Youth Justice and Other Legislation Amendment Bill 2021

Explanatory Notes

Short title

The short title of the Bill is the Youth Justice and Other Legislation Amendment Bill 2021.

Policy objectives and the reasons for them

The Queensland Government remains committed to community safety, reducing youth offending and reducing crime victimisation.

On 11 December 2018, the Queensland Government released the *Working Together Changing the Story: Youth Justice Strategy 2019-2023* (the Youth Justice Strategy). The Youth Justice Strategy adopts 'Four Pillars' as its policy position for youth justice reform: intervene early; keep children out of court; keep children out of custody; reduce reoffending.

The Four Pillars were recommended in the 2018 *Report on Youth Justice* by former Police Commissioner Mr Bob Atkinson AO APM.

Overall, the Government's youth justice reforms have had a positive impact on crime trends, with a continued decrease in the number of unique youth offenders coming to the attention of police. However, there remains a small cohort of recidivist youth offenders who engage in persistent and serious offending.

The most recent Childrens Court of Queensland Annual Report 2019-20 reveals 10 per cent of all youth offenders (in the order of 390 individuals) account for 48 per cent of all youth crime, an increase of four per cent from the previous 12-month period. This cohort of serious recidivist youth offenders presents a significant risk not only to themselves but also to the communities in which they live.

In March 2020, the Government announced the *Five Point Action Plan* (5PP) to complement the Youth Justice Strategy, targeting this specific cohort. This Bill enacts a suite of amendments to the *Youth Justice Act 1999* (YJA) that build on the 5PP.

The objectives of the amendments in the Bill are to respond to the characteristics of the offending behaviours of serious recidivist youth offenders and strengthen the youth justice bail framework. These behaviours place both the community and youth offenders at risk of serious harm or death.

The Bill also enacts a range of amendments to the *Police Powers and Responsibilities Act 2000* (PPRA), in relation to knife crime and hooning offences.

The primary policy objective of the amendments relating to knife crime is to minimise the risk of physical harm caused by knife crime in Safe Night Precincts (SNPs).

Police have detected a general state-wide increase in knife related offences, including the unlawful possession of a knife in recent years.

The possession of knives in public places poses a significant risk to community safety with the potential for altercations to quickly escalate to the use of a weapon. Recently, this has been evidenced in two separate tragic murders involving knives within the Surfers Paradise SNP.

The objectives include amendments to minimise risks of harm associated with the unlawful possession of knives in the Surfers Paradise CBD and Broadbeach CBD SNPs.

SNPs are prescribed in the *Liquor Act 1992* and are characterised by the presence of licensed premises and concentrations of pedestrian traffic, particularly in the evenings and weekends. These areas tend to function as entertainment precincts and can result in the congregation of large numbers of people. The concentration of people in these areas means the risks of harm being caused through the carriage of weapons is elevated and warrants particular attention.

The objectives of the amendments relating to hooning laws are to protect the community and road users from the risk of a range of antisocial and unsafe driving behaviours, known as hooning.

Hooning offences are often committed in the context of the gathering of a number of vehicles and offenders may attempt to escape liability by masking their identity or denying being the driver. To address this, the Government has committed to providing police with advanced camera technology to record evidence of hooning offences and enhancing owner onus deeming provisions to help identify the drivers of motor vehicles used in these offences.

Offences considered to be 'hooning offences' are listed in chapter 4 of the PPRA as type 1 vehicle related offences. These offences include evade police and any of the following committed in circumstances involving a speed trial, a race between motor vehicles or a burn out:

- Dangerous operation of a vehicle (section 328A of the Criminal Code);
- Careless driving of motor vehicles (section 83(1) of the *Transport Operations (Road Use Management) Act 1995* (TORUM));
- Organising, promoting or taking part in a race between vehicles, speed trials or speed record attempts (section 85(1) of TORUM);
- Wilfully starting or driving a motor vehicle in a way that makes unnecessary noise or smoke (section 291(1)(b) of the *Transport Operations (Road Use Management – Road Rules) Regulation 2009*).

The proposed amendments will strengthen owner onus provisions by expanding the evasion offence notice scheme outlined in the PPRA to apply to all type 1 vehicle related offences listed in the PPRA. This amendment will require owners of motor vehicles involved in these offences to make declarations and provide information that may be used to assist the investigation of hooning offences.

Achievement of policy objectives

The Bill achieves its policy objectives by amending the YJA and PPRA by:

- Strengthening the youth justice bail framework through:
    - Providing the legislative framework required to trial the use of electronic monitoring devices as a condition of bail for some offenders aged 16 and 17 years old who have committed a prescribed indictable offence and have been

previously found guilty of one or more indictable offences (with a review after 12-months);
    - Explicitly permitting the court or a police officer to take into consideration, when determining whether to grant bail, whether a parent, guardian or other person has indicated a willingness to do one or more of the following: support the young person to comply with their bail conditions, advise of any changes in circumstances that may impact the offender's ability to comply with the bail conditions, or advise of any breaches of bail;
    - Creating a limited presumption against bail, requiring certain young offenders charged with 'prescribed indictable offences' to 'show cause' why bail should be granted;
    - Clarifying that although a lack of accommodation and/or family support is a consideration that bail decision makers can take into account when determining whether to grant bail, it cannot be the sole reason for keeping a child in custody;
- Codifying the sentencing principle, currently found in common law, that the fact that an offence was committed while subject to bail is an aggravating factor when determining the appropriate sentence;
- Amending the Charter of Youth Justice Principles to include a reference to the community being protected from recidivist youth offenders;
- Providing for a trial of powers for police to stop a person and use a hand held scanner to scan for knives in SNPs on the Gold Coast; and
- Enhancing the enforcement regime against dangerous hooning behaviour by strengthening existing owner onus deeming provisions for hooning offences.

Strengthening the youth justice bail framework

The bail framework for young offenders is found in Part 5 of the YJA. The *Bail Act 1980* (Bail Act) also applies, subject to the provisions of the YJA. The Bill contains a series of amendments intended to strengthen the bail framework in Part 5.

Electronic monitoring devices as a condition of bail for offenders aged 16 and 17 years old in certain circumstances

Currently, courts and police officers are not permitted to impose on a grant of bail to a young offender a condition that the offender wear a tracking device when released on bail. The Bill amends the current bail framework to remove this blanket restriction as it applies to courts. Police officers will continue to be prevented from imposing a tracking device condition on a grant of bail to a youth offender.

The Bill inserts provisions which provide the necessary legislative framework to implement a 12-month trial of the use of electronic monitoring devices on recidivist youth offenders aged 16 or 17 years old to enable monitoring of the whereabouts of this cohort of offenders on bail. It does this by inserting a new s 52AA (Court may impose tracking device condition) into the YJA.

A trial of this technology will operate in limited geographical areas, to be prescribed in regulation. The Bill prevents courts and youths outside of these prescribed geographical areas from the tracking device provisions. The Bill includes a sunset clause, which expires the new provisions two years from commencement of the provision. This is to provide enough time for Government to conduct an evaluation and consider its findings.

The electronic monitoring conditions will only be permitted to be imposed on a restricted class of young offenders, the intent being that these provisions designed to protect the safety of the

community, will only be imposed on recidivist youth offenders charged with 'prescribed indictable offences' and who would benefit from more intensive bail conditions.

The threshold for a tracking device condition is that the youth must be charged with a prescribed indictable offence (defined in the Bill) and have been previously found guilty for one or more indictable offences. The previous conviction need not be a prescribed indictable offence.

In determining whether electronic monitoring is appropriate, courts will follow the existing pathway found in sections 48AAA, 48AA and 52A of the YJA, to determine whether the young offender should be released on bail and what conditions should be imposed, before considering the requirements of section 52AA and whether a tracking device condition is appropriate. The Bill also permits the court to impose any other condition necessary to facilitate the operation require of the tracking device.

The Bill will also insert an authority for Queensland Corrective Services (QCS) to undertake the monitoring functions for the tracking devices, including being able to contact the youth (by telephone) to resolve low level alerts (e.g. an alert for a low battery on the device) before escalating.

Parental or other support associated with youth bail

Section 48AA of the YJA contains the matters a court or police officer considers in making particular decisions about release and bail.

Section 48AA(4)(a) contains a list of considerations courts and police officers may have regard to when making a decision about:

- whether there is an unacceptable risk of a matter mentioned in section 48AAA(2);
- whether there is an unacceptable risk of a matter mentioned in section 48AAA(3);
- whether to release the child despite being satisfied there is an unacceptable risk of a matter mentioned in section 48AAA(3);
- whether to release the child without bail or grant bail to the child.

The Bill inserts an additional consideration into section 48AA(4)(a), that the court or police officer may, at their discretion, choose to take into consideration, namely: whether a parent or another person has indicated a willingness to do one or more of the following:

- support the child to comply with the conditions imposed on a grant of bail;
- notify the chief executive (youth justice) or a police officer of a change in the child's personal circumstances that may affect their ability to comply with the bail conditions;
- notify the chief executive (youth justice) or a police officer of a breach of the conditions imposed on a grant of bail.

The definition of 'parent' appears in Schedule 4 of the YJA. Another person could be, for example, immediate or extended family, a relative, kin, other community member, neighbour, employer or a staff member or volunteer from a support service.

The consideration is intended to operate flexibly, to recognise the operational and practical reality that the nature of the support a bail decision maker may take into consideration will vary depending on the circumstances of each case. For example, the bail decision maker may have wide-ranging concerns, or may only have a specific concern about the ability of a child to comply with one of the conditions of bail (such as attending the next court date). The indication of willingness could be given orally or in writing.

Presumption against bail

Section 48 of the YJA provides a presumption that a youth charged with an offence should be released from custody. The Bill inserts a new section 48AF, to create a presumption against bail for a limited class of youth offenders. The presumption against bail will apply to bail by both courts and police officers.

New section 48AF operates to require police or a court to refuse to release the child from custody unless the child can show cause why their detention in custody is not justified when the young person is charged with a prescribed indictable offence and that offence was alleged to have been committed while the child was released into the custody of a parent, or at large with or without bail, or awaiting trial or sentencing, in relation to an existing charge for an indictable offence.

In determining whether the child has shown cause why their detention is not justified, the Bill requires the court or police officer to take into consideration the matters in s 48AA of the YJA. If a court or police officer releases the child, they must give reasons for doing so. This applies in conjunction with existing section 48B of the YJA, which requires police officers and courts to give reasons for keeping the child in custody.

Clarifying section 48AA(7) of the YJA

Following advice from certain stakeholders that existing section 48AA(7) is unclear, the Bill clarifies this provision, without altering its policy intent. The intent of the provision remains that although a lack of accommodation and/or family support is a consideration that bail decision makers can take into account when determining whether to grant bail ('home environment' is referred to in section 48AA(4)(a)(ii), and 'any other relevant matter' in section 48AA(4)(a)(vii)), it cannot be the sole reason for keeping a child in custody.

Aggravating factor when determining the appropriate sentence

The Bill amends section 150 of the YJA to codify existing judicial practice when determining an appropriate sentence for a young offender; this is intended to make the operation of the law more accessible. The Bill will require courts to take into consideration the presence of any aggravating or mitigating factor concerning the child and, without limiting this requirement, to consider as an aggravating factor whether the child committed the offence whilst released into the custody of a parent, or at large with or without bail, for another offence.

Amending the Charter of Youth Justice Principles

The Bill amends the charter of youth justice principles to provide that the community should be protected from recidivist high-risk offenders, as well as from offences generally, to underscore the importance of protecting the community from harm.

Providing powers for police to stop a person and use a hand held scanner to scan for knives

The Bill provides that a senior police officer may authorise the use of hand held scanners in a public place in a prescribed area defined as the Surfers Paradise CBD and Broadbeach CBD SNPs. The boundaries of the SNPs are defined in the *Liquor Act 1992.*

The initial inclusion of these two SNPs will facilitate a trial of the scheme to be conducted in these areas over twelve months. At the conclusion of the trial, consideration will be given to whether additional areas should be included in the scheme.

Use of a hand held scanner to detect the presence of metal on a person is a quick and effective means of police identifying when a person is in possession of a knife. Police can then seize knives before they can be used to cause harm. In this way, the policy will help reduce the risk

of harm being caused by knives in the prescribed areas as well as creating a disincentive from any persons carrying them unlawfully.

Use of hand held scanners and other electronic screening equipment is already an established practice in some contexts in Queensland. The PPRA provides for the use of electronic screening on any person entering into Queensland watch-houses and State buildings. These schemes allow for use of walk-through detectors and x-ray machines in addition to hand held scanners.

The amendments provide that hand held scanning may be undertaken by using a hand held scanning device as defined in the PPRA. These are intended to function by being passed over the exterior of a person's clothing or belongings and give an indication of the presence of metal.

If the hand held scanner detects metal, the amendments give police the power to require the person to produce any item likely to have caused this activation. The amendments then give police the power to conduct a second scanning to determine if any metal is still detected.

These provisions allow for the likely scenario that a person may possess keys and other harmless metal objects on their person or belongings. If, after subsequent scans, the scanner still detects metal, police may form a reasonable suspicion that the person is in unlawful possession of a knife. They would, therefore, have power to search the person without warrant under the existing provisions of section 29 of the PPRA.

Amendment will be made to section 30(1) of the PPRA to provide additional prescribed circumstances for conducting a search without warrant, so that if the person refuses to submit to a scan, or refuses to produce anything that may have caused an activation, police will have the power to conduct a search without warrant under section 29 of the PPRA to search for knives. In these circumstances, the existing search safeguards in the PPRA will apply. This ensures that a person cannot evade the detection of a knife in their possession merely by refusing to co-operate with police.

Any scanning activities undertaken must first be authorised by a senior police officer. A senior police officer is defined as an officer of at least the rank of inspector, or a senior sergeant approved by the Commissioner to be an authorising officer for scanning activities. This provides a degree of oversight to ensure that scanning activities are undertaken in the most effective way to achieve the policy intent.

The amendments provide that the authorisation must state the day and time the authorisation starts, and the prescribed area for which the authorisation is given. Any such authorisation is to be for a period of 12 hours. As such, a further authorisation will be required for any additional 12-hour period. This ensures the ongoing involvement of an authorising officer in any scanning activities. There is no limitation on the days or times on which this 12-hour period can apply.

The scanning process takes little time, does not require a person be moved to a different location, and does not involve the application of force. The amendments will clarify that scanning does not constitute an enforcement act under section 678 of the PPRA or a search under schedule 6 of the PPRA.

Data from the trial will be recorded to inform a twelve-month review of the operation of the policy prior to any consideration of a further expansion of the scheme. As such, a sunset clause is included to state that the provisions will cease to have effect after 2 years.

The amendments incorporate provisions to provide a range of additional safeguards aimed at preserving individual rights and ensuring the least inconvenience practicable be caused to persons scanned.

These include requiring that an officer exercise the power in the least invasive way that is practicable in the circumstances. Use of a hand held scanner does not require a police officer to physically touch the person, rather the scanner is waved across the outside of a person's clothing. If the person is holding a bag, police may ask a person to handle a bag while it is being scanned.

The provisions also provide that police may detain the person for so long as is reasonably necessary to exercise the power. The powers require a person to stop and submit to a scan. They may then be required to remain with police until any subsequent scans or searches are completed if they are required in the circumstances. Police are not, however, to detain a person longer than is reasonably necessary to exercise these powers.

The amendments state that the police officer must, if requested by the person, inform them of the officer's name, rank and station. The officer must also provide this in writing if requested. If a police officer is not in uniform, they must produce their identity card for inspection by the person subject to the scan.

The officer must also inform the person that they are required to submit to the use of a hand held scanner. Furthermore, police must offer the person a notice which states: that the person is in a public place in a prescribed areas; police are empowered to require the person to be scanned; and it is an offence for the person not to comply with the requirement unless the person has a reasonable excuse.

Additionally, the provisions provide that the police officer must be of the same sex as the person being scanned, where practicable.

Enhancing the existing owner onus deeming provisions for hooning offences

The Bill expands the evasion offence notice scheme to apply to all type 1 vehicle related offences so that police may require from an owner of a motor vehicle used to commit a hooning offence information in a statutory declaration that may lead to the identification of the driver.

The owner of a vehicle is required to provide the following additional information, if they do not know who was driving the vehicle:

- where the owner was when the type 1 vehicle related offence happened;
- the usual location of the vehicle when it is not being used;
- the name and address of each person (a potential driver) known by the owner to have access to drive the vehicle when the hooning offence happened;
- the way each potential driver has access to drive the vehicle;
- how frequently each potential driver normally uses the vehicle and for how long each potential driver normally uses the vehicle;
- whether each potential driver uses the vehicle in connection with a business or for private use.
- whether the vehicle was reported as stolen, or otherwise being used without consent, when the type 1 vehicle related offence happened; and
- the nature of the inquiries made by the owner to find out who was driving the vehicle when the type 1 vehicle related offence happened

If the owner sold the motor vehicle before the type 1 vehicle related offence occurred, the owner need only state in the statutory declaration the time of sale and the name and address of the person to whom the vehicle was sold.

If the owner purchased the motor vehicle after the type 1 vehicle related offence happened, the owner need only state the time of purchase and the name and address from whom the vehicle was purchased.

The owner must comply with the requirement within 14 business days of receiving the notice unless they have a reasonable excuse. Failing to give the statutory declaration will be an offence punishable by a maximum penalty of 100 penalty units.

If the owner does not provide a declaration as required, the owner will be deemed to be the driver of the vehicle at the time the type 1 vehicle related offence occurred. Conviction of the owner for the new offence of failing to make a declaration does not prevent a proceeding for the hooning offence being started against the owner or another person.

In a proceedings for a type 1 vehicle related offence started against the person as a result of these amendments, it is a defence for the person to prove on the balance of probabilities that the person was not the driver of the motor vehicle involved in the offence when the offence happened.

Further, a person may not rely on evidence in their defence if it is information the person was required to include in the statutory declaration unless the person notifies the prosecuting authority of the intention to seek leave to rely on the evidence at least 21 business days before the day the hearing starts and the court grants leave to rely on this evidence. This does not apply to a type 1 vehicle related offence that is an offence against sections 328A of the Criminal Code. In such an instance, the court may grant leave to the person to rely on evidence that is information the person was required to include in the statutory declaration in his or her defence even if the person has not complied with the notice requirements relating to an intention to seek leave, if it is in the interests of justice that the person should be able to rely on the evidence. It is noted that, in considering whether to grant leave, a court should consider sections 31 (Fair hearing) and 32 (Rights in criminal proceedings) of the *Human Rights Act 2019*.

Alternative ways of achieving policy objectives

The Human Rights Statement of Compatibility discusses in detail whether there are any less restrictive (on human rights) and reasonably available ways to achieve the policy objectives underpinning the Bill. It is considered there are no such alternative ways to achieve the policy objectives.

Estimated cost for government implementation

The Bill supports and builds upon a number of previous and current policies funded through existing budgets. It is expected that there will be implementation costs associated with some of the policies in the Bill (e.g. equipment purchase).

Consistency with fundamental legislative principles

The Bill has been drafted with due regard to the fundamental legislative principles (FLPs) outlined in the *Legislative Standards Act 1992* (LSA) by achieving an appropriate balance between individual rights and liberties and the protection of the broader Queensland community. There are, however, a number of FLPs that may be perceived to be impacted by these amendments.

Youth justice amendments

Some of the amendments to the YJA may be seen to depart from the principle that legislation have sufficient regard to the rights and liberties of individuals (s 4(2)(a) of the LSA).

Electronic monitoring devices as a condition of bail for offenders aged 16 and 17 years old in certain circumstances

The policy relating to electronic monitoring of certain youths while they are on bail may impact the principle that sufficient regard be given to an individual's rights and liberties, which includes their privacy and confidentiality (s 4(2) of the LSA).

This amendment is necessary to provide an appropriate level of monitoring while the young person is on bail, deterring them from committing further alleged offences. It is limited to a certain category of offender, those 16 years or over, who have committed a prescribed offence and have been previously convicted for an indictable offence. Only a court can order an electronic monitoring condition.

The impact on the young person's privacy is considered necessary in light of this objective of promoting compliance with bail conditions, which ultimately is aimed at protecting the community. This right is further protected by the existing safeguards within the YJA that must be satisfied before an electronic monitoring condition can be imposed on a young offender. As an additional safeguard, the provisions are subject to a review and sunset clause.

Electronic monitoring conditions will be able to be applied to a child charged with an offence, whether the offence was allegedly committed, or the child was charged, before or after the commencement. This may be seen to have an adverse impact on an individual's rights and liberties insofar as it applies, to a degree, retrospectively (s 4(3)(g) of the LSA). However, any impact is considered warranted, given electronic monitoring is aimed at promoting compliance with bail conditions, community safety as well as the safety of the young person.

Parental or other support associated with youth bail

The Bill permits a court or police officer to take into consideration whether a parent, guardian or another person has indicated a willingness to support the young offender on bail, or advise of any change of circumstances which might impact on a young person's ability to comply with bail conditions, or any breaches of bail.

This arguably impacts individual rights and liberties insofar as it may be seen to be an intrusion of privacy. Any impact is considered minimal. This amendment merely adds another consideration to the myriad of existing considerations police and judicial officers take into consideration when determining whether to grant bail. The amendments aim to promote a young offender's need to be supported while on bail.

Whether a parent, guardian or another person has indicated a willingness as detailed above will be able to be considered in relation to a child charged with an offence, whether the offence was allegedly committed, or the child was charged, before or after the commencement. Where a child does not have a parent or other person who can indicate an appropriate willingness, this may be seen to have an adverse impact on an individual's rights and liberties insofar as it applies, to a degree, retrospectively (s 4(3)(g) of the LSA). However, any impact is considered warranted, given the intent is to promote compliance with bail conditions and community safety.

Presumption against bail

The Bill inserts new provisions which require certain youths charged with a prescribed indictable offence, if the offence was alleged to have been committed while at large or awaiting trial or sentence, to show cause why their detention is not justified. This will impact the principle that sufficient regard must be had to an individual's rights and liberties, as it reverses the onus of proof (s 4(3)(d) of the LSA).

Any impacts on this principle is safeguarded by the specific cohort of youth offenders to which the show cause provisions apply. It is further safeguarded by providing clear guidance on the considerations which are to be taken into account in determining whether cause has been shown and the requirement to give reasons for releasing the child or keeping the child in custody. This policy is also regarded as warranted to ensure the community's safety from serious offending behaviour, as well as to ensure the accused's presence at trial and prevent interferences with the course of justice.

This provision may also be seen to depart from the principle that sufficient regard be had to an individual's rights and liberties as it applies, to an extent, retrospectively (s 4(3)(g) of the LSA). The provision will apply to a young person charged with a prescribed indictable offence, regardless of whether that prescribed indictable offence, or the other indictable offence the child was already charged with when allegedly committing the prescribed indictable offence, was allegedly committed before or after commencement. It is considered any departure from this principle is outweighed by the need to protect the community from harm.

Clarification of existing provisions and codification of common law principles

The amendments to sections 48AA(7), 150 and schedule 1 of the YJA may be seen to depart from the principle that sufficient regard be had to the rights and liberties of individuals insofar as the amendments apply retrospectively (s 4(3)(g) of the LSA). However, any departure is seen as minimal. These amendments are not expected to alter the operation of the current law. Section 150 simply codifies existing common law principles, and the amendments to section 48AA(7) and schedule 1 merely clarifies the operation of existing provisions.

PPRA amendments

Providing powers for police to stop a person and use a hand held scanner to scan for knives

The ability of police to stop and detain a person and require them to submit to hand held scanning may be seen to adversely affect the rights and liberties of individuals generally (section 4(2) of the LSA) as it interferes with their freedom to move about at that time and the right to privacy.

It is noted, however that the amount of inconvenience to a person caused by this scanning will be minimal. Scanning takes only a short amount of time and is relatively non-invasive as it occurs by passing the hand held scanner only over the exterior of a person's clothing and belongings. If the scanner indicates the presence of metal, the person will be required to produce any item likely to have caused the activation, after which the person may be scanned again.

This engagement of the rights and liberties of individuals is safeguarded by the requirement for authorisation to be given by a senior police officer prior to scanning activities being undertaken. Such scanning must be for a specified time period of 12 hours.

While a person's liberty may be impacted by scanning activities it is considered warranted in order to achieve the policy intent of minimising the risk of harm being caused by knives in public places in the prescribed areas.

If a person fails to submit to the scanning or fails to comply with the requirement to produce items, the amendments will allow police to search the person without warrant. While this may be considered to further impact on the rights and liberties of the individual, such a search is again considered necessary when weighed against the risks presented by person potentially possessing a knife in a public place.

Furthermore, any such search will be undertaken within the existing constraints of the PPRA and Queensland Police Service (QPS), Operational Procedures Manual safeguards.

In operationalising the amendments, the QPS will undertake a communication and public education campaign in the trial area, including through the QPS website and social media channels.

Enhancing the existing owner onus deeming provisions *for hooning offences*

The information required to be provided by an owner in a declaration may be seen to adversely affect the rights and liberties of individuals to be provided appropriate protection against self-incrimination (s 4(3)(f) of the LSA), right to privacy, right to a fair trial and procedural fairness (s 4(3)(b) of the LSA). However, the amount of information sought is minimal, is necessary to effectively investigate and solve type 1 vehicle related offences, and is information expected to be readily within the knowledge of every responsible vehicle owner.

It may be also suggested that these amendments impact upon FLPs by precluding an owner from relying on evidence in the person's defence for a type 1 vehicle related offence.

The amendments provide that a defendant may rely on evidence that should have been included in the statutory declaration if notice of their intention to seek leave to rely on the evidence is given to the prosecuting authority at least 21 business days before the day the hearing starts and the court grants the person leave to rely on the evidence.

Limiting the use of rebuttal provisions is required to strengthen the legislative framework designed to address type 1 vehicle related offences. The commission of type 1 vehicle related offences may endanger the community and the prevalence of these offences is a legitimate community concern. Robust legislation that addresses this issue is warranted. These amendments place a strong emphasis on the owner of a vehicle used to commit a type 1 vehicle related offence to cooperate with police and to be accountable for the use of his or her vehicle.

Concerns about this issue are minimised through maintaining the discretion of the courts to allow evidence in appropriate circumstances. The court may grant leave if the court is satisfied that the person had a reasonable excuse for not giving the statutory declaration as required or the evidence came to the person's knowledge more than 14 business days after the person was given the type 1 vehicle related offence notice or the interests of justice require that the person be able to rely on the evidence.

Additionally, if the type 1 vehicle related offence is an offence against sections 328A of the Criminal Code, the court may grant leave to the person to rely on evidence that is information the person was required to include in the statutory declaration in his or her defence even if the person has not complied with the notice requirements relating to an intention to seek leave, if it is in the interests of justice that the person should be able to rely on the evidence.

These amendments reach an appropriate balance between the rights of the accused and the interests of the community.

Offence for failing to give a statutory declaration

The Bill provides an offence for the owner failing to comply with a requirement to provide a statutory declaration in response to a type 1 vehicle related offence notice. This new offence is a simple offence carrying a maximum penalty of 100 penalty units.

Concerns that this new offence may impact upon a person's rights or liberties are minimised as the defendant may avoid liability if the person can substantiate a reasonable excuse for failing to comply with the requirement.

This new offence incentivises owners to provide declarations which is reflective of the importance of ensuring that police have the necessary tools to properly investigate type 1 vehicle related offences and to bring to justice offenders who represent a clear risk to other road users and members of the community.

Consultation

A stakeholder meeting was held with respect to the youth justice proposals ahead of the development of this Bill, which included representatives from Sisters Inside Inc, Aboriginal and Torres Strait Islander Legal Service, Legal Aid Queensland, Queensland Law Society, Bar Association of Queensland, Youth Advocacy Centre, PeakCare, Micah Projects, Aboriginal and Torres Strait Islander Community Health Service (ATSICHS) Brisbane, Act for Kids, Queensland Aboriginal and Torres Strait Islander Child Protection Peak Ltd (QATSICPP), Your Town, the Queensland Family and Child Commission, the Queensland Mental Health Commission and the Queensland Human Rights Commission.

Due to the nature of the PPRA amendments, no external consultation was undertaken ahead of the development of this Bill.

Key members of the judiciary were also consulted with respect to some aspects of the youth justice proposals, ahead of the development of this Bill, including the Chief Magistrate, Deputy Chief Magistrate, Chief Judge and the President of the Childrens Court of Queensland. They were not consulted with respect to a draft of the Bill.

Consistency with legislation of other jurisdictions

Where applicable, the amendments in the Bill are broadly consistent with legislation in other jurisdictions.

Only some jurisdictions (Western Australia, Northern Territory and South Australia) permit electronic monitoring of some young offenders. South Australia and Victoria have laws facilitating the use of hand held scanners by police.

Notes on provisions

Part 1 Preliminary

Clause 1 Short title

This clause provides the short title of the Act is the *Youth Justice and Other Legislation Amendment Act 2021*.

Part 2 Amendment of *Penalties and Sentences Act 1992*

Clause 2 Act amended

This clause states that the part amends the *Police Powers and Responsibilities Act 2000*.

Clause 3 Amendment of s 179K (Giving details of impact of crime on victim during sentencing)

This clause amends the notes in section 179K(3) of the *Penalties and Sentences Act*, due to the renumbering of the provisions as a result of the amendments to section 150 of the *Youth Justice Act*.

Part 3 Amendment of the *Police Powers and Responsibilities Act 2000*

Clause 4 Act amended

This clause states that the part amends the *Police Powers and Responsibilities Act 2000.*

Clause 5 Amendment of s 30 (Prescribed circumstances for searching persons without warrant)

This clause amends section 30(1) by inserting a new subsection that provides an additional prescribed circumstance for searching a person without a warrant, namely where a person fails to comply with a requirement under section 39C or 39D(2).

Clause 6 Insertion of new ch 2, pt 3A

This clause inserts a new Part 3A 'Use of hand held scanners without warrant in public places in prescribed areas.'

The clause inserts a new section 39A 'Definitions for part'. This section includes definitions of:

- *Broadbeach CBD safe night precinct* means the area prescribed under the *Liquor Act 1992* as the Broadbeach CBD safe night precinct;
- *Prescribed area* means the Broadbeach CBD and the Surfers paradise CBD safe night precincts;

- *Surfers Paradise CBD safe night precinct* means the area prescribed under the *Liquor Act 1992* as the Surfers Paradise CBD safe night precinct; and
- *Use* of a hand held scanner is defined by reference to section 39B.

The clause inserts a new section 39B 'Meaning of *use* of hand held scanner'. This section provides that the use of a hand held scanner, in relation to a person, means to pass a hand held scanner in close proximity to the person or the person's belongings. This definition ensures that the use of a hand held scanner captures both the scanning of the person and, where applicable, their belongings.

The clause inserts a new section 39C 'Use of hand held scanner in public place in prescribed area without warrant'. This section provides that if an authorisation is given by a senior police officer under section 39E, a police officer may, in a public place in the prescribed area without a warrant, require a person to stop and submit to the use of a hand held scanner to ascertain whether the person has a knife.

The clause inserts a new section 39D 'Police requirements if hand held scanner indicates metal'. This section provides that, if a scanner indicates the presence, or likely presence, of metal, the officer may require the person to produce anything likely to have caused the activation and resubmit to the use of the scanner.

The clause inserts a new section 39E 'Authorisation by senior police officer'. This section outlines the nature of the authorisation that may be given and provides a definition for 'senior police officer'. The senior police officer may authorise the use of a hand held scanner in relation to persons by police officers in a public place in a prescribed area. The authorisation must state the day and time the authorisation starts and the prescribed area for which the authorisation is given. The authorisation has effect for 12 hours after the authorisation starts.

The section also defines *senior police officer* as a police officer of at least the rank of inspector, or a police officer of at least the rank of senior sergeant authorised by the Commissioner to give an authorisation under the section.

The clause inserts a new section 39F 'Safeguards for exercise of powers' to provide a range of safeguards to support the use of the new powers.

The clause inserts a new section 39G 'Effect of part on power to search person without a warrant'. This section clarifies that the part does not affect the power of a police officer to search a person without a warrant under part 2, division 2. That division deals with searching persons without warrant.

The clause also inserts a new section 39H 'Expiry of particular provisions'. This section states that section 30(1)(l), the new part 3A, and particular schedule 6 definitions expire 2 years after commencement.

Clause 7 Amendment of s 69A (Meaning of *type 1* and *type 2 vehicle related offences*)

This clause is a technical amendment that amends the reference to 'an offence against section 754(2)' to 'an evasion offence'.

Clause 8 Amendment of ch 22, hdg (Provisions about evading police officers)

This clause amends the heading of ch 22 to reflect that this chapter will relate to type 1 vehicle related offences.

Clause 9 Amendment of s 746 (Purpose of chapter)

This clause provides that the purpose of chapter 22 is to enhance community safety in part through helping police officers investigate type 1 vehicle related offences. This will be achieved by providing police officers with a power to help investigate these offences.

Clause 10 Amendment of s 747 (Definitions for ch 22)

This clause omits the definition of 'evasion offence' for drafting purposes and expands the definition of 'nominated person' to relate to a type 1 vehicle related offence.

Clause 11 Amendment of s 754 (Evasion offence)

This clause omits the definition of evasion offence. This definition is inserted into schedule 6 'Dictionary' through a later amendment.

Clause 12 Amendment of ch22, pt 2, div 2, hdg (Matters about investigation of evasion offence)

This clause amends the heading of division 2, part 2 of chapter 22 to reflect that this division will relate to type 1 vehicle related offences.

Clause 13 Amendment of s 755 (When evasion offence notice may be given to owner of motor vehicle involved in offence)

This clause amends the heading of section 755 to reflect that this section will relate to type 1 vehicle related offences.

Further technical amendments are made by this clause through omitting the terms 'evasion offence' and 'evasion offence notice' and replacing them with 'type 1 vehicle related offence' and 'type 1 vehicle related offence notice' respectively. These amendments will ensure that section 755 will apply to type 1 vehicle related offences.

Clause 14 Amendment of s 755A (Information to be stated in statutory declaration responding to evasion offence notice)

This clause amends the heading of section 755A to reflect that this section will relate to type 1 vehicle related offences.

Further technical amendments are made by this clause through omitting the terms 'evasion offence' and 'evasion offence notice' and replacing them with 'type 1 vehicle related offence' and 'type 1 vehicle related offence notice' respectively. These amendments will ensure that section 755A will apply to type 1 vehicle related offences.

Clause 15 Amendment of s 756 (Who may be prosecuted for evasion offence if no response to evasion offence notice)

This clause amends the heading of section 756 to reflect that this section will relate to type 1 vehicle related offences.

Further technical amendments are made by this clause through omitting the terms 'evasion offence' and 'evasion offence notice' and replacing them with 'type 1 vehicle related offence' and 'type 1 vehicle related offence notice' respectively. Additionally, the term 'relevant evasion offence' is replaced with 'relevant type 1 vehicle related offence'. These amendments will ensure that section 756 will apply to type 1 vehicle related offences.

This clause also inserts new subsections 7A and 7B which apply to type 1 vehicle related offences that are an offence against section 328A of the Criminal Code. This clause allows a court to grant leave to a defendant to rely on evidence that is information the defendant was required to include in the statutory declaration in his or her defence even if the defendant has not complied with the notice requirements relating to an intention to seek leave, if it is in the interests of justice that the defendant should be able to rely on the evidence.

This clause also renumbers this section.

Clause 16 Amendment of s 757 (Evidentiary provision)

This clause makes technical amendments through replacing the terms 'an evasion offence' and 'evasion offence' with 'a type 1 vehicle related offence' and 'type 1 vehicle related offence' respectively. These amendments will ensure that section 757 will apply to type 1 vehicle related offences.

Clause 17 Insertion of new ch 24, pt 22

This clause inserts the new part 22 'Transitional provision for Youth Justice and Other Legislation Amendment Act 2021' into chapter 24. This chapter provides that provisions relating to the investigation of type 1 vehicle related offences will only apply to type 1 vehicle related offences committed after the commencement of these provisions.

Clause 18 Amendment of sch 6 (Dictionary)

This clause inserts new definitions into schedule 6 'Dictionary' by:

- inserting a new definition of Broadbeach CBD safe night precinct for chapter 2, part 3A by referring to section 39A; and
- inserting a new definition of *evasion offence* to mean an offence against section 754(2);
- amending the definition of *enforcement act* to ensure that the use of a hand held scanner under chapter 2, part 3A is not an enforcement act;
- amending the definition of *search* to exclude the use of a hand held scanner in relation to a person under chapter 2, part 3A.

Part 4 Amendment of *Youth Justice Act 1992*

Clause 19 Act amended

This clause states that the part amends the *Youth Justice Act 1992*.

Clause 20 Amendment of s 48 (Releasing children in custody in connection with a charge of an offence)

This clause inserts a reference to new section 48AF in the notes of this section.

Clause 21 Amendment of s 48AA (Matters to be considered in making particular decisions about release and bail)

This clause amends section 48AA(1) to insert a new subsection (s 48AA(1)(d)) which ensures section 48AA applies to situations where a court or police officer is deciding whether a child has shown cause under new section 48AF(2) as to why their detention is not justified.

This clause also inserts an additional matter into section 48AA(4) that the court may have regard to when making a decision mentioned in section 48AA(1), namely whether a parent of the child, or another person, has indicated a willingness to the court or police officer that the parent or other person will do any of the following things:

- support the child to comply with the conditions imposed on a grant of bail;
- notify the chief executive or a police officer of a change in the child's personal circumstances that may affect the child's ability to comply with the conditions imposed on a grant of bail;
- notify the chief executive or a police officer of a breach of the conditions imposed on a grant of bail.

Parent is defined in the YJA. There is no definition of, and therefore no limitation on, who 'another person' can be. It will be for the bail decision maker to determine what weight to put on the person's indication of willingness, which will depend on the circumstances of the case.

For example, the bail decision maker may have no concern about reoffending but may consider there to be a risk of failing to appear at the next court date because neither the child nor the parent is likely to remember the date. In these circumstances, 'another person' may be a next-door neighbour who is close to or friends with the child and/or their family who has indicated a willingness to remind them of the next court date. By way of further example, in these circumstances it may also be a staff member from a 'wraparound' support service, or a person who is not an adult, such as a 17-year-old sibling. Whatever the circumstances may be, it will be for the bail decision maker to determine the credibility and weight of the indication of willingness, and in any event would be considered alongside all other relevant factors (subject to section 48AA(7)).

This clause clarifies the language in existing section 48AA(7) but it is not intended to otherwise alter its application.

This clause renumbers various subsections in section 48AA.

Clause 22 Amendment of s 48AC (Representatives of community justice groups must advise of particular matters)

This clause updates the cross-reference in section 48AC(1).

Clause 23 Amendment of s 48AE (Releasing children whose safety is endangered because of offence)

This clause re-orders the subparagraphs in section 48AE(3) but does not otherwise alter its operation.

Clause 24 Insertion of new s 48AF

This clause inserts a new section 48AF (Releasing children charged with prescribed indictable offence committed while on release).

This new section requires a court or police officer to refuse to release a child from custody unless the child shows cause why their detention in custody is not justified, where the child is in custody charged with a 'prescribed indictable offence' where that offence is alleged to have been committed:

- while the child was released into the custody of a parent, or at large with or without bail, between the day of the child's apprehension and the day of the child's committal for trial for another indictable offence (regardless of whether this first offence was a prescribed indictable offence or not); or
- while the child was awaiting trial, or sentencing, for another indictable offence (regardless of whether this first offence was a prescribed indictable offence or not).

The new section also provides that if the court releases the child, the order releasing the child must state the reasons for the decision. Similarly, the section also provides that if a police officer releases the child, the police officer must make a record of the reasons for the decision. Existing section 48B requires reasons to be given when keeping or remanding a child in custody.

Clause 25 Amendment of s 52A (Other conditions of release on bail)

This clause amends section 52A(5) to remove the blanket prohibition against courts imposing a grant of bail to a child with a condition that the child must wear a tracking device while released on bail. The prohibition still applies to police officers.

The clause also inserts a note to draw attention to new section 52AA.

Clause 26 Insertion of new s 52AA

This clause inserts a new section 52AA (Court may impose tracking device condition), establishing the legislative framework required to trial the use of tracking devices on certain young offenders.

New section 52AA will permit a court to impose, on a grant of bail, a condition that the child must wear a tracking device when released on bail (a 'tracking device condition). The court

will also be able to impose any other condition the court considers necessary to facilitate the operation of the tracking device (new section 52AA(2)).

The court will only be able to impose a tracking device condition on a child if:

- the child is at least 16 years old; and
- the offence in relation to which bail is being granted is a 'prescribed indictable offence' (a defined term – see clause 35 (Amendment of sch 4 (Dictionary)); and
- the child has previously been found guilty of at least one indictable offence (note: this offence does not have to be a 'prescribed indictable offence' it can be any indictable offence);
- the court is in a geographical area prescribed by regulation (note: this is because the trial of the tracking device conditions will take place in specified locations);
- the child lives in a geographical area prescribed by regulation (note: this is to ensure the support services intended to accompany a tracking device condition are available to the child);
- the court is satisfied, in addition to being satisfied of the matters mentioned in existing section 52A(2), that imposing the tracking device condition is appropriate having regard to the following matters:
    - whether the child has the capacity to understand the tracking device condition and any associated conditions under section 52AA(2);
    - whether the child is likely to comply with the condition and any associated conditions under section 52AA(2), having regard to the personal circumstances of the child;
    - whether a parent of the child, or another person, has indicated a willingness to the court to do any of the things mentioned in new section 48AA(4)(a)(vi);
    - any other relevant matter the court considers relevant.

Examples are provided for personal circumstances of a child the court may consider relevant to determining whether the child is likely to comply with the condition and any associated condition.

New section 52(A)(3) also requires the court, before imposing a tracking device condition, to request from the chief executive, and to consider, a suitability assessment report containing the chief executive's opinion about the child's suitability for a tracking device condition, having regard to the matters in section 52A(1)(e). New section 52AA(4) establishes timeframes for which the report must be delivered.

New section 52AA(1) also includes a note referencing sections 19, 22 and 25 to 28 of the *Human Rights Act 2019*, which are references to the following rights:

- the right to freedom of movement;
- the right to peaceful assembly and freedom of association;
- the right to privacy and reputation;
- the right, among others, of children to protection in their best interests;
- cultural rights (generally); and
- cultural rights (Aboriginal peoples and Torres Strait Islander peoples).

The purpose of the note is to ensure that provisions of the *Human Rights Act* are considered when a tracking device condition is imposed. The reason why the note is required is that when a court is deciding a bail application it is exercising a judicial function and therefore is not a

public entity under s 9(4)(b) of the *Human Rights Act*. Courts are required to take into account some human rights when exercising a judicial function under s 5(2)(a) of the *Human Rights Act*, but there is uncertainty about which human rights apply in which circumstances. The note clarifies that the human rights listed are relevant to the court's decision to impose an electronic tracking condition. The inclusion of the note is not intended to make human rights irrelevant for other decisions under provisions of the Youth Justice Act which do not contain a similar note.

New section 52AA(5)-(8) and (10) ensure the chief executive can utilise the Queensland Police Service and Queensland Corrective Services (QCS) to implement new section 52AA. It will permit police to fit and remove tracking devices from the child, and permit QCS to:

- remotely monitor the tracking device;
- contact the child on a mobile phone in relation to an alert or notification from the tracking device (e.g. an alert may be sent if the tracking device is low on battery, and QCS may call the child to remind them to charge it before it goes flat);
- give information relating to alerts and notifications from the tracking device to the chief executive and the commissioner of the police service.

A power of delegation is provided to QCS. No similar provision is required for the police as a power of delegation is already provided by the *Police Service Administration Act 1990*.

The clause also provides new section 52AA expires 2 years after the commencement.

Clause 27 Amendment of s 59B (Definitions for part)

This clause removes the definition of corrective services officer from section 59B because the term is now defined in schedule 4 (see clause 35 (Amendment of sch 4 (Dictionary)).

Clause 28 Amendment of s 59E (Proper officer of a court may ask for help to perform functions)

This clause removes the definition of 'chief executive (corrective services)' from section 59E because the term is now defined in schedule 4 (see clause 35 (Amendment of sch 4 (Dictionary)).

Clause 29 Amendment of s 150 (Sentencing principles)

This section codifies the existing common law by inserting into section 150 provisions that will require a court, in sentencing a child for an offence, to have regard to the presence of any aggravating or mitigating factor concerning the child, including whether the child committed the offence:

- while released into the custody of a parent, or at large with or without bail, for another offence; or
- after being committed for trial, or awaiting trial or sentencing, for another offence.

The policy intent of this provision is to embed in legislation the existing common law principle that the fact the offence was committed while subject to bail is an aggravating factor when determining the appropriate sentence. The reference to 'any aggravating or mitigating factor'

is to make clear that the inclusion of this new provision does not inadvertently imply that other common law aggravating or mitigating factors are excluded.

The clause also renumbers various subsections in section 150.

Clause 30 Amendment of s 289 (Recording, use or disclosure for authorised purpose)

This clause renumbers various provisions as consequential amendments. It also inserts a provision relating to the recording, use or disclosure of information by the chief executive (corrective services).

Clause 31 Amendment of s 301A (Protection from liability)

This clause renumbers various provisions.

Clause 32 Insertion of new pt 11, div 19

This clause inserts a new Division 19 (Savings and transitional provisions for Youth Justice and Other Legislation Amendment Act 2021). New Division 19 will contain new sections 402 to 406.

New section 402 (Definition for division) provides the definition of *amending act* within the division to mean the *Youth Justice and Other Legislation Amendment Act 2021*.

New sections 403 (Application of amended bail provisions) and 404 (Application of show cause provision for bail for prescribed indictable offence committed while on release) provides transitional provisions in relation to sections 48AA, 52A, 52AA and 48AF as amended or inserted.

New section 405 (Effectiveness of tracking device condition after geographical area stops being prescribed or section 52AA expires) provides savings provisions for tracking device conditions imposed in the event a geographical area stops being prescribed or section 52AA expires, so that the tracking device condition continues to be effective until the date ordered by the court.

New section 406 (Application of amended sentencing principles and youth justice principles) inserts a transitional provision in relation to section 150 and schedule 1, as amended, so that they apply in relation to a child charged with an offence whether the offence was allegedly committed, or the child was charged, before or after the commencement.

Clause 33 Amendment of sch 1 (Charter of youth justice principles)

This clause amends the first principle in the charter of youth justice principles to clarify the existing scope of the principle by specifically referencing recidivist high-risk offenders.

Clause 34 Amendment of sch 4 (Dictionary)

This clause inserts new definitions for *chief executive (corrective services)*, *corrective services officer*, *tracking device*, and *prescribed indictable offence*.