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19 January 2023

Committee Secretary
Community Support and Services Committee
Parliament House
George Street
Brisbane Qld 4000

By email: cssc@parliament.qld.gov.au

Dear Secretary,

RE: SUBMISSION ON THE POLICE POWERS AND RESPONSIBILITIES (JACK'S LAW) AMENDMENT BILL 2022

Thank you for the opportunity to provide comments on the Police Powers and Responsibilities (Jack's Law) Amendment Bill 2022 (**Bill**) which proposes to extend the Gold Coast knife-wanding trial (**Trial**) for an additional two years and increase the scope of prescribed public areas for scanning to cover all 15 safe night precincts as well as public transport stations and infrastructure, and public transport vehicles in certain specified circumstances. While we appreciate that knife crime is a serious issue and measures need to be taken to preserve public safety, any proposed laws that seek to limit an individual's fundamental human rights to equality before the law, freedom of movement, privacy and reputation must, in accordance with the *Human Rights Act 2019* (Qld) (**HRA**), only be subject to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom[1]. In our view, the proposed expansion of police powers contained in the Bill goes too far and does not meet this threshold. If, notwithstanding our concerns as outlined in this submission, the Queensland government is minded to enact the Bill, we have included in this submission some recommendations for the consideration of the Committee. In providing this submission, we have reviewed the Griffith University *Review of the Queensland Police Service Wanding Trial* report (**Griffith University Report**)[2].

[1] Section 13(1), HRA.
[2] Griffith University Criminology Institute, *Report – Review of the Queensland Police Service Wanding Trial* (August 2022), < chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://documents.parliament.qld.gov.au/tp/2022/5722T1863-952D.pdf>.

Preliminary consideration: Our background to comment

The Aboriginal and Torres Strait Islander Legal Service (Qld) Limited (**ATSILS**), is a community-based public benevolent organisation, established to provide professional and culturally competent legal services for Aboriginal and Torres Strait Islander peoples across Queensland. The founding organisation was established in 1973. We now have 24 offices strategically located across the State. Our Vision is to be the leader of innovative and professional legal services. Our Mission is to deliver quality legal assistance services, community legal education, and early intervention and prevention initiatives which uphold and advance the legal and human rights of Aboriginal and Torres Strait Islander peoples.

ATSILS provides legal services to Aboriginal and Torres Strait Islander peoples throughout Queensland. Whilst our primary role is to provide criminal, civil and family law representation, we are also funded by the Commonwealth to perform a State-wide role in the key areas of Community Legal Education, and Early Intervention and Prevention initiatives (which include related law reform activities and monitoring Indigenous Australian deaths in custody). Our submission is informed by nearly five decades of legal practise at the coalface of the justice arena and we, therefore, believe we are well placed to provide meaningful comment, not from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences.

Introductory comments on the Trial and the Bill generally

Stop and search powers and human rights

There are long-established legal safeguards which are founded in the rule of law and principles of due process which limit the powers of police officers to prevent arbitrary or unreasonable searches of individuals. These safeguards exist to preserve certain fundamental human rights of the individual which are enshrined in the HRA including:

- the right to equality before the law (section 13(3), HRA);
- the right to freedom of movement (section 19, HRA);
- the right to privacy and reputation (section 25, HRA); and
- the right to protection of families and children (section 26, HRA).

Such safeguards include that:

- subject to certain specific exceptions, a police officer cannot undertake a search of an individual or their property without a search warrant; and
- a police officer may only search an individual in the absence of a search warrant if the police officer has a "reasonable suspicion" of any of the list of prescribed circumstances contained in section 30 of the *Police Powers and Responsibilities Act 2000* (Qld) (**PPRA**), including, for example, that the person has something that may be:
    - a weapon, knife or explosive;
    - an unlawful dangerous drug; or

- stolen property.

We have concerns regarding the passage of this Bill for the reasons outlined below.

A. Reasonable suspicion threshold should not be bypassed

The reasonable suspicion threshold is a fundamental tenet of criminal law and procedure which should not be dispensed with lightly. We are concerned that the proposed police powers create a framework where police could target certain individuals that are known to police for crimes unrelated to violent knife/weapon crime and search those individuals without having to meet the reasonable suspicion threshold.

In providing feedback on their experience of the Trial, ATSILS' Southport office advised that:

- there have been several instances of ATSILS' being engaged to represent individuals that were the subject of wanding by police where knives or weapons were not found on their person, however, small amounts of drugs, such as cannabis, were found and, instead of a caution being applied, subsequent drug related charges were imposed; and
- it appears that individuals that are known to police as drug users, for example, are being profiled by police as candidates for wanding as a means to search them for drugs without the need for meeting the reasonable suspicion threshold.

Relevantly, Key Finding 9 of the Griffith University Report stated:

> *Given the increased number of drug detections linked to wanding in Surfers Paradise, care needs to be taken to ensure that wanding does not lead to a by-passing of reasonable suspicion safeguards, and net-widening among minor offenders who are not carrying weapons, but nevertheless come to police attention purely because of wanding practices. The entry of larger numbers of these individuals into formal criminal justice processes could have many adverse flow-on effects.*[3]

Further to this, as revealed in the Griffith University Report, officers interviewed as part of the Griffith University review commented that wanding had increased engagement opportunities which increased the detection of other offences including detecting drugs and stolen property and that as many persons being wanded provided their names and addresses, police were able to detect individuals that might be identified as having an outstanding warrant or being wanted for questioning, for example. The Griffith University Report contained the following comments by a police officer interviewed as part of the review:

> *Once we engage with them in terms of being wanded and going through that process whether we find other offences being committed, such as possession of a dangerous drug and there's been lots of those, people wanted on warrants, people wanted for questioning about domestic violence matters – a whole range of other offences being committed which actually exceed the number of offences that we're detecting for the knives.* ***So that's been one of the real benefits, because we are able to engage with people in such a manner that you know reasonable suspicion isn't required and because we're***

[3] Note 2, page v.

engaging with them around the knives it's just a lot of offences flow off the back of that and the way we're going about that.[4]

It is imperative that any laws that seek to expand the powers of police to be able to search individuals without a warrant are proportionate and are used for the purpose for which they were created which, in this case, is for the very narrow objective of detecting and deterring the unlawful possession of knives[5]. Any net-widening could have a damaging effect and could exacerbate the overrepresentation of Aboriginal and/or Torres Strait Islander people in the criminal justice system.

B. <u>There appears to be no evidence that stop and search powers will reduce knife crime</u>

The Victorian Office of Police Integrity conducted a review of Victoria Police's use of stop and search powers which were, inter alia, used to reduce knife crime. The report (2012) that came out of this review, referred to a study into the effectiveness of "stop and search" powers in the United Kingdom which found that:

- the "relationship between incidence of knife-crime and the rates of 'stop and search' is at best unclear"[6] and that after a month, "no significant and consistent correlation between searches and crime levels"[7] was found; and
- "a review of the 'stop and search' reporting data over six months compared to crime statistics for the same period showed no relationship between increased searches and a decrease in knife-crime."[8]

Moreover, Key Finding 3 of the Griffith University Report stated in relation to the Trial that "there is no evidence as yet of any deterrent effect given that there has been an increase in detections at one site, and no change at the other"[9].

Given the lack of evidence for the effectiveness for these sorts of powers in reducing knife crime, we do not consider the expanded powers to be justified especially when considering the human rights impacts.

C. <u>Selective policing when conducting "random" searches and concerns that overrepresentation may be exacerbated</u>

We note Key Finding 7 of the Griffith University Report which found that during the Trial, wanding was "inconsistently used across different groups in the community" and that there was "some evidence of inappropriate use of stereotypes and cultural assumptions by a small number of officers in determining who to select for wanding"[10].

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[4] Note 2, page 51.
[5] Explanatory Notes to the Bill, page 1.
[6] Victorian Office of Police Integrity, *Review of Victoria Police use of 'stop and search' powers* (May 2012), page 41 < https://www.vgls.vic.gov.au/client/en_AU/search/asset/1148111/0>.
[7] Note 5, page 41.
[8] Note 5, page 41.
[9] Note 2, page iv.
[10] Note 2, page iv.

The proposed laws give police the discretion to decide who are good candidates for wanding and, accordingly, open the door for bias including the profiling of candidates on the basis of an individual's ethnicity/minority status and potentially First Nations status.

In this vein, it would have been very useful to see reliable Queensland Police Service statistics on the following matters:

- the number of Aboriginal and/or Torres Strait Islander individuals wanded compared to non-Indigenous individuals wanded during the Trial;
- of the number of Aboriginal and/or Torres Strait Islander individuals wanded, the number of incidences of wanding that resulted in a knife or other weapon being found;
- of the number of Aboriginal and/or Torres Strait Islander individuals wanded, the number of those incidences of wanding that resulted in another offence being detected, for example, drug related offences (e.g., possession of cannabis); and
- of the instances where another offence was detected, a breakdown showing:
    - the number of instances which resulted in charges being laid on the individual; and
    - the number of instances that resulted in police officers applying a caution to the individual.

However, in its review of the Trial, Griffith University found QPRIME data to be unreliable, in particular, in relation to the recording of First Nations status and commented in its report that the data needs to better reflect police interactions with Aboriginal and Torres Strait Islander peoples.[11]. With respect to the unreliability of QPRIME statistics, the Griffith University Report stated:

> *It is important to note that, as with all administrative data recorded for operational purposes, there are significant limitations with QPRIME data. The most important of these is that it is entered in the field by thousands of individual officers who have many other tasks to complete and are often time-pressured. Its quality is therefore highly variable and this is particularly so with the recording of demographic information like racial or cultural identification. There are many gaps and errors as a result…*[12].

There needs to be accurate and transparent data collection on the individuals who have been selected by police to be wanded, including their First Nations status, to ensure that the laws are applied fairly and so that selective policing is avoided.

[11] Note 2, page iv.
[12] Note 2, page 22.

Comments on the drafting of the Bill

Clause 4 – Replacement of ch 2, part 3A (Use of hand held scanners without a warrant in public places in prescribed areas)

Definition of "use"

In our view, the drafting of the definition of "use" could be clearer and suggest that the word "of" could be reinstated before the words "a hand held scanner in relation to a person" to aid in understanding the context of this definition.

Section 39C

We welcome the more rigorous authorisation process contained in proposed section 39C which appears to be in response to criticisms noted in the Griffith University Report relating to the authorisation process.

We recommend that the word "reasonably" be inserted before "considers" in proposed section 39C(2)(b).

Section 39F (Authorised use of hand held scanner without a warrant at public transport station and on board public transport vehicles)

We have the following concerns regarding the framework set out in proposed section 39F, along with its associated definitions:

- The physical footprint of the area to which a wanding authority applies is not clear, for example, what constitutes the "immediate vicinity of the bus stop" under proposed section 39B, in the 5th example, will be a matter of discretion by a police officer in exercising these powers and subsequently a matter for a court to interpret should this be challenged at a later time.
- The regime that authorises wanding on public transport stations and, more particularly, public transport vehicles is not easily understood. It would be difficult for a lay person to understand the confines of where they can and cannot be wanded and, if on a public transport vehicle, it would be even more difficult for an individual to be cognisant of when they were wanded and if that was within 1 scheduled stop of a public transport station which is the subject of a wanding authority. Accordingly, it will be crucial that information regarding wanding authorities is communicated effectively to the community so that individuals understand their rights and obligations.

Section 39H (Safeguards for exercise of powers)

In proposed section 39H(2), we recommend the words "least invasive way" be replaced with "least intrusive and invasive way". Use of a wanding device in public places can be embarrassing/humiliating for the person being wanded. It is recommended that, where practicable, wanding can be undertaken discretely so as to recognise an individual's right to privacy and reputation (section 25 of the HRA).

Section 39K (Effect of part on power to search a person without a warrant)

In our view, the drafting of this proposed provision is unnecessarily complicated. While it may be the case that a police officer exercising a power to use a hand held scanner in relation to a person without a warrant does not, in and of itself, give the police officer a prima facie right to also search that individual without a warrant, pursuant to proposed section 39G(2)(b) example 2 and section 30(1)(l), if a person does not submit to the use of a hand held scanner, a police officer does have a discrete power to search that person without a warrant. This power is not easy to find on the current drafting and, in our view, could be made clearer so that the powers and consequences for refusal may be better understood.

Other recommendations

We respectfully make the following additional recommendations in relation to the Bill:

- That the Committee considers whether a legislative obligation could be inserted into the proposed wanding regime which obligates a police officer to consider diversionary options if an individual that has been the subject of wanding has not been found to have a knife or other weapon, but for which another less serious offence has been detected (for example, if the individual is found to have a small amount of cannabis on their person, that the police officer must caution that individual rather than charge them on the basis that the drugs were detected using a method of searching for which reasonable suspicion is required under the PPRA).
- That QPS implements, if it has not already done so, policies and procedures and comprehensive training which support police officers to:
    - appropriately use the powers for the narrow legislative purpose of detecting unlawful possession of knives and not for searching a person in contexts where reasonable suspicion would ordinarily be required[13]; and
    - remove unconscious and conscious biases when applying their discretion so as to avoid selective policing.
- That, as recommended in the Griffith University Report, the current form of wording used for notifications given by police to individuals being wanded be revised and, additionally, that appropriate training be provided to police officers including, that such communication is culturally appropriate when the individual that they are approaching is an Aboriginal and/or Torres Strait Islander person.
- That the Committee considers the insertion of a legislative obligation on police officers to record additional information relating to the exercise of wanding powers, such as, the First Nations status/ethnicity/age group (e.g., youth or adult) of each person wanded so that there is a reliable set of data which can be used to audit whether certain cohorts of the community are being profiled. Further to this, we agree with the following recommendation contained in suggestion 8 of the Griffith University Report which states:

    QPS should address the unreliability of data recorded in QPRIME specifically relating to First Nations people. Given the over-representation of Aboriginal and Torres Strait Islander Peoples in the criminal

[13] See also suggestion 5 from the Griffith University Report, Note 2, page v.

justice system, and state and federal government commitments to Closing the Gap, it is crucial that QPS can accurately record and retrieve this important information.

and suggestion 5 in the Griffith University Report which states:

QPS should formalise the current audit process used by senior officers to review wanding operations. In particular, there should be random audits of a proportion of offenders who participate in wanding, specifically focussed on whether they are over-targeting any particular categories of individuals (rather than simply focusing on compliance with policy). These audits can draw on BWC and CCTV footage, but also involve analysis of both offence and street check data in QPRIME to identify any patterns suggesting bias.

CONCLUSION

We thank you for the opportunity to provide feedback on the Bill.

Yours faithfully,

Gregory M. Shadbolt
Principal Legal Officer
Acting Chief Executive Officer