Parliamentary Committees

Police Powers and Responsibilities and Other Legislation Amendment Bill 2013

Report No. 44

Legal Affairs and Community Safety Committee

November 2013

Legal Affairs and Community Safety Committee

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Abbreviations

Bill	Police Powers and Responsibilities and Other Legislation Amendment Bill 2013
Committee	Legal Affairs and Community Safety Committee
Minister	The Honourable Jack Dempsey MP, Minister for Police and Community Safety
PPRA	*Police Powers and Responsibilities Act 2000*
QAILS	Queensland Association of Independent Legal Services
QLS	Queensland Law Society
QPS	Queensland Police Service

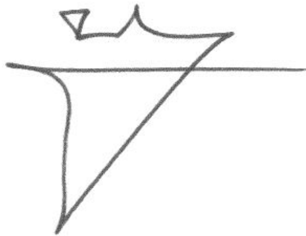
Chair's foreword

This Report presents a summary of the Legal Affairs and Community Safety Committee's (Committee) examination of the Police Powers and Responsibilities and Other Legislation Amendment Bill 2013 (Bill).

The Committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the Bill had sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

On behalf of the Committee, I thank those individuals and organisations who lodged written submissions on this Bill. I also thank the Committee's Secretariat, and the Queensland Police Service.

I commend this Report to the House.



Ian Berry MP

Chair

Recommendations

Recommendation 1 **2**

The Committee recommends the Police Powers and Responsibilities and Other Legislation Amendment Bill 2013 be passed.

Recommendation 2 **19**

The Committee recommends the Minister for Police and Community Safety give consideration to including the further list of examples suggested by the Queensland Law Society in section 53BH(3) of the Bill to improve the clarity of how the 'reasonable steps' defence is intended to operate.

Recommendation 3 **28**

The Committee recommends the Minister for Police and Community Safety conduct a review of the operation and use of the new Part 7 Out-of-control events and report to Parliament within two years of commencement.

Recommendation 4 **29**

The Committee recommends clause 39 be omitted from the Bill.

1. Introduction

1.1 Role of the Committee

The Legal Affairs and Community Safety Committee (Committee) is a portfolio committee of the Legislative Assembly which commenced on 18 May 2013 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.[1]

The Committee's primary areas of responsibility include:

- Department of Justice and Attorney-General;
- Queensland Police Service; and
- Department of Community Safety.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation;
- the application of fundamental legislative principles; and
- for subordinate legislation – its lawfulness.

The Police Powers and Responsibilities and Other Legislation Amendment Bill 2013 (Bill) was introduced into the House and referred to the Committee on 12 September 2013. In accordance with the Standing Orders, the Committee of the Legislative Assembly required the Committee to report to the Legislative Assembly by 11 November 2013.

1.2 Inquiry process

On 13 September 2013, the Committee wrote to the Queensland Police Service (QPS) seeking advice on the Bill, and invited stakeholders and subscribers to lodge written submissions on the Bill.

The Committee received written advice from the QPS on 24 September 2013 and received five submissions (see **Appendix A**).

An authorised sub-committee held a public briefing on 11 September 2013, where it took evidence from representatives from the QPS on the initiatives being pursued in the Bill. A copy of the transcript of the briefing can be accessed on the Committee's website.

1.3 Policy objectives of the Police Powers and Responsibilities and Other Legislation Amendment Bill 2013

The objectives of the Bill as set out in the Explanatory Notes are threefold:

1. improve the efficiency of the delivery of police services and the efficiency of the use of police resources by 'blue tape reduction';
2. introduce a scheme to address the increasing occurrences of and societal impact of out-of-control events; and
3. amend the minimum penalties which a court can impose under section 754(2) of the *Police Powers and Responsibilities Act 2000* dealing with the 'Evade Police' offence.

[1] *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

1.4 Should the Bill be passed?

Standing Order 132(1) requires the Committee to determine whether or not to recommend the Bill be passed.

The Committee has examined the Bill and its policy objectives and has given thorough consideration to the information provided by both the QPS and submitters, including the written submissions from stakeholders.

The Committee notes in relation to the evade police initiatives, that similar amendments to section 754(2) of the *Police Powers and Responsibilities Act 2000* (PPRA) were included in the Criminal Law (Criminal Organisations Disruption) Amendment Bill 2013,[2] introduced by the Attorney-General and Minister for Justice on 15 October 2013. That Bill was debated by the Legislative Assembly and was also passed on 15 October 2013. It received Royal Assent and became law on 17 October 2013.

As the Government's commitment to ensuring penalties for those who evade police are commensurate with the risk posed to the community has already been realised and is now law, appropriate amendments to the Bill will be required. This is discussed further in Part 2 of the Report.

With respect to the remaining two initiatives, namely the 'Blue Tape Reduction' initiatives and managing 'Out-of-Control events', the Committee supports the Government's commitment to revitalising front line services of the QPS and providing the QPS with an appropriate scheme to curb the increasing occurrences of out-of-control events.

Accordingly, the Committee makes the following recommendation.

Recommendation 1

The Committee recommends the Police Powers and Responsibilities and Other Legislation Amendment Bill 2013 be passed.

[2] Clause 64, Amendment of section 754 (Offence for driver of motor vehicle to fail to stop motor vehicle).

2. Examination of the Police Powers and Responsibilities and Other Legislation Amendment Bill 2013

This section discusses the key issues raised during the Committee's examination of the Bill.

The Committee has examined the policy objectives contained in the Bill under the broad headings below which do not necessarily follow the order in which they appear in the Bill.

2.1 Blue tape reduction

The Bill proposes to improve both the efficiency of front line police services and the use of police resources. In this regard, the QPS advised:

> *In support of the Government's commitment to revitalise front line services, the Queensland Police Service (QPS) conducted a review to identify initiatives with the potential to reduce regulatory burden and increase operational efficiency... The proposed amendments benefit the community through improved efficiency in delivering policing services and utilisation of police resources.*[3]

The primary initiatives in the Bill which are designed to improve police efficiencies are as follows:

- clause 12 replaces the existing rules relating to the destruction of registered digital photographs in the possession of the QPS. Currently there is a blanket requirement for all copies to be destroyed once they are no longer required. Amended section 195L will only require that the Commissioner take reasonable steps to destroy copies, and sub section (5) inserts a broad definition of 'destroy' to include deleting an electronic copy and removing an electronic link to the photo;
- clause 13 allows for a senior police officer to give a written notice to a financial institution requiring it to provide personal information about account holders, enabling police to gather the necessary information to obtain a search warrant;
- clause 14 expands what a surveillance device warrant authorises to include entry into a place to undertake the preparatory action reasonably necessary for the installation of a surveillance device; and
- clause 20 allows the Commissioner to use non-government laboratories to analyse DNA samples.

At the public briefing, Deputy Commissioner Gollschewski spoke to the anticipated cost savings resulting from these amendments:

> *The blue tape reduction amendments provide positive benefits for the Queensland Police Service and the Queensland community; however, due to the number and disparate nature of the proposals, it has been neither feasible nor efficient to seek to quantify benefits or scrutinise each proposal with a view to measure success in terms of financial or resource savings. While many of the proposals do not provide cashable savings, they will ensure valuable policing resources are directly focused on serving the Queensland community.*

[3] Letter from the Minister for Police and Community Safety, 24 September 2013, Attachment, page 5.

> *For example, the bill removes the requirement for a police officer to obtain a senior officer's approval before taking a DNA sample from a person being proceeded against for an indictable offence. For the period 1 July 2012 to 17 June 2013 there were 14,378 DNA samples. The average length of time it takes a police officer to get a senior officer's approval is 10 minutes per sample; therefore, the removal of this requirement has a potential saving of about 2,396 police hours per year.*[4]

Each of the initiatives are examined below.

Destruction of digital photos

Clause 12 of the Bill intends to dilute the current destruction requirements concerning registered digital photographs in the possession of the QPS under section 195L of the PPRA as these are regarded as unnecessarily onerous and inefficient.[5]

The net effect of the proposed changes to section 195L will be as follows:

- the requirement that destruction occur 'as soon as practicable' after a photo is no longer required is removed and replaced with a requirement that destruction be carried out within a 'reasonable period' after the later of: (i) the period during which the Commissioner may appeal a justice's order under section 195H(2) ends; or (ii) if the Commissioner starts an appeal under section 195H(2) in relation to a justice's order - the appeal is finally decided; or otherwise the Commissioner becomes aware of a circumstance listed in subsection (2)(a) or (b);
- the requirement that the police officer who accessed the photo must destroy all copies of it is replaced with a requirement that the Commissioner take 'reasonable steps' to destroy copies;
- new subsection (3) contains a list of exceptions where the digital photo does not need to be destroyed (the current requirement is that all copies be destroyed);
- a new broad definition of 'destroy' is inserted, to include deletion of an electronic copy and ending the way in which a photo may be accessed electronically; and
- the requirement that the photos be destroyed in the presence of a justice is removed.

In its initial briefing to the Committee, the QPS advised these amendments were necessitated by the impracticalities of the current destruction regime, for example:

- strict compliance requires an applicant police officer to personally oversee the destruction of photos in the presence of a justice. This can involve travel around the State to destroy all copies which is clearly inefficient; and
- if the photograph is circulated to external parties such as the media or the courts, it is impossible for the applicant officer to ensure all existing copies are destroyed.[6]

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[4] *Transcript of Proceedings (Hansard)*, Public Briefing, Legal Affairs and Community Safety Committee, 26 September 2013, page 3.

[5] Letter from the Minister for Police and Community Safety, 24 September 2013, Attachment, page 7.

[6] Letter from the Minister for Police and Community Safety, 24 September 2013, Attachment, page 6.

In its submission to the Committee, the Queensland Law Society (QLS) set out the following concerns about the proposal to replace the current destruction requirements under section 195L.

> *The Society understands that there may be an imperative to replace the provision with one which is more practical, given the advent of technology in accessing photos electronically. However, …* [w]*e query the reason why there is not a blanket obligation to ensure destruction of copies.*
>
> *Proposed s195L(3), which provides a list of exceptions where the digital photo does not need to be destroyed (whereas the current position is that all copies should be destroyed where it is no longer required for the purpose for which it was accessed). The exceptions are:*
>
> *a) the person has been found incapable of standing trial for the offence because of mental illness; or*
>
> *b) the person's registered digital photo was accessed for a purpose relevant to the investigation or prosecution of more than 1 offence and for at least 1 of the offences-*
>
> *i) the person is found guilty; or*
>
> *ii) proceeding has started against the person but a finding has not been made by the court about whether or not the person is guilty.*
>
> *Proposed s195L(3)(b) is reasonable, as the person is still under investigation and access to digital photographs may be required. However, proposed s195L(3)(a) could pose a situation in which the person has been dealt with, and under the* Mental Health Act 2000*, the proceedings become discontinued. Specifically, we highlight s283 of the* Mental Health Act 2000 *which states:*
>
> ***283 Proceedings discontinued-permanently unfit for trial***
>
> *If the Mental Health Court decides a person charged with an offence is unfit for trial and the unfitness for trial is of a permanent nature-*
>
> *a) proceedings against the person for the offence are discontinued; and*
>
> *b) further proceedings must not be taken against the person for the act or omission constituting the offence.*
>
> *In circumstances where the proceedings are discontinued and no further proceedings can be taken, we consider that the digital photographs must be destroyed. The Bill should be amended to clarify this point.*[7]

In response, the QPS advised:

> *It is impractical for the commissioner to ensure the destruction of every copy of a registered digital photograph. This is particularly so in circumstances where the photograph is transmitted to every police officer in the State as part of a state-wide broadcast. In such circumstances, it would be impossible for the commissioner to ensure the destruction of all copies of photos without every computer being examined to see a copy of the image was retained. A police officer who fails to comply with a direction given by the commissioner for all copies of the photographs would be subject to disciplinary proceedings. The requirement contained in clause 12 that the commissioner must take reasonable steps to destroy the person's registered digital photograph is therefore appropriate.*

[7] Queensland Law Society, Submission No. 4, page 5.

> *Where a person has been found incapable of standing trial because of a mental illness, does not mean the person did not undertake the behaviour subject of the offence provision. The ability for police to retain that photograph is consistent with the power for police to retain the person's identifying particulars.*[8]

Committee Comment

The concerns raised by stakeholders are noted, however the Committee considers the impracticalities of the current provision require improvement as set out in the Bill. The Committee accepts the reasons provided by the QPS as to why the exemptions to the provision are necessary and does not consider that the Bill, as drafted, requires any amendment in this regard.

Financial Institutions- provision of information

Clause 13 inserts a new chapter 7, part 7 in the PPRA, to enable a senior police officer to issue a written notice to a financial institution requiring it to provide personal information about account holders, in circumstances where the officer has a reasonable suspicion and belief, freely allowing officers to thereby obtain the information needed to obtain a search warrant. Non-compliance with the requirement to provide information attracts a maximum penalty of 100 penalty units.

New section 197D provides a defence whereby a financial institution is able to prove it:

a) could not reasonably comply with the notice within the period stated in the notice; and

b) took reasonable steps to comply with the notice; and

c) gave the advice sought in the notice as soon as practicable after the period for compliance stated in the notice.

This aspect of the Bill was not addressed by submitters, save for the Queensland Council of Civil Liberties which indicated it did not oppose the clause.[9] The Committee notes the QPS consulted with both the Australian Bankers Association and the Customer Owned Banking Association in relation to clause 13.[10]

Committee Comment

The Committee accepts this provision will facilitate access to information needed for search warrants and notes that a reasonable suspicion or belief is necessary prior to making an application to a financial institution. The changes would be of valuable assistance to police particularly where time is of the essence.

The Committee notes the defence provided in section 197D for financial institutions and supports its inclusion, acknowledging that there will be circumstances where compliance is not possible.

Surveillance device warrants

Clause 14 of the Bill amends current section 332 of the PPRA, to allow police to attend a premises to undertake preliminary actions necessary to facilitate the installation of a surveillance device. Such activities could include inspecting and photographing an internal layout.

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[8] Letter from the Minister for Police and Community Safety, 4 November 2013, Attachment, page 13.

[9] Queensland Council of Civil Liberties, Submission No. 3, page 3.

[10] *Explanatory Notes*, Police Powers and Responsibilities and Other Legislation Amendment Bill 2013, page 6.

The QPS advised:

> *Without conducting such a survey of the premises prior to installation, police officers are required to enter with large amounts of equipment to accommodate any scenario. It also means the officers remain in the premises for a longer period of time increasing the risk of detection...*
>
> *The amendment will enable police officers to ... better plan for the installation and in circumstances of more complex installations, trial the installation methods in a safe environment.*[11]

In its submission to the Committee, the Queensland Council for Civil Liberties stated:

> *On its face the amendment to section 332 appears reasonable. However, it raises once again the important question of the power of the Public Interest Monitor to review the actual implementation of search warrants. This Council has repeatedly called for the Public Interest Monitor to be given the right to be present in the room whilst conversations are actually monitored. We have also argued for the implementation of a requirement that all persons implementing the search warrant should be required to provide a report to the Judge who issued the warrant and to the Public Interest Monitor on the outcome of the warrant and if the warrant was not actually used, why it was not used.*
>
> *lt is our view that the Police Powers and Responsibilities Act ought to be amended to require that the police should report to the issuing Judge and the Public Interest Monitor on the actual implementation of the warrant or if it was not issued, to say so and to specify why it was not implemented. Furthermore, the law ought to provide, as is the constitutional requirement in Canada, that a person who is the subject of a warrant ought to be so advised. The law should require the police to notify all individuals whose personal information has been accessed within one year of the information being obtained unless the individual cannot be readily identified or notification would prejudice an ongoing investigation. Notification should be required within five years of the information being obtained unless it is determined the public interest in non-disclosure outweighs the right to a notification.*[12]

The response from the QPS made the following points:

> *The amendment to section 332 is a minor amendment to provide that a surveillance device warrant includes the power to enter the premises for the purpose of undertaking preparatory acts for the installation of a surveillance device at a later time. The submission by the QCCL does not object to the amendment itself but canvasses broader issues in relation to surveillance device legislation. The issues raised by the QCCL are outside the parameters of the proposed amendment and will not be addressed by this Bill.*[13]

Committee Comment

The Committee accepts the submission of the QPS that this is a relatively minor amendment designed to facilitate planning and to minimise the incidence of police being placed in unsafe situations whilst installing surveillance devices, and not otherwise consequential as regards the operation of the existing Act.

[11] Letter from the Minister for Police and Community Safety, 24 September 2013, Attachment, page 7.
[12] Queensland Council of Civil Liberties, Submission No. 3, page 6.
[13] Letter from the Minister for Police and Community Safety, 4 November 2013, Attachment, page 12.

The Committee considers the amendment to be entirely appropriate and notes it will greatly enhance the ability of the police to carry out investigations which use surveillance devices.

It is noted that the specific matters raised in the submission from Queensland Council for Civil Liberties fall outside the scope of this Bill and delve more into police operational matters. Nonetheless the Committee commends those suggestions to the QPS for consideration.

DNA Samples- amendment of sections 481, 482, 489 and insertion of new section 488B

Essentially, the amendments relating to DNA samples will have the effect of:

- facilitating the use of non-government laboratories to analyse DNA samples;
- enabling forensic nurse examiners to perform forensic procedures; and
- removing the requirement for senior police officer approval to be sought to take a DNA sample from a person charged with an indictable offence.

In its initial briefing to the Committee, the QPS provided the following background to these amendments:

> *Clauses 18 and 19 of the Bill amend sections 481… to remove the requirement to obtain senior officer approval prior to taking a DNA sample from a person who is being proceeded against for an indictable offence.*
>
> *Senior officers, prior to giving their approval, must have regard to the rights and liberties of the person and the public interest… It is considered the public interest outweighs the rights and liberties of persons who are being proceeded against for indictable offences and the need for senior officer approval, and subsequent considerations, are unnecessary.*
>
> *Additionally, clause 18 amends section 481 by removing the power for a police officer to detain a person to obtain the senior officer approval. This reduces the period of time a person is likely to be held in police custody.*
>
> ***Allowing the Commissioner to use non-government laboratories to analyse DNA samples***
>
> *Clause 20 and 21 of the Bill inserts new section 488B of the PPRA to enable the Commissioner to enter into an arrangement, other than with the Chief Executive (Health), for the DNA analysis of a DNA sample… The amendment allows the analysis of the samples to be undertaken by a non-government National Associations of Testing Authorities accredited laboratory or equivalent accreditation. Whilst the Department of Health will continue to be the preferred provider of DNA analysis services, the amendment will ensure business continuity in the analysis of DNA samples.*
>
> *Clauses 44 and 45 of the Bill makes consequential amendments to sections 95… and 133A of the* Evidence Act 1977 *to enable a non-Queensland Health analyst to issue a DNA evidentiary certificate.*[14]

At the public briefing, the QPS indicated that the amendments will result in substantial time savings:

> *While many of the proposals do not provide cashable savings, they will ensure valuable policing resources are directly focused on serving the Queensland community. For example, the bill removes the requirement for a police officer to obtain a senior officer's approval before taking a DNA sample from a person being proceeded against for an indictable offence. For the period 1 July 2012 to 17 June 2013 there were 14,378 DNA samples. The average length of time it takes a police officer to get a senior officer's approval is*

[14] Letter from the Minister for Police and Community Safety, 24 September 2013, Attachment, pages 8-9.

> *10 minutes per sample; therefore, the removal of this requirement has a potential saving of about 2,396 police hours per year.*[15]

The Queensland Council for Civil Liberties, whilst not objecting to the amendments which make provision for non-government laboratories to perform DNA analysis, stressed that its approval *'is conditional upon DNA samples analysed by those laboratories being de-identified.'*[16]

Committee Comment

The Committee is mindful of the importance of efficient operations regarding DNA analysis and sampling and to this end supports the amendments. The Committee is of the view that the proposed changes will streamline existing processes, and bring much needed relief to DNA processing centres such as John Tonge. In addition, the Committee notes the valuable time savings that the amendments will result in, which should mean that police officers are able to be reallocated to areas of greatest need.

No opposition to these amendments was raised in submissions.

Noise abatement - amendment of sections 577-580 and sections 582-585

The Bill also makes a number of significant changes in relation to noise complaints. The changes include:

- allowing a person to make an anonymous complaint (section 577(1));
- enabling a police officer, before acting on a complaint, to only be satisfied that the noise complained of is clearly audible at or near a complainant's residence or place of work (section 578);
- extending noise abatement periods from 12 to 96 hours (section 582(4)(b)).

The need for these changes was explained by the QPS as follows:

> *Approximately 10 percent of noise complaints are repeat calls for service with police officers attending within 7 days of the initial complaint of excessive noise. The increased noise abatement period is aimed at alleviating the police resource drain caused by repeat calls for service and allowing neighbourhoods to have a reprieve from excessive noise, typically, over a weekend.*
>
> *The amendments also ensure any property seized under section 583 'Additional powers of police officers on later investigation' may not be recovered until the next business day after the expiration of the noise abatement direction period. Section 584(2) 'Offence to interfere with locked etc. property' is also amended to ensure the person must not unlock, unseal or use the property within the 96 hour noise abatement period.*[17]

In its submission, the QLS queried the amendments and outlined the following concerns:

> *… it will no longer be necessary to ascertain that the noise level affects a particular person or persons tied to their location, and will rely solely on the reasonable satisfaction of a police officer that the noise is clearly audible at or near residential premises.*
>
> *… malicious complaints could be made as they will be anonymous…*

[15] *Transcript of Proceedings (Hansard)*, Public Briefing, Legal Affairs and Community Safety Committee, 26 September 2013, page 3.

[16] Queensland Council of Civil Liberties, Submission No. 3, page 5.

[17] Letter from the Minister for Police and Community Safety, 24 September 2013, Attachment, page 9.

> *There may be situations where it would be unfair to impose a 4-day direction, particularly with families and share houses where various people might not be aware of the direction.*[18]

In relation to the proposed extension of the noise abatement period from 12 to 96 hours, at the public briefing Senior Sergeant Utz from the QPS provided this clarification as to how it is intended to work:

> *The 96-hour noise abatement … is more about giving peace to people in the community. For example, over long weekends someone will be having a party on a Friday night and, with our direction for 12 hours, by Saturday night they are having another event. This gives them the peace and quiet. With our move from 12 to 96 hours, it puts us about halfway in the span of noise abatements within Australia. Within Australia it ranges from about six hours through to seven days, so it gives us a sort of mid-range balance for that to apply.*[19]

In relation to concerns about anonymity, the QPS advised:

> *It is considered necessary to allow persons to make noise complaints anonymously especially in circumstances where the complainant is afraid of reprisals from the person responsible for the excessive noise. Currently the police officer attending the complaint has to be reasonably satisfied that the noise is clearly audible at or near the complainant's address. In determining if the noise is excessive in the circumstance, the police officer may have regard to the degree of interference the noise is causing, or likely to cause, to the conduct of activities in the vicinity of the place from which the noise is emitted. The actual determination that the noise is excessive does not need to occur at the complainant's premises.*[20]

Committee Comment

Whilst the Committee notes the issues raised by the QLS, after careful consideration it is satisfied there are sound reasons for the various changes relating to noise abatement. In particular, the QPS advice is noted which anticipates the amendments should counter the resource drain caused by repeat calls for service, and provide an ongoing reprieve for neighbourhoods subjected to excessive noise. The Committee agrees these considerations outweigh the other matters raised.

The Committee regards the 96 hour abatement as appropriate and notes that some Australian states allow abatement periods of up to a week. In the Committee's view, 96 hours is not excessive nor unfair and appears to be a sound length of time to address ongoing noise, for example over the course of a long weekend.

2.2 Out-of-control events

The second major initiative of the Bill is the introduction of a scheme to deal with out-of-control events, thus reducing their disruptive impact on communities and providing a deterrence to those who organise such gatherings.

When introducing the Bill, the Honourable Jack Dempsey MP, Minister for Police and Community Safety (Minister) stated the scheme is aimed at *'events at the more serious end of the scale of anti-social behaviour. They often involve large groups of people whose conduct results in community*

[18] Queensland Law Society, Submission No. 4, page 6.
[19] *Transcript of Proceedings (Hansard)*, Public Briefing, Legal Affairs and Community Safety Committee, 26 September 2013, page 7.
[20] Letter from the Minister for Police and Community Safety, 4 November 2013, Attachment, page 14.

members fearing violence to themselves, their families or damage to property. Many participants in these out-of-control events become subject to mob mentality...'[21]

The QPS advised that such events are on an increase, and 'there has also been considerable reporting of events being undertaken for profit with it being reported that an organiser of such events was profiting between $10,000 to $12,000 per event.'[22]

Suggested alternatives to the Bill

Several submitters suggested that in lieu of legislation, a better alternative to discourage out-of-control parties would be community awareness campaigns with *'an emphasis on safety and supervision and obligations around duty of care'*[23] and *'the risks and responsibilities of hosting parties associated with the use of social media platforms...'*[24] There was a common theme in some submissions that the proposed legislation is unnecessarily punitive and that *'in reality, the introduction of restrictive legislation fails to deal with the underlying social issues and does not serve to educate young people and their parents about the issues and risks associated with social media use. There is no reasonable basis to expect that continual expansion of police powers will actually lead to a reduction in the instances of 'out of control' gatherings...'*[25]

In response, the QPS outlined:

> *The Queensland Government and the QPS have a long history of running community awareness campaigns on safely hosting parties, alcohol fuelled violence and campaigns about specific events such as Schoolies celebrations. Since 2003, the QPS has administered a Party Safe program which provides advice to persons on how to reduce the risks for hosts planning a party, information for guests and for parents of children attending parties...*
>
> *In consultation with the Department of Education, Training and Employment and Department of Local Government and Planning, QPS has provided Party Safe information and promotional information and resources to over 500 high schools and local councils across the State. Details regarding the Party Safe initiative are also available on the QPS website and on the QPS Facebook page. Police Officers, including School Based Police Officers, regularly provide information to school students.*
>
> *Whilst awareness campaigns are beneficial, they are not a panacea to deterring out-of-control events, but form part of the policing toolbox in minimising the occurrence and impact of such events. In addition to the general deterrence provided through the proposed offence provisions and associated penalties, the proposed powers enable police to effectively respond to, and minimise the harm caused by out-of-control events.*[26]

<u>Committee Comment</u>

Whilst the Committee is cognisant of the value of community awareness campaigns particularly when it comes to issues such as the risks inherent with social media and hosting Facebook or 'open house' parties, it does not accept that such campaigns alone are the answer to address the increasing prevalence and detriment of out of control events.

Educational campaigns do not always bring about behavioural change, however well intentioned.

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[21] *Record of Proceedings (Hansard)*, 12 September 2013, page 3055.
[22] Letter from the Minister for Police and Community Safety, 4 November 2013, Attachment, page 10.
[23] Caxton Legal Centre Inc., Submission No. 1, page 8.
[24] Queensland Association of Independent Legal Services, Submission No. 5, page 3.
[25] Youth Advocacy Centre Inc., Submission No. 2, page 9.
[26] Letter from the Minister for Police and Community Safety, 4 November 2013, Attachment, page 7.

The Committee is firmly of the view that legislation is the appropriate way to address out-of-control events, by both providing police with the power to effectively respond and providing a sufficient deterrent to organisers.

Examination of the Out-of Control events scheme

Clause 4 of the Bill contains an entirely new *Part 7 – Out-of-control events* which is inserted into chapter 2 of the PPRA. An overview of the key features of the proposed Part 7 are examined below.

Key definitions

Division 1 of the new Part 7 contains four key definitions which are integral to the application of the out-of-control events scheme.

Meaning of 'out-of-control event'

Section 53BB of the Bill defines an 'out-of-control event' as a gathering of 12 or more persons at a place, where three or more of the persons associated with the event, either collectively or individually, engage in out-of-control conduct where the conduct of persons, taken together, is of such a nature that it causes or would likely cause a person at or near the event:

- to reasonably fear unlawful violence to a person or property;
- to reasonably believe a person would suffer substantial interference with their rights or liberties; or
- to reasonably believe a person would suffer substantial interference with their peaceful passage through, or enjoyment of, a public place.

The QPS advised the types of events to be captured by this scheme are at the more serious end of the scale of anti-social behaviour.[27]

Meaning of 'out-of-control conduct'

Section 53BC of the Bill defines the type of conduct which is considered to be 'out-of-control' in a way that is intended to reflect '*the anti-social and violent behaviour commonly displayed by persons at out-of-control events'.*[28] Importantly, a person does not have to be committing an offence to meet the conduct criteria.

The following are all classified as out-of-control conduct:

a) unlawfully entering, or remaining in, a place or threatening to enter a place;
b) behaving in a disorderly, offensive, threatening or violent way- for example using offensive, obscene, indecent, abusive or threatening language or taking part in a fight;
c) unlawfully assaulting, or threatening to assault, a person;
d) unlawfully destroying or damaging, or threatening to destroy or damage, property;
e) wilfully exposing a person's genitals or doing an indecent act;
f) causing or contributing to the emission of excessive noise mentioned in section 576(1);
g) driving a motor vehicle in a way that causes a burn out within the meaning of section 69;
h) unlawfully lighting fires or using fireworks;

27 Letter from the Minister for Police and Community Safety, 24 September 2013, Attachment, page 2.
28 Letter from the Minister for Police and Community Safety, 24 September 2013, Attachment, page 3.

i) throwing, releasing or placing a thing in a way that endangers, or is likely to endanger, the life, health or safety of a person;

j) unreasonably obstructing the path of a vehicle or pedestrian;

k) littering in a way that causes, or is likely to cause, harm to a person, property or the environment;

l) being drunk in a public place;

m) conduct that would contravene the *Liquor Act 1992,* part 6;

n) conduct that would contravene the *Drugs Misuse Act 1986*, part 2.

Meaning of 'associated'

Section 53BD of the Bill defines 'associated', with an event, to mean a person who:

a) is at the event; or

b) is near the event and is reasonably suspected by a police officer of either—

    1. intending to go to the event, whether or not the person was invited to attend the event; or

    2. leaving the event.

Meaning of 'organise'

Section 53BD of the Bill defines 'organise' in the context of an out-of-control event to mean '*being substantially involved in arranging, hosting, managing, advertising or promoting the event*.'

Committee Comment

The Committee has carefully considered the definitions contained in the Bill and is satisfied that they have been drafted appropriately to effectively meet the needs of tackling out-of-control events.

The Committee notes the issues raised in submissions i.e. the definition of out-of-control conduct is extremely wide, however considers the provisions when read together in the context of the operation of the whole out-of-control event scheme are appropriate. Given the specific objectives of the Bill, the Committee considers a more confined definition would be problematic. Narrowing the definition would ultimately exclude behaviour which is typically associated with out-of-control events.

Out-of-control event powers

Division 2 of the new Part 7 sets out the three police powers which may be used to address out-of-control events. These powers are:

- the power to stop a vehicle or enter a place, including a vehicle, without warrant (section 53BG(2)(a));
- the power to give a person or group of persons a direction to stop any conduct, immediately leave a place, not return to a place within a stated period of not more than 24 hours (unless the person resides at the place) (section 53BG(2)(b)); and
- the power to take any other steps the police officer considers reasonably necessary (section 53BG(2)(c)).

The Bill sets out a process under which authorisation for using the powers must be obtained before an officer can exercise a power in relation to an out-of-control event.

Authorisation of the use of the powers may only occur if a senior police officer, of or above the rank of Sergeant, reasonably believes that an event is an out-of-control event (as defined above) or the event is likely to become an out-of-control event.[29]

The authorisation provided by the senior police officer must be in writing and state the following:

a) the date and time the authorisation is given;

b) the location of the event;

c) the circumstances that led the officer to authorise using the out-of-control event powers in relation to the event; and

d) any restrictions on using the powers in relation to the event.[30]

The authorisation has effect for a period of 24 hours (or less) after the authorisation is given.[31] The Bill also provides that in the case of the authorisation being required on an urgent basis, the authorisation is not invalid merely because it is not in writing, if the senior police officer makes a written record of the authorisation at the first reasonable opportunity after a police officer exercises a power under the authorisation.[32]

Actions which can be taken

Proposed section 53BG sets out the specific purposes for which a police officer may exercise out-of-control event powers as:

a) preventing the event becoming an out-of-control event;

b) if the event is an out-of-control event, stopping the event from continuing or starting in another location;

c) dispersing persons associated with the event;

d) minimising the impact of the event on public order or safety;

e) identifying a person organising the event; or

f) identifying a person committing an out-of-control event offence (set out in new Division 3).

Are the new powers necessary?

A number of submissions queried upfront the need for the additional powers at all. Submitters contended that the Bill merely duplicates offences already contained in existing legislation which address the same types of offending.

By way of example, the QLS expressed the view that the examples of behaviour contained in proposed section 53BC are *'already appropriately criminalised under existing Queensland legislation'*, stating further that *'the Society considers that the most effective way to address this issue is to strengthen policing resources to deal with such events...'*[33] Similarly, the Queensland Association of Independent Legal Services (QAILS) suggested section 577 of the *Police Powers and Responsibilities*

[29] Section 53BE(1).
[30] Section 53BE(2).
[31] Section 53BE(4).
[32] Section 53BE(3).
[33] Queensland Law Society, Submission No. 4, page 2.

Act 2000 is already *'a sufficient trigger for police to investigate complaints about a so-called 'out of control event'.*[34]

Both Caxton Legal Centre[35] and Youth Advocacy Centre[36] made suggestions that adequate powers to deal with out-of-control parties already exist in the PPRA (sections 46, 48 and 50); the *Summary Offences Act 2005* (sections 6, 9 and 10) and the Criminal Code (Qld) (sections 245, 461 and 469), amongst many others which could be applicable in discrete circumstances.

In its initial briefing to the Committee, the QPS conceded the powers contained in the Bill were not dissimilar to existing powers available to manage various incidents, but they addressed existing gaps to ensure police have effective powers to respond to out-of-control events.[37] The QPS went on to state:

> *For example, it may be argued the existing noise abatement powers do not apply to an event undertaken for profit where a DJ is provided as entertainment for an event and the attendees have to pay an entrance fee, as the existing noise abatement powers do not apply to commercial entertainment. Additionally, the existing move on powers would rarely apply to events held at a private residence. Furthermore, existing legislation does not provide power for police to undertake pre-emptive action where it is reasonably believed that the event is likely to become out-of-control.*[38]

Following on from submissions that existing powers were adequate, the QPS provided further explanation to the Committee as follows:

> *The new Bill provides police with the capability to act pre-emptively in shutting down events which are likely to become out-of-control. This proactive measure cannot be used wantonly…*
>
> *Offences such as riot or unlawful assembly already exist. However, the conduct of people at out-of-control events may not reach this level of unlawful behaviour or be undertaken with the requisite common purpose. One of the important measures in the Bill is the ability to prevent behaviour from escalating to the level of a riot.*
>
> *Existing offences do not capture persons who organise events which become out-of-control and therefore provide no deterrence to persons holding such events. Their pursuit of profit and/or notoriety gained from holding such events is undertaken with little or no regard to the resultant harm suffered by both persons attending the events and the broader community. This new offence also captures those persons who, as a commercial undertaking, coordinate the events in return for the cover charge attendees must pay. Furthermore, existing legislation does not hold a parent or guardian responsible for allowing a child to organise an event which becomes out-of-control.*
>
> *…*
>
> *Whilst the* Penalties and Sentences Act 1992 *and the* Youth Justice Act 1992 *provide for compensation and restitution in specified circumstances, these Acts do not enable courts to make costs orders in relation to the reasonable costs of the policing response to offences committed under the out-of-control event scheme. The proposed scheme, however, does apply the relevant provisions of these Acts to how the cost orders in relation to an adult or*

[34] Queensland Association of Independent Legal Services, Submission No. 5, page 2.
[35] Caxton Legal Centre Inc., Submission No. 1, pages 3-4.
[36] Youth Advocacy Centre Inc., Submission No. 2, pages 5-6.
[37] Letter from the Minister for Police and Community Safety, 24 September 2013, Attachment, pages 3-4.
[38] Letter from the Minister for Police and Community Safety, 24 September 2013, Attachment. pages 3-4.

> *child offender are dealt with. The scheme also applies the relevant provisions of the* Youth Justice Act 1992 *to enable a parent of a child offender to be called to show cause why the parent should not pay all or some of the costs of the policing response and how such orders are to be dealt with.*
>
> *The proposed new offence section 53BI 'Causing an out-of-control event' provides significant deterrence to persons who, upon being refused entry to an event, engage in out-of-control conduct, causing the event to become an out-of-control event. The offence is not limited to gate-crashers but can also apply to invited guests who the organiser wishes to refuse entry due to inappropriate behaviour, intoxication or other matters. This offence supports organisers of events who undertake reasonable steps to ensure that an event does not become an out-of-control event.*[39]

Committee Comment

The Committee notes the views raised in submissions, and notes the similarity of the police powers in the Bill with existing police powers. However, the Committee considers the specific powers in the Bill are warranted to deal with the increasing occurrence of out-of-control events.

The unique nature of these events and havoc caused is exactly what has necessitated the development of specific legislation. While it is acknowledged the Bill contains new offences with appropriate penalties to act as a deterrent to those who organise out-of-control events – as identified by the similar laws enacted in Western Australia, a significant advantage of the new powers is to enable the QPS to prevent an event from becoming out-of-control.

While there have been limited examples of prosecution of offences in Western Australia, the Committee understands from the QPS that the major benefit derived from that legislation is the capacity for police to undertake pre-emptive action and shut down events which are likely to become out-of-control.[40] The Committee considers this to be an important factor of the Bill and considers, like the WA legislation, this will be one of the greatest benefits of the out-of-control event scheme.

The QPS advised the requirement for authorisation before the powers can be used demonstrates the powers are directed at the more serious events.[41] The Committee agrees this is an appropriate safeguard built into the scheme, that officers cannot simply exercise the powers when attending any event, but need 'event authorisation' by a senior officer to occur, as provided for in the Bill.

This process should allay concerns that the powers in the Bill are wide ranging powers which can be used to unfairly target anyone holding a party. For the authorisation to occur, and the corresponding powers to be used – there must be a reasonable belief, by an experienced senior police officer, that the event is one which is, or is likely to become an event that would cause a person to reasonably fear violence to a person or damage to property or that a person would suffer substantial interference with their peaceful passage through, or enjoyment of, a public place.

The Committee is satisfied the powers are, as described by the Minister in his introductory speech, aimed at the more serious end of the scale of antisocial behaviour, and are appropriate for inclusion in the Bill.

[39] Letter from the Minister for Police and Community Safety, 4 November 2013, Attachment, page 2.
[40] Letter from the Minister for Police and Community Safety, 4 November 2013, Attachment, page 8.
[41] Letter from the Minister for Police and Community Safety, 24 September 2013, Attachment, page 3.

Offences & corresponding defences

Division 3 of the new Part 7 contains three new offences related to out-of-control events:

a) Organising an out-of-control event (section 53BH);

b) Causing an out-of-control event (section 53BI); and

c) Contravening a direction given by an officer (when exercising a power under the Act) (section 53BJ).

Each of the three offences and the corresponding defences is considered in further detail below.

Organising an out-of-control event

Proposed section 53BH states a person commits an offence if they organise an event and it becomes out-of-control. The maximum penalty hinges upon whether the event is held at a place where the organiser does not reside or have lawful authority to use (165 penalty units or three year's imprisonment); or otherwise (110 penalty units or 1 year's imprisonment).

In circumstances where the organiser is a child, the Bill provides the child's parent is liable for the offence if they gave the child permission to organise the party.

In its submission to the Committee, the Queensland Council of Civil Liberties stated:

> *… the offence is constructed such that an out-of-control event may result from behaviour of people over which the organiser may not have any control. The people who engage in out-of-control conduct which transforms a lawful event into an unlawful event need only be 'associated' with the event… Consequently, actions of others over which a person has very limited control is likely to make that person liable for a criminal offence. The Council considers this result manifestly unfair.*[42]

The proposed section contains a specific defence to the offence of organising an out-of-control event – for a person to establish that they took 'reasonable steps' to ensure that the party remained under control. Two examples of what could constitute 'reasonable steps' are included in section 53BH(3) of the Bill, namely:

- hiring an appropriate number of security officers for the event; and
- ending the event as soon as possible after persons who are not invited to the event enter the place where the event is being held.

The QPS provided the following information to the Committee about the 'reasonable steps' defence:

> *The examples provided in the Bill are not the only means by which a person can undertake reasonable steps; neither is it requisite that the organiser undertake the examples to avail themselves to the defence provision. The vast range of individual characteristics of events preclude any advantage in prescribing an exhaustive list of steps which can be undertaken. The term 'reasonable' is one which is widely used throughout legislation and case authorities. It is a term the judiciary are entirely familiar with and competent in applying to each case on its merits*[43]

[42] Queensland Council of Civil Liberties, Submission No. 3, page 2.
[43] Letter from the Minister for Police and Community Safety, 4 November 2013, Attachment, page 4.

The QPS considered organisers of events have substantial control over the events they hold and provided a number of examples to the Committee:

- *ensuring that the event location is suitable for the number of persons attending and the nature of the event;*
- *determining whether the event will be by invitation only;*
- *determining whether limits will be placed on the amount of alcohol a person can bring;*
- *determining whether minors can only consume alcohol where a responsible adult for the minor is present;*
- *determining whether or not the event is to advertised on social media;*
- *planning how to deal with persons who become unduly intoxicated or disorderly;*
- *mitigating noise being emitted from the event;*
- *planning how to minimise the impact the event will have on the amenity of the surrounding area;*
- *provision of a suitable number of adult supervisors or security; and*
- *registering the event with local police.*[44]

Deputy Commissioner Gollschewski reiterated the above examples to the Committee at the public briefing, advising there was considerable scope for organisers to ensure that a party remains under control in terms of reasonable steps taken. However, Deputy Commissioner Gollschewski explained:

> *It would be unlikely persons organising events where it is intended that hundreds of youths would attend and consume excessive amounts of alcohol would be able to avail themselves of this defence. Even the presence of a number of security personnel would not be sufficient in the circumstances to rely on the defence due to the high risk that the event would become out of control.*[45]

The QLS suggested that the defence of 'reasonable steps' could be enhanced by including a list of examples, noting that the Western Australian legislation contained the following examples which could be instructive in relation to the Bill:

> *(b) organising the gathering in a manner that indicates that only persons invited to the gathering may attend;*
>
> *(c) giving notice of the gathering to the Commissioner of Police in a manner approved by the Commissioner of Police;*
>
> *(d) taking steps to request the attendance of police officers at the gathering as soon as practicable after becoming aware that-*
>
> *(i) the gathering is likely to become an out-of-control gathering; or*
>
> *(ii) any person is trespassing on a place where the gathering is occurring.*[46]

[44] Letter from the Minister for Police and Community Safety, 4 November 2013, Attachment, page 9.

[45] *Transcript of Proceedings (Hansard)*, Public Briefing, Legal Affairs and Community Safety Committee, 26 September 2013, page 3.

[46] Queensland Law Society, Submission No. 4, page 3.

Committee Comment

The Committee considers the QLS has raised a valid issue in relation to the inclusion of additional examples of what would be considered 'reasonable steps' in section 53BH(3) of the Bill, such as those contained in section 75B(4) of the Western Australian *Criminal Law Amendment (Out-of-Control Gatherings) Act 2012*.

The Committee agrees that it would be instructive to include these further examples to improve clarity as to how the defence is intended to operate. The use of further examples would make the intention of the legislation clear and be of valuable assistance to people organising large gatherings.

The Committee considers that this should be given further consideration by the Minister.

Recommendation 2

The Committee recommends the Minister for Police and Community Safety give consideration to including the further list of examples suggested by the Queensland Law Society in section 53BH(3) of the Bill to improve the clarity of how the 'reasonable steps' defence is intended to operate.

In terms of the concerns raised by Queensland Council of Civil Liberties, the Committee does not accept that it is 'manifestly unfair' that under the Bill liability for an offence may attach to a person resulting from the behaviour of certain others.

Unfortunately, the reality is that someone needs to be held ultimately accountable for out-of-control behaviour, and the offence provisions are specifically drafted to this end. When viewed against the background of the harm caused by those who organise out-of-control events, the offence provisions appear to the Committee to be justified and proportionate.

Causing an out-of-control event

Section 53BI of the Bill provides a person commits an offence if they have been refused entry to an event and subsequently engage in out-of-control behaviour near the event, and that event then becomes out-of-control as a consequence of their behaviour.

The maximum penalty for an offence under section 53BI is 110 penalty units or one year's imprisonment.

Section 53BI(2) provides a person may be liable for the offence of causing an out-of-control event even if another person's conduct contributed to the event becoming an out-of-control event.

In its submission to the Committee, the Youth Advocacy Centre raised the following concerns regarding the practicalities of section 53BI:

> *Many young people will be unable to host any event in a private residence due to the risk of liability that this legislation creates…*
>
> *These provisions will make young people and their parents liable for conduct they have no control over. Further, these provisions could punish people who were trying to do the right thing and have refused entry to uninvited guests, possibly to prevent inappropriate behaviour.*

> *Attributing ongoing liability to people for the actions of others who have in fact been turned away from the gathering illustrates the oppressive nature of these proposed amendments.*[47]

The QLS expressed concern about the scope of the section:

> *The Society is concerned with the expanded liability being proposed. This will lead to situations where the liability of the accused is being influenced by conduct that they were not only* ***not*** *part of, but perhaps entirely unaware of.*[48]

Committee Comment

The Committee acknowledges the concept of liability for the serious offence of causing an out-of-control event, even if another person's conduct contributed to the event becoming an out-of-control event, is onerous. Nonetheless, appropriate justification exists in the Bill since the events it applies to are those at the more serious end of the spectrum of anti-social behaviour.

Additionally, it needs to be borne in mind that the penalties proposed for contraventions of this offence are maximum penalties and would not be imposed in every instance. It will be up to the judiciary to determine appropriate levels of penalties having regard to all the circumstances of each individual matter, which the Committee considers would include whether a person had knowledge, or ought to have knowledge of other person's conduct.

Offence to contravene direction

Proposed section 53BJ provides that a person must not, without reasonable excuse, contravene a direction given to them by a police officer under section 53BG(2).[49]

The maximum penalties are dependent upon the gravity of behaviour, as follows:

a) if the person contravenes the direction by doing any of the following—

    (i) unlawfully assaulting, or threatening to assault, another person;

    (ii) unlawfully destroying or damaging, or threatening to destroy or damage, property;

    (iii) throwing, releasing or placing a thing in a way that endangers, or is likely to endanger, the life, health or safety of another person;

    165 penalty units or 3 years imprisonment; or

b) otherwise — 110 penalty units or 1 year's imprisonment.

In its submission to the Committee, the QLS queried why the existing offence provision for disobey direction under section 791 of the PPRA was not considered adequate and applicable to out-of-control events.[50]

[47] Youth Advocacy Centre Inc., Submission No. 2, page 9.
[48] Queensland Law Society, Submission No. 4, page 4.
[49] Namely, to stop a vehicle or allow an officer to enter a place without warrant; to stop any conduct; to immediately leave a place; or not return to a place within a stated period of not more than 24 hours, unless the person resides at the place; or to comply with any other order the police officer considers reasonably necessary.
[50] Queensland Law Society, Submission No. 4, page 4.

The QPS responded to these concerns that the section 791 offence creates a general offence and penalty for contravening a direction or requirement if no other penalty is expressly provided for the contravention of the direction or requirement. Due to the 'pack mentality' that can often be displayed by persons at out-of-control events, their ability to blend into the crowd and the level of violence used, a higher penalty was considered appropriate and necessary to provide a greater deterrence to persons from contravening the directions of police officers.

Committee Comment

The Committee endorses the QPS response in relation to the penalty for the offence to contravene direction as it relates to out-of-control events, and considers an increase in the maximum penalty to take into account the more serious nature of the offence is warranted.

Penalties in general

In its submission to the Committee, Caxton Legal Centre contended that the penalties under the Bill were *'disproportionately severe'*, to the extent that they would be likely to discourage routine gatherings such as birthday parties and family gatherings.[51]

At the briefing, Deputy Commissioner Gollschewski on behalf of QPS stated:

> *The maximum penalties are considered appropriate and provide a general deterrence to persons committing offences. This is particularly so when it comes to people organising an event for commercial gain who have total disregard for the harm they cause. One individual who has organised several Facebook parties this year was reported in the Sunday Mail as making between $10,000 and $12,000 per party. These penalties make it clear they will not profit from organising such events.*[52]

The QPS provided the following further advice to the Committee in its response to submissions:

> *The penalties proposed for contraventions of the out-of-control event scheme are the maximum penalties that can be imposed and naturally, the maximum penalty would not be imposed in every instance. Additionally, the proposed legislation does not impose any mandatory minimum penalty leaving the actual penalty to be imposed to the discretion of the court. Furthermore, the levels of penalties are considered appropriate and necessary to provide adequate deterrence.*[53]
>
> *… The proposed out-of-control event scheme does not explicitly target young people. However, the events typically which become out-of-control and would be captured by this scheme, are predominately attended by young adults and adolescents. As has been previously stated, it is not the intent of the legislation to prevent persons from having parties and celebrating specific occasions. Of the thousands of events held every year, only a very limited number would fall within the meaning of out-of-control event.* [54]

[51] Caxton Legal Centre Inc., Submission No. 1, page 5.

[52] *Transcript of Proceedings (Hansard)*, Public Briefing, Legal Affairs and Community Safety Committee, 26 September 2013, page 3.

[53] Letter from the Minister for Police and Community Safety, 4 November 2013, Attachment, page 4.

[54] Letter from the Minister for Police and Community Safety, 4 November 2013, Attachment, page 8.

Committee Comment

The Committee endorses the policy objective of this aspect of the Bill which recognises the increasing occurrence of out-of-control events, at the more serious end of the scale, needs to be addressed. The Committee believes that those engaged in the drastic types of anti-social acts typical of out-of-control parties should rightfully expect considerable sanctions.

The Committee was mindful of the submission by the Caxton Legal Centre in relation to the penalties imposed, however on balance it does not consider that the proposed maximum penalties are excessive, nor does it accept they will deter reasonable people from holding innocuous gatherings such as birthday parties and family events. The Committee considers, due to the criteria that must be met for an event to be out-of-control event, including the requirement for a reasonable fear of violence to a person or property, there is little risk of family events or small gatherings being caught by the provisions in the Bill.

The Committee agrees the level of penalties must make it clear that those persons who organise these events for financial gain will not profit from them.

Cost orders

One of the most contentious aspects of the Bill is the ability for a court, under Division 3 of the new Part 7 (sections 53BK-53BN) to order that a person found guilty of an out-of-control event offence pay all or some of the reasonable expenses of, or incidental to, the police response to the event.

Further, if the person is a child and the court considers the child has the capacity to pay all or some of the costs of the police response, the court may order that the child do so. In the event that the child cannot pay the costs, the court may alternatively require that their parent show cause as to why they should not foot the reasonable costs in relation to the event.

At the public briefing, Deputy Commissioner Gollschewski explained:

> *In making its determination the court will consider whether the parent or guardian may have contributed to the offence by not adequately supervising the child and whether it is reasonable in the circumstances that a parent or guardian should be ordered to pay all or some of the costs. Pursuant to the applied section 260 of the Youth Justice Act, the maximum amount that the court can order a parent or guardian to pay is 67 penalty units or $7,370.*[55]

The costs of police attendance at such events can vary widely and has been estimated at in excess of $50,000 per event.[56] At the public briefing, Deputy Commissioner Gollschewski explained that the cost for the QPS '*is based around an average of resources that we deploy to deal with these parties and the time that is required to be deployed to deal with them. That is a very narrow figure of course and the broader one when you look at the whole social cost—ambulance and factor in everyone else—means that there is a greater cost.'*[57]

[55] *Transcript of Proceedings (Hansard)*, Public Briefing, Legal Affairs and Community Safety Committee, 26 September 2013, page 3.

[56] *Reforms crack down on parents and teens to control Facebook parties,* The Courier Mail, 7 July 2013, http://www.couriermail.com.au/technology/news/reforms-crack-down-on-parents-and-teens-to-control-facebook-parties/story-fniho3wq-1226675350420, accessed 22 October 2013.

[57] *Transcript of Proceedings (Hansard)*, Public Briefing, Legal Affairs and Community Safety Committee, 26 September 2013, page 6.

The notion that young people and their parents can be liable to pay the 'reasonable costs' in relation to an event attracted heavy criticism in submissions. The Youth Advocacy Centre submitted:

> *This imposes what is, in effect, an additional penalty in a situation where the Bill is entirely lacking in safeguards; does not provide guidance for the courts exercising the power regarding situations where such an order would be appropriate; nor does it set out any test to establish the costs sought in a particular instance are 'reasonable'.*
>
> *… Research has shown that creating offences and increasing penalties do not of themselves deter people from offending.*[58]

The Queensland Council of Civil Liberties queried the fairness of parent cost orders and suggested that section 53BM of the Bill is objectionable.[59]

In response to these concerns, the QPS stated:

> *Proposed new section 53BH provides the court with a discretionary power to call on the parent or guardian of a child who commits the offence, to show why the parent or guardian should not be required to pay all or some of the costs of the policing response to the out-of-control event. In determining whether to make the costs order, the court must be satisfied that the parent contributed to the offence by not adequately supervising the child and it is reasonable in the circumstances that the parent pay all or some of the costs of the policing response. The scheme applies the relevant compensation provisions of the* Youth Justice Act 1992 *to enable a parent of a child offender to be called to show cause why the parent should not pay all or some of the costs of the policing response and how such orders are to be dealt with.*
>
> *The issuing of, and quantum, of the costs orders is discretionary and can only be imposed if the court considers that the parent or guardian contributed to the offence by not adequately supervising their child.*[60]

The QLS suggested issues might arise in terms of '*ensuring that reasonable costs are fairly sought between those accused, particularly where there are multiple parties charged with offences relating to the same conduct. For example, would the reasonable costs for police time in dispersing persons be sought against the organiser or against parties convicted of causing the out-of-control conduct? Further clarification is required in this regard*.'[61]

In response, the QPS advised:

> *The cost orders relating to an adult offender will be dealt with as if it was an order for compensation under the* Penalties and Sentences Act 1992*, part 3, division 4 payable to the State. Cost orders made against a child offender will be dealt with as if it was an order under section 310 of the* Youth Justice Act 1992*. Costs order made against a parent or guardian of a child offender are dealt with by applying sections 258, 259 and 260 of the* Youth Justice Act 1992 *as if it was an order for compensation under the applied provisions.*[62]

58 Youth Advocacy Centre Inc., Submission No. 2, page 11.
59 Queensland Council of Civil Liberties, Submission No. 3, page 3.
60 Letter from the Minister for Police and Community Safety, 4 November 2013, Attachment, pages 9-10.
61 Queensland Law Society, Submission No. 4, page 4.
62 Letter from the Minister for Police and Community Safety, 4 November 2013, Attachment, page 11.

Committee Comment

The Committee is of the view that those directly involved in organising or causing out-of-control events, as well as parents who recklessly fail to adequately supervise their children, should rightfully be held responsible for recompense, within reason. This is only fair.

The Bill provides the court with a discretionary power to call on the child, parent or guardian of a child who commits the offence to demonstrate why they should not be required to pay all or some of the costs of the out-of-control event. Further, the amount of the costs order is similarly discretionary. The courts should have the full discretion to award costs orders under the Bill as required, taking into account the individual circumstances of each matter.

The Committee considers this scheme is fair and reasonable in the circumstances and provides those held to account with an adequate opportunity to show why they should not be subject to an order, whilst recognising that, where appropriate, it is important that people be held responsible for damage done.

Other matters raised in submissions

Mechanics of the Bill - threshold for constituting an event; establishing who 'organised' an event

Various concerns were raised in submissions regarding what has been described as the potentially problematic threshold for constituting an 'event' under section 53BB, and difficulties associated with determining who 'organised' an event under section 53BH.

In its submission, the QLS stated:

> *We note that having a threshold of three out of 12 or more persons engaging in out-of-control conduct may be quite a low barrier. We particularly note the wide variety of conduct that can be considered as being out-of-control, which could mean that three people being drunk in a public place (for example, by standing out on a footpath in front of a property where a party takes place) at different times in the night could result in those people and the organiser of the event being charged, noting the hefty fines and potential imprisonment which could result.*[63]

The Youth Advocacy Centre shared similar concerns, and suggested that *'if legislative changes are favoured, they should be strictly limited to apply to the specific issue, in particular: large parties (minimum of 100 people), evidence of 'world at large' invitation and/or for financial gain.'*[64]

QAILS also stated:

> *A gathering of at least 12 people is akin to the size of a generous dinner party – it is hardly the composition of an 'open house party' or 'Facebook party'.*[65]

In response, the QPS outlined that the threshold was arrived at taking into account the following considerations:

> *Such an amendment [minimum of 100 people] would be unworkable requiring police to count significant numbers of persons before the use of the powers could be exercised. As identified by Deputy Commissioner Gollschewski, an event does not have to involve large numbers of persons to end violently, with a party attended by about 17 guests in January this year resulting in 5 persons receiving knife wounds. Furthermore, the requirement for 12*

[63] Queensland Law Society, Submission No. 4, page 3.
[64] Youth Advocacy Centre Inc., Submission No. 2, page 12.
[65] Queensland Association of Independent Legal Services, Submission No. 5, page 3.

> *or more persons to be gathered at a place is the same number of persons required to constitute a riot under the Criminal Code. Additionally, having to wait for 100 persons to be in attendance at the event would nullify the power for police to undertake pre-emptive action in relation to an event which is likely to become an out-of-control event.*
>
> *The second criteria requiring 3 or more persons associated with the event engaging in out-of-control conduct is necessary as the conduct may be undertaken outside the place where the event is being held. This is particularly relevant in circumstances where persons have spilled out from the event or persons who have been refused entry into the event, engage in out-of-control conduct causing the event to become an out-of-control event.*[66]

With reference to determining who 'organised' an event under section 53BH, at the public briefing Deputy Commissioner Gollschewski, on behalf of the QPS, explained:

> *The definition of 'organise' is necessarily broad and enables several persons to be prosecuted for organising a single event. It is immaterial whether or not any other organiser of the event knows of, or consents to, another person's involvement in organising the event.*[67]
>
> *… As you have heard, there have been some parties with 1,000 people at it. As we would for any investigation, we have to go through the steps of trying to identify who organised what and then gathering the evidence to do that. I do not see that as particularly a problem for us to investigate that an offence has occurred. The challenge for us will be to identify those entrepreneurs who are starting to crop up that we might not have heard about before so we can take that preventative action, and that is where our intelligence capability will come into it.*[68]

Committee Comment

In view of the explanations provided by the QPS, the Committee is confident that the threshold for constituting an 'event' under section 53BB, and determining who 'organised' an event under section 53BH, will not present any significant concerns in terms of the overall workability and application of the Bill.

Impact on civil liberties

Given the nature of the proposed out-of-control events provisions, they have unsurprisingly attracted criticism to the effect that they are 'extreme' and 'paramilitary'.[69]

In its submission to the Committee, Caxton Legal Centre suggested that the provisions infringe the right to freedom of association together with the UN Convention on the Rights of the Child:

> *It is our submission that the proposed Bill constitutes a substantial threat to the existing freedom of association. The practical effect of the Bill is to deny Queenslanders - and particularly Queensland teenagers - the right to associate with each other through gatherings.*

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66 Letter from the Minister for Police and Community Safety, 4 November 2013, Attachment, page 3.

67 *Transcript of Proceedings (Hansard)*, Public Briefing, Legal Affairs and Community Safety Committee, 26 September 2013, page 2.

68 *Transcript of Proceedings (Hansard)*, Public Briefing, Legal Affairs and Community Safety Committee, 26 September 2013, page 8.

69 *Reforms crack down on parents and teens to control Facebook parties*, The Courier-Mail, 7 July 2013, www.couriermail.com.au/technology/news/reforms-crack-down-on-parents-and-teens-to-control-facebook-parties, accessed 18 September 2013.

The right to freedom of association is contained in the International Covenant on Civil and Political Rights (ICCPR}. Australia has agreed to be bound by the ICCPR. Article 22 relevantly provides that 'everyone shall have the right to freedom of association of others'. 'No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order ... the protection of public health or morals or the protection of the rights and freedoms of others'.

The Bill infringes the United Nations Conventions on the Rights of the Child

Australia has been a signatory to the United Nations Conventions on the Rights of the Child (UNCROC). The CROC deals with the rights of persons under 18 years of age.

The Convention contains the following relevant articles.

- *All organisations concerned with children should work towards what is best for each child.*
- *Governments should ensure that children are properly cared for and protect them from violence, abuse and neglect by their parents, or anyone else who looks after them.*
- *Children have the right to relax, play and to join in a wide range of leisure activities.*

This submission argues that the Bill infringes on these aforementioned articles. First, the Bill does not act to the best interests of children, as it is likely to impact on the ability of young people to meet, socialise or play without fear of excessive punishment and in a safe environment.

… Second, where parents have granted permission to their children to hold gatherings that become out of control, they may be liable for 12 months' imprisonment. The effect of the imprisonment would be to deny children their right to live with their parents at such important stages of their lives.[70]

In response to suggestions that the proposed organising offence infringes upon an individual's freedom of association, the QPS stated:

The proposed organising offence does not infringe upon an individual's freedom of association. The purpose of the organising offence is not operational efficiency, but to:

- *provide a general deterrence to out-of-control events;*
- *minimise harm caused to attendees and the broader community;*
- *minimise the resultant community impact caused by out-of-control events; and*
- *hold to account those who organise or permit events which become out-of-control.*

The out-of-control event scheme does not broadly prohibit persons from associating together, or prevent persons from holding events.

…

Neither the organising offence nor the entire out-of-control event scheme offend Article 22 of the ICCPR as it is proposed that the restrictions be imposed by legislation and are necessary for public safety, public order and for the protection of the rights and freedoms of

[70] Caxton Legal Centre Inc., Submission No. 1, pages 6-7.

> *others. This is clearly evidenced by the third requisite criteria for determining an out-of-control event under proposed section 53BB(1)(c) which provides:*
>
> *'the out-of-control conduct would cause a person at or near the event –*
>
> *(i) to reasonably fear violence to a person or damage to property; or*
>
> *(ii) to reasonably believe a person would suffer substantial interference with their rights and freedoms or peaceful passage through, or enjoyment of, a public place.'* [71]

The QPS addressed the suggestion the proposed offence infringes upon the United Conventions on the Rights of the Child as follows:

> *The out-of-control event scheme does not infringe upon the rights of a child. The Bill does not prevent children from relaxing, playing or from joining in a wide range of leisure activities. Nor does it prohibit children generally from holding events or gathering together. The Bill does act in the best interest of a child in that it strives to ensure events attended by persons, including children, are safe and do not become out-of-control thereby placing children or other attendees at risk of serious harm. It is a common result of out-of-control events that attendees and the general public, are subject to alcohol fuelled violence. Further, it is a common characteristic of out-of-control events that underage persons consume excessive amounts of alcohol resulting in a number of attendees requiring medical attention due to severe intoxication.* [72]

In addition to the comments made by Caxton Legal Centre, QAILS described the provisions as *'poor law making...seek*[ing*] to infringe upon the rights and liberties of ordinary citizens* [whilst failing] *to provide any sound evidentiary basis to justify its curtailment of those rights and liberties.'* [73]

At the briefing, Deputy Commissioner Gollschewski addressed these comments generally as follows:

> *I think the point that has to be made is that it relates to a very small proportion of events that occur. Even for this year—and we are currently in September—we are talking about 18 events across the state, and there is a community of 4.6 million people who come within that particular area. The unique aspect of those particular events is that they are outside the norm and require an outside-the-norm response by police. So our normal legislation does not allow us to deal with them effectively and quickly and safely. We have had events, ... where the entire policing response is tied up for hours to try and get this type of thing under control. So if there is something else happening that is important in the community, our ability to respond to that is completely diminished in that area and sometimes nonexistent because of the risk to our young people and members of the community posed by these events.*
>
> *We should not forget too it is not just about the police; it is also our other emergency responders such as ambulance in particular that are being tied up. For every ambulance officer that is tied up dealing with people who are injured there, someone else who is at risk in the community for some illness is put on a list. One of the issues there is the preventative stuff; we would actually like to stop them happening. That is the perfect world for us. So we are not impinging on anyone's rights at all; we are stopping them before they occur. Then if they do occur, this new legislation will allow us to deal with them quickly and effectively. If we rely on the current legislation, we are stuck in the same place where it is*

71 Letter from the Minister for Police and Community Safety, 4 November 2013, Attachment, pages 5-6.
72 Letter from the Minister for Police and Community Safety, 4 November 2013, Attachment, page 6.
73 Queensland Association of Independent Legal Services, Submission No. 5, page 2.

> *going to tie up all our resources and take us hours upon hours in some instances to resolve them and not be able to mitigate the risk to the people that are involved as quickly as we need to.*[74]

Committee Comment

The Committee accepts that getting the balance right in situations such as this is difficult. The Committee is of the view that the Bill achieves the right balance between protecting the rights of people to hold parties and the need to ensure the safety and security of the general public, and deter antisocial conduct. The Committee is not convinced the Bill offends the right to freedom of association together with the UN Convention on the Rights of the Child, as suggested.

Review of the Out-of-control event powers

The initiatives being pursued under this Bill will be significant in addressing the increasing occurrence of out-of-control events across the State and the Committee commends the Minister in taking the steps he has to curb this growing problem.

As the additional powers in the Bill could be considered as ground-breaking, and there have been concerns raised that the provisions may be applied against groups or gatherings that are not intended to be caught by the provisions, the Committee considers the Parliament would benefit from a report on their operation and use after they have been in force over the Christmas/end of year period and the following months.

The Committee does not consider this will increase the administrative burden on police officers, as under the Bill there is a requirement for all out-of-control event authorisations to be made in writing. The Committee considers an analysis of the number of authorisations made, powers used, number of offences committed and costs orders issued under the Bill, will greatly assist the Parliament and this Committee in understanding the effect of Bills that are passed and implemented.

Recommendation 3

The Committee recommends the Minister for Police and Community Safety conduct a review of the operation and use of the new Part 7 Out-of-control events and report to Parliament within two years of commencement.

2.3 Evade Police

The intent of the amendment to the evade police provision was explained in the Explanatory Notes as follows:

> *Section 754(2) of the* Police Powers and Responsibilities Act 2000 *(PPRA) provides for the offence of failing to stop a vehicle when the driver of the vehicle has been directed to do so by a police officer. The offence of 'evading police' was created as an alternative to pursuits and to ensure that a sufficient deterrent exists following the decision of the QPS to move towards a more restrictive police pursuit policy.*

[74] *Transcript of Proceedings (Hansard)*, Public Briefing, Legal Affairs and Community Safety Committee, 26 September 2013, page 5.

Prior to the last state election on the 24 March 2012, the policy document First 100 Days Action Plan was released by the Government. That document expressed the Government's commitment to introduce legislation within the first 100 days of office to impose a minimum penalty of $5000 and two years disqualification for the offence of evading police. The Government considered the existing penalties were not commensurate with the risk posed by those who evade police.

This commitment was met on 29 August 2012 by the Criminal Law Amendment Act 2012 *which amended section 754(2) of the PPRA to allow for a minimum penalty of 50 penalty units ($5500) by way of fine and a two year disqualification from holding or obtaining a driver's licence.*

On 6 August 2013, the Cairns Supreme Court delivered a decision in the matter of Commissioner of Police Service v Magistrate Spencer and Ors [2013] QSC 202. The decision suggests that alternative penalties for evading police offences could include a range of sentencing options, including probation or suspended sentences. Sentencing options such as these, particularly in circumstances where such an option is not comparable with a fine of 50 penalty units, undermines the Government's commitment to ensuring penalties for those who evade police are commensurate with the risk posed to the community.[75]

Clause 39 of the Bill therefore proposed to amend section 754 of the PPRA to clarify the only alternative minimum penalty that a court can impose instead of the 50 penalty units was 50 days imprisonment.

As set out in Part 1.4 of this report, the Committee notes similar amendments to section 754(2) of the PPRA were included in the Criminal Law (Criminal Organisations Disruption) Amendment Bill 2013,[76] introduced by the Attorney-General and Minister for Justice on 15 October 2013.

As a consequence, the amendments to clause 39 are no longer considered necessary and accordingly should be removed from the Bill.

Recommendation 4

The Committee recommends clause 39 be omitted from the Bill.

75 *Explanatory Notes*, Police Powers and Responsibilities and Other Legislation Amendment Bill 2013, page 2.
76 Clause 64, Amendment of section 754 (Offence for driver of motor vehicle to fail to stop motor vehicle).

3. Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals; and
- the institution of Parliament.

The Explanatory Notes set out in some detail how fundamental legislative principles considerations are addressed. The Committee has also examined the application of the fundamental legislative principles to the Bill. In addition to the matters highlighted in the Explanatory Notes and earlier in this Report, the Committee brings the following to the attention of the Legislative Assembly.

The Committee does not consider that any of the identified FLP issues warrant amendment to the Bill.

3.1 Rights and liberties of individuals

Section 4(2)(a) of the *Legislative Standards Act 1992* requires that legislation has sufficient regard to the rights and liberties of individuals.

New police power to enter without warrant and exercise powers

Proposed new section 53BG - powers to enter vehicle or place without warrant

Clause 4 inserts proposed new section 53BG 'Taking action for out-of-control event'. Section 53BG(2)(a) confers on a police officer the power to stop a vehicle or enter a place without a warrant. Once a police officer enters the vehicle or place, he or she may give a direction to:

- stop conduct;
- leave a place;
- not return to a place within a stated period of up to 24 hours; and
- take any other steps the police officer considers reasonably necessary.

Section 4(3)(e) of the *Legislative Standards Act 1992* provides that legislation is to confer '*power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer*'.

The former Scrutiny of Legislation Committee stated: '*Departures from the safeguards provided by search warrants should be carefully considered and adequately justified'*.[77]

The effect of this section will be that once an out-of-control event authorization is made, police can enter a vehicle or place without consent of the owner. The greatest potential for impact on the rights and liberties of individuals will be when entry is made to a residence without consent.

[77] Scrutiny of Legislation Committee, *Alert Digest 1 of 2002*, page 27.

Under current Queensland drafting practice identified by the Office of the Queensland Parliamentary Counsel, legislation can achieve consistency with this FLP by limiting the circumstances in which police may enter a vehicle or place without a warrant. Section 53BE does contain some limitations, including the following:

- a senior police officer reasonably believes the event is or is likely to become an out-of-control event;
- requirement for authorisation to be given by senior police officer;
- authorisation effective for 24 hours.

The Committee is satisfied that the powers to enter without a warrant as contained in new section 53BG, whilst necessarily impacting upon certain right and liberties, are justified and reasonable in view of the clear policy objective of addressing the increasing occurrences of and detrimental impact of out-of-control events.

The Committee regards the powers conferred on police under section 53BG as necessary to allow the QPS to effectively deal with out-of-control events.

Section 53BH – offence of organising an out-of-control event

Proposed new section 53BH creates a new offence of organising an out-of-control event. Section 53BH(3) provides for a reasonable steps defence in preventing the event becoming an out-of-control event.

As stated by the Office of the Queensland Parliamentary Counsel,

> *… the most general concept of liberty logically requires that an activity should be lawful unless for a sufficient reason it is declared unlawful by an appropriate authority*[78]; and
>
> *… should be sufficiently specific to enable all persons to understand what is required of them.*[79]

It is considered that the broad drafting of section 53BH(3) may present difficulties for an accused to understand what is required of them when relying on this defence. For this reason, it is possible the provision could be regarded as having inadequate regard to the right and liberties of individuals and is not consistent with fundamental legislative principles.

As outlined in part 2 of the report, the Committee recommends that the Minister give consideration to including the further list of examples suggested by the QLS in section 53BH(3) of the Bill to improve the clarity of how the ‘reasonable steps’ defence is intended to operate. This should go some way to alleviating the above concerns.

Removal of requirement for approval of senior officer for DNA related matters

Clause 18 amends section 481 to remove the requirement to obtain approval of a senior officer to detain a person for the purposes of obtaining a DNA sample; and to actually take a DNA sample for DNA analysis from a person detained. Similarly, clause 19 amends section 482 to remove the requirement to obtain approval of a senior officer to issue a DNA sample notice.

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78 Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, January 2008, page 118.

79 Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, January 2008, page 124.

The effect of clause 18 will be that a person may be detained for the time reasonably necessary to take a DNA sample from the person.

The effect of clause 19 will be that a DNA sample notice may be issued requiring a person to report to a police officer to enable a DNA sample to be taken, without any requirement for approval by a senior officer. Sections 481(6) and 482(6) provide that a senior officer is one holding at least the rank of Senior Sergeant.

Sections 481(4) and 482(3) include requirements for the senior officer to have regard to the rights and liberties of the person and the public interest when issuing an approval. As these amendments remove these requirements, they remove a measure that helps preserve the privacy of DNA material. This may result in DNA testing being carried out more frequently and becoming routine. However, the DNA of each individual (except for identical twins) is unique. Therefore, it is highly personal information. Individuals have a reasonable expectation of privacy of DNA material. This amendment may impact on privacy of DNA material. Further, DNA profiles are uploaded onto the National Criminal Investigation DNA Database (as stated at page 4 of the Explanatory Notes).

This issue of fundamental legislative principle is not identified or addressed by the Explanatory Notes.

No opposition to these amendments was raised in submissions. The departures from fundamental legislative principles as outlined above are noted. However, the Committee is of the view that in the circumstances, and given the tangible benefits these measures will bring, the amendments are appropriate and justified.

Costs orders

Sections 53BK, 53BL and 53BM provide for costs orders to be made for a person found guilty to pay some or all of the Police Commissioner's reasonable costs in relation to the event. Further, the costs orders proposed by the Bill are enforceable:

- Section 53BK – if a person does not pay – he or she may be imprisoned - section 36(2), 37 *Penalties and Sentences Act 1992*, however an appeal is available section - 35(4);
- Section 53BL – order against a child is enforceable in the Magistrates Court as a debt owing to the state. This is in contrast to the usual position at law, where a child is regarded as a person under a legal incapacity and requires a legal guardian to defend a proceeding (Uniform Civil Procedure Rules 1999, rule 93);
- Section 53BM – order against parent of child offender – debt enforceable as an order of the Magistrates Court.

Section 53BM will apply if lack of adequate supervision contributed to the child committing the offence. The parent must show cause why he or she shouldn't pay compensation. At the show cause briefing, a decision beyond reasonable doubt is required and the maximum compensation order is 67 penalty units ($7,370). The parent may also be liable for the court costs of the civil proceeding (section 258(8) *Youth Justice Act 1992*). Typically under the *Youth Justice Act 1992*, compensation is awarded on the ground of property loss or personal injury. An order under section 53BL or 53BM may apply in addition to sentencing provisions of the *Youth Justice Act 1992*, part 7.

Each of these costs order provisions will have an impact on the rights and liberties of individuals.

The notion of convicted offenders being ordered to pay the Police Commissioner's reasonable costs in relation to an event is highly unusual. The Explanatory Notes indicate that this aspect of the scheme is unique in Australia.[80]

The Committee recognises that the cost order provisions in the Bill are contentious and notes the implications of them on the rights and liberties of individuals. However, the Committee has formed the view that those directly involved in organising or causing out-of-control events, as well as their parents, should be held responsible for the financial consequences of this antisocial behaviour.

As such it regards the cost order provisions as appropriate and proportionate having regard to the objectives of the Bill.

3.2 Explanatory Notes

Part 4 of the *Legislative Standards Act 1992* relates to Explanatory Notes. It requires that an explanatory note be circulated when a bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Consultation

The Department of the Premier and Cabinet has outlined its expectations of the 'consultation' part of Explanatory Notes by stating:

> *This part of the notes should focus on consultation with community stakeholders and organisations independent of government.*[81]

The Explanatory Notes tabled with the Bill describe consultation undertaken with Government Departments stating *'Consultation was also undertaken with the Australian Bankers Association and the Customer Owned Banking Association in relation to clause 13 'Insertion of new ch 7, pt 7 'Accessing account information.'*[82]

Therefore, it appears full consultation occurred for only one clause out of 45.

Further, the guidelines state the following:[83]

> *When preparing this statement:*
>
> - *consider that, in principle, consultation should occur with affected key stakeholders at all stages of the regulatory cycle – the explanatory notes should explain how consultation has occurred and if not, why not;*[84]
> - *the groups or persons consulted should be suitably identified (preferably by means of a list);*[85] *and*
> - *additional information about the consultation process may be required depending on the nature and importance of the bill – this might include:*
>   - *the form of consultation;*
>   - *a summary of the views expressed;*

[80] *Explanatory Notes*, Police Power and Responsibilities and Other Legislation Amendment Bill 2013, page 6.
[81] Department of the Premier and Cabinet, *Guidelines for the preparation of Explanatory Notes*, page 9.
[82] *Explanatory Notes*, Police Power and Responsibilities and Other Legislation Amendment Bill 2013, page 6.
[83] Department of the Premier and Cabinet, *Guidelines for the preparation of Explanatory Notes*, pages 9-10.
[84] Citing Principle 7, COAG Principles of Best Practice Regulation.
[85] Citing Appendix 5.6, Auditor-General's Report No 6 of 2009.

- *the resultant impact of the consultative process on the content of the bill; and*
- *if no consultation occurred, the reasons for that.*[86]

It cannot be said that the consultation part of the Explanatory Notes complies with the requirements of the *Legislative Standards Act 1992,* as articulated by the Department of Premier and Cabinet.

The other aspects of the Explanatory Notes are fairly detailed and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the bill's aims and origins.

[86] Citing Appendix 5.6, Auditor-General's Report No 6 of 2009.

Appendix A – List of Submissions

Sub #	Submitter
001	Caxton Legal Centre Inc.
002	Youth Advocacy Centre Inc.
003	Queensland Council for Civil Liberties
004	Queensland Law Society
005	Queensland Association of Independent Legal Services In.