



Australian Crime Commission (Queensland) and Other Legislation Amendment Bill 2016

**Report No. 32, 55th Parliament
Legal Affairs and Community Safety Committee
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Legal Affairs and Community Safety Committee

Chair	Mr Mark Furner MP, Member for Ferny Grove
Deputy Chair	Mr Michael Crandon MP, Member for Coomera
Members	Mr Don Brown MP, Member for Capalaba Mr Jon Krause MP, Member for Beaudesert Ms Joan Pease MP, Member for Lytton Mrs Jann Stuckey MP, Member for Currumbin
Staff	Mr Stephen Finnimore, Research Director Dr Jacqui Dewar, Research Director Mrs Kelli Longworth, Principal Research Officer Mrs Lynda Pretty, Principal Research Officer Mr Gregory Thomson, Principal Research Officer Ms Lorraine Bowden, Committee Support Officer
Technical Scrutiny Secretariat	Ms Renée Easten, Research Director Mr Michael Gorringe, Principal Research Officer Ms Kellie Moule, Principal Research Officer Miss Carla Campillo, Committee Support Officer
Contact details	Legal Affairs and Community Safety Committee Parliament House George Street Brisbane QLD 4000
Telephone	+61 7 3553 6641
Fax	+61 7 3553 6699
Email	lacsc@parliament.qld.gov.au
Web	www.parliament.qld.gov.au/lacsc

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Abbreviations

ACC	Australian Crime Commission
AUSTRAC	Australian Transaction Reports and Analysis Centre
the bill	the Australian Crime Commission (Queensland) and Other Legislation Amendment Bill 2016
the committee	Legal Affairs and Community Safety Committee
FESA	<i>Fire and Emergency Services Act 1990</i> (Qld)
FLPs	fundamental legislative principles
LSA	<i>Legislative Standards Act 1992</i>
PPRA	<i>Police Powers and Responsibilities Act 2000</i> (Qld)
PPRA 1997	<i>Police Powers and Responsibilities Act 1997</i> (Qld)
QCCL	Queensland Council for Civil Liberties
QPS	Queensland Police Service
Weapons Act	<i>Weapons Act 1990</i> (Qld)

Chair's foreword

This report details the examination by the Legal Affairs and Community Safety Committee of the Australian Crime Commission (Queensland) and Other Legislation Amendment Bill 2016.

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 in accordance with section 4 of the *Legislative Standards Act 1991*.

The committee has recommended that the Bill be passed.

On behalf of the committee, I thank those who lodged written submissions on this Bill. I also thank the Public Safety Business Agency, Queensland Police Service and Queensland Fire and Emergency Services for the support they have provided the committee during this inquiry.

In particular, I thank all members of the committee for their efforts during this inquiry and committee office staff for the support they have provided us.



Mark Furner MP
Chair

Recommendations

Recommendation 1

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The Committee recommends the Australian Crime Commission (Queensland) and Other Legislation Amendment Bill 2016 be passed.

1. Introduction

1.1 Role of the Committee

The Legal Affairs and Community Safety Committee (the committee) is a portfolio committee of the Legislative Assembly which commenced on 27 March 2015.¹

The committee's primary areas of responsibility include:

- Justice and Attorney-General
- Police Service
- Fire and Emergency Services
- Training and Skills.

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
- for subordinate legislation – its lawfulness.

1.2 Inquiry process

On 24 May 2016, the Minister for Police, Fire and Emergency Services and Minister for Corrective Services, the Hon Bill Byrne MP, introduced the Australian Crime Commission (Queensland) and Other Legislation Amendment Bill 2016 into the Queensland Parliament. In accordance with Standing Order 131 of the Standing Rules and Orders of the Legislative Assembly, the bill was referred to the committee for detailed consideration. The committee was required to report to the Parliament by 2 August 2016.

The committee invited written submissions from the public and from identified stakeholders. One submission was received – from the Queensland Council for Civil Liberties.

The Queensland Police Service (QPS), the Public Safety Business Agency, and the Queensland Fire and Emergency Services (QFES) provided an oral briefing on 15 June 2016. The QPS also provided a response to the submission received.

1.3 Policy objectives of the Australian Crime Commission (Queensland) and Other Legislation Amendment Bill 2016

The stated objectives of the bill are to facilitate the merger of CrimTrac, Australia's policing information sharing agency, into the Australian Crime Commission (ACC), the national criminal intelligence agency. The bill also aims to address operational priorities of the QPS and (QFES).²

The bill proposes to introduce 'a diverse range of amendments'³ and achieve the following objectives by:

- amending Queensland Acts that currently refer to 'CrimTrac' to refer to the ACC
- increasing the quorum at ACC Board meetings from seven to nine members
- permitting police to use an explosives detection dog, without warrant, to carry out explosives detection operations at licensed premises, where an event is being held or in a public place

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

² Explanatory notes, p.1.

³ Hansard transcript, 24 May 2016 (explanatory speech), p 1937.

- redrafting section 439 of the *Police Powers and Responsibilities Act 2000* (Qld) (PPRA) to allow judicial discretion to admit evidence of unrecorded admissions or confessions where the admission of the evidence is in the interests of justice
- ensuring it is lawful in the PPRA for a police officer to arrest a person without warrant at the instruction of another police officer, where there are lawful grounds for the arrest
- providing police with the power to search a vehicle, without warrant, where it is reasonably suspected the vehicle may contain a knife, not in the lawful possession of a person
- defining ‘public place’ in section 51 of the *Weapons Act 1990* (Qld) (Weapons Act) to clarify the definition of ‘public place’ with respect to a knife being possessed within a vehicle in public, without reasonable excuse
- defining ‘public place’ in section 57 of the Weapons Act to clarify the definition of ‘public place’ with respect to particular conduct involving possession of a weapon within a vehicle in public, without reasonable excuse
- permitting an authorised fire officer of QFES to require information that will identify or help identify a person reasonably suspected of contravening *Fire and Emergency Services Act 1990* (Qld) (FESA) or chapter 7 or 7A of the *Building Act 1975* (Qld). The authorised fire officer may require the information from a government entity, an occupier of the premises, or a person who may reasonably be expected to give the information
- creating an offence provision for the failure to provide information that is required by an authorised fire officer, without reasonable excuse.

The bill also amends the following legislation:

- *Animal Management (Cats and Dogs) Act 2008*
- *Australian Crime Commission (Queensland) Act 2003*
- *Australian Crime Commission (Queensland) and Other Legislation Amendment Bill 2016*
- *Child Protection (Offender Reporting) Act 2004*
- *Fire and Emergency Services Act 1990*
- *Police Powers and Responsibilities Act 2000*
- *Police Powers and Responsibilities Regulation 2012*
- *Police Service Administration Act 1990*
- *Weapons Act 1990*.⁴

1.4 Consultation on the bill

The explanatory notes state that public consultation was not undertaken during the drafting stage of the bill as the amendments were either technical in nature or sought to clarify legislative intent.⁵

The committee was informed that consultation was undertaken beyond state law enforcement agencies:

*Departmental consultation was undertaken with the Department of the Premier and Cabinet, the Department of Justice and the Attorney-General, Queensland Treasury, the Department of Communities, Child Safety and Disability Services and others.*⁶

⁴ Explanatory notes, pp.3-4.

⁵ Explanatory notes, p.8.

⁶ Queensland Police Service, response to submission, 4 July 2016, p. 2.

However, the Queensland Council for Civil Liberties (QCCL) raised concerns about the lack of broad and appropriate public consultation:

... the well established processes post the Fitzgerald Inquiry of changes to the criminal law being put out for public comment and submission before Cabinet signs off on such changes has not occurred in this instance.

The QCCL raised particular concerns about a lack of public consultation regarding the proposed changes to the admissibility of confessions provided in s 439 of the PPRA:

...[This] throws up profound issues of QPS accountability and the apparent failure of the Cabinet process to ensure that law changes that emanate from a government department (particularly the QPS) are widely circulated to stakeholders before Cabinet makes the decision on such changes.⁷

The Queensland Police Service stated that broad consultation beyond government departments was not undertaken in regard to the bill due to the 'largely technical nature of the amendments'.⁸

1.5 Should the bill be passed?

Standing Order 132(1)(a) requires the committee to determine whether or not to recommend that the bill be passed.

Committee comment

After examination of the bill, including the policy objectives it seeks to achieve and consideration of the information provided by government agencies and stakeholders, the committee recommends that the bill be passed.

Recommendation 1

The Committee recommends the Australian Crime Commission (Queensland) and Other Legislation Amendment Bill 2016 be passed.

⁷ Queensland Council for Civil Liberties, submission 1, pp.3-4.

⁸ Queensland Police Service, response to submission, 4 July 2016, p. 2.

2. Examination of the Australian Crime Commission (Queensland) and Other Legislation Amendment Bill 2016

2.1 CrimTrac agency merger into the ACC

As of 1 July 2016, the CrimTrac agency was to cease to exist as an entity. The integration of Australia's national information (CrimTrac) and intelligence capabilities (ACC) is vital to ensure law enforcement and protection agencies have access to accurate information and intelligence in their response to immediate threats.⁹

The committee was informed:

*The merger will have a number of benefits, including approved quality and timeliness of information and intelligence delivered to operational police officers. In addition, the combined agency will provide a clearer picture of national security threats which will better inform operational decision-making. The Commonwealth legislation that merges CrimTrac into the ACC will be assented to and will commence on 1 July 2016.*¹⁰

There were no issues raised in the committee's inquiry in regard to this matter.

2.2 Amendment to the Australian Crime Commission (Queensland) Act 2003

The Australian Transaction Reports and Analysis Centre (AUSTRAC) provides valuable information to the broader law enforcement community. To further strengthen this partnership the ACC Board resolved to add the CEO of AUSTRAC as a member of the ACC Board. Increasing the Board's membership from 14 to 15 members requires amendment to the quorum at Board meetings from seven to nine Board members, so as to constitute a majority.¹¹

There were no issues raised relating to this essentially administrative matter.

2.3 Amendments to the Police Powers and Responsibilities Act 2000 (PPRA)

2.3.1 Explosive detection dogs

In 2013, the PPRA was amended by the *Tattoo Parlours Act 2013* (Qld). Section 35 of the PPRA was amended to include the power for a dog handler to use an explosives detection dog to carry out explosives detection in relation to a person who is about to enter, is in, or is leaving, a tattoo parlour. A drug detection dog can carry out detection at a tattoo parlour, licensed premises, where an event is being held or in a public place. The committee heard that:

*The bill amends the places at which an explosives detection dog can carry out explosive detection to align it with the places that a drug detection dog can currently operate in. The bill also changes reference to 'explosive detection dogs' to 'firearms and explosive detection dogs' to provide consistency in the use of terminology throughout the PPRA, the Police Powers and Responsibilities Act, and to better reflect the duties that police dogs perform.*¹²

The amendment was argued to be of particular importance as Queensland is hosting the Commonwealth Games in 2018 and there will be a need for an enhanced security platform for large scale events.¹³

There were no issues raised before the committee in regard to this matter.

⁹ Explanatory notes, p. 1.

¹⁰ Public briefing transcript, Brisbane, 15 June 2016, p 1.

¹¹ Explanatory notes, p. 1.

¹² Public briefing transcript, Brisbane, 15 June 2016, p 1.

¹³ Public briefing transcript, Brisbane, 15 June 2016, p 1.

2.3.2 Authorising a police officer to arrest

Section 365 of the PPRA lists a number of circumstances where police can arrest a person without a warrant. This authority is predicated on the requirement that the police officer who makes the arrest is required to witness the event or alternatively have the requisite evidence before them to form the suspicion that the suspect has committed or will commit an offence. The explanatory notes highlight the recent decision of the Queensland Court of Appeal of *Bulsey and Anor v State of Queensland* [2015] QCA 18. The court there found the arrest to be unlawful as the police officer making the arrest had done so under the direction of a senior police officer rather than forming their own reasonable suspicion about the offences committed as required under section 198(2) (now section 365(2) of the PPRA).¹⁴

It was argued before the committee that this proposed amendment highlighted a gap between the current legislation and methods use in contemporary policing:

*There are a number of circumstances that you can imagine where a situation like that would unfold. A police officer ... reviewing CCTV ... may very well witness an event occurring that is tantamount to an offence and forms the suspicion in their own mind, but currently the legislation is such that that police officer is not able to direct another police officer to take action. The amendments to this bill will ultimately recognise the fact that the world has moved on and technology plays a very significant part in the detection of offences and, importantly, this will address that very significant oversight.*¹⁵

Aerial surveillance - for example photographic or video evidence taken by officers in the police helicopters - provides another contemporary example which illustrated to the committee the need for these proposed amendments.

*It is often a situation that occurs where you might have a police officer in an aircraft observing certain behaviour. The police officer observing that behaviour can form a suspicion and a view that there is sufficient evidence to arrest a person for a particular offence. Naturally enough, they have technology that illuminates the offending behaviour... They would direct the crew then to a particular individual. ...That police officer would not have to go through another mechanism, a more bureaucratic mechanism to effect that arrest and then, ultimately, the arrest would be effected thereafter. It is a more direct transaction.*¹⁶

The current legislation has limitations regarding arrests during large scale operations and in pressing or urgent circumstances. The explanatory notes state the proposed amendment is justified:

*... particularly in instances of emergencies or large policing operations, which require a rapid response to apprehend individuals, and where there is insufficient time to provide first response or specialist officers with a detailed briefing of the reasons for arrest.*¹⁷

The committee heard that the proposed amendment would allow an arrest to occur irrespective of the police officer's level or rank. For example, a police officer who has observed or witnessed a certain behaviour could instruct a more senior officer to make an arrest.¹⁸

There were no issues raised by stakeholders on this aspect of the Bill.

¹⁴ Explanatory notes, p. 2.

¹⁵ Public briefing transcript, Brisbane, 15 June 2016, p. 2.

¹⁶ Public briefing transcript, Brisbane, 15 June 2016, p. 5.

¹⁷ Explanatory notes, p. 6.

¹⁸ Public briefing transcript, Brisbane, 15 June 2016, p. 5.

2.3.3 Evidence of admissions or confessions

The bill amends section 439 of the PPRA to provide judicial discretion to admit evidence of admissions or confessions and to specifically omit references to the term ‘record’ in order to admit evidence of unrecorded admissions or confessions.

In introducing the Bill, the Minister stated that the proposed amendment addresses concerns that, without this discretion, people guilty of serious crimes ‘may go free’:

When investigating an indictable offence, a police officer must comply with safeguards in the PPRA with regard to the recording of admissions or confessions. On occasion, due to circumstances beyond the control of police, there may not be full compliance with safeguards... The bill amends section 439 of the PPRA, allowing the judiciary to admit evidence where there is noncompliance or insufficient evidence of compliance with relevant safeguards.¹⁹

The amendment comes about because of the decision in *R v McMillan* [2010] QSC 30. There, the defendant was charged with unlawfully trafficking dangerous drugs. During a recorded interview with police, the applicant expressed reservations about answering questions, citing a fear of retribution if recorded incriminating others. The recorded interview concluded. After the recording had stopped, but before the police and the applicant left the interview room, the defendant made admissions. Oral testimony of the police officers regarding the admissions was subsequently excluded from evidence, in part due to an analysis of the meaning of section 439 of the PPRA.²⁰

The QPS cited the comments of the judge in that case to the effect that there was a lack of judicial discretion in the current legislation, as a result of a drafting error in 2000 (when the current PPRA was introduced).²¹

Section 439 of the PPRA was, prior to consolidation and reform in 2000, in effect set out in section 104(13) of the former *Police Powers and Responsibilities Act 1997* (Qld) (‘PPRA 1997’).

The relevant part of section 104 provided:

(13) If a court considers this section has not been complied with or there is not enough evidence of compliance, the court may, despite the noncompliance, admit evidence to which this section applies if, having regard to the nature of and the reasons for the noncompliance and any other relevant matters, the court is satisfied, in the special circumstances of the case, admission of the evidence would be in the interests of justice.²²

The explanatory notes for the PPRA 1997 stated in relation to this section that ‘a court may admit evidence obtained in non-compliance with this clause if it is in the interests of justice’.²³

In 2000, when the Police Powers and Responsibilities Bill 2000 was introduced, the wording of the corresponding section, now s 439, had changed to its current form:

439 Admissibility of records of questioning etc.

(1) Despite sections 436 and 437, the court may admit a record of questioning or a record of a confession or admission (the record) in evidence even though the court considers this division has not been complied with or there is not enough evidence of compliance.

¹⁹ Hansard transcript, 24 May 2016 (explanatory speech), p 1937.

²⁰ Explanatory notes, p. 2.

²¹ *R v McMillan* [2010] QSC 309, p 12 at 58.

²² *Police Powers and Responsibilities Act 1997* (Qld), s 104(13).

²³ *Police Powers and Responsibilities Act 1997* (Qld), explanatory notes, p 79.

(2) *However, the court may admit the record only if, having regard to the nature of and the reasons for the noncompliance and any other relevant matters, the court is satisfied, in the special circumstances of the case, admission of the evidence would be in the interests of justice.*²⁴

The explanatory notes for the 2000 Bill do not explain the express inclusion of the word 'record' in the section. The notes refer to the provisions relating to the recording of questioning, such that if the provisions are 'not complied with or there is a lack of evidence of compliance, the court may still admit the evidence in the interests of justice'.²⁵

Noting the judicial observations in *McMillan* to the effect that there was an error in drafting the 2000 legislation, the QPS stated to the committee that the wording change had resulted in the exclusion of unrecorded evidence in a court and that section 439 of the PPRA had always intended to provide judicial discretion to admit evidence where there may not have been full compliance by police in the recording of an admission or a confession.²⁶

The QCCL did not consider this proposed change to s 439 of the PPRA was minor or technical, instead arguing that the change would foster the re-emergence of 'verballing', a practice identified as rife in Queensland criminal investigation prior to the Fitzgerald Inquiry.²⁷ The QCCL stated:

*To open up the possibility 26 years after the Fitzgerald Inquiry that police will be able to more energetically engage in a verbal is a significant worry.*²⁸

In contrast, the QPS was of the view that:

*...this will apply to a very, very narrow suite of circumstances, quite exceptional circumstances, bearing in mind our very considerable investment in technology across the state, technology such as body worn video, technology such as the ability to record, as we do currently, interviews with offenders and victims in police stations and establishments from one end of Queensland to the other and the amount of technology that officers carry to be able to record interviews that currently occur.*²⁹

In introducing the bill the Minister stated that, 'on occasion, due to circumstances beyond the control of police, there may not be full compliance with safeguards'.³⁰ The QCCL disputed that non-compliance with safeguards was beyond the control of police in the example of *McMillan*. The QCCL maintained that police had sufficient time and opportunity in that case to provide the defendant with a copy of the written record of the admission, in the form of a copy of the police notes.³¹

The QPS emphasised its expectation that the courts are the best place to consider issues of admissibility of evidence:

*At the end of the day the appropriate safeguard here is that the relevant magistrate or judge, properly instructing an jury, is the best place to consider all of the available information, including those very rare cases where an admission is made that is not recorded.*³²

²⁴ *Police Powers and Responsibilities Act 2000* (Qld), s 439.

²⁵ *Police Powers and Responsibilities Act 2000* (Qld), explanatory notes, p 97.

²⁶ Queensland Police Service, response to submission, 4 July 2016, p. 4.

²⁷ G E Fitzgerald (Chairman), *Report of a Commission of Inquiry pursuant to Orders in Council: Commission of Inquiry into possible illegal activities and associated police misconduct*, 3 July 1989, p 331.

²⁸ Queensland Council for Civil Liberties, submission 1, p. 3.

²⁹ Public briefing transcript, Brisbane, 15 June 2016, p 7.

³⁰ Hansard transcript, 24 May 2016 (explanatory speech), p 1937.

³¹ Queensland Council for Civil Liberties, submission 1, p 3.

³² Public briefing transcript, Brisbane, 15 June 2016, p 7.

The QCCL also noted the Minister's comment in his introduction speech that the provision 'will address judicial concerns that, without the discretion, people guilty of serious crimes, may go free'. The QCCL sought details of the plural 'judicial concerns' to which the Minister refers.³³ In response, the QPS referred to *McMillan* and also to *R v Purnell* [2012] QSC 60. In that case, Dalton J made the following statement in relation to the absence of a record of admission by the defendant, other than notes made by the arresting police officer:

*These notes are not admissible at general law and thus must be excluded for the same reason that the evidence of admissions was excluded in R v McMillan. I endorse the remarks of Byrne SJA in McMillan as to the need for reform of s 439 of the PPRA to avoid what seems to be an unintended consequence flowing from the drafting of that section.*³⁴

In addition, the QPS pointed to the case of *R v Smith* [2003] QCA 76, which is cited in both the QCCL submission and the findings of Byrne SJA in *McMillan*. The QPS maintained that:

*... the case of R v Smith serves to highlight that had the judiciary had the discretion to admit evidence of an admission or confession in this case, they would not have exercised the discretion in favour of police due to the lack of compliance with safeguards by police.*³⁵

The QCCL's comments on *Smith* drew attention to part of McMurdo P's observation:

*To allow in such evidence here would be to ignore the safeguards for those the subject of the police investigation and questioning provided by... the Act and to risk a return to an earlier less accountable period when police evidence of verbal admissions was regularly challenged in the Courts as fabricated, often with justification.*³⁶

The committee notes that the QPS has expressed agreement with the QCCL, 'that a return to an era of police verballing would be completely abhorrent and unacceptable'. The QPS holds that 'this amendment will not permit or encourage any such return to that behaviour'.³⁷

2.3.4 The power to search a vehicle for a knife

Under section 31 of the PPRA, a police officer who reasonably suspects any of the prescribed circumstances for searching a vehicle without warrant exist may:

- (a) stop a vehicle
- (b) detain a vehicle and the occupants of the vehicle
- (c) search a vehicle and anything in it for anything relevant to the circumstances for which the vehicle and its occupants are detained.³⁸

Section 32 of the PPRA lists the prescribed circumstances where a police officer may search a vehicle without warrant. Section 32(a) provides a power to search where there may be something in the vehicle that is a weapon or explosive that a person may not lawfully possess, but does not permit a search for a knife that a person may not lawfully possess. The bill inserts the word 'knife' into section 32(a) to provide police with a clear power to search a vehicle for a knife that is unlawfully possessed.³⁹

The committee heard that:

The Police Powers and Responsibilities Act currently permits the search of a vehicle where it is reasonably suspected that a weapon or explosive is in the vehicle and that a person

³³ Queensland Council for Civil Liberties, submission 1, p 3.

³⁴ Explanatory notes, p. 2.

³⁵ Queensland Police Service, response to submission, 4 July 2016, p 5.

³⁶ Queensland Council for Civil Liberties, submission 1, p 3.

³⁷ Queensland Police Service, response to submission, 4 July 2016, p 5.

³⁸ *Police Powers and Responsibilities Act 2000* (Qld), s 31.

³⁹ Explanatory notes, pp. 1-2.

may not lawfully possess that. It does not permit the search of a vehicle for the unlawful possession of a knife. Currently the detection of a person carrying a knife unlawfully in a vehicle will only be the by-product of a search by a police officer under a different search power. The bill amends the PPRA to permit a police officer to search a vehicle without warrant where it is reasonably suspected that the vehicle contains a knife that a person may not lawfully possess.⁴⁰

The proposed amendment will not alter the definition of ‘knife’. Schedule 6 of the PPRA defines ‘knife’ as:

a thing with a sharpened point or blade that is reasonably capable of—

- (a) being held in 1 or both hands; and*
- (b) being used to wound or threaten someone when held in 1 or both hands.⁴¹*

The committee sought clarification as to the meaning of ‘lawfully possess’, in the context of a search for a knife a person may not lawfully possess.⁴² The committee heard evidence in relation to circumstances where a knife may be lawfully possessed by a person in the context of the Weapons Act. Refer to section 2.4 below.

There were no issues raised by stakeholders on this aspect.

2.4 Amendments to the Weapons Act 1990

In 2012, the *Weapons Act 1990* (Qld) was amended by the *Weapons and Other Legislation Amendment Act 2012* (Qld). Section 50 of the Weapons Act (Possession of weapons) was amended by the insertion of a mandatory minimum penalty where a person unlawfully possesses a short firearm in a public place without reasonable excuse. Also inserted into s 50 by the amending Act was s 50(3) which states, ‘In this section – public place includes any vehicle that is in or on a public place’. The insertion of this definition clarifies that possession of a short firearm in a vehicle that is in or on a public place constitutes possession of a short firearm in a public place. The amendment has highlighted inadequacies in other sections of the Weapons Act that make it unlawful to possess a knife or a weapon in a public place.⁴³

Under s 51 of the Weapons Act it is an offence to physically possess a knife in a public place or school without reasonable excuse. Section 57 of the Act prohibits particular conduct with a weapon in a public place, for example carrying a loaded firearm without reasonable excuse. The committee was informed that:

Under the current interpretation of the Weapons Act, a person would be potentially excused from carrying a loaded shotgun or rifle in a vehicle in public without reasonable excuse but would be liable for possessing a short firearm in a vehicle in public. Unlawful possession of long arms, knives or other types of weapons in public without reasonable excuse should be a concern for the community as with the unlawful possession of a short firearm.⁴⁴

The bill inserts the same clarifying definition of public place into sections 51 and 57. This creates conformity between sections 50, 51 and 57 of the Weapons Act, such that a person who unlawfully

⁴⁰ Public briefing transcript, Brisbane, 15 June 2016, p 2.

⁴¹ *Police Powers and Responsibilities Act 2000* (Qld), schedule 6.

⁴² Public briefing transcript, Brisbane, 15 June 2016, p 3.

⁴³ Explanatory notes, p. 2.

⁴⁴ Public briefing transcript, Brisbane, 15 June 2016, p 2.

carries a short or long firearm, a knife, or another type of weapon in a vehicle, in public, is committing an offence under the Act.⁴⁵

The legislation allows for a number of exemptions and the discretion of the police officer.⁴⁶ During the public briefing on the bill, the committee was able to clarify a range of circumstances in which it would be permissible for an individual to possess a knife. Examples could include a person who belongs to a scouting group, a chef travelling to work, or someone going fishing. The committee heard that the proposed amendments to the Weapons Act would allow police officers to use their discretion in accordance with the circumstances and other observed events, such as a perceived threat made to public safety. The committee heard that:

*The discretion of the police officer is such that circumstances by which we find [the persons] – they might be a fisher, for example – under certain circumstances, that would be quite permissible... However, in a public place, possessing that same knife under circumstances that would give rise to public safety, then we would take action appropriately.*⁴⁷

Section 51(1) of the Weapons Act currently provides that a person must not ‘physically possess’ a knife in a public place or a school. The proposed amendment will add the inclusion of a vehicle that is in or on a public place. The amendment does not propose to alter the ‘physical possession’ aspect of the section. The committee sought clarification with regards to the physical possession of a knife in a vehicle. The explanatory notes state in regards to this matter:

*... if a knife was located in a tool box in the back of a vehicle, the possession could not be regarded as ‘physical’ for the purposes of the section. However, if the knife was located in the door well of a vehicle where it is readily to hand, this could be considered physical possession.*⁴⁸

There were no issues raised in the committee’s inquiry in regard to this matter.

2.5 Amendments to the *Fire and Emergency Services Act 1990 (FESA)*

As of 1 July 2015, the Residential Tenancies Authority (RTA) advised QFES that they were no longer able to provide QFES with access to information contained within their rental bonds database on the basis of confidentiality provisions.

The committee heard that the RTA had carried out an assessment of its privacy framework and formed the view that disclosing information to the QFES was without legislative basis and that it was inappropriate to continue to provide that information due to privacy requirements in Queensland law.⁴⁹ In order to obtain a measure of the scale of this practice, the committee sought more information in regards to how many times the QFES had requested from the RTA details of owner or occupier information prior to 1 July 2015. QFES advised:

*... in the period from January 2013 to the end of June 2015, a total of 117 requests for information were made to the RTA.*⁵⁰

The cessation of provision of owner and occupier information by the RTA has restricted QFES’ efforts to identify the owners and occupiers of budget accommodation buildings and take appropriate action to ensure compliance with fire safety standards in such structures. The bill inserts a new section 58D

⁴⁵ Hansard transcript, 24 May 2016 (explanatory speech), p 1938.

⁴⁶ Public briefing transcript, Brisbane, 15 June 2016, p 4.

⁴⁷ Public briefing transcript, Brisbane, 15 June 2016, p 4.

⁴⁸ Explanatory notes, p 5.

⁴⁹ Public briefing transcript, Brisbane, 15 June 2016, pp 5-6.

⁵⁰ Public Safety Business Agency, *Response to question on notice from the Legal Affairs and Community Safety Committee during its consideration of the Australian Crime Commission (Queensland) and Other Legislation Amendment Bill 2016*, 24 June 2016.

(Power to require information about identity if occupier) into FESA to permit an authorised fire officer to require information that will assist in identifying the occupier of a premises, so as to investigate a contravention of fire safety measures. The proposed amendments would allow an authorised fire officer to seek information from a government entity, an occupier of the premises, or a person who may reasonably be expected to give the information.⁵¹

The proposed amendments are expected to allow the QFES to again be able to seek owner or occupier information from the RTA. The explanatory notes state that an authorised officer may also be able to access the information by seeking information from a tenant of a premises or a neighbour who has knowledge of the identity of the owner or occupier.⁵²

There were no issues raised before the committee in regard to this matter.

⁵¹ Explanatory notes, p 11.

⁵² Explanatory notes, p 8.

3. Compliance with the *Legislative Standards Act 1992*

Section 4 of the *Legislative Standards Act 1992* (LSA) states that ‘fundamental legislative principles’ (FLPs) 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 individuals⁵³
- the institution of parliament.⁵⁴

The committee has examined the application of FLPs to the bill. The following section discusses potential breaches that were not discussed in the previous policy examination section of this report.

3.1 Rights and liberties of individuals

Potential FLP issues

Clause 6

This clause has been discussed above. Clause 6 inserts new section 58D (Power to require information about identity of occupier) into FESA. Section 58D imposes a maximum penalty of 20 penalty units for its contravention.

Up until 30 June 2015, the RTA provided the QFES with access to information contained within the rental bonds database to assist in investigations of matters within QFES jurisdiction. New section 58D re-establishes access to information in order to help the QFES with their investigations.

The power for an authorised fire officer to require information about the identity of an occupier, where a contravention of fire safety is reasonably suspected, may be seen as a breach of privacy. The authorised fire officer may require a government entity, an occupier of the premises, or a person who may be reasonably expected to give the information, to give the authorised fire officer information that will identify or help identify an occupier of the premises.

The explanatory notes state:

While it is envisaged the QFES will primarily seek this information from the RTA there will be occasions where an authorised officer may be able to access the information by making the requirement to a tenant of a premises or a neighbour who has knowledge of the identity of the owner/occupier.⁵⁵

The explanatory notes state this potential breach of privacy may be justified:

To ensure that persons in control of accommodation cannot avoid identification and prosecution, and continue to put their own profits ahead of the safety of persons housed in their accommodation.⁵⁶

The imposition of liability may also raise FLP issues. Here, where the information requirement is contravened, an offence provision will apply with a maximum of 20 penalty units. The offence penalty is consistent with other penalty provisions in part 6 of FESA.

The explanatory notes state in justification:

It will be a defence for a person to show the person had a reasonable excuse for failure to comply. A reasonable excuse will include not giving the information if giving it might tend to incriminate the individual or expose the individual to a penalty. The offence provision

⁵³ *Legislative Standards Act 1992*, s 4(2)(a).

⁵⁴ *Legislative Standards Act 1992*, s 4(2)(b).

⁵⁵ Explanatory notes, p 8.

⁵⁶ Explanatory notes, p 8.

*will therefore provide a proportionate penalty and adequate definition for the basis of liability.*⁵⁷

Committee consideration

As mentioned above, this issue was not raised by any stakeholder before the committee. On balance, the committee considers that any potential breach of the fundamental legislative principles is justified in the circumstances.

Clause 8

Clause 8 inserts the word “knife” after the word “weapon” in section 32(a) of the PPRA.

Section 31 of the PPRA authorises a police officer who reasonably suspects any of the prescribed circumstances for searching a vehicle without warrant exist, to: stop the vehicle, detain the vehicle and its occupants, and search the vehicle and anything in it for anything relevant to the circumstances for which the vehicle and its occupants are detained.

Section 32 of the PPRA prescribes a number of circumstances where a police officer may search a vehicle without warrant. Section 32(a) permits a search where a vehicle may contain a weapon or explosive that a person may not lawfully possess. The insertion of the word ‘knife’ into section 32(a) will potentially expose more drivers and occupants of a vehicle to a search of their vehicle and therefore this amendment could be considered to be inconsistent with the fundamental legislative principle that legislation have regard to the rights and liberties of individuals.

Section 51 of the Weapons Act makes it an offence to physically possess a knife in a public place without reasonable excuse. The section contains many safeguards that will excuse a person from liability where the person is carrying a knife for a legitimate reason. The power for police to search a vehicle for a knife will support the clarification in the Weapons Act that a vehicle in a public place, is a public place.

The explanatory notes state the power is justified:

*...as persons who would seek to use a knife as a weapon to intimidate or injure another should not be protected from detection by the insulation of their vehicle while they are in a public place.*⁵⁸

Committee consideration

As mentioned above, this issue was not raised by any stakeholder before the committee. The committee considers that any potential breach of the fundamental legislative principles is justified in the circumstances.

Clause 16

Clauses 16 and 17 amend the Weapons Act to provide that a public place includes a vehicle that is in or on a public place. Under section 51 of the Weapons Act a person must not possess a knife in a public place or school without reasonable excuse. This section will define public place to include a public place where a vehicle is in or on. Accordingly, a person cannot carry a knife in a vehicle in or on a public place without a legitimate reason.

This potentially infringes the rights and liberties of individuals and potentially exposes more people to liability under the Weapons Act.

⁵⁷ Explanatory notes, p 8.

⁵⁸ Explanatory notes, p 7.

The explanatory notes state there are a number of safeguards built into the section:

...examples of ‘reasonable excuses’ for possession of a knife in public are as follows:

- *A person may carry a knife on his or her belt for performing work in primary production*
- *A scout may carry a knife on his or her belt as part of the scout uniform*
- *A person may carry a knife as an accessory while playing in a pipe band*
- *A fisher may carry a knife for use while fishing*
- *A person who collects knives may exhibit them at a fete or another public gathering*
- *A person may use a knife to prepare or cut food at a restaurant in a public place or where having a picnic in a park, and*
- *A person may carry a pen knife or Swiss Army knife for use for its normal utility purposes.*

Further, under section 51(4), it is a reasonable excuse to physically possess a knife for genuine religious purposes, for example, a Sikh may possess, in a public place, a knife known as a kirpan to comply with the person’s religious faith.

Further, in section 51(6), in deciding what a reasonable excuse is the court may have regard to whether the way the knife was held in possession would cause a reasonable person concern that he or she, or someone else in the vicinity, may be threatened or harmed.

Additionally the section requires “physical possession” of the knife. This means that if a knife was located in a tool box in the back of a vehicle, the possession could not be regarded as “physical” for the purposes of the section. However, if the knife was located in the door well of a vehicle where it is readily to hand, this could be considered physical possession.⁵⁹

The Department asserted that there is a propensity for knives that are not prohibited weapons (e.g. a kitchen knife) to be used to commit serious crimes such as armed robbery in part due to their easy accessibility and difficulty of detection.

The explanatory notes state that:

Limiting the possession of knives in a vehicle that is travelling in a public place to those persons who have a lawful reason for the possession will assist in the deterrence of those persons with unlawful intentions.⁶⁰

Clause 17

Under section 57 of the Weapons Act particular conduct involving a weapon in a public place is prohibited, without reasonable excuse. For the purpose of this section defining a public place as including a public place where a vehicle is in or on will mean a person cannot (a) carry a weapon exposed to view, (b) carry a loaded firearm or a weapon capable of being discharged or (c) discharge a weapon in, into, towards, over or through a public place, while in a vehicle in or on a public place, without a legitimate reason.

This potentially infringes on a person’s rights and liberties as well as exposes more people to liability under the Weapons Act.

⁵⁹ Explanatory notes, pp 4-5.

⁶⁰ Explanatory notes, p 5.

The explanatory notes give examples of a number of safeguards built into the section:

- *A person may carry a sword for ceremonial purposes at an official function attended by the Governor*
- *A person may carry a sword as an accessory while playing in a pipe band*
- *A person who collects swords may exhibit them at a fete or another public gathering, and*
- *A person may carry a sword as part of an official uniform the person is entitled to wear.*

Further, under section 57(7), in deciding what is a reasonable excuse for subsections 57(2) & (3), regard may be had, among other things, to whether the way the weapon is carried, or when and where it is carried, would cause a reasonable person concern that he or she, or someone else in the vicinity, may be threatened or harmed.⁶¹

Committee consideration

The committee considers that any potential breach of the fundamental legislative principles is justified in the circumstances.

Natural justice - Section 4(3)(b) Legislative Standards Act 1992

The committee has examined the Bill to determine whether it is consistent with principles of natural justice. Clause called for examination in this respect.

Clause 12

Clause 12 replaces current section 439 with new section 439 (Admissibility of evidence when noncompliance with requirements).

Potential FLP issues – procedural fairness – evidentiary provisions

Legislation should be consistent with the principles of natural justice which are developed by the common law and incorporate three principles. Of relevance here is the third principle, being that ‘procedural fairness’ should be afforded to the person, meaning fair procedures that are appropriate and adapted to the circumstances of the particular case.⁶²

In relation to procedural fairness, justification is required for relaxation of the normal rules of evidence applicable to legal proceedings.⁶³

Clause 12 seeks to replace current section 439 with new section 439 which omits references to the term ‘record’ in order to allow judicial discretion to admit evidence where there has not been full compliance by police in the recording of an admission or confession.

The Minister, in his introduction speech, alluded to a number of issues including his understanding that the amendment was needed for occasions where police are unable to comply with the safeguard ‘due to circumstances beyond the control of police’.⁶⁴

The explanatory notes advise of the perceived need for the amendment:

Prior to further consolidation and renumbering of police powers, section 439 was section 104(13) of the former Police Powers and Responsibilities Act 1997. The section did not use the term ‘record’ and allowed the court to admit evidence in the interests of justice if a

⁶¹ Explanatory notes, p 6.

⁶² Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: The OQPC Notebook, p 25.

⁶³ Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: The OQPC Notebook, p 30.

⁶⁴ Record of proceedings (Hansard), 24 May 2016, p 1937.

court considered the division had not been complied with or there was not enough evidence of compliance. The current use of the term 'record' means the discretion to admit evidence of a confession or admission does not apply to oral testimony.

The Bill redrafts section 439 and omits the use of the term 'record'. This will allow oral testimony of a confession or admission where it is in the interests of justice. This arguably breaches an individual's rights due to noncompliance or insufficient evidence of compliance with safeguards pertaining to confessions and admissions. However, sometimes the lack of compliance is of a minor nature or out of the control of the police officer, for instance where a person makes a verbal admission but refuses to make the same admission on record due to fear of retribution. Any breach of rights is justified by the need to ensure that evidence can be admitted where the crime is of a serious nature and admission into evidence is in the overriding interests of justice.

The Queensland Council for Civil Liberties stated:

The Minister's speech demonstrates the problems which were identified in the Fitzgerald report where significant amendments to criminal law legislation are effected without the QPS and the Minister consulting beyond law enforcement agencies.

...

The Committee should be concerned that the well established processes post the Fitzgerald Inquiry of changes to the criminal law being put out for public comment and submission before Cabinet signs off on such changes has not occurred in this instance.

The proposed change is not a minor or technical change. It will, in my submission, lead to the re-emergence of the 'verbal' where there are already too frequent challenges by accused persons to non-compliance with the provisions of the PPRA.⁶⁵

Power to enter premises – Section 4(3)(e) Legislative Standards Act 1992

Does the Bill 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?

Clause 9

Clause 9 amends the PPRA to replace the current sections 35 and 36 (regarding the use of detection dogs and entry powers) with new sections addressing these matters.

Potential FLP issues

Legislation should 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 Office of the Queensland Parliamentary Counsel (OQPC) handbook provides that this principle supports a long established rule of common law that protects the property of citizens. Power to enter premises should generally be permitted only with the occupier's consent or under a warrant issued by a judge or magistrate. Strict adherence to the principle may not be required if the premises are business premises operating under a licence or premises of a public authority. The chief concern of the former Scrutiny of Legislation Committee (SLC) in this context was the range of additional powers that became exercisable after entry was made without a warrant or the occupier's consent.

The OQPC Notebook states, 'FLPs are particularly important when powers of inspectors and similar officials are prescribed in legislation because these powers are very likely to interfere directly with the rights and liberties of individuals'.

Under section 35 of the PPRA, a drug detection dog can be used in relation to the search of persons at licensed premises, where an event is being held and in regard to a person who is in a public place or

⁶⁵ Submission No. 1, pp 2-3.

who is in a tattoo parlour. Until 2013, the PPRA was silent on the use of an explosives detection dog to carry out explosives detection. In 2013, the PPRA was amended by the insertion of the power for a dog handler to use an explosives detection dog to carry out explosives detection in relation to a person who is about to enter, is in, or is leaving, a tattoo parlour. This had the consequence of excluding the use of an explosives detection dog to carry out explosives detection in places other than a tattoo parlour.

Here, the replacement of the sections has the effect that drug detection dogs and explosives detection dogs can carry out drug detection or explosives detection respectively, in the same circumstances. References to 'explosives detection dog' are replaced with 'firearms and explosives detection dog' to ensure the consistent use of terminology throughout the PPRA and to better reflect the duties which explosives detection dogs perform.

The sections expand the circumstances where entry and search powers may be utilised and accordingly this clause may potentially constitute an FLP breach.

The Explanatory Notes state:

The expansion of the use of explosives detection dogs to the same places in which drug detection dogs can operate is arguably a breach of rights as it is likely to increase the opportunities for a dog to detect and for a police officer to subsequently search a place or person for explosives.

Potential breaches of fundamental legislative principle are justified in order to ensure places such as sports stadiums, running events, concert arenas and other places of mass congregation can be kept secure.

Committee consideration

The committee considers that any potential breach of the fundamental legislative principles is justified in the circumstances.

Rights and liberties – retrospectivity - Section 4(3)(g) Legislative Standards Act 1992

The committee has considered issues regarding retrospectivity - does the Bill adversely affect rights and liberties, or impose obligations, retrospectively?

Section 4(3)(g) of the *Legislative Standards Act 1992* provides that legislation should not adversely affect rights and liberties, or impose obligations, retrospectively. Strong argument is required to justify an adverse effect on rights and liberties, or imposition of obligations, retrospectively.

Here, clause 2 provides that part 2 and schedule 1 amendments - which relate to the merger of CrimTrac into the Australian Crime Commission - will commence immediately after the commencement of the *Australian Crime Commission Amendment (National Policing Information) Act 2016* (Cwlth). The provisions are operating retrospectively, having commenced on 1 July 2016. The explanatory notes state (in relation to the retrospectivity) that the merger amendments are technical in nature (at page 10).

Committee consideration

The committee considers that, given the nature of the provisions covered by the retrospective operation in this instance, any impact of a potential breach of the fundamental legislative principles is minor and justified in the circumstances.

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.

Explanatory notes were tabled with the introduction of the Bill. The 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. However, it would be helpful if the explanatory notes identified the specific clauses being discussed, when identifying the fundamental legislative principles.

Whilst the explanatory notes identified a number of potential FLP issues (including those associated with changes to police powers), the QPS claimed that those changes are minor and technical in nature. This reason is given as justification for not consulting wider than government departments and law enforcement agencies.

On balance, the committee accepts the position of the QPS in this regard.

Appendix A – List of Witnesses

Public Briefing – Brisbane, 15 June 2016

Queensland Police Service

A/Deputy Commissioner Peter Martin (Strategy, Policy and Performance)

Public Safety Business Agency

Ms Cecilia Vine, Acting Director, Legislation Branch

Mr David Flynn, Acting Inspector, Legislation Branch

Queensland Fire and Emergency Services

Deputy Commissioner Doug Smith (Capability and Performance Division)

GOVERNMENT MEMBERS STATEMENT OF RESERVATION

The government members note the lack of broad community consultation on this bill and the reduction of evidentiary safeguards as proposed by changes to section 439 of the PPRA.

Government members are not convinced by the argument that due to circumstances beyond the control of police, QPS may not be in full compliance with evidentiary safeguards. And as such, the proposed amendment to section 439 of the PPRA, allowing the judiciary to admit evidence where there is noncompliance or insufficient evidence of compliance with relevant safeguards is neither desirable nor necessary.

Government members recommend the bill be amended to delete the proposed amendment of section 439 of the PPRA.