44 VR 526, 558 [110] (Bell J); *Loiello v Giles* (2020) 63 VR 1, 58 [214] (Ginnane J).

<sup>41</sup> *Slaight Communications Inc v Davidson* [1989] 1 SCR 1038, 1080.

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

However, any limit on the above human rights is reasonable and justified as follows:

- Nature of the human right – What is at stake in human rights terms is the ability to retain property in the form of money, to not be arbitrarily deprived of liberty, to associate with others without interference, to keep information to oneself and enjoy one’s private sphere without interference.
- Purpose – The purpose is to facilitate the personal safety and security of others in the community. This is a legitimate aim that protects and promotes the human rights of others. This is a proper purpose that is consistent with a free and democratic society based on human dignity, equality and freedom.
- Relationship between limitation and its purpose – The amendments are effective at achieving the objective as they restrict a person’s access to firearms and firearm related items.
- Less restrictive alternatives – The provisions are necessary to achieve the purpose. In considering the availability of less restrictive alternatives, it is also relevant that the potential limits on human rights are narrowly tailored and subject to safeguards. In particular:
  - a person may not be liable under new section 141Y where the firearm or firearm related item is surrendered to a police officer in accordance with proposed section 141W;
  - the offences do not operate retrospectively and do not result in the imposition of greater penalties retrospectively and the right against retrospective criminal laws in section 35 of the HR Act is protected; and
  - the FPO scheme will be subject to review by both the public interest monitor and Minister.
- Fair balance – There is compelling public interest in proscribing the above conduct. The provisions seek to further community safety and security by ensuring there is sufficient deterrence for those who are involved in sophisticated criminal or terrorist activities in Queensland. Further, the penalties set a maximum penalty that may be imposed, leaving the court with a sentencing discretion in the individual circumstances of each particular case. The provisions strike a fair balance, taking into account the safeguards that are inherent within the Bill.

As the interference with property, liberty and privacy is proportionate and not arbitrary, these rights are not limited by these amendments. Any limits on the other human rights are proportionate and therefore justified. Accordingly, these amendments are compatible with human rights.

### **Reverse onuses**

Reverse onus defences are introduced through new sections 141Y(5) and 141ZA(2). A reverse legal burden of proof requires the defendant to prove an exception to the offence (on the balance of probabilities) to avoid being found guilty.

In criminal law, as a general rule, it is for the prosecution to prove a defendant's guilt, not for the defendant to prove their innocence.<sup>42</sup> A reverse onus leaves open the possibility, that a person who is not able to discharge their burden (on the balance of probabilities), will be found guilty of the offence despite there being a reasonable doubt.

Pursuant to section 32(1) of the HR Act a person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law. The presumption of innocence is 'fundamental to the protection of human rights'.<sup>43</sup> Our system of law places great weight on the principle that the prosecution ought to bear the onus of proving guilt. That principle has been described as the 'golden thread' of the criminal law,<sup>44</sup> and the 'fundamental principle' of the accusatorial nature of the criminal justice system.<sup>45</sup>

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

However, any limit on the above human rights is reasonable and justified as follows:

- Nature of the human right – The presumption of innocence is concerned with ensuring the prosecution 'mak[e] out the case against the accused before he or she need respond, either by testifying or by calling other evidence'.<sup>46</sup> The real gravamen of reversing the onus is the possibility that 'an accused may be convicted whilst a reasonable doubt exists'.<sup>47</sup>
- Purpose – It could be difficult in prosecuting matters under new section 141Y to prove that the defendant knew the firearm or firearm related item was present at the premises. Placing the onus on the defendant to provide that they did not know of its presence reduces the risk of individuals subject to FPOs being able to evade their consequences by simply storing firearms and firearm related items at premises to which they have ready access. In the case of new section 141ZA, however, it is reasonable to expect the individual to know that firearms may be present at the specified types of locations. Given the individual is subject to the prohibition order, it is appropriate in those circumstances to require them to establish that they are not attempting to avoid the clear consequences of the FPO.
- Relationship between limitation and its purpose – Placing the burden on the defendant will be effective to reduce the risk of evading the consequences of an FPO.
- Less restrictive alternatives – There is no less restrictive alternative available to new section 141Y, given the difficulty for a prosecutor in establishing that a defendant knew of the presence of the firearm or firearm related item at the premises. For new section 141ZA, given the probable presence of firearms at the specified types of premises, requiring the defendant to establish that they did not and could not reasonably have

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<sup>42</sup> *Woolmington v Director of Public Prosecutions* [1935] AC 462, 481-2 (Viscount Sankey LC); *X7 v Australian Crime Commission* (2013) 248 CLR 92, 119-20 [46] (French CJ and Crennan J), 135-6 [100]-[102] (Hayne and Bell JJ), 153 [159] (Kiefel J); *Lee v NSW Crime Commission* (2013) 251 CLR 196, 266 [176] (Kiefel J), 313 [318] (Gageler and Keane JJ); *Lee v The Queen* (2014) 253 CLR 455, 467 [32] (French CJ, Crennan, Kiefel, Bell and Keane JJ).

<sup>43</sup> UN Human Rights Committee, *General Comment No 32 – Article 14: Right to equality before courts and tribunals and to a fair trial*, 90th sess, UN Doc CCPR/C/GC/32 (23 August 2007) 9 [30].

<sup>44</sup> *Woolmington v Director of Public Prosecutions* [1935] AC 462, 481 (Viscount Sankey LC).

<sup>45</sup> *Lee v The Queen* (2014) 235 CLR 455, 467 [32] (French CJ, Crennan, Kiefel, Bell and Keane JJ); *Lee v New South Wales Crime Commission* (2013) 251 CLR 196, 266 [176], 313 [318]; *X7 v Australian Crime Commission* (2013) 248 CLR 92, 119-120 [46], 135-136 [100]-[102], 153 [159].

<sup>46</sup> *Dubois v The Queen* [1985] 2 SCR 350, 357 (Lamer J for the majority).

<sup>47</sup> *R v Whyte* [1988] 2 SCR 3, 18 [31]-[32] (Dickson CJ for the Court).

known firearms would be present is less restrictive than making the offence one of strict liability.

- Fair balance – Reversals of the onus of proof significantly limit human rights. It is therefore something that should be done rarely. However, firearm related crime poses a serious public safety risk. When that risk is considered together with the fact that these offences apply only to persons who have already been found to be appropriate subjects for FPOs, I am satisfied the provisions strike a fair balance between the importance of protecting rights of defendants and the importance of ensuring that persons who pose a risk of firearm related crime cannot negate the controls imposed by an FPO by evasive tactics.

Accordingly, these amendments are compatible with the right to be presumed innocent in section 32(1) of the HR Act.

### **Search powers relating to firearm prohibition orders**

The Bill inserts division 4 of Part 5A to provide police officers with search and seizure powers.

New section 141ZD authorises the exercise of a search power if it is reasonably required to determine whether a person subject to the FPO is committing an offence under new section 141Y (offence to acquire, possess or use firearm or firearm related item or attempting to do so). New section 141ZD authorises these search powers without warrant or consent.

These search powers apply to:

- persons subject to the FPO (new section 141ZE);
- vehicles where the person subject to the FPO is either:
  - the registered operator of the vehicle;
  - driving, riding, in charge or in control of the vehicle;
  - a passenger in or on the vehicle; or
  - ordinarily has access to, or use of the vehicle (new section 141ZF); and
- premises where those are owned or occupied, or in the care or under the control or management of the person subject to the FPO (including any vehicle on the premises) (new section 141ZG).

New section 141ZH provides the police with the power to seize a firearm or firearm related item found during the search.

### Human rights potentially limited (Part 2, Divisions 2 and 3 Human Rights Act)

These search powers (and associated seizure powers) may potentially limit the following human rights:

- Freedom of movement (section 19 of the HR Act). The purpose of the right to freedom of movement is to protect the individual's right to liberty of movement. It is directed to restrictions on movements which fall short of physical detention coming within the right to liberty in section 29 of the HR Act.<sup>48</sup> The powers authorise a police officer to stop and detain a person for the purpose of the search, as well as detain any passengers in a vehicle. This will interfere with a person's freedom of movement.

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<sup>48</sup> *Re Kracke and Mental Health Review Tribunal* (2009) 29 VAR 1, 124 [558] (Bell J); *DPP (Vic) v Kaba* (2014) 44 VR 526, 560 [118] (Bell J).

- Property rights (section 24(2) of the HR Act), which provides that a person must not be arbitrarily deprived of property.
- Privacy rights (section 25(a) of the HR Act). The right to privacy is concerned with dignity and bodily integrity.<sup>49</sup> The right to privacy may also be limited through the search powers.<sup>50</sup>
- Rights related to home (sections 19, 24 and 25(a) of the HR Act) where a person's residence is searched.
- Best interests of the child (section 26(2) of the HR Act). Under section 26(2), children have a right to protection in their best interests. The provisions apply equally to children who may also be searched.

Some of these human rights have internal limitations. The right to property will only be limited if the property is deprived arbitrarily. The right to privacy will only be limited where the interference with privacy is unlawful or arbitrary. Because the Bill authorises any interference, any interference would be lawful. If an interference is proportionate under section 13 of the HR Act, it will not be arbitrary. Accordingly, whether the interference with property or privacy is arbitrary will be addressed below when considering the factors in section 13.

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

However, any limit on the above human rights is reasonable and justified as follows:

- Nature of the human right – What is at stake in human rights terms is the ability to be free from restrictions on movement, free from intrusions on one's own personal space, to not be arbitrarily deprived of possessions and for the best interests of the child to be protected.
- Purpose – The purpose is to facilitate the personal safety and security of others in the community. This is a legitimate aim that protects and promotes the human rights of others.
- Relationship between limitation and its purpose – The search powers in section 141ZE are effective in facilitating the personal safety and security of others in the community. The search powers are authorised if the exercise of the power is reasonably required to determine whether a person subject to the FPO is committing an offence pursuant to new section 141Y (acquiring, possessing and using firearms and firearm related items or attempting to).
- Less restrictive alternatives – The provision is necessary to achieve the purpose. Firearms are freely and easily passed amongst members of these organisations in a clandestine manner, which presents significant difficulties for police to ascertain the whereabouts of illicit firearms and seize them. Upon any suggestion of police involvement or suspicion that indicates a search warrant may be sought or executed, weapons are able to be secreted away and passed to another member of the organisation, thus interrupting police operations. In considering the availability of less restrictive alternatives, it is also relevant that the potential limits on human rights are narrowly tailored and subject to safeguards. In particular:
  - the Queensland Police Service will be required as a public entity under the

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<sup>49</sup> Explanatory notes, Human Rights Bill 2018 (Qld) 22; *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 126 [599] (Bell J)

<sup>50</sup> *R (Roberts) v Commissioner of Police of the Metropolis* [2016] 1 WLR 210, 213 [3] (Baroness Hale DPSC and Lord Reed JSC).

- HR Act, to give proper consideration to human rights and to exercise their powers in a way that is compatible with human rights under section 58 of the HR Act;
- the test for the exercise of the search powers is *if* a search is reasonably required. This is the test that the New South Wales Ombudsman recommended to be adopted in the equivalent New South Wales legislation to ensure that the limits of the search powers are clear.<sup>51</sup> This is also the test that has been adopted in the equivalent Victorian legislation.<sup>52</sup>
  - the search powers do not extend to associates of the person subject to the FPO;
  - the search powers are subject to the safeguards that apply under chapter 20, part 3 of the PPRA (including those that relate to children) (see the note under new section 141ZE); and
  - the FPO scheme will be subject to review by both the public interest monitor and Minister.
- Fair balance – The purpose is to further the human rights of others by furthering personal safety and security in the community. High-risk individuals likely to be subject to the FPO scheme are also likely to be involved in a sophisticated criminal or terrorist organisation where firearms are freely and easily passed amongst members in a clandestine manner. The current threshold to obtain a warrant and conduct a search is comparatively high and presents obstacles to seizing these weapons due to the high evidentiary threshold required before a search can be conducted, despite the individuals high-risk profile and consistent history of committing violent and firearm related offences. In light of the safeguards that are inherent within the Bill, and the intent that safeguards under chapter 20, part 3 of the PPRA as they relate to children will apply, the search powers strike a fair balance.

As the interference with property and privacy is proportionate and not arbitrary, those rights are not limited by these amendments. The limits on the other human rights are proportionate and therefore justified. Accordingly, the search powers are compatible with human rights.

### **Confidentiality of criminal intelligence**

The Bill also introduces new provision 141ZT into the Act.

New section 141ZT will protect the confidentiality of criminal intelligence, in relation to an application for the FPO and proceedings before a court (including a review of a child's FPO and appeal proceedings). The court must on the application of the commissioner take steps to maintain the confidentiality of information classified by the commissioner as criminal intelligence, including steps to receive evidence and hear argument about the information in the absence of the parties, their representatives and the public.

The court may, as it considers appropriate, receive evidence consisting of or relating to information classified as criminal intelligence by way of affidavit.

Where the court considers that information categorised as criminal intelligence has been incorrectly categorised, the commissioner may withdraw the information from consideration.

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<sup>51</sup> NSW Ombudsman, *Review of the police use of the firearms prohibition order search powers: Section 74A of the Firearms Act 1996* (August 2016) 71-2.

<sup>52</sup> *Firearms Act 1996* (Vic) ss 112Q-112R.

Information that is withdrawn must not be disclosed to any person or taken into consideration by the court.

If a decision is made on the basis of information classified by the commissioner as criminal intelligence, the only reason required to be given is that the decision was made in the public interest.

Criminal intelligence will be intelligence that could, if disclosed, reasonably be expected:

- to prejudice an 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; or
- to prejudice the maintenance or enforcement of a lawful method or procedure for protecting public safety or security.

#### Human rights potentially limited (Part 2, Divisions 2 and 3 Human Rights Act)

This provision may engage or potentially limit the following human rights:

- Freedom of expression (section 21), which includes the right to seek, receive and impart information. The information here being relating or to arising out of the proceeding. This right may be engaged.<sup>53</sup>
- Fair hearing (section 31), which enshrines the open justice principle. The right is directed to ensuring that hearings are publicly accessible and directed to ensuring the decision is publicly accessible. This right is limited.

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

However, any limit on the above human rights is reasonable and justified as follows:

- Nature of the human right – What is at stake in human rights terms is ability of individuals to seek and receive information and the open justice principle. The public nature of hearings ensures the transparency of proceedings and provides an important safeguard for the interest of the individual and of society at large.<sup>54</sup>
- Purpose – The purpose of the provision is to facilitate public safety and security including through ensuring criminal investigations are not prejudiced and a person's life is not endangered. This is a legitimate aim that protects and promotes the human rights of others.
- Relationship between limitation and its purpose – The provision is effective at achieving the objective.
- Less restrictive alternatives – The provision is necessary to achieve the purpose. In considering the availability of less restrictive alternatives, it is also relevant that the potential limits on human rights are narrowly tailored and subject to safeguards. In particular:
  - Where the court considers that information categorised as criminal

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<sup>53</sup> See *PQR v Secretary, Department of Justice and Regulation [No 1]* (2017) 53 VR 45, 57-8 [37], 66 [56] (Bell J).

<sup>54</sup> UN Human Rights Committee, *General Comment No 32 – Article 14: Right to equality before courts and tribunals and to a fair trial*, 90th sess, UN Doc CCPR/C/GC/32 (23 August 2007) 8 [28].

intelligence has been incorrectly categorised, the commissioner may withdraw the information from consideration. Information that is withdrawn must not be disclosed to any person or taken into consideration by the court.

- If a decision is made on the basis of information classified by the Commissioner as criminal intelligence, the only reason required to be given is that the decision was made in the public interest.
- Fair balance – There is an acknowledgment in international law that certain proceedings or circumstances will justify a court suppressing all or part of its judgment.<sup>55</sup> Given the limits on human rights are narrowly tailored and subject to safeguards (including that it is for the court to consider whether the information categorised as criminal intelligence is or is not correctly categorised), the provision strikes a fair balance between the impact on the need for open justice and the need to protect the safety and security of others.

The limits on the other human rights are proportionate and therefore justified. Accordingly, the provision is compatible with human rights.

### **Introducing a new verification process for purchasing small arms ammunition**

#### (a) the nature of the right

The right to recognition and equality before the law (section 15 of the HR Act) reflects every person has the right to recognition as a person before the law, that every person is equal before the law and that laws should not be discriminatory.

The right to privacy and reputation (section 25 of the HR Act) protects a person's right not to have their privacy and reputation unlawfully or arbitrarily interfered with. The protection afforded by this right is very broad, although not absolute, as it acknowledges a person must be subject to certain breaches of privacy and reputation inherently required as a member of the community. This right only protects unlawful or arbitrary interference, with the latter referring to interferences that are unreasonable, unnecessary, or disproportionate, or in the content of the right to privacy also means capricious, unpredictable, or unjust as the interference is not proportionate to the legitimate aim sought.

The requirement upon sellers to physically sight a person's licence or authority prior to sale for small arms ammunition may interfere with these rights, as any potential buyer will need to reveal personal information about themselves by presenting the relevant authority and may be discriminated against by the seller refusing the sale if the buyer cannot produce the required authority.

However, the amendment also promotes the right to life (section 16 of the HR Act) as it supports the Queensland Government's obligation to protect the community.

#### (b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation is to prevent unauthorised persons from purchasing small arms ammunition and to ensure a person cannot seek to utilise an invalid authority (such as a suspended or revoked weapons licence) to unlawfully purchase the ammunition. This promotes

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<sup>55</sup> Explanatory notes, Human Rights Bill 2018 (Qld) 25.



public safety and security by limiting potentially dangerous persons from having access to small arms ammunition which may be used in the commission of violent firearm offences.

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

The limitation on the individual's rights due to the new verification requirement in the Bill is minor, noting it is already an offence under section 42 of the Explosives Act for a person to sell small arms ammunition to an unauthorised person. In order to comply with this preexisting obligation, most sellers of small arms ammunition have already instituted a policy of requiring buyers to present their licence or authority so that it can be sighted. Therefore, the new verification measures do not impose additional limitations upon the individual's rights, it merely introduces additionally safeguards by stipulating the actions to be taken by the seller to ensure compliance with the preexisting obligation and prevents individuals from attempting to subvert the prohibition of sale without lawful authority by presenting an invalid authorisation.

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

There are no less restrictive ways to achieve the policy objective.

- (e) the balance between the importance of the purpose of the limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Noting the potential limitation on the rights of the individual are minor and do not infringe any further than current legislation, the balance struck between the need to protect the community and preserve the individual's rights is appropriate.

- (f) any other relevant factors

Nil.

**Implementing recommendations from the Queensland Audit Office report *Regulating firearms (Report 8: 2020-21)***

- (a) the nature of the right

The rights potentially impacted by amendments to the Weapons Act regarding firearm regulation, include the right to recognition and equality before the law (section 15 of the HR Act), the right to privacy and reputation (section 25 of the HR Act), the right not to be punished more than once (section 34 of the HR Act), the right to peaceful assembly and freedom of association; the right to a fair hearing (section 31 of the HR Act), and the right not to be subject to retrospective criminal laws (section 35 of the HR Act).

The nature of these rights which are relevant to the amendments include:

- the right to privacy and reputation includes the right of individuals to control their personal information which extends to protection of unwarranted intrusion into their personal affairs, background, and history. Preserving this right to privacy and ability to withhold personal information, works in conjunction with the right to preserve one's reputation, particularly if the unwarranted disclosure of someone's personal

information, affairs or background negatively impacts their reputation. Unwarranted or unjust damage to a person's reputation can be significantly detrimental to their health and wellbeing, noting reputational damage can impact the person's career, relationships and standing within the community and consequently harm the person's mental and emotional health. The scope of this right also extends to the protection of data collection of personal information;

- the right to fair and equal treatment before the law is a foundational aspect of a just society as it promotes the right to freedom from discrimination. All members of society should be afforded equal opportunities and protections, regardless of gender, religious affiliations, their background, or circumstances;
- the right to freely associate with other members of the community seeks to empower individuals to engage in public life and are pivotal in fostering a fair and democratic society. This includes the right to freely engage in business arrangements or associate with other members of the community;
- the right not to be punished more than once seek to safeguard individuals from multiple prosecutions or punishments for the same offence. Whilst the right generally relates to criminal punishments for the same action, its broader purpose is to prevent injustice, abuse of power, unjust persecution and harassment by the State and authorities. It promotes finality and certainty in legal proceedings and supports the individuals rehabilitation in society;
- the right not to be subject to retrospective criminal laws includes the right not to be subject to retrospective penalties; and the right to a fair hearing relates to both criminal offences and civil proceedings, therefore still applies to proceedings in relation to administrative decision making and the right for the proceeding to be decided by a competent, independent, and impartial court or tribunal.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

These rights are relevant to the revised framework for the 'fit and proper person' test in sections 10B and 10C of the Weapons Act in the Bill.

It may be construed that these amendments interfere with the above-mentioned rights because:

- consideration of a person's criminal history may be viewed as punishing the person twice, because the person's history is 'held against them' and relied upon to reject their application for a licence. A person's previous history such as spent convictions and non-recorded convictions may also be considered by an authorised officer in relation to a licence;
- the Queensland Police Service Weapons Licensing Unit must collect and consider the individual's personal information and history to assess whether they are fit and proper to hold a licence. This may arguably infringe upon their privacy as it includes storing some of the information and accessing it at a later date for the purpose of reassessment, review and monitoring of compliance in relation to the licence;
- they interfere with the person's freedom of association as the revised sections 10B and 10C continue to prevent a person from being found 'fit and proper' if the person is a licensed dealer and they have an 'associate' (defined in the Act, relating to the existence of a special relationship involving a vested interest in the licensed dealer's business dealings, or possession of power or authority over the licensed dealer) who is not deemed to be fit and proper. This may be viewed as unfairly punishing the licensed

- dealer for the actions of their associate, although it is noted that the licensed dealer may be deemed fit and proper if the relationship with the associate no longer exists;
- if a person is found to not be fit and proper, then this may be regarded as reflecting poorly on the person's character and potentially impact their reputation. Or the person may perceive themselves to be discriminated against as their ability to obtain a licence authorising them to possess and use firearms will be restricted;
  - the changes to the framework in considering if someone is fit and proper may be perceived to have a retrospective affect, as the new section 198 provides that if before commencement, a person has applied for a review of a licensing decision but no decision on the review has been made, then in hearing or deciding the review the revised framework contained within the Bill will apply. This may also be perceived as affecting the person's right to a fair hearing.

The purpose of any limitation on these rights is to ensure the authorised officer has the necessary information to make an appropriate decision regarding a licence under the Weapons Act. Any perceived interference with the above rights resulting from these amendments is consistent with a fair and democratic society, noting some limitations on these rights is both necessary and appropriate in order to promote public safety and security. In addition to its obligations to preserve the rights of the individual, the State has a corresponding responsibility to also promote the right to life of other members within the community who may be placed at risk if an unsuitable person obtains a weapons licence and uses a firearm to commit violent offences.

All personal information accessed and collected in relation to licensing decisions must be handled securely and only be used for internal licensing, monitoring of the person's ongoing suitability and other legitimate policing purposes. Additionally, the scope in relation to the right regarding retrospective and criminal penalties does not prevent other consequences arising from the same conduct connected with the criminal conviction when the other consequences do not attempt to punish the person but are designed to protect the public.<sup>56</sup> Any perceived limitation on the person's right to association is also minor, as the person may elect to not pursue a weapons licence in order to maintain the relationship with the other person, retaining the freedom to associate, noting the impact of this association is merely a condition of the licence.

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

The limitation in relation to an individual's rights stemming from the amendments to the Weapons Act improving its efficiency and effectiveness, in particular, by enhancing the fit and proper person test, achieve its purpose by preventing unsuitable persons from holding a licence and enhancing the operation of the Act.

It gives effect to the QAO's recommendations to provide appropriate support to the Weapons Licensing Unit to reject applications from people who a history of domestic violence incidents, and convictions outside the current 5 year period, along with achieving the overarching recommendation of amending the Weapons Act to place a greater focus on public safety.

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<sup>56</sup> *Psychology Board of Australia v Ildiri (Occupational and Business Regulation)* [2011] VCAT 1036 [34]-[35]; *Sim v Business Licensing Authority (Occupational and Business Regulation)* [2011] VCAT 583 [41].

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

There are no less intrusive ways to achieve the policy objective.

- (e) the balance between the importance of the purpose of the limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The amendments in the Bill strengthen firearm regulations, particularly regarding licencing decision making which supports the principles underling the Weapons Act in section 3 and implements the recommendations in the QAO Report to promote public safety.

It is noted that the amendments in the Bill may have a more adverse affect on certain individuals who may currently possess a weapons licence, but following commencement of these provisions will no longer be deemed fit and proper to hold a licence. Whilst this is acknowledged, it is anticipated that only a small cohort of people will be impacted by the revised framework, noting that most individuals with a relevant criminal history impacted by the 10 year exclusionary period, would have been unlikely to receive a licence due to the discretionary ability of the decision-maker to reject their application based on public interest grounds. The amendments in the Bill also make clear that the discretionary power to reject a weapon licence application extends to spent convictions and non recorded convictions.

- (f) any other relevant factors

Nil.

### **Increasing the maximum penalty for unlawful possession of a knife in a public place or school**

- (a) the nature of the right

Section 29(1) of the HR Act states that every person has the right to liberty. This right to liberty means that people must not be arrested and detained, unless provided for by law. Their arrest and the detention must also not be arbitrary. The concept of arbitrariness carries a human rights meaning of ‘capriciousness, unpredictability and unreasonableness – in the sense of not being proportionate to the legitimate aim sought’.

- (b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation is to deter unlawful knife possession and send a message to the community that this offending behaviour is not acceptable. Maximum penalties are a legitimate means of reflecting the seriousness of an offence in recognition of the societal harm that may stem from the unlawful possession of knives.

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

The maximum sentence for an offence is a reflection of, and a proxy for, its seriousness. Increasing penalties for an offence is a suitable way of showing that the offence is considered

to be more serious. Increasing the maximum penalty for the offence in section 51 of the Weapons Act will permit a sentencing court to impose higher sentences after assessing all of the circumstances surrounding the offending.

The devastating harm caused by this offending is known; knife-related crime poses a serious risk to community safety. Since 2019, reported offences where a knife was identified as the most serious weapon has increased by 18% to 12,865 (2022-23 financial year). Furthermore, the number of reported offences committed by a person under the age of 18, where a knife was identified as the most serious weapon, has risen by 22% since 2018-19 to 2,177 (2022-23 financial year).

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

Less restrictive alternatives include not increasing the penalty at all, or increasing the maximum penalty to a lesser extent. However, as noted above, maximum sentences are a reflection of the perceived seriousness of the offence and it is the Government's intention that the increased penalty levels more appropriately reflect the seriousness of the offence. In sentencing, the Court will retain discretion to determine an appropriate sentence having regard to all the facts and circumstances of the offending.

(e) the balance between the importance of the purpose of the limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On one side of the scales, the right to liberty is important. However, on the other side it is important that a maximum penalty appropriately reflect the seriousness of the relevant offending conduct and impact it has on the community. As noted above, the Court will retain discretion to determine an appropriate sentence having regard to all the facts and circumstances. This includes aggravating and mitigating factors, ensuring that the extent of the limitation (being a potentially longer period of detainment) is constrained and occurs in circumstances that are appropriate and proportionate.

(f) any other relevant factors

Nil.

### **Cracking down on serious vehicle offending**

(a) the nature of the right

The right to liberty and security of person provides that a person must not be subjected to arbitrary arrest or detention and must not be deprived of their liberty except on grounds, and in accordance with procedures, established by law. This right applies to all forms of detention where people are deprived of their liberty, not just criminal justice processes.

Although this right seeks to protect an individual's freedom to live fully within society, it is accepted that at times infringement of an individual's liberty and security is necessary, provided the infringement is not arbitrary or unlawful.

The proposed increase of maximum penalty for dangerous operation of a vehicle causing death or grievous bodily harm under section 328A(4) of the Criminal Code from 10 years to 14 years for the simpliciter offence and to 20 years for the new aggravated offence in which the offender evades police at the time of committing the offence, limits this right as an offender may be liable to longer periods of imprisonment.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality, and freedom

The purpose of increasing the maximum penalties is to more appropriately reflect the seriousness of these offences and send a message to offenders and the community that this conduct is viewed seriously and is not acceptable.

The additional introduction of a new circumstance of aggravation for offenders who drive dangerously and cause death or grievous bodily harm and where the offender, at the time of committing the offence, evades police, ensures that this behaviour can be appropriately addressed in all circumstances.

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

The maximum sentence for an offence is a reflection of, and a proxy for, its seriousness.<sup>57</sup> Increasing penalties for an offence is a suitable way of showing that the offence is considered to be more serious.

Death and serious injuries on Queensland's roads cause significant devastation for victims, their families, and the broader community. The Queensland Government is committed to eliminating death and serious injuries from our roads.<sup>58</sup> The Queensland Government's vision is for zero road deaths and serious injuries by 2050. Creating strong disincentives for this offence supports this commitment and ensures the safety of Queenslanders remains of utmost importance.

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

Less restrictive alternatives include not increasing the penalty at all, or increasing to a lesser extent the maximum penalties to apply. However, as noted above, maximum sentences are a reflection of the intended seriousness of the offence, and it is the Government's intention that the penalty levels proposed reflect the seriousness of the offence.

There is no less restrictive alternative which would still achieve the purpose of the amendments.

(e) the balance between the importance of the purpose of the limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

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<sup>57</sup> *R v Sharma*, 2022 SCC 39, [106].

<sup>58</sup> Queensland Government, *Queensland Road Safety Strategy 2022–2031*, 11.

The increases to the maximum penalties reflects the seriousness of this type of offending and the community's denunciation of such conduct. This is particularly so given the considerable impact these events have on the lives of individuals involved.

Accordingly, having regard to the extent of limitations on the right to liberty, it is considered that the importance of achieving the purposes of the limitations outweighs the harm caused to the right to liberty and security of person.

(f) any other relevant factors

Nil.

### **Keeping emergency workers safe**

#### **Ramming emergency vehicles**

(a) the nature of the right

The right to liberty and security of person includes the right to not be arrested or detained except in accordance with the law. The fundamental value which the right to liberty and security expresses is freedom, which is acknowledged to be a prerequisite for equal and effective participation in society. The right is directed at all deprivations of liberty (including criminal sanctions) and will be relevant whenever a person is placed at risk of imprisonment.

Although this right seeks to protect an individual's freedom to live fully within society, it is accepted that at times the infringement of an individual's liberty and security is necessary, provided the infringement is not arbitrary or unlawful.

The creation of a new offence to operate a motor vehicle in a way that damages an emergency vehicle with the intention to damage the emergency vehicle or injure or endanger the safety of an emergency worker limits this right as the offence provision imposes a maximum penalty that includes a term of imprisonment.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the new offence provision is to clearly signal to the community that ramming is not tolerated. A person who rams an emergency vehicle may be arrested and face serious penalties, including imprisonment. However, this offence and the consequences that may result from the commission of this offence are not arbitrary in nature. The imposition of this offence is a deliberate measure to ensure that people do not damage emergency vehicles by operating a motor vehicle.

This provision is intended to appropriately recognise the occupational vulnerability of emergency workers and the impact of ramming on the community.

The purpose of providing a penalty that includes imprisonment, and thus limits the right to liberty and security of person, is to ensure that a person who commits the offence will be held to account and is liable to foreseeable and proportionate punishment.

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

The limitation on the right to liberty and security of person will achieve the purpose of the Bill by ensuring the gravity of operating a motor vehicle in a way that damages an emergency vehicle with the intention to damage the vehicle or injure or endanger the safety of an emergency worker is sufficiently captured in Queensland legislation.

Ramming emergency vehicles is a dangerous act. Offenders ram emergency vehicles to evade police, damage the vehicles or injure emergency workers. Ramming risks damage to the targeted emergency vehicle, and harm to passengers in and people near, the emergency vehicle. Damage to vehicles can be substantial, and injury to persons can extend to serious injuries requiring hospitalisation or even death.

Damage to emergency vehicles has a significant impact on service delivery where vehicles are rendered inoperable while repairs are completed. This places risk on the operational capacity of emergency workers to rapidly respond to calls for service and perform essential work that keeps our community safe. Prohibiting deliberate damage to emergency vehicles ensures these vehicles can continue to be used in service delivery. This broadly promotes, for the general community, a range of human rights that are protected and promoted by emergency workers through their everyday duties.

It also promotes the rights of emergency workers who may suffer injuries or loss of life through the collision between the vehicles, which would otherwise limit their right to life (HR Act section 16), right to privacy and reputation and right to liberty and security of person.

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

There are no less restrictive alternatives to achieve the purpose of the Bill.

- (e) the balance between the importance of the purpose of the limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Any limitation on an offender's right to liberty and security is reasonable and demonstrably justified when considering the serious risk of harm to emergency workers and the impacts on service delivery to the community. This conduct is a deliberate disregard to the safety of emergency workers and other road users and to the laws that govern our community. As such, the offending requires proportionate and predictable consequences to send a firm message to offenders.

The limitation on the right to liberty and security of person is appropriate to ensure that sentences imposed for the relevant offence adequately account for the impacts of the behaviour and to meet community expectations. By establishing a new offence, the Bill sends a clear message to potential offenders and the broader Queensland community that this offending behaviour is serious and not acceptable.

On balance, it is considered that the importance of achieving the purposes of the limitations outweighs the harm caused to the right to liberty and security of person.



(f) any other relevant factors

Nil.

### **Endangering police officers**

(a) the nature of the right

The right to liberty and security of person includes the right to not be arrested or detained except in accordance with the law. The fundamental value which the right to liberty and security expresses is freedom, which is acknowledged to be a prerequisite for equal and effective participation in society. The right is directed at all deprivations of liberty (including criminal sanctions) and will be relevant whenever a person is placed at risk of imprisonment.

Although this right seeks to protect an individual's freedom to live fully within society, it is accepted that at times the infringement of an individual's liberty and security is necessary, provided the infringement is not arbitrary or unlawful.

The creation of a new offence that prohibits the driving of a motor vehicle toward or near a police officer in an attempt to threaten the officer's safety limits this right as the offence provision imposes a maximum penalty that includes a term of imprisonment.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the new offence is to clearly signal to the community that driving a vehicle in a way intended to injure or endanger the safety of a police officer is not tolerated. A person who commits this offence may be arrested and face serious penalties, including imprisonment. However, the behaviour that amounts to the offence and the consequences of the offence are not arbitrary in nature.

This provision is intended to appropriately recognise the occupational vulnerability of police officers, particularly when they are working near drivers of motor vehicles.

The purpose of providing a penalty that includes imprisonment, and thus limits the right to liberty and security of person, is to ensure that a person who commits the offence will be held to account and is liable to foreseeable and proportionate punishment.

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

The limitation on the right to liberty and security of person will achieve the purpose of appropriately holding to account offenders who intentionally and deliberately risk the safety of police officers in the line of duty.

Police officers frequently work on the roadside or other places where people drive motor vehicles. Police officers have a duty to attend volatile and dangerous situations and stay there until the situations are resolved. While working in these situations, police officers are exposed to an increased risk of violence. Where a police officer is a pedestrian, they are especially vulnerable to vehicles. This is particularly so where the driver operates the vehicle in a way that deliberately puts the police officer's safety at risk.

Examples of this dangerous behaviour include:

- deliberately swerving towards a police officer on foot;
- deliberately driving at police vehicles in an attempt to ram the vehicle, requiring the officer to take evasive action where they have limited control and are at high risk of suffering injury;
- swerving on the road in an attempt to ram a police vehicle; or
- crashing into a police vehicle that is stationary at a traffic signal.

The new offence recognises the important role that police officers have in community safety, which places them at greater risk of work-related violence and aggression.

Deliberate harm, or deliberate attempts to harm, a police officer can have a significant impact on police officers. This includes suffering injuries (including psychological injuries), some of which may require hospitalisation. By prohibiting this behaviour, the Bill promotes police officers' right to life (HR Act section 16), right to privacy and reputation and right to liberty and security of person. The offender's dangerous behaviour can also risk the safety of other road users and the community.

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

There are no less restrictive alternatives to achieve the purpose of the Bill.

(e) the balance between the importance of the purpose of the limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The limitation of an offender's right to liberty and security of person is reasonable and demonstrably justified when considering the serious risk of harm to police officers and the broader service delivery consequences for the community. Targeting police officers is a deliberate attempt to disregard the laws that govern our community. As such, the offending requires proportionate and predictable consequences to send a firm message to offenders.

The limitation on the right to liberty and security of person is appropriate to ensure that sentences imposed for the relevant offence adequately account for the seriousness of the behaviour and its impacts on the safety and wellbeing of emergency worker in the line of duty. By establishing a new offence, the Bill sends a clear message to potential offenders and the broader Queensland community that this offending behaviour is unacceptable.

On balance, it is considered that the importance of achieving the purposes of the limitations outweighs the harm caused to the right to liberty and security of person.

(f) any other relevant factors

Nil.

### **Protecting emergency vehicles**

#### **Inflicting deliberate damage to emergency vehicles**

(a) the nature of the right

The right to liberty and security of person includes the right to not be arrested or detained except in accordance with the law. The fundamental value which the right to liberty and security expresses is freedom, which is acknowledged to be a prerequisite for equal and effective participation in society. The right is directed at all deprivations of liberty (including criminal sanctions) and will be relevant whenever a person is placed at risk of imprisonment.

Although this right seeks to protect an individual's freedom to live fully within society, it is accepted that at times infringement of an individual's liberty and security is necessary, provided the infringement is not arbitrary or unlawful.

The Bill will increase the maximum penalty where a person damages an emergency vehicle and the person knew, or ought reasonably to have known, the vehicle is an emergency vehicle. This proposal limits an offender's right to liberty and security of person as it includes a maximum penalty of 7 years imprisonment.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality, and freedom

The purpose of increasing the maximum penalty is to more appropriately reflect the seriousness of these offences and send a message to offenders and the community that this conduct is viewed seriously and is not acceptable.

The increase in maximum penalty addresses damage caused to emergency vehicles other than by ramming. For example, a person may throw objects such as rocks at an emergency vehicle, kick the windows of the vehicle or hit the vehicle with an implement such as a bat. This offence and its penalty are not arbitrary in nature and reflect the seriousness of the offence, including its impact on service delivery to the community.

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

The maximum sentence for an offence is a reflection of, and a proxy for, its seriousness.<sup>59</sup> Increasing penalties for an offence is a suitable way of showing that the offence is considered to be more serious.

Damaging emergency vehicles has a significant impact on the community by frustrating service delivery while the vehicle is unavailable for use awaiting repairs. This can impact operational capacity for emergency workers to respond to calls for service and to perform vital roles for all Queenslanders, providing ambulance, emergency, fire, policing, and protective services to the community.

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

Less restrictive alternatives include not increasing the penalty at all, or increasing to a lesser extent the maximum penalty to apply. However, as noted above, maximum sentences are a

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<sup>59</sup> *R v Sharma*, 2022 SCC 39, [106].

reflection of the intended seriousness of the offence, and it is the Government's intention that the penalty levels proposed reflect the seriousness of the offence.

There is no less restrictive alternative which would still achieve the purpose of the amendments.

(e) the balance between the importance of the purpose of the limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The increase to the maximum penalty reflects the seriousness of this type of offending and the community's denunciation of such conduct.

Accordingly, having regard to the extent of limitations on the right to liberty, it is considered that the importance of achieving the purposes of the limitations outweighs the harm caused to the right to liberty and security of person.

(f) any other relevant factors

Nil.

### **Entering or taking emergency vehicles**

(a) the nature of the right

The right to liberty and security of person includes the right to not be arrested or detained except in accordance with the law. The fundamental value which the right to liberty and security expresses is freedom, which is acknowledged to be a prerequisite for equal and effective participation in society. The right is directed at all deprivations of liberty (including criminal sanctions) and will be relevant whenever a person is placed at risk of imprisonment.

Although this right seeks to protect an individual's freedom to live fully within society, it is accepted that at times infringement of an individual's liberty and security is necessary, provided the infringement is not arbitrary or unlawful.

The Bill will insert a new circumstance of aggravation in sections 408A (Unlawful use or possession of motor vehicles, aircraft or vessels) and 427 (Unlawful entry of vehicle for committing indictable offence) of the Criminal Code where the vehicle in question is an emergency vehicle. This increases the maximum penalty and limits an offenders right to liberty and security of person. The maximum penalty is 14 years imprisonment.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality, and freedom

The purpose of this new circumstances of aggravation and increasing the maximum penalty is to more appropriately reflect the seriousness of these offences and send a message to offenders and the community that this conduct is viewed seriously and is not acceptable. It is intended to deter offenders from actively targeting emergency vehicles to commit offences.

The intention of the new circumstances of aggravation is to appropriately deal with offenders who actively target emergency vehicles to commit an indictable offence, creating serious risks to the community and reputational harm. The proposed amendment is intended to further

strengthen legislation to ensure the penalty of unlawfully entering or using an emergency vehicle reflects the significance of the offence and the risk of harm. Therefore, any limitation on an offender's human right to liberty and security of person is reasonable and demonstrably justifiable by ensuring that they are subject to appropriate punishment.

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

The maximum sentence for an offence is a reflection of, and a proxy for, its seriousness.<sup>60</sup> Increasing penalties for an offence is a suitable way of showing that the offence is considered to be more serious.

Some offenders have used police vehicles without consent to commit offences and to evade police. This behaviour creates serious risks to the community. Road users have certain obligations when seeing an emergency vehicle displaying a warning light or hearing emergency vehicle sirens. Road users would not be aware that the emergency vehicle is not being operated by an emergency worker, but rather is in the possession of an offender. There are reputational risks to the Queensland Government where marked vehicles are operated dangerously and the behaviour is incorrectly imputed to the organisation despite the vehicle being operated by an offender.

Additionally, offenders can commit certain offences as a result of unlawful entry and use of an emergency vehicle that cannot be committed in other vehicles. This is because emergency vehicles may contain restricted items that are not lawfully possessed by members of the public.

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

Less restrictive alternatives include not increasing the penalty at all, or increasing to a lesser extent the maximum penalty to apply. However, as noted above, maximum sentences are a reflection of the intended seriousness of the offence, and it is the Government's intention that the penalty levels proposed reflect the seriousness of the offence.

There is no less restrictive alternative which would still achieve the purpose of the amendments.

(e) the balance between the importance of the purpose of the limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The increase to the maximum penalty reflects the seriousness of this type of offending and the community's denunciation of such conduct.

Accordingly, having regard to the extent of limitations on the right to liberty, it is considered that the importance of achieving the purposes of the limitations outweighs the harm caused to the right to liberty and security of a person.

(f) any other relevant factors

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<sup>60</sup> *R v Sharma*, 2022 SCC 39, [106].

Nil.

## **Removal of criminal online content and advertising offences**

### **New standalone advertising offence**

The Bill will create a new offence for publishing material depicting conduct that constitutes a prescribed offence for the purpose of glorifying the conduct or increasing the person's reputation, or another person's reputation, because of their involvement in the conduct.

#### (a) the nature of the right

The right to liberty and security of person includes the right to not be arrested or detained except in accordance with the law. The fundamental value which the right to liberty and security expresses is freedom, which is acknowledged to be a prerequisite for equal and effective participation in society. The right is directed at all deprivations of liberty (including criminal sanctions) and will be relevant whenever a person is placed at risk of imprisonment.

Although this right seeks to protect an individual's freedom to live fully within society, it is accepted that at times infringement of an individual's liberty and security is necessary, provided the infringement is not arbitrary or unlawful.

The new offence will limit the right to liberty because a maximum penalty of 2 years imprisonment applies.

The right to freedom of expression protects the right of all persons to hold an opinion without interference and the right of all persons to seek, receive and express information and ideas, including verbal and non-verbal communication. This is the freedom to seek, receive and impart information and ideas of all kinds, within or outside Queensland. The forms of protected expression are broad, including oral, written, print, art or any other medium. However, while the concept of freedom of expression is very broad, how people exercise it can be limited.

The right to freedom of expression protects almost all types of expression, as long as it conveys or attempts to convey a meaning. This is judged by its impact on reasonable members of the public who are exposed to it, without knowing the purpose of the person who expressed it.

However, not all forms of expression are protected. For example, expressions which involve violence or criminal damage to someone else's property are not protected by this right, regardless of whether they convey meaning or not.

The right to freedom of expression "is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb".<sup>61</sup>

The new offence will limit the right to freedom of expression by prohibiting the expression of proscribed material.

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<sup>61</sup> *Matalas v Greece* (2021) 73 EHRR 26, 975 [38]. See also *Gachechiladze v Georgia* (2022) 74 EHRR 21, 761 [49].

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality, and freedom

The purpose of the proposed new offence is to protect victims from re-traumatisation resulting from seeing criminal offending online and prevent the spread of material online that promotes antisocial behaviour and evokes fear within members of the community.

The offence is also directed towards denouncing the advertising of the offence on social media. It is legitimate to seek to proscribe furnishing people with information about how to commit a crime and encouraging people to do so.<sup>62</sup>

The amendments in the Bill hold to account offenders who publish this material online and send a clear message that advertising offending is not tolerated in Queensland.

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

The creation of this offence will serve the purpose of denouncing the advertising of the offence on social media.

Distributing the material encourages copycat offenders and may encourage the escalation of offending where offenders compete and sensationalise the seriousness of their behaviour. This can inflame, or evoke fear within, members of the community.

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

The following alternatives were considered:

- making advertising the offence or involvement in it on social media a factor to take into account in the sentencing principles in the PS Act and the YJ Act; and
- setting the maximum penalty lower than 2 years imprisonment.

However, as the act of advertising the prescribed offences on social media encourages criminal offending, a new offence was considered the most appropriate response, having regard to a greater maximum penalty and the ability to reflect the offending on an offender's criminal history. A lower maximum penalty was considered to not achieve the purpose of reflecting the seriousness of the offence to the same extent.

Accordingly, there is no less restrictive alternative which would still achieve the purpose of the amendments.

(e) the balance between the importance of the purpose of the limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On one side of the scales, liberty and expression of ideas are important.

When it comes to the impact on freedom of expression, some ideas are more important to express than others, such as political speech or debate on matters of public interest.<sup>63</sup>

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<sup>62</sup> *Brown v Classification Review Board* (1998) 82 FCR 225, 238, 246, 258.

<sup>63</sup> *Gachechiladze v Georgia* (2022) 74 EHRR 21, 761-2 [51].

Advertising a prescribed offence, or one's involvement in it, is at the lower end of the spectrum of expression worthy of protection.

On the other side of the scales, it is important to reflect the community's denunciation of conduct which encourages the commission of offending which places the community at risk.

The publishing of these offending behaviours online can promote offending and may cause an escalation or increase in seriousness of offences which poses an increased risk to the community. Online exposure to these behaviours can be inappropriate and harmful to members of the community, particularly victims of offences who may experience re-traumatisation from seeing this material. It is important to reflect the community's denunciation of conduct which encourages the commission of offending which places the community at risk. On balance, the importance of protecting the community outweighs any limitations on human rights that may occur.

The impact on liberty and freedom of expression is outweighed by the need to denounce advertising the prescribed offences on social media.

(f) any other relevant factors

Nil.

### **Further circumstances of aggravation for advertising offending**

The Bill will create new circumstances of aggravation for various offences where the offender published material on a social media platform or online social network to advertise their involvement in the offence or the act or omission constituting the offence having occurred. This will increase the maximum penalty available for those offences.

(a) the nature of the right

The right to liberty and security of person includes the right to not be arrested or detained except in accordance with the law. The fundamental value which the right to liberty and security expresses is freedom, which is acknowledged to be a prerequisite for equal and effective participation in society. The right is directed at all deprivations of liberty (including criminal sanctions) and will be relevant whenever a person is placed at risk of imprisonment.

Although this right seeks to protect an individual's freedom to live fully within society, it is accepted that at times infringement of an individual's liberty and security is necessary, provided the infringement is not arbitrary or unlawful.

The creation of new circumstances of aggravation limits the right to liberty as the circumstance increases the maximum penalty that was otherwise available and therefore has the effect of increasing the time some people may spend in custody.

The right to freedom of expression protects the right of all persons to hold an opinion without interference and the right of all persons to seek, receive and express information and ideas, including verbal and non-verbal communication. This is the freedom to seek, receive and impart information and ideas of all kinds, within or outside Queensland. The forms of protected expression are broad, including oral, written, print, art or any other medium. However, while the concept of freedom of expression is very broad, how people exercise it can be limited.



The right to freedom of expression protects almost all types of expression, as long as it conveys or attempts to convey a meaning. This is judged by its impact on reasonable members of the public who are exposed to it, without knowing the purpose of the person who expressed it.

However, not all forms of expression are protected. For example, expressions which involve violence or criminal damage to someone else's property are not protected by this right, regardless of whether they convey meaning or not.

The right to freedom of expression "is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb".<sup>64</sup>

The new circumstances of aggravation will also limit the right to freedom of expression.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality, and freedom

The aggravated offences are directed towards denouncing the advertising of the offence on social media. It is legitimate to seek to proscribe furnishing people with information about how to commit a crime and encouraging people to do so.<sup>65</sup>

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

The creation of this offence will serve the purpose of denouncing the advertising of the offence on social media.

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

The following alternatives were considered:

- making advertising the offence or involvement in it on social media a factor to take into account in the sentencing principles in the PS Act and the YJ Act; and
- setting the maximum penalties lower than the proposed increase in imprisonment.

However, as the act of advertising the offences on social media encourages criminal offending, a new offence was considered the most appropriate response, having regard to a greater maximum penalty and the ability to reflect the offending on an offender's criminal history. A lower sentencing range was considered to not achieve the purpose of reflecting the seriousness of the offence to the same extent as a circumstance of aggravation.

Accordingly, there is no less restrictive alternative which would still achieve the purpose of the amendments.

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<sup>64</sup> *Matalas v Greece* (2021) 73 EHRR 26, 975 [38]. See also *Gachechiladze v Georgia* (2022) 74 EHRR 21, 761 [49].

<sup>65</sup> *Brown v Classification Review Board* (1998) 82 FCR 225, 238, 246, 258.

- (e) the balance between the importance of the purpose of the limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On one side of the scales, liberty and expression of ideas are important.

When it comes to the impact on freedom of expression, some ideas are more important to express than others, such as political speech or debate on matters of public interest.<sup>66</sup> Advertising one of the offences, or one's involvement in it, is at the lower end of the spectrum of expression worthy of protection.

On the other side of the scales, it is important to reflect community's denunciation of conduct which encourages the commission of offending which places the community at risk.

The impact on liberty and freedom of expression is outweighed by the need to denounce advertising the offences on social media.

- (f) any other relevant factors

Nil.

### **Removal of online criminal content**

- (a) the nature of the right

The right to freedom of expression protects the right of all persons to hold an opinion without interference and the right of all persons to seek, receive and express information and ideas, including verbal and non-verbal communication. This is the freedom to seek, receive and impart information and ideas of all kinds, within or outside Queensland. The forms of protected expression are broad, including oral, written, print, art or any other medium. However, while the concept of freedom of expression is very broad, how people exercise it can be limited.

The right to freedom of expression protects almost all types of expression, as long as it conveys or attempts to convey a meaning. This is judged by its impact on reasonable members of the public who are exposed to it, without knowing the purpose of the person who expressed it.

However, not all forms of expression are protected. For example, expressions which involve violence or criminal damage to someone else's property are not protected by this right, regardless of whether they convey meaning or not.

The right to freedom of expression "is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb".<sup>67</sup>

The right to privacy and reputation under section 25 of the HR Act protects a person's privacy and reputation and provides that a person has the right not to have the person's privacy or correspondence unlawfully and arbitrarily interfered with. Correspondence likely includes modern forms of communication, including email, social media, and text messages on mobile

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<sup>66</sup> *Gachechiladze v Georgia* (2022) 74 EHRR 21, 761-2 [51].

<sup>67</sup> *Matalas v Greece* (2021) 73 EHRR 26, 975 [38]. See also *Gachechiladze v Georgia* (2022) 74 EHRR 21, 761 [49].

phones. Any withholding, censorship, inspection, surveillance, or publication of private communications will amount to ‘interference’ with correspondence.<sup>68</sup>

The right to privacy is limited only if the interference is arbitrary. ‘Arbitrary’ means capricious, unpredictable, unjust, or unreasonable in the sense of not being proportionate to the legitimate aim sought.<sup>69</sup>

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality, and freedom

There are two primary purposes of the proposed scheme. First, the scheme aims to prevent the glorification of crime and the promotion of criminal behaviour to ultimately reduce crime in the community. Second, it aims to protect victims from re-traumatisation of public visibility of the material. These are legitimate purposes that hold significant public interest.

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

The Bill proposes that an authorised officer may give a removal notice in respect of material published on an online service if the authorised officer is satisfied that the material depicts conduct that constitutes a prescribed offence.

The authorised officer must suspect the person posted the material for the purpose of glorifying the unlawful conduct, or increasing the person’s or another person’s reputation, because of their involvement in the unlawful conduct.

The removal notice is directed at the provider of the online service rather than the individual who published the material on the service.

The introduction of the scheme will achieve the purpose of preventing the spread online of harmful material depicting criminal offending by enabling the Queensland Police Service to require its removal.

The removal of material from an online service for the above reasons achieves the purpose.

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

There are no less restrictive alternatives to achieve the purpose of the Bill.

An authorised officer, in deciding whether to give a removal notice, is required to give proper consideration to relevant human rights and make the decision in a way that is compatible with human rights.<sup>70</sup> The same requirement applies to the police commissioner in deciding whether to bring proceedings for failure to comply with a removal notice. These requirements reduce any burden on human rights the scheme may have.

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<sup>68</sup> William Schabas, *UN International Covenant on Civil and Political Rights; Nowak’s CCPR Commentary* (NP Engel, 3<sup>rd</sup> ed, 2019) 490 [55].

<sup>69</sup> *Thompson v Minogue* (2021) 294 A Crim R 216, 232 [56], [58], 269 [221], 270 [226].

<sup>70</sup> Section 58 of the HR Act.

- (e) the balance between the importance of the purpose of the limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

When it comes to the impact on freedom of expression, some ideas are more important to express than others, such as political speech or debate on matters of public interest.<sup>71</sup> Advertising a prescribed offence, or one's involvement in it, is at the lower end of the spectrum of expression worthy of protection.

The removal of such material strikes a fair balance between the human rights concerned and the legitimate purposes.

- (f) any other relevant factors

The Bill provides that an authorised officer may give a removal notice to the provider of the online service requiring the provider of the online service to remove the relevant material from the service. The court will be empowered to make a pecuniary penalty order against the online social network for contravening the civil penalty provision with the quantum of the order being at the court's discretion up to the maximum penalty.

## **Modernising document authentication and service requirements**

### **Electronic service of documents**

As the Bill introduces amendments that allow police officers to serve prescribed documents and related documents with a person's consent, it is congruent with underlying human rights principles of self-determination, autonomy and agency.

Despite this, rights that are potentially engaged by the Bill are analysed below.

#### *Recognition and equality before the law*

Section 15(2) of the HR Act protects a person's right to enjoy their other human rights without discrimination. Section 15(3) provides that every person is entitled to the equal protection of the law without discrimination. Section 15(4) provides that all people have the right to equal and effective protection against discrimination.

In the HR Act 'discrimination' is defined as including direct or indirect discrimination on the basis of one of the protected attributes in the *Anti-Discrimination Act 1991*, such as age and impairment. Because the definition of 'discrimination' in the HR Act is inclusive, it protects against discrimination on additional grounds that are analogous to those protected by the *Anti-Discrimination Act 2019*.<sup>72</sup>

Clause 85 of the Bill, which inserts section 789E to the PPRA, outlines that a police officer must not serve the prescribed document or related document by electronic communication if the police officer reasonably suspects the person is a child under 16 years or a person with impaired capacity. The limit under this clause would *prima facie* constitute discrimination against persons who have an impairment or who are under the age of 16. However, section

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<sup>71</sup> *Gachechiladze v Georgia* (2022) 74 EHRR 21, 761-2 [51].

<sup>72</sup> *Austin BMI Pty Ltd v Deputy Premier* [2023] QSC 95, [317]-[320].

15(5) of the HR Act provides that ‘measures taken for the purpose of assisting or advancing persons, or groups of persons, disadvantaged because of discrimination do not constitute discrimination.’

A person with impaired capacity means a person whose capacity to look after or manage their own interests is impaired because of either of the following—

- (a) an obvious loss or partial loss of the person’s mental functions;
- (b) an obvious disorder, illness or disease that affects a person’s thought processes, perceptions of reality, emotions or judgment, or that results in disturbed behaviour.<sup>73</sup>

(a) the nature of the right

The right to recognition and equality before the law protects a person’s right to enjoy human rights without discrimination. The Bill limits this right by not allowing police officers to serve documents on people under 16 and people with impaired capacity electronically, whereas people 16 and over and those without impaired capacity can receive service of documents in this manner.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the amendment is to ensure that children and people who do not have the capacity to look after or manage their own interests,<sup>74</sup> are not managing electronic material in relation to legal proceedings. It is a safeguard to ensure police officers are not substituting effective (ie, personal) service for efficient service where it is not appropriate to do so in the circumstances.

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

The limitation will be effective to achieve the purpose, as it ensures that children under 16 and people with impaired capacity who are subject to legal proceedings are served personally or via a lawyer.

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

There are no less restrictive ways to ensure that police officers are not serving documents on people via electronic communication, unless they reasonably believe that the person has the capacity to understand the nature of the document and the person has capacity to give consent to electronic service.

(e) the balance between the importance of the purpose of the limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

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<sup>73</sup> *Police Powers and Responsibilities Act 2000* (Qld) Sch 6 (definition of ‘person with impaired capacity’).

<sup>74</sup> *Ibid.*

On one view, the right is not limited by ‘laws which make justifiable provision for persons who lack legal competence by reason of infancy, infirmity or other similar cause’.<sup>75</sup> Another view is that the right to legal personality embodies freedom to choose how to exercise legal rights, powers and duties.<sup>76</sup> ‘Equality before the law prescribes arbitrary treatment, that is, treatment devoid of objective justification, in the application and administration of the law’.<sup>77</sup>

As the clause requires police officers to make reasonable efforts to determine a person has capacity to understand the nature of the document and the person has capacity to provide consent, the clause strikes a fair balance between ensuring efficiency with the service of prescribed and related documents from police officers, and respecting people’s individual capacities.

Any limit on the right is reasonable and demonstrably justified pursuant to section 13 of the HR Act.

### *Privacy and reputation*

The right to privacy will only be limited where the interference with privacy, family or home is unlawful or arbitrary. Because the Bill authorises any interference, any interference would be lawful. In a human rights context, arbitrary refers to conduct that is capricious, unpredictable or unjust, and also refers to interferences which are unreasonable in the sense of not being proportionate to a legitimate aim sought. If an interference is proportionate under section 13 of the HR Act, it will not be arbitrary. Accordingly, whether the interference with privacy is arbitrary will be addressed below when considering the factors in section 13.

#### (a) the nature of the right

The right to privacy protects a person’s right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with and not to have their reputation unlawfully attacked. The Bill limits this right by allowing police officers to request further personal information from people via their unique electronic mail address. What is at stake in human rights terms, is the ability of individuals to keep information about their private lives private.

#### (b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the amendment is to ensure that officers can efficiently perform their functions under the PPRA. The purpose is consistent with a free and democratic society operating under the rule of law.

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

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<sup>75</sup> *Re Lifestyle Communities Ltd [No 3]* [2009] VCAT 1869; (2009) 31 VAR 286, 343 [278] (Bell J).

<sup>76</sup> *Goddard Elliott (a firm) v Fritsch* [2012] VSC 87, [545], [553] (Bell J).

<sup>77</sup> *Re Lifestyle Communities Ltd [No 3]* [2009] VCAT 1869; (2009) 31 VAR 286, 344 [285] (Bell J). See also *She v RMIT University* [2021] VSC 2, [100], [113] (Incerti J).

The limitation will be effective to achieve the purpose, as electronic communications are ubiquitous in modern society, and they provide an efficient way to serve prescribed and related documents.

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

As the service of documents via electronic mail is voluntary and can only be achieved if a person has capacity to provide consent, other less restrictive methods of service can be utilised. This is an important safeguard in the Bill to ameliorate the impact of any limitation right to privacy.

(e) the balance between the importance of the purpose of the limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

As the amendment in relation to electronic service is with the consent of the person, the amendment strikes a fair balance between ensuring efficiency within the QPS and respecting people's right to privacy in accordance with the HR Act.

As the potential interference of privacy is lawful and not arbitrary, the right is not limited by the amendments. Accordingly, the amendment is compatible with human rights.

#### *Fair hearing and Rights in criminal proceedings*

These rights will be considered together, as when it comes to criminal proceedings, there is significant overlap between the right to a fair hearing in section 31 and the specific rights in criminal proceedings set out in section 32 of the HR Act. The right to a fair hearing is 'a key element of human rights protection and serves as a procedural means to safeguard the rule of law.' Section 31 of the HR Act goes further in requiring the executive to also play a role in ensuring a fair trial.<sup>78</sup> That may include investigating police and prosecutors,<sup>79</sup> and even the staff of a court registry.<sup>80</sup>

(a) the nature of the right

The Bill inserts section 789F to the PPRA, which outlines that prescribed and related documents served via electronic communication are taken to be served personally on the day the document was sent to the person's nominated unique electronic address. This essentially reverses the onus of proof. Section 32(2)(a) of the HR Act provides a minimum guarantee to a person charged with a criminal offence 'to be informed promptly and in detail of the nature and reason for the charge...'. This reversal of onus may be a limit to this right.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

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<sup>78</sup> *DPP (Vic) v Mokbel [No 1]* [2010] VSC 331, [162] (Whelan J).

<sup>79</sup> *Baker v DPP (Vic)* [2017] VSCA 58; (2017) 270 A Crim R 318, 331 [55] (Tate JA, Maxwell P agreeing).

<sup>80</sup> *She v RMIT University* [2021] VSC 2, [136], [149] (Incerti J).

The purpose of the amendment is to ensure that officers can efficiently perform their functions under the PPRA. The purpose is consistent with a free and democratic society operating under the rule of law.

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

The limitation will be effective to achieve the purpose, as it provides an efficient way to serve documents.

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

As the service of documents via electronic mail is voluntary and can only be achieved if a person has capacity to provide consent, other less restrictive methods of service can be utilised. This is an important safeguard in the Bill to ameliorate the impact of any limitation right to privacy. Another important safeguard within the section is the term ‘unless the contrary is proved’, which allows people to provide evidence that the document was not received on the day it was taken to be served.

- (e) the balance between the importance of the purpose of the limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Although the section engages the rights in section 31 and 32 of the HR Act, where a measure involves a voluntary impact on human rights, it might be argued that there is no limit on human rights, because the measure respects the personal autonomy of individuals, or at the least, the limit is greatly reduced. People are able to make informed choices about whether or not to receive prescribed and related documents via electronic communication. Further, people are able to raise evidence to prove that a document was not served on the day it was sent, pursuant to section 789F(2) of the PPRA.

The rights are therefore not limited by the amendments. Accordingly, the amendment is compatible with human rights.

### **Electronic signatures**

As the Bill introduces amendments that allow police officers to sign documents electronically, it is congruent with underlying human rights principles of self-determination, autonomy and agency.

Despite this, rights that are potentially engaged by the Bill are analysed below.

Section 24 of the HR Act protects a person’s right to property alone or in association with others. A person must not be arbitrarily deprived of the person’s property.

Case authority suggests ‘arbitrary’ in this context refers to conduct that is capricious, unpredictable, or unjust, and also refers to interferences which are not proportionate to a legitimate aim sought. ‘Property’ includes all real and personal property interests recognised under general law (for example, interests in land, contractual rights, money and shares) and



may include some statutory rights, especially if the right includes traditional aspects of property rights, such as to use, transfer, dispose and exclude.

Section 25 of the HR Act protects individuals against unlawful or arbitrary interferences with their privacy, family, home, or correspondence. Privacy is generally understood to comprise of freedom from unwarranted and unreasonable intrusions into activities that society recognises as falling within the sphere of individual autonomy. The concept of lawfulness in the context of the right to privacy means that no interference can take place except in cases envisaged by the law, while the concept of arbitrariness extends to interferences that may be lawful but that are capricious, unpredictable, unreasonable, and disproportionate. It protects privacy in the sense of personal information, data collection and correspondence.

The Bill allows police officers to electronically affix a signature to documents.

The Bill does not prescribe a certain type of technology that must be used in applying an electronic signature or a particular way that an electronic signature must be applied. Rather, the Bill provides that the electronic signature must use a ‘method approved under section 789M’ of the PPRA which is approved by the Commissioner of Police, identifies the signatory and is ‘reliable as appropriate for the purpose for which the document is signed’.

Electronic signatures can cover everything from a scanned physical signature added to documents, typed signatures, clicking “I accept” on a website, replying to an email, to digital signatures and Public Key Infrastructure (which are the technical and administrative requirements for managing encryption). All are intended to link an identifiable person to information held in electronic form. The various technological approaches have differing degrees of trustworthiness of the information and the identity of the person signing the information. However, an electronic signature does not have to be unique to the person who is using it.

Documents with an electronic component, such as the application of an electronic signature, may increase the risk of fraud. For example, a person’s electronic signature could be taken and used without their consent. In addition, given the broad meaning of ‘electronic signature’, a person could fraudulently sign a document on behalf of a person without their authority. As the Bill does not prescribe acceptable methods of electronic signature, there is greater potential for electronic signatures to be used improperly.

The creation, storage and transmission of electronic documents also brings new security issues. Documents created and stored electronically may be more susceptible to data breaches or cyber-attack. There is an increased risk that the use of technology to make and execute documents will mean personal information (such as names, addresses and other private details) is more susceptible to data breaches and/or cyber security issues (when compared to traditional physical documents). In many cases, the servers for platforms for making, transmitting and storing documents are located offshore, further heightening risks. Documents signed by the signatory and then transmitted electronically or by post to the witness for signature may be more vulnerable to interception by a third party.

For these reasons, the Bill limits the right to privacy and reputation (section 25 of the HR Act) and property rights (section 24 of the HR Act) (if the interception or breach resulted in fraud).

(a) the nature of the right

The protection of property rights in section 24 of the HR Act encompasses ‘free use, enjoyment and disposal of all [one’s] acquisitions’.<sup>81</sup> It protects the right of all persons to own property (alone or with others) and protects individuals from the arbitrary deprivation of their property, including real property, shares, etc. In a human rights context, ‘arbitrary’ means capricious, unpredictable, unjust or unreasonable in the sense of not being proportionate to a legitimate aim sought.<sup>82</sup>

The right to privacy in section 25(a) of the HR Act protects a person from having their privacy arbitrarily interfered with. The purpose of this is ‘to protect and enhance the liberty of the person – the existence, autonomy, security and well-being or every individual in their own private sphere’.<sup>83</sup> In the context of the Bill, the right protects against arbitrary interference with a person’s private information as well as protecting their correspondence and communications with others.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the modernisation of document authentication is to align with contemporary business practice and improve efficiencies. The Bill embraces modern technology to provide new and alternative pathways for document signing, in addition to the ordinary physical approach, which will allow police officers to choose their preferred method of document signing. The amendments will make it easier for police officers to make and sign documents without the need to be physically present or to create a physical document. The amendments to enable electronic signatures by police officers will increase efficiencies and relieve police officers of administrative burden.

There is a balancing act between the importance of ensuring that individuals are not made susceptible to fraud and, similarly, do not have their privacy interfered with. On the other side of the scales, however, is the importance of ensuring that document production reflects contemporary practice and the increased use of technology, and that efficiencies are gained for police officers that can redirect resources to the front line. The limitation is a proportionate response consistent with a free and democratic society operating under the rule of law.

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

In order to modernise the signing of documents, the Bill modifies physical paper requirements by allowing documents to be signed electronically by police officers. The limitation on property rights and the right to privacy helps achieves the purpose of the electronic signatures amendment by providing police officers with an additional optional way to sign a document.

The use of technology to sign documents will modernise the creation of documents in line with contemporary practice. It will do this by ensuring that the technology for electronic signatures is available as an option for use if an electronic signature is deemed appropriate and suitable to the person making the relevant document. In modern society, technology is commonly and

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<sup>81</sup> *PJB v Melbourne Health* (2011) 39 VR 373.

<sup>82</sup> Explanatory notes, Human Rights Bill 2018 (Qld); *PJB v Melbourne Health* (2011) 39 VR 373.

<sup>83</sup> *Director of Housing v Sudi* (2010) 33 VAR 139.

routinely used by individuals to express their wishes or enter into agreements, as well as by businesses and government to undertake their functions. Enabling certain documents to be made, signed and witnessed electronically is in keeping with contemporary uses of technology.

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

To overcome the need for police officers to physically sign documents, there are no less restrictive reasonable alternatives. Maintaining the status quo of hard copy, wet ink signatures does not align with contemporary practice and the prevalent use of technology in society, and will not achieve the same efficiencies.

The Bill includes a number of procedural requirements and safeguards to manage the risks of fraud and improper use of electronic signatures, and in turn ameliorate the impact on human rights. For example, to safeguard against fraudulent use of electronic signatures, it is proposed that the method or system used for applying an electronic signature must require user validation. This aligns with the accepted methods under section 13A of the *Oaths Act 1867*.

Importantly, the Bill does not remove a police officer's ability to sign documents in person if that is preferable or if the required technology is not available. The Bill simply provides additional measures for signing documents, while maintaining the ability to sign documents in person.

While the Bill does not prescribe the methods to be used for electronic signatures, the Commissioner of Police may approve methods for electronic signature to set standards to protect against fraud and improper use of improper signatures. The reason for not prescribing methods in legislation are to maintain maximum flexibility for the future because:

- technology in this area is developing at a fast pace and prescribing certain methods in the Bill would risk being quickly outdated or obsolete; and
- it would be desirable for Queensland to aim for as much consistency as possible with other jurisdictions.

(e) the balance between the importance of the purpose of the limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On one side of the scales is the importance of ensuring that individuals are not made susceptible to fraud and, similarly, do not have their privacy interfered with. On the other side of the scales, however, is the importance of ensuring that document production is kept with contemporary practice and the increased use of technology.

To the extent the Bill impacts on property rights and the right to privacy and reputation, it is considered that facilitating the use of electronic signatures by police strikes an appropriate balance. Because the impact on property rights and the right to privacy is not disproportionate, the impact is also not arbitrary. Therefore, it follows that, to the extent that these human rights are limited by the Bill, the limitations are nonetheless reasonable and demonstrably justified.

(f) any other relevant factors

Not applicable.

## **Serving DFV documents on prisoners in custody**

### *Right to privacy*

The scope of the right to privacy is very broad. It protects privacy in the sense of personal information, data collection and correspondence, but also extends to an individual's private life more generally. Under this human right, a person has the right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with.

Under the new framework introduced in the Bill, the personal information of prisoners is shared between Queensland Police Service and QCS in order to facilitate the service of DFV documents. As such, the amendments engage the right to privacy. It is however noted that QCS is already made aware of relevant DFV information about prisoners in relation to case management, therefore the extent of any interference would be minimal.

The right to privacy is only limited if the interference is unlawful or arbitrary. The Bill ensures the lawfulness of the interference with privacy. The notion of arbitrary interference extends to those interferences which may be lawful, but are unreasonable, unnecessary and disproportionate to the aim sought.

Because questions of proportionality arise when considering justification of limits on human rights under section 13 of the HR Act, it is convenient to consider these questions below before making a determination as to whether any limitation on the right to privacy will be arbitrary.

### *Right to fair hearing*

The right to fair hearing affirms the right of all individuals to procedural fairness when coming before a court or tribunal. The concept of a fair hearing is concerned with procedural fairness, it applies to both criminal and civil proceedings. The underlying value of the right is said to be in relation to defining the relationship between the individual and the State and protecting people against aggressive behaviour of those in authority, both of which reflect the philosophy that the State must prove its case without recourse to the suspect.

Case law suggests that one of the essential requirements for a fair hearing is the principle of 'equality of arms,' meaning that each party must be given a reasonable opportunity to present its case. This will ordinarily involve being informed of the case to be advanced by the opposing party and having an opportunity to respond. For DFV matters, service of the relevant documents on a respondent is a key aspect of procedural fairness.

The amendment limits the right to a fair hearing by providing for an alternative method of personal service for prisoners to be served with relevant DFV documents, and for that service to be established via an evidentiary certificate. This differs from the requirements for people in the community to be personally served and for that service to be established via a sworn police statement, only to the extent that the certificate is signed by QCS.

#### (a) the nature of the right

The right to privacy protects individuals from arbitrary interference with their privacy, family, home or correspondence, particularly with respect to the inherent dignity of the human person.

The underlying value of the right to a fair hearing is said to be in relation to defining the relationship between the individual and the state and protecting people against aggressive behaviour of those in authority, both of which reflect the philosophy that the state must prove its case without recourse to the suspect.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitations presented by the amendment is to ensure the timely progression of DFV matters. This in turn promotes the right to fair hearing by increasing the time a respondent has to prepare their matter having received the relevant documents.

Enabling corrective services officers to serve documents on prisoners will also ensure that DFV documents are served on respondent prisoners in a timelier manner, thereby protecting the individuals involved from harm and promoting the right to security (section 29(1) of the HR Act).

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

The nature of the correctional environment means that access to prisoners from outside a facility is heavily regulated to ensure safety and security. For police attempting to serve documents personally on prisoners, there can be barriers to access that can delay service. For example, as a result of a centre lockdown or other event, planned service may be unexpectedly interrupted. This can delay document service and finalisation of DFV matters. By enabling corrective services officers to personally serve DFV documents, and provide clear evidence that service took place, this delay will be reduced.

Further, unlike in the community, the identity and location of a prisoner in the custody of QCS is a matter that is easily verifiable by QCS through the provision of a certificate that, unless proven otherwise, is evidence of the facts that a particular prisoner was served on a particular date. This streamlined process further assists to ensure timeliness in the processes.

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

There is no less restrictive, but equally effective, way to achieve the purposes of ensuring the timely progression of DFV matters and promoting the safety of those involved.

The existing alternative for police to personally serve prisoners in accordance with the service requirements for persons in the community is presently causing delays, so would not be as effective at achieving the purpose.

A number of safeguards have also been built into the Bill to ensure that the limits on human rights are the least necessary to achieve the purpose of ensuring the timely progression of DFV matters and promoting the safety of those involved. These safeguards include:

- a prerequisite for an arrangement between agencies to be in place prior to service commencing;
  - the ability for the evidentiary certificate to be rebutted by the prisoner that was served;
  - the retention of the ability for police to personally serve the prisoner in accordance with existing law and practice;
  - it is an offence under section 341 of the CSA for an informed person to share confidential information without authorisation; and
- QCS will continue to be required to comply with other legislation when performing this service including the HR Act and the *Information Privacy Act 2009*.

(e) the balance between the importance of the purpose of the limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On one side of the scales the amendments provide for the sharing of personal information from the Queensland Police Service to QCS and for a streamlined personal service process for DFV documents on prisoners while in the custody of QCS. Although the extent to which these amendments limit the right to privacy and right to fair hearing is narrow, it is important that such limitations are sufficiently justified.

On the other side, the amendments seek to support the timely progression of DFV matters which aim to protect the safety of individuals involved. The process is consistent with the process for personal service by police, subject to a streamlined requirement for proof of service. This streamlined approach is appropriate while a person is in custody as their identity and location are easily verifiable. There are also sufficient safeguards in place to mitigate the impacts on human rights, including an ability for a respondent to provide evidence against the certificate.

For these reasons, the impact on a person's privacy enabled by the amendment is not considered to be arbitrary, and so it is not considered to limit human rights. However, even if it was considered to limit the human right, the limitations on the right to privacy, and other limitations on the right to fair hearing are considered justified for the above reasons. As such, the amendments are considered to be compatible with human rights.

(f) any other relevant factors

Not applicable.

### **Transport amendments**

#### **Amendments to the Summary Offences Act 2005**

The offence of hooning in section 19C of the Summary Offences Act was introduced in 2023 to target the encouragement, spectating and promotion of hooning activities. As the Bill clarifies the application of the existing offence to spectators, rather than expanding the offence, it is congruent with underlying human rights principles of self-determination, autonomy and agency. These amendments are not intended to change the underlying policy, but merely to remove any subjectivity or ambiguity in the application of the offence.

Despite this, rights that are potentially engaged by the Bill are analysed below.

(a) the nature of the right

*Freedom of movement*

The right to freedom of movement protects a person's right to move freely within Queensland, enter and leave it, and choose where to live if they are lawfully within Queensland. This right may be limited for any person who wishes to congregate in an area where hooning occurs.

*Freedom of expression*

The right to freedom of expression protects the right of all persons to hold an opinion without interference and the right of all persons to seek, receive and express information and ideas, including verbal and non-verbal communication. This is the freedom to seek, receive and impart information and ideas of all kinds, within or outside Queensland. The forms of protected expression are broad, including oral, written, print, art or any other medium. However, while the concept of freedom of expression is very broad, how people exercise it can be limited. This right may be limited if a person photographs, films or publishes a hooning event occurring or promotes a hooning event taking place.

*Peaceful assembly and freedom of association*

Every person has the right to freedom of association with others, including the right to form and join trade unions. The right to peaceful assembly and freedom of association can be limited where it is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom. This right may be limited if a person wishes to attend a hooning event with others.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Hooning activity is inherently dangerous driving behaviour. It places the participants and road users at significant risk. Reports about hooning activity indicate that acts of hooning remain prevalent.

The purpose of the amendment is to protect the community from dangerous activities by clarifying the application of the offence to capture participants, drivers and spectators who:

- willingly participate in the photographing, filming or publishing of a photograph or film of a motor vehicle being used to commit a hooning related offence or to organise or promote the participation of persons in a hooning related offence; or
- participate in any group activity involving a vehicle used to commit a hooning offence; or
- persons who encourage others to commit hooning offences.

Any limitation of a person's human right to freedom of movement, freedom of expression or freedom of association is directly related to the purpose of the amendments.

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

The Bill affects the participants and the individuals responsible for operating vehicles in an anti-social manner. The mass gatherings at night attract hooners at industrial estates, shopping centre car parks, and other public car parks, making it unsafe for the community. At these locations, individuals commit hooning offences encouraged by spectators. Organised groups record and promote this offending behaviour by uploading these recordings and images on social media.

The offence will not capture a person who films a hooning activity to make a complaint to the police or who films/photographs as part of a lawful event, for example, drag racing events that are held at a raceway. However, the offence will apply to persons who photograph or film a hooning event to organise or promote persons' participation in any such group activity.

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

There is no less restrictive and reasonably available way to achieve the purposes of the amendment that has been identified.

(e) the balance between the importance of the purpose of the limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

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.

(f) any other relevant factors

Not applicable.

### **Amendments to the Transport Operations (Road Use Management) Act 1994**

As the Bill introduces amendments to the TORUM Act that increase penalties for drivers involved in the commission of drink driving offences, the following human rights are potentially engaged by the Bill.

(a) the nature of the right

#### *Recognition and equality before the law*

Section 15 (Recognition and equality before the law) of the HR Act reflects that every person holds the same human rights by virtue of being a human and not because of some particular characteristic or membership of a particular social group. This right encompasses the right to recognition as a person before the law and the right to enjoy human rights without discrimination.



This right may be limited to the extent that the Bill allows an offence to be dealt with as an infringement notice offence. It further provides for an administrative disqualification for those people issued with a low range drink driving infringement notice and increases the minimum disqualification period for the same offence when the matter is dealt with by a court. The requirement to pay a fine and serve a licence disqualification may adversely and disproportionately impact persons of lower socio-economic status. The impact of fines and licence loss on individuals from low socio-economic backgrounds and living in regional and remote areas can be particularly severe, exacerbating existing inequalities. They may perpetuate cycles of poverty and marginalisation due to their limited financial resources, access to alternative transport options and social support networks. These persons may have more difficulty paying a monetary sum and individuals who rely on driving for their livelihood may face financial hardship or social stigma because of losing their licence, exacerbating existing inequalities. However, restricted licence provisions are in place to support cases where a person needs a driver licence to earn a living and the licence disqualification would cause the person or their family extreme hardship. Eligible drink drivers may elect to go to court and apply for a restricted licence.

### *Property rights*

Section 24 (Property rights) of the HR Act protects the right of all persons to own property and provides that people have a right not to be arbitrarily deprived of their property.

The Bill may limit property rights to the extent that it prescribes an offence as an infringement notice offence. The failure to pay an infringement notice fine may result in enforcement action including, for example, vehicle immobilisation or seizure and sale of property (for example, a vehicle owned by the individual), as provided for under the *State Penalties Enforcement Act 1999* (SPE Act).

### *Right to liberty and security of person*

Section 29 (Right to liberty and security of person) of the HR Act provides a person with certain protections relating to liberty and security, ensuring a person is not subject to arbitrary arrest or detention and not deprived of their liberty other than on grounds and in accordance with procedures established by law.

The Bill may limit the right to liberty and security to the extent that it prescribes financial penalties that may be enforced under the SPE Act. The registrar of the State Penalties Enforcement Registry may issue an arrest and imprisonment warrant to a person for failing to pay an amount stated in an enforcement order after the person fails to pay a financial penalty. Importantly, however, the State Penalties Enforcement Registry Charter, provided for under section 9 of the SPE Act, preferences the use of other enforcement actions for unpaid fines over arrest and imprisonment to reduce the use of imprisonment for fine default.

### *Fair hearing and rights in criminal proceedings*

Section 31 (Fair Hearing) of the HR Act provides that a person has the right to have a criminal charge, or a civil proceeding decided by a competent, independent, and impartial court or tribunal after a fair and public hearing. Section 32 (Rights in criminal proceedings) of the HR Act provides the right to be presumed innocent until proven guilty according to law, as well as rights to certain minimum guarantees, including the right of accused persons to be informed of

the nature and reason for a charge and to defend themselves personally or through legal assistance.

The Bill may limit the right to a fair hearing and rights in criminal proceedings to the extent that it prescribes an offence as a penalty infringement notice offence. This may arise because a person does not have to attend court in relation to a penalty infringement notice offence. However, they will have the option to elect to have their matter heard in court if they wish.

(a) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of prescribing an offence against sections 79(a) or (b) of the TORUM Act as a penalty infringement notice offence is to enhance police efficiency by:

- ensuring an efficient means of enforcing this offence; and
- reducing the administrative burden on frontline officers of preparing briefs for largely objective matters; and
- avoiding the costs and inconvenience to both the individual and the State associated with consideration before a court in relation to offences that are objective in nature.

This is a proportionate response consistent with a free and democratic society based on human dignity, equality and freedom.

The purpose of creating the administrative disqualification and increasing the minimum disqualification is to enhance police efficiency without there being a negative impact on road safety by:

- ensuring there is no benefit for a person to elect for the matter to be heard by a court in the hope of getting a lesser disqualification period; and
- ensuring an efficient means of enforcing the offence without there being an impact on other processes that flow from being convicted of a drink driving offence such as interlock and education requirements.

This is a proportionate response consistent with a free and democratic society based on human dignity, equality and freedom.

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

The Bill allows an offence against section 79(a) or (b) of the TORUM Act to be dealt with as a penalty infringement notice offence. It further provides for a two-month administrative disqualification period for those people issued with a low range drink driving penalty infringement notice, and also increases the minimum disqualification period, to two months, for the same offence when the matter is dealt with by a court.

There is a direct relationship between the penalty infringement notice offence provision, its financial penalty, the administrative disqualification period, and the purpose of improving road safety while reducing the burden on policing resources. A fine and a mandatory disqualification sends a strong deterrent message to encourage compliance with drink driving laws. By restricting those eligible to be issued with a penalty infringement notice to the lowest risk category, the Bill ensures that road safety will not be negatively impacted.

Further, the New South Wales Bureau of Crime Statistics and Research published a report in January 2024 that found the introduction of penalty notices significantly reduced the number of court appearances for first time low, special and novice range drink driving offences. It also found that the percentage of offenders who received a court dismissal or conditional discharge for these offences decreased.

Finally, there is a direct relationship between the prescription of a penalty infringement notice fine for this offence and the purpose of providing an efficient means of enforcing this offence and avoiding court costs. This is because the penalty infringement notice fine system allows enforcement through the issue of a fine by an authorised officer which the alleged offender can pay while avoiding a court process. This system also encourages individuals to comply with drink driving laws which will assist in achieving the desired safety and efficiency outcomes.

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

There is no less restrictive and reasonably available way to achieve the purposes of increasing police efficiency while also enhancing the safety of Queensland roads through promoting compliance with drink driving laws, other than allowing a penalty infringement notice to be issued to those persons who fall into a lower risk category and imposing penalties and mandatory disqualification periods for those persons who fail to comply with the law.

If these offences were not penalty infringement notice offences, they would need to proceed to court where additional costs may be payable by the alleged offender. Penalty infringement notice offences also provide several other benefits, including that the person does not have to attend court with or without legal representation, as well as giving them certainty about their legal position.

Importantly, there are several protections built into the fine enforcement system under the SPE Act which ensure that the seizure and sale of property or vehicle immobilisation because of non-payment of a penalty infringement notice fine would only occur infrequently. In terms of seizure and sale, the State Penalties Enforcement Registry only undertakes this activity where it has registered an interest over the property to be seized. The SPE Act sets out the minimum amount that must be owed by a debtor before the State Penalties Enforcement Registry can register an interest over property, or before vehicle immobilisation can occur.

Other protections include that:

- A person who believes a fine should not have been issued may elect to have the matter heard by a court instead of paying the fine.
- If a fine is not paid within the specified timeframe and the penalty infringement notice fine is registered with the State Penalties Enforcement Registry for enforcement action, the person may apply to pay their debt by instalments.
- Individuals who are experiencing hardship can apply to resolve their debt under a work and development order (which can include undertaking relevant courses, attending counselling and treatment programs or completing work with an approved hardship partner).

All persons, including those of low socio-economic status, who may have lesser financial capacity to pay a penalty infringement notice fine, can avoid the impact of any penalty infringement notice fine by complying with the requirements of the TORUM Act.

In addition, a person can elect to have their matter considered by the court, where they can also apply for a restricted licence if they need a driver licence to earn a living, and the licence disqualification would cause the person or their family extreme hardship. If the person is eligible, the court may grant the application, allowing the person to be issued with a restricted licence.

Where a person is found guilty of an offence by a court, the court can take into account multiple factors when handing down the penalty, including the person's socio-economic status.

(d) the balance between the importance of the purpose of the limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

In order to increase police efficiency while also protecting the community from dangerous behaviour on our roads, it is important that people are held accountable when non-compliance occurs.

Allowing for the issuing of a penalty infringement notice for the offence of low range drink driving to those offenders who are considered lower risk and implementing an administrative disqualification provides several benefits to alleged offenders who decide not to contest the penalty infringement notice fine. These benefits include not having to attend court with or without legal representation, as well as giving them certainty about their legal position. Without that option, all persons charged with this offence would be forced to expend the time, effort and stress involved in court proceedings. If found guilty, they would also be required to pay the costs associated with the offender levy and the issuing of the complaint and summons. In addition, allowing penalty infringement notice fines to be issued for non-compliance with the low range drink driving offence provides an efficient enforcement option. If this enforcement option was not available, additional police resources would be required to both complete briefs of evidence and appear in court.

The Bill does not affect the ability for individuals to elect to have their matter heard by a court. Section 15 of the SPE Act requires that all penalty infringement notice fines must indicate that the alleged offender may elect to have the matter decided by a court. This promotes awareness that persons have this option at the time they are issued with a penalty infringement notice fine, and gives the person the choice between electing to have the matter dealt with under the State Penalties Enforcement Regulation 2014 or electing to have the matter heard by a court. This enables individuals to choose the option that best suits their circumstances. For those people who attend court, the court must consider all relevant circumstances in deciding an appropriate penalty. These circumstances may include the total financial burden on the person including the additional costs that arose from having the matter heard by a court.

In respect of the right to recognition and equality before the law, while the imposition of financial penalties may disproportionately impact a person from a lower socio-economic group, the importance of maintaining the punishment and deterrent effect of penalties for applicable offences outweighs the impact on the right. As outlined above, there are also certain fine payment options available under the SPE Act.

Any limit on the right is reasonable and demonstrably justified pursuant to section 13 of the HR Act.

Upon review of the other clauses within the Bill, no other rights under the HR Act have been engaged, and therefore have not been analysed for the purposes of this Statement.

### **Amendments to the Youth Justice Act 1992**

#### **Electronic Monitoring (EM)**

The *Youth Justice and Other Legislation Amendment Act 2021* amended the YJ Act by inserting a new section 52AA to allow a court, in certain circumstances, to impose on a grant of bail to a child a condition that the child must wear an EM device. The criteria were designed to target serious repeat offenders. Two of the criteria are that the child is seeking bail on a charge of a prescribed indictable offence, and that the child has been previously found guilty of at least one indictable offence. Section 52AA was introduced to facilitate a trial, and included a two year sunset clause (subsequently extended by a further two years, to 30 April 2025).

The EM trial is intended to assess the advantages and disadvantages of EM, and draw overall conclusions as to its effectiveness at reducing recidivism of children on bail. A number of jurisdictions use EM for children, but the evidence of its effectiveness is equivocal. The current sample size for the Queensland trial is too small to support reliable conclusions, and it is not projected to increase sufficiently in the near future under existing trial conditions.

The Bill makes changes to increase the number of participants in the EM trial by:

- expanding the list of prescribed indictable offences under s52AA to include specified offences involving violence or threats of violence. The nature of these offences is intended to maintain the intended serious repeat offender target cohort for the trial.
- expanding the criteria for electronic monitoring to include children who have been charged with a prescribed indictable offence in the preceding 12 months. This expansion is intended to capture children who become serious repeat offenders very quickly, before even being found guilty of an indictable offence. These children are currently excluded by the requirement for the child to have been previously found guilty of an indictable offence. DYJ data indicate that in calendar year 2023, 27 per cent of children who became a serious repeat offender (according to the DYJ Serious Repeat Offender Index (SROI)) for the first time had not yet been found guilty of an indictable offence. This occurs where a child engages in prolific offending in a short space of time while proceedings are still on foot for even the earliest offences.

It is acknowledged that facilitating EM expansion would limit human rights, as identified in the Statements of Compatibility for the Youth Justice and Other Legislation Amendment Bill 2021 and the Strengthening Community Safety Bill 2023.

#### **Transfers of detainees aged over 18 to adult custody**

Arrangements for the transfer of 18-year-old detainees from youth detention centres to adult custody were amended in 2023. The prerequisite that a remandee have two clear months without a court date at the time a prisoner transfer notice is issued was intended to protect against transfers taking place only a short time before matters are finalised (and the remandee possibly released). However, the prerequisite has significantly limited eligibility for transfer when often it is known, or can be ascertained, that the scheduled court matters (for example a simple mention) are highly unlikely to result in the person's release.

Modified arrangements for the transfer of remanded detainees over 18 years of age resolve an unanticipated ineligibility issue that has materialised since the recent amendments, and to achieve the outcomes intended by the introduction of the provisions in the *Strengthening Community Safety Act 2023* in a more efficient way. The proposed new model:

- makes transfer within the month after turning 18 mandatory, unless the chief executive decides there are exceptional circumstances;
- retains current criteria for chief executive decisions, but replaces the requirement that keeping the detainee in detention would be ‘in the interests of justice’ with a requirement that there be ‘exceptional circumstances’;
- retains the requirement that the chief executive ensure the detainee has access to legal advice, and to consider any submission made by the detainee within five business days of the legal advice; and
- retains review of the chief executive’s final decision by a Childrens Court judge.

For consistency, the Bill also introduces a chief executive discretion not to transfer a sentenced detainee who has turned 18, using the same decision-making criteria.

The effect of the proposed changes is to create a presumption of prompt transfer, with any undesirable outcomes (such as transfer only a short time before release, or of a highly vulnerable young person) managed by chief executive discretion, with judicial oversight. Practically, this would mean that those who have court dates scheduled within two months would be in scope for transfer, but the chief executive (with judicial oversight) may take into account the likelihood of imminent release when deciding whether or not to transfer. It would also mean that sentenced detainees would transfer earlier than under current arrangements, with the chief executive retaining discretion and judicial oversight. The process for transfer would be ‘triggered’ at 17 years and 10 months, to allow time for the reviews that can occur.

#### Recording of detainee phone calls

Detainees in YDCs can make personal telephone calls for a minimum amount of 120 minutes per week to family and friends from an approved phone list and unlimited telephone calls to professional support officers, such as lawyers, Office of Public Guardian, and Child Safety. The YJ Act prohibits the recording of the detainee’s telephone conversations but allows the calls to be monitored and terminated in certain circumstances. Intelligence officers in YDCs have identified circumstances where offences are being committed or the good order and safety of YDCs are being compromised. Examples include breaches of domestic violence orders; intimidating witnesses; communicating with associates in other units in the centre or even in other detention centres, risking the good order and safety of detention centres; and being on telephone calls with associates while they are committing offences. This can happen when the recipient of a phone call forwards the call, or facilitates a conference call. Only some of these examples meet the threshold for staff to monitor the call, and there is still no ability to record at all, meaning there is limited opportunity to take action.

The Bill retains the general prohibition on recording, other than as prescribed by regulation. It is proposed to undertake work in the near future to develop a framework permitting the recording of detainees’ phone calls in certain circumstances, with appropriate thresholds and safeguards. A head of power for this is required in the YJ Act.

This may limit the rights of the detainee but also the person that is receiving the call from the detainee, such as the right to privacy, the protection of families and children, and cultural rights.

(a) The nature of the right

*Electronic Monitoring (EM)*

The right to liberty and security of person (HR Act, s29(1)) protects the personal physical liberty of all persons, including the right not to be arrested or detained except in accordance with the law. The fundamental value which the right to liberty expresses is freedom, which is acknowledged to be a prerequisite for equal and effective participation in society. The right is directed at all deprivations of liberty including, but not limited to, imprisonment in correctional facilities or detention in hospitals. It may also include where persons are deprived of liberty through supervision, protection, treatment, guardianship or similar orders made under various legislative schemes.

The protection of families and children (HR Act, s26) recognises that families are the fundamental group unit of society and entitles families to protection by the society and the State. The meaning of families is broad and recognises that families take many forms and accommodates the various social and cultural groups in Queensland whose understanding of family may differ. Cultural, religious and other traditions will be relevant when considering whether a group of persons constitute a ‘family’.

The right also protects the right of every child, without discrimination, to the protection that is needed by the child and is in the child’s best interests. This recognises the special vulnerability of children, and it is a right that is only held by children. The right requires the State to ensure the survival and development of every child to the maximum extent possible. ‘The concept of the child’s best interests is aimed at ensuring both the full and effective enjoyment of all the [child’s human rights] and the holistic development of the child.’<sup>84</sup> The content of this right is informed by the *Convention on the Rights of the Child*, in which article 37(b) provides that, ‘the arrest, detention or imprisonment of a child ... shall be used only as a measure of last resort and for the shortest appropriate period of time’.<sup>85</sup>

The right to privacy (HR Act, s25(a)) protects individuals from unlawful or arbitrary interference with their privacy, family, home and correspondence. The protection extends to physical and mental integrity, including appearance, clothing, gender, sexuality and the home.

The right of indigenous peoples to enjoy kinship ties (HR Act, s28(2)(c)) recognises the significance of family and community in Aboriginal and Torres Strait Islander culture. For a First Nations child, their kinship network will become one of the two key ways in which their identity is constructed (the other being connection to country).

The right to freedom of movement (HR Act, s19) protects the individual’s right to move freely within Queensland and their right to live wherever they wish.

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<sup>84</sup> Committee on the Rights of the Child, *General Comment No 19 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art 3, para 1)*, UN Doc CRC/C/GC/14 (29 May 2013) 2.

<sup>85</sup> *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

The right to freedom of association (HR Act, s20) protects individuals who wish to associate with others for whatever purpose and whatever reason, and this freedom applies to social, cultural and familial contexts.

#### *Transfers of detainees aged over 18 to adult custody*

The amendments may impact on the rights of 18 year olds to humane treatment when deprived of liberty – for example, lesser access to the services, programs and interventions in adult custody than in a YDC, or 18 year olds whose particular needs may be better addressed in a youth detention setting but who do not meet the ‘exceptional circumstances’ threshold. The right to humane treatment when deprived of liberty (HR Act, s 30) requires that all detained persons must be treated with humanity and respect for the inherent dignity of the human person, recognising the particular vulnerability of all persons deprived of their liberty. Individuals who are detained should not be subject to any hardship or constraint that is in addition to that resulting from the deprivation of their liberty (that is, a person who is detained should retain all their human rights subject only to the restrictions that are unavoidable in a closed environment).

The right is informed by a number of United Nations (UN) standards, including the UN Standard Minimum Rules for the Treatment of Prisoners which covers matters such as accommodation conditions, adequate food, personal hygiene, clothing and bedding standards, exercise, medical services, and disciplinary procedures. Under the ICCPR, the application of the right to humane treatment when deprived of liberty cannot depend on government resources and must be applied without discrimination.

The changes may limit this right if 18-year-old detainees are required to discontinue access to beneficial programs or therapeutic supports. There are also potential impacts on the right to education (s 36) – The right of every child to access primary and secondary education (s 36(1)), and the right of every person to have access to equally accessible further vocational education and training (s 36(2)). The proposal may limit the s 36(2) right by interrupting the 18-year-old detainee’s access to beneficial programs and services. The right to health services (s 37) – The right of every person to access health services without discrimination, and the right not to be refused emergency medical treatment. The proposal may limit this right if ongoing medical care of the 18-year-old is interrupted as a result of the transfer.

#### *Recording of detainee phone calls*

The right to privacy and reputation (section 25 of the HR Act) protects the individual from all interferences and attacks upon their privacy, family, home, correspondence (written and verbal) and reputation. The scope of the right to privacy is very broad, but at its most basic is concerned with notions of personal autonomy and dignity.

The right to privacy under the HR Act protects individuals against unlawful or arbitrary interferences with their privacy. The concept of lawfulness in the context of the right to privacy means that no interference can take place except in cases envisaged by the law. Interference authorised by States can only take place on the basis of law, which itself must comply with the HR Act.



The concept of arbitrariness in the context of the right to privacy carries a human rights meaning of capriciousness, unpredictability, injustice and unreasonableness – in the sense of not being proportionate to the legitimate aim.

The right to the protection of families and children (section 26 of the HR Act) recognises that families are the fundamental group unit of society and entitles families to protection by the society and the State. The meaning of families is broad and recognises that families take many forms and accommodates the various social and cultural groups in Queensland whose understanding of family may differ. Cultural, religious and other traditions will be relevant when considering whether a group of persons constitute a ‘family’.

The right also protects the right of every child, without discrimination, to the protection that is needed by the child and is in the child’s best interests. This recognises the special vulnerability of children, and it is a right that is only held by children. The right requires the State to ensure the survival and development of every child to the maximum extent possible.

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.

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

#### *Electronic Monitoring (EM)*

The statements of compatibility referred to above acknowledged the dearth of evidence relating to the effectiveness of EM at reducing recidivism for children on bail. The aim of the trial is to fill this evidence gap and enable conclusions as to whether EM is an effective measure to reduce reoffending by serious repeat offenders while on bail, and therefore, whether EM is a viable alternative to detention. This aim is consistent with a free and democratic society based on human dignity, equality and freedom, as it is closely linked with protecting the community from crime.

Since the EM trial commenced, the sample size has been disproportionate to the number of serious repeat offenders. A 2022 review of the EM trial identified that the current sample size is not conducive to drawing sound conclusions as to its effectiveness. This suggests the proposed expanded trial would help to achieve the purpose.

The purpose of expanding the trial is therefore to contribute to determining whether EM reduces reoffending among certain children who appear to be serious repeat offenders and whether EM is an effective alternative to detention.

The new ‘prescribed indictable offences’ involve violence or threats of violence, and are intended to increase the sample size for the trial, while retaining the focus on serious repeat offenders.

Expanding the use of EM to children who have been charged with a prescribed indictable offence in the preceding 12 months will ensure fast-onset serious repeat offenders – a significant cohort, as noted above – are not excluded from EM. This is also intended to increase

the sample size for the trial, while retaining the focus on serious repeat offenders. Charges that have been withdrawn or resulted in an acquittal are excluded.

*Transfers of detainees aged over 18 to adult custody*

The purpose of the potential limitation imposed by the Bill is to minimise the extent to which children are detained with adults by streamlining processes for the transfer of persons aged 18 years and over from youth detention centres to adult custody.

*Recording of detainee phone calls*

A regulation could, for example, provide for the recording of phone calls for the purpose of preventing serious crime. There would be a requirement that the parties to the conversation are informed of the recording at the beginning of the call. This limits the privacy of the participants but does not prevent contact with family. Preventing serious crime is a legitimate purpose.

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

*Electronic Monitoring (EM)*

While decisions to place individual children on EM are made by the courts, the limitation will increase the eligible cohort and therefore is likely to increase the sample size to help determine whether EM is an effective alternative to detention. When section 52AA was introduced in 2021, the Legal Affairs and Safety Committee (LASC) noted that the effectiveness of EM at reducing the rate of reoffending on bail is not clear, and that the evidence suggests that effectiveness may be highly dependent on other contextual considerations, including rehabilitation and support services available to the person subject to EM. The LASC stated that great care must be taken to ensure that adequate safeguards exist to protect the rights of young people who are subject to EM conditions, given the potentially inconclusive nature of the effectiveness of this particular tool at achieving the legitimate purposes described above.

*Transfers of detainees aged over 18 to adult custody*

The proposed new arrangements would directly reduce the contact children in detention have with adult detainees.

*Recording of detainee phone calls*

The limitation is essential to achieving the purpose.

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

*Electronic Monitoring (EM)*

The following alternatives were considered:

- maintaining the trial essentially in its present form;

- expanding the geographical areas to which the trial applies, but otherwise maintaining the trial in its present form;
- removing the requirement in s 52AA(1)(c) of the YJ Act that the child has previously been found guilty of at least one indictable offence and replacing it with a requirement that the child has previously been charged with an indictable offence, but otherwise maintaining the trial in its present form; or
- extending the time within which the current trial is to be completed.

The first option would mean that the sample size will remain dependent on existing conditions, and it is unlikely that the sample population would increase significantly. The expansion of prescribed indictable offences and the availability criteria could lead to an increase in the potential eligible population of serious repeat offenders and is another means to increase the cohort size. Thus, potentially providing a stronger evidence base for the suitability of this trial.

The second option is a viable possibility to improve the scope of the trial to deliver more conclusive results as it widens the sample population. It would be beneficial to combine this suggestion with the current additions as the requirements for new geographical locations are still within the parameters of the trial.

The third option would allow the trial to capture young offenders who have not yet been found guilty. However, it is doubtful that this new condition, taken in isolation, would increase the sample size for the trial.

The final option is not a viable alternative for the same reasons as the first option.

None of the above is a less restrictive way of achieving the purpose of determining whether EM is effective in reducing recidivism among serious repeat offenders while on bail, and whether it would be an effective alternative to detention.

#### *Transfers of detainees aged over 18 to adult custody*

No alternatives that are less restrictive, but still achieve the purpose to the same extent, have been identified.

#### *Recording of detainee phone calls*

There is no less restrictive way to achieve the purpose.

- (e) the balance between the importance of the purpose of the limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

#### *Electronic Monitoring (EM)*

The proposal does not impose EM on any child. The proposal expands the current trial of EM, which makes EM available as an option which may be imposed by courts.

It is incumbent upon the Parliament and the Executive to provide to the Judiciary a range of options that may be used to manage risk when considering bail. Some of these options will necessarily have greater limits on human rights than others, for use where the risks are greater.

This does not mean that options which significantly limit human rights do not represent a fair balance. It is up to the courts to ensure a fair balance in the circumstances of each case.

It is not proposed to alter the framework under which the courts consider EM, including the requirements of YJ Act s.52A(2) – including that there is a risk, that the condition is necessary to mitigate the risk, and that the condition does not involve undue management or supervision of the child.

The aim of the expanded trial is important—to determine whether EM will reduce reoffending among serious repeat offenders while on bail and therefore whether it would be an effective alternative to detention. The importance of that aim lies in its connection to two other purposes; namely, protecting the community from crime and avoiding detention for children where a suitable alternative is available. A number of existing safeguards will remain in place. The date for the end of the trial has not changed. Children under 15 will be ineligible for EM. The court will retain discretion whether to set EM as a bail condition after determining whether it is appropriate in the circumstances, including consideration of the impact on the child’s human rights. The court can only determine appropriateness after considering a suitability assessment for the child provided by the chief executive. Although the eligible cohort is being expanded, the criteria will target serious repeat offenders.

On balance, the factors considered outweigh the harm or potential harm caused to human rights.

While the use of EM limits human rights, it has benefits which may enhance human rights. For example, EM avoids the need for intrusive police curfew checks (involving entering the child’s residence at night, walking someone in the household if necessary, to see the child in the home). In some circumstances, EM keeps a child out of custody.

#### *Transfers of detainees aged over 18 to adult custody*

Impacts on the rights of 18-year-olds in YDCS need to be balanced against the right of accused children in detention to be segregated from adults (HR Act s.33(1)).

The proposed amendments will continue to allow detainees to remain in YDCs when there are exceptional circumstances, for example particular vulnerabilities or an imminent release date. They will remove the ineligibility for transfer of remandees who have court dates within the following two months, which applies even if those court dates will not lead to release. Instead, the chief executive will have a discretion not to transfer in special circumstances, and will have an obligation to ensure the detainee has access to legal advice before a decision is made, so that any relevant information can be provided to the chief executive and taken into account. A child will be able to seek a temporary delay of transfer from the chief executive, and review of the transfer decision by a Childrens Court judge will continue to be available.

#### *Recording of detainee phone calls*

A regulation could, for example, provide for the recording of phone calls for the purpose of preventing serious crime. There would be a requirement that the parties to the conversation are informed of the recording at the beginning of the call. This limits the privacy of the participants but does not prevent contact with family. Preventing serious crime is a legitimate purpose.

(f) any other relevant factors

*Electronic Monitoring (EM)*

Nil.

*Transfers of detainees aged over 18 to adult custody*

Nil.

*Recording of detainee phone calls*

Nil.

## **Conclusion**

In my opinion, the Queensland Community Safety Bill 2024 is compatible with human rights under the HR Act because it limits a human right only to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality, and freedom.

**Mark Ryan MP**

Minister for Police and Community Safety

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