Legislative Council
HANSARD
Thursday 10 April 2025

[excerpt]

POLICE OFFENCES AMENDMENT (KNIVES AND OTHER WEAPONS) BILL 2025 (No. 3)

Second Reading

[11.51 a.m.]

Ms WEBB (Nelson) - Mr President, I rise to make my contribution on the Police Offences Amendment (Knives and Other Weapons) Bill 2025. I appreciate the time we spent on a number of briefings on this bill yesterday and thank those who provided them and the external stakeholders and experts and department staff for the information they provided and the questions that they answered.

At the outset, importantly, as others have done, I acknowledge the tragic catalyst for this bill, and the human faces, and the loss and pain, which is ongoing for many who are intrinsically associated with this bill's origins and goals. I particularly acknowledge and thank Laraine Ludwig for being in attendance yesterday all day with us and participating in the briefings, and today also generously participating in those briefings and being here with us as we contemplate this bill. Laraine has experienced something that is unimaginable. It is impossible to imagine the murder of her son, Reid. Her lived experience is relevant to this bill and that is undeniable.

In addition to that, I understand that Laraine has engaged in substantial research, consultation, relationship-building and advocacy over these past five years, and hearing from her yesterday was admirable. I thought her approach was clearly solutions-focused and collaborative, while being committed to tangible outcomes for greater safety in our community. She is planning to do everything in her power to make sure no other family has to go through the tragic experience that befell hers and continues to be felt by them every day.

That being said, it is with heavy hearts we find ourselves here grappling with this bill and its potential ramifications. Let me state then, really clearly, that I do not condone the carrying of any weapons or dangerous items, such as knives, in public for the sake of any evil, dangerous or violent intention. That is distinct from people who need to carry items of that nature for legitimate work-related, recreational or religious reasons, and we all understand that distinction.

I have long stated on the public record that there is no place for violence in our society. None. Whether that is verbal violence, threats, or physical acts of violence with or without weapons of any kind, none of it is acceptable and, of course, all of us here and in the community want to see effective measures in place to address violence and threats of violence in our community. Effective is the crucial word here. We want to consider options to improve safety and reduce violence that are evidence-informed and demonstrably effective in delivering those outcomes. In addition to the assessment of efficacy, we must also ask ourselves what other outcomes, intended or unintended, may result from the measures that we pursue.

What we see from the government in this bill, which aligns with their consistent

ideological inclination, is the direction that is being considered is to seek to expand police powers to deliver outcomes. However, what we know is that anytime that we consider the expansion of police powers, we will, by definition, be confronted with questions on the impact of those powers on civil liberties and human rights. That is the other aspect of this debate that we must grapple with here today. To what extent do we allow the curtailment of civil liberties and human rights? How can that, or should that, be evaluated as warranted and justified against the known risk of knife violence in prescribed public areas? We are grappling with that balance. Our assessments need to ask if the curtailment of human rights or civil liberties is proportionate to the known or perceived problem identified.

The challenge is heightened and made all the more difficult by the fact that it is easier for us to visualise the known human faces who have suffered violence than the apparent vague, amorphous mass lumped together under headings like 'the vulnerable', 'those with mental health issues', 'children and young people' or 'youth', which is a term the minister used quite regularly in his second reading speech. Empathy for known individuals who have suffered horrific transgressions can cloud our responsibility and concern for those for whom we do not have a name or a face before us at the moment. That is a difficulty we are grappling with and I am trying to address this as sensitively as possible.

We need to be asking: how do we balance empathy for those known individuals with the imperative to protect civil liberties and human rights broadly for our community - especially in the absence of a Tasmanian human rights act and framework that, if it were in place, would have already ensured that a human rights and civil liberties lens had been applied to any proposed policy or draft bill that came before us? We would have had that assessment made and put into the mix for our consideration. As members in this place well know, I am a passionate advocate for a Tasmanian human rights act. This is precisely the sort of area where it would serve us well to have that framework in place, so we could hold to account our policy development processes, our legislative responsibilities here, and the implementation and ongoing playing out of those in the community when things pass through this place and become law.

In the absence of a rigorous human rights framework and clear human rights legislation, I need to revert my decision-making responsibilities to clear principles based on balancing evidence-based arguments and information provided through expert stakeholders with the problems identified and outcomes we seek.

The bill before us seeks to amend the *Police Offences Act 1935* as the principal act. The main impact of the proposed amendments are under section 15C, dangerous articles.

Subsection (2) of that section states:

> A police officer may stop, detain and search, without a warrant, any person in a public place whom the police officer reasonably believes has possession of, or carries, any dangerous article without lawful excuse and may stop, detain and search, without a warrant, the person's vehicle.

This bill seeks to amend that definition by replacing 'reasonably believes' with the lesser threshold of 'reasonable grounds for suspecting'.

We have heard legal and civil society stakeholders - and it can be seen in the submissions that they made to earlier drafts of the bill - voice their concern about the apparent overreach of this proposed amendment, which I will discuss more thoroughly later.

The other key component of the bill is to provide for electronic metal detection device usage by Tasmania Police, referred to as wanding, to assist in the identification of defined metallic dangerous articles such as knives.

The stated intention of these changes is not just to expand police powers but, by doing so, to remove concealed dangerous weapons from public spaces and to provide an effective deterrent to the carrying of knives in public areas. That is my understanding of the justification we are being asked to consider as warranting the broad and open-ended expansion of police powers and corresponding impact that can have on civil liberties and human rights, as represented in the bill before us.

We have heard, both during the debate in the other place and during yesterday's briefings, that the bill before us is based on the Queensland act. This reference moves us towards evaluating a known entity and assessing whether there is relevant evidence available for us to test the known and the data to inform our decisions as to whether Tasmania should follow a similar path - that is being claimed. Of additional significance is the fact that the initial 2021 legislation in Queensland provided for a trial of metal-detecting wand use by the state's police force across two sites, and an evaluation of the impact, effectiveness, efficiency and equity of the trial was to be conducted. The independent review of the Queensland Police Service wand trial was undertaken by Griffith University's Criminology Institute and released in August 2022. It is a really interesting report and it contains a great deal of insightful data. However, for the purposes of today's debate, I wish to focus on the question of whether any empirical evidence was gleaned from this trial to show that the expanded police powers provided a deterrent to the carrying of knives as potential weapons in prescribed public places.

The answer, according to the Griffith Criminology Institute report, is no, not that it can be ascertained yet. That is key. We will always be alert to the fact that new evidence can come to light and sometimes over time, once something has been implemented and has more time to become embedded, it can give effect to changes which may not have been evident in an earlier stage. I absolutely recognise that, but so far, that evidence is not there.

The report's key finding, number three, states:

> While wanding has been useful to better detect weapons (in one site only), there is no evidence as yet of any deterrent effect, given that there has been an increase in detections at one site, and no change at the other. A longer term follow up may be needed to better assess these effects.

Despite there being an increased detection of knives in one of those trial sites, there was no evidence of a deterrent effect yet. As I said, this report from the Griffith Criminology Institute contains a wealth of detail. In the interest of time, I am not going to delve into too much of it, but I want to contrast what occurred in Queensland with that trial and the independent evaluation with the recently concluded Tasmanian trial of the use of handheld metal-detection wands.

The minister announced recently that the four-month Tasmania Police handheld metal-detection wand trial was completed and showed strong results. The results that have been reported in the media and mentioned here already include that 213 searches were conducted across the state, which saw 54 weapons seized, 42 of which were knives. A very interesting and pertinent point that was confirmed during yesterday's briefing on the bill, and one that needs to be emphasised on the record, is that the minister confirmed that this trial's strong

results occurred under our current act, under the current laws available to us that police can operate under now. It is important to be clear on that point. The current provisions of the *Police Offences Act*, with the current threshold test of a police officer requiring reasonable belief provided for a handheld metal-detection wand trial, showed, and I quote from the minister's media release, 'strong results'.

It is a positive thing about our current circumstances, I would have thought. The current act appears to facilitate Tasmania Police using electronic wanding technology to seek to deter potentially knife-wielding Tasmanians, if that is the intent, and that is reassuring for us all. In the briefing I asked the minister for more detail on the trial and he undertook to provide more information. However, in the later briefing from the department there did not seem to be much more information available beyond those raw numbers - that basic data.

I would have thought there would be more documentation that, in straightforward terms, outlines the conduct of the trial and its results in detail, which would be relevant, available to us when we are considering this bill. I remain interested to hear more about, for example, the full demographics of the people searched during the trial - age, gender, ethnicity, et cetera. I would also be interested in an analysis of the circumstances of the searches made and the documentation and the reporting of those searches.

My understanding is that there is a report being prepared internally within Tasmania Police, which is good. Of course, that should happen. However, it is also my understanding that, unlike the Queensland operational trial, the Tasmanian trial has not been subjected to an independent evaluation and it appears that there is no intention for there to be one, although I hope to be corrected. I hope that is not the case because if it is, it indicates poor policymaking practice. On a law reform matter of this kind, we should see a really robust policymaking practice. In my view, that would have been, at the very least, an issues paper made public that could have originated from within the department, or it could have been done by an independent entity like our TLRI.

After an issues paper, we would then potentially have input. We might also design a trial based on what is identified in the issues paper to test and inform the matters that are raised in the issues paper and have an overt connection between the characteristics of the trial and the features of it and what has been raised in the issues paper. We would then have had a trial properly outlined and documented transparently in the public domain; we would also then have had an independent evaluation of the trial, in light of the issues paper. We would have had, then, through an independent evaluation and the results of that being furnished transparently, the ability to have that inform legislative reform and a bill.

Now, when I look at what has occurred here, it just simply is not a robust policymaking process for where to go, and that is a shame. It shows in this bill that we did not go through those expected good-practice policymaking steps here. We curtailed them; we cut them short. We skipped ahead actually, and skimmed over. What we should have had presented in a bill here and clearly explained in supporting material with that bill was a detailed analysis of the problems that we are trying to solve and the potential other negative consequences or related issues that sit around those problems - the evidence base of information drawing from other jurisdictions, drawing from a trial conducted in this state in an evaluated way, an approach presented, then, in the bill that can be demonstrated as optimising the effectiveness in addressing the problems while minimising the risk of the identified potential negative consequences. We should have been able to track that through, seen it here and had it explained to us here as being what is represented in this bill.

We have nothing like that here, with this bill. It is bad policymaking. It is bad legislative reform, and that is why we see such an unnecessary overreach in it. I want to be clear: when I make those comments, it is criticism of a process. It is not criticism of the need to look at this area of legislative reform. I absolutely think we should be looking at this area of legislative reform, and that it is appropriate to do so. We are not following Queensland's lead. The 2023 Queensland act proceeded on the basis of an independent evaluation of the 2021 trial. It is worthwhile noting, too, that things that come out of a trial that may be contra-indicative of going forward on certain policy matters do not have to stop it. In fact, the current Queensland act did proceed despite the fact that the independent review of the trial did not necessarily provide the evidence pointing forward for it.

You still have the option to proceed with reform and proceed with legislation being drafted, not necessarily having to align with everything that came out of a trial or the analysis of it. However, it is important, in the interest of transparency and a clear rationale and evidence base, to actually work your way through a good-practice process. It should have been especially clear that consideration of balancing rights and protections was a key issue here to be explicitly and robustly demonstrated, because it is raised front and centre by the TLRI as well, in material that they put in submissions to the draft bill.

It is interesting because I note that there is an inclination from the government and perhaps in the minister's second reading speech - in the second reading speech presented to us in this place as well from the government - there is sort of almost an attempt to co-opt credibility from the TLRI by implying that they are supporting elements of this bill.

I think that is somewhat misleading, to be honest. I just want to be really clear, for the record, that when the Tasmania Law Reform Institute put a submission into the draft of this bill, they said this:

> While the TLRI supports measures aimed at improving the safety of the public and police officers, it has concerns that this bill creates an unwarranted expansion of police search powers.

They also said:

> To the best of our knowledge, no data has been presented to justify the expansion of police search powers to detect knives and similar dangerous weapons.
>
> Evidence is important from a human rights and legal policy perspective. That is because expanding police powers to enable searches of individuals prima facie breaches the right to liberty and the right to refuse to self-incriminate, among other things.
>
> These breaches might be acceptable to the community if there was robust evidence that they would reduce Tasmanians' risk of injury or death from knife crimes, thereby promoting their right to life.
>
> Similar considerations were examined by parliaments and the courts in the late 20th century, when the police were given the power to randomly stop drivers and require them to undergo a breath test for alcohol levels. Ultimately, the quality of the evidence was so strong that the random-breath test laws were upheld.

I will talk more about random breath tests and the validity of using that comparator here in the way that the government has, further in my contribution.

I think that is a really interesting comment there from the TLRI submission. Clearly, they do think that there is overreach here; that important balance is the central consideration here when we are looking at this sort of sensitive law reform, and the balance has not been got right in this bill.

There are other very pertinent references in the TLRI report. They make quite categorical statements. I would have appreciated seeing the TLRI delve into this area and do a full look at how to move forward with this and being thoroughly informed by them on it, and to see that come through in the inner piece of legislation. They do say things like no other data was presented on the use or detection of knives in public places. They talk about, in short, there are no indications that new police powers to search individuals in public places will reduce homicide-related offences involving knives.

These are hard things to read out when we have people in the room who are affected by these crimes, and I am immensely sensitive to that fact, but I am also here as a legislator making decisions broadly, not about specific matters and specific people, but broadly for our community and having to apply accountable principles to that exercise.

It is the TLRI's view that there does not appear to have been any evidence presented that this existing search power is inadequate in detecting unlawful possession of dangerous weapons, including knives, or in preventing knife crime in Tasmania. Again, that is why we need to have a robust case for what the problem is that we are trying to solve and for what the best solution will be.

There are many other matters of relevance in the TLRI submission. In the interest of time, I am going to move on from them. I know other members will hopefully have read them. They are a matter of public record, and the degree to which this bill diverges from the expert reflections of the TLRI is an unfortunate matter of fact.

I also note here, as I am sure it will be brought up as an attempted sort of sleight of hand to mask the failure of good-practice policymaking, that a review of this act down the track, which was inserted into this bill by amendment, was not by the government, proactively committed to monitoring effectiveness and accountability. It was not put in there by the government at the outset, but it was put in by a diligent crossbencher in the other place as an amendment. But that later review of the act that is there in the bill does not substitute for a proper evidence-based policy development process from the outset. It simply does not. It is important. I am glad it is there. It is right that we would review this act down the track, but it is not an excuse nor a replacement for ditching poor policy development practice in the pursuit of what I believe is an underpinning ideological agenda focused on electoral appeal.

That is not the level of political leadership that Tasmanians want or deserve.

In addition to the stark contrast between the Queensland situation, which is based on that independent evaluation of a trial, and our lack of rigorous analysis to lead us into this reform is the fact that the bill before us is vastly different, in fact, to equivalent legislation in places across other jurisdictions nationally, despite hearing assertions that we are in some way following along with and replicating what is happening in other jurisdictions. That is simply just not the case.

Glaring differences are there and these include the failure to include any form of prescribed safeguards, including temporal and geographical limitations, an incredibly broad application to a range of public places that are not included elsewhere.

I will look now more closely at the safeguard provisions provided for in our interstate counterpart jurisdictions. Of course, we should have been able, just as an aside - if the government is going to claim that we are following other jurisdictions and we are aligning with them, they, of course, should have provided - and it should have come as part of an initial issues paper in this whole policy development process - but at least with this - either the consultation draft bill or this bill itself coming to us, we should have had some sort of comparison table of the features of this bill with other jurisdictions. That would have been genuinely helpful and transparent to allow us to compare.

If the government wish to explicitly claim that we are aligned with other jurisdictions, you would have assumed they would be keen to demonstrate it and show us. Nothing of that sort was provided by the government because they know that if they did provide a comparison table of that sort, it would glaringly show how far beyond every other jurisdiction we have gone in this bill.

They would have been expected then to have very sound evidence-based reasons for the massive expansion beyond what other states have done. And, of course, they have not been able to present us with sound evidence-based reasons for that.

So, better to claim the alignment briefly in a second reading speech and hope we will not notice how badly they are fibbing, and skate through as though there is nothing to see here. But there is something to see here because when you look at a straightforward comparison table, you see that every other jurisdiction has more tangibly grappled with and given effect to that attempt to balance the public safety outcomes sought with minimal curtailment of civil liberties.

In preparation for this bill, my office made a table - of course, that is immediately what you would want in order to begin to scrutinise this bill and the claims that are made by the government in the second reading speech. I note that yesterday we received further correspondence from TasCOSS, which contained a detailed comparison table with other jurisdictions too, and I thank them for doing that work for us in the absence of any such appropriate information being provided by the government.

I would like to spend some time running through some of the features that jump out in relation to the approach in other jurisdictions when you have a careful comparative look at them alongside our approach in this bill.

I will start with the Queensland *Police Powers and Responsibilities (Jack's Law) Amendment Act 2023*, as that appears to be the government's main model referred to throughout this debate. The Queensland act defines the seniority required for police officers to authorise the use of a handheld scanner.

I am going to skip through some features, not exhaustively; I am going to point to some features as contrast. It provides a geographical limitation for the use of handheld scanners, that being public transport locations and vehicles, and defined safe night precincts, not the exhaustive list of public places contained in the bill before us. It also crucially provides a time limitation, and I quote from section 39D subsection (2) of that act:

> The hand held scanner authority has effect for 12 hours after the authority starts.

Further, the Queensland Police Commissioner is required to publish a notice on the police website about a handheld scanner authority being issued within two months of that authority being issued. There are a range of prescribed safeguards for the exercise of the powers detailed in the act's section 39H.

Ms O'Connor - Isn't that interesting, through you, Mr President, this is a jurisdiction with only one House of parliament. So, one House of parliament managed to pretty much get the balance right.

Ms WEBB - The other interesting thing to note is that it is a jurisdiction that has a *Human Rights Act* actually.

Ms O'Connor - Yeah. True.

Ms WEBB - Not that they always comply and align with their *Human Rights Act*, but the expectation would be that they would need to take those considerations into account when producing legislation and perhaps that is what assisted here. I do not know for sure but that is my reflection.

Ms O'Connor - That sounds solid.

Ms WEBB - Moving on to New South Wales and its *Law Enforcement (Powers and Responsibilities) and Other Legislation Amendment (Knife Crime) Act 2024*, that jurisdiction has also put geographical limitation on the use of handheld scanners in. Yes, it has it. The act also designates areas, and those include public transport stations, shopping precincts, sporting venues and other public places prescribed by the regulations including, for example, places at which the following are being or to be held: special events and events that are part of or support the night-time economy.

The New South Wales act also prescribes the circumstances necessary in order to declare a designated area for wanding purposes. Timely publication of designated areas - yes, they have that - and I will quote from there:

> An instrument declaring a place to be a designated area must be published on the NSW Police Force website as soon as practicable after the declaration is made.

Time limitation is present, tick.

> The declaration of a designated area remains in force for the period, not more than 12 hours, specified in the declaration.

There it is, legislated.

In Western Australia, they also have defined geographical limitations in the form of protected entertainment precincts under the state's *Liquor Control Act* and other designated areas which has a subsequent list of criteria, including that it cannot be an area exceeding 3 square kilometres. They have defined time limitations in that act, for a period of up to 12 hours

or so, plus, a requirement for any declaration to be ratified by an officer of the rank of at least superintendent.

In South Australia, there were recent amendments in March, this year, to its *Summary Offences Act 1953*. Under section 66(Z) of that act, the Police Commissioner may authorise the use of search powers in relation to a specified public place if there are reasonable grounds to believe that an incident of violence or disorder may take place in that area and that the exercise of search powers is reasonably necessary to prevent the incident. An authorisation must be in writing or, if urgent, reduced to writing as soon as possible. It must specify the public place to which it relates and may only operate for up to six hours. Geographical limitation, time limitation and authority record are all evident there in the South Australian approach.

Lastly, in the Northern Territory, the *Police Legislation (Further Amendment) Act 2023* details prescribed areas and criteria for defining those areas, along with public transport providing geographical limitations. It includes a time limitation of 12 hours after the authority commences and contains legislated safeguards for the exercise of powers.

Most of these interstate acts also prescribe either criteria by which designated areas are to meet prior to declaration and/or specified safeguards for search procedures and officer obligations such as the requirement that, where possible, police officers undertaking the wanding search should be the same gender as the person searched. It is important to emphasise, that unlike other states with similar laws and the Northern Territory, the Tasmanian government is trying to introduce this expansion of police powers in this bill, minus things like the specified time limits, the location declarations consistent across other jurisdictions and the legislated safeguards that are there commonly in other jurisdictions around the exercise of the powers provisions.

I have just outlined those key examples of the safeguards and the public accountability measures. However, I want to be clear, by doing so I am not endorsing any one approach of the other jurisdictions or even the specific measures that they have legislated. Instead, what I am seeking to do is to point out that all those jurisdictions recognised, in one way or another, that the civil liberties of their respective communities needed protecting. They recognised the validity of those concerns in stark contrast to the bill before us, and that is the point I am emphasising here.

Critically, we have not been provided any coherent rationale as to why the government is seeking to take us down this path, which diverges so wildly from the interstate model the government itself points to as justification for the current bill, nor have we been provided with sufficient or rigorous evidence whatsoever that the government's bill will prove effective as a deterrent to a greater degree than the approaches taken in those other jurisdictions which have more protections and safeguards in place. In fact, it appears to be flying in the face of consistent evidence demonstrating that when we have ham-fisted overreach or draconian overreach in bills, it does not deter. That is what evidence tells us anyway.

I am just wondering here. I am not making an argument that we should not have law reform in this space on these matters. Not at all. What I am arguing is that I do not think we have grappled with this law reform process appropriately in this state. The fact that we are diverging so significantly from other jurisdictions indicates that to me. We have not been provided with a rationale for that or a justification for why we would seek to do so.

Speaking of deterrent, we have heard discussions surrounding the increase in penalties under this bill. It has been doubled, in fact. We always have to ask ourselves why. Upon what

data or evidence is a decision like that made in a law reform sense? I asked in the briefing if there is a rationale or evidence-based reasoning for that difference. Essentially, the answer was no.

The government is absolutely entitled on summation of this debate to provide a reason if they believe they have one. Essentially it is a policy decision by government. We could reach to point to bits of evidence here and there; it is pretty slim, though. Overwhelming evidence will tell us that increasing penalties largely does not act as a greater deterrent for most people. It is a policy decision by government to double penalties in this bill. It is really hard to see that as anything other than a kneejerk populist decision by those in power. It is a policy decision made on the basis of how good it will sound in a social media post, perhaps. It is sad to say that, but 'double' sounds really tough. No doubt it is appealing, because it is something really tough to announce.

I am all for a discussion about the appropriateness of increasing penalties, but we should be doing it in an evidence-based way, in a way that is proportionate. We should be looking at comparable penalties across other areas of the law. We should be able to explain clearly why we have decided to double a penalty in a piece of legislation.

As we have heard across briefings and in the debate so far, there are serious concerns regarding the disproportionate impact this bill could have on vulnerable people in our community, including our children and young people. I note the children's commissioner's 2025 submission to the draft bill states her clear disappointment, as she describes it, given her statutory role. She says:

> I was disappointed, given my statutory role, not to be contacted directly to provide comment and advice on the proposed amendments, given their potential to affect the rights and wellbeing of children and young people.

That is an extraordinary stakeholder to overlook - the children's commissioner on law reform that is going to explicitly involve children - that key stakeholder in our Commissioner for Children and Young People had not been intimately involved in the development process of this area of policy and law reform, but was reduced to a stakeholder who put in a submission to a draft bill, which is a very late stage of a law reform process. It is just unutterably disappointing. It is wrong, it is disrespectful, and it means that, again, what we have before us is probably not the best legislation that we should expect.

Particularly, the children's commissioner, in her submission on the draft bill warns this:

> It is critical to consider new legislative amendments through an evidence-based lens, including considering the potential impact of increased police presence and contact with children and young people (particularly within or near educational and health facilities) on their rights and wellbeing. Academic studies have shown that the younger that children are when they first encounter the criminal justice system, the more likely they are to encounter it again.

Another relevant expert voice providing a clear warning here of serious perverse outcomes. Those sorts of warnings are not a reason to stop or not undertake reform in this area, but they must be explicitly taken into account and be able to be seen to have influenced the decisions we have made and where we have landed in this bill when it comes to the exercise of

powers and the safeguards and constraints we put around them. Where we can see when we have balanced the ideas of public safety against curtailment of civil liberties, we can see where this has helped shift and decide where we land on that balance.

Not only is it risking perverse outcomes, I think it also flies in the face - and others have raised this - of our state government's 10-year Youth Justice Blueprint 2024-2034. I note that in the government's second reading speech they try to provide themselves some cover by mentioning this blueprint in passing, as if recognising its existence verbally in a second reading speech means they can move on and act as if it does not exist in practice in this bill.

I echo the children commissioner's submission where she states:

> In 2024 the Tasmanian Government released its 10-year Youth Justice Blueprint, which makes a commitment to contemporary, rights-based, individualised, therapeutic and integrated approaches to youth justice. It is frustrating then that the draft Bill does not reflect this endorsed framework.

I am going to repeat that bit of the quote because it would still apply to this final bill as it applied to the draft bill. This is what the children's commissioner said:

> It is frustrating then that the draft Bill does not reflect this endorsed framework. I believe there is reason to pause and consider holistically how isolated pieces of legislative reform, such as that proposed by the draft Bill, fit within broader whole-of-government goals and commitments. The Youth Justice Blueprint provides an overview of multiple avenues that can be utilised to address community safety concerns, whilst also balancing the rights and wellbeing of children and young people. It is imperative that endorsed frameworks such as the Youth Justice Blueprint and the Youth Justice Model of Care (which applies to police) are considered in the drafting process for any future legislative changes in this space.

I will go a little further than the commissioner and state that it is not just frustrating; I would say it is actually reprehensible and irresponsible for the government to ignore its own Youth Justice Blueprint framework and not work in a whole-of-government holistic way on matters that are directly relevant to it, but, in fact, progress in ways that are concerningly, identifiably, potentially at odds with it.

Despite assertions made in the other place that the *Youth Justice Act 1997* overrides this bill's proposed provisions in relation to children and young people, it is my understanding from our briefings that provisions protecting the rights of children and young people defined in the *Youth Justice Act* relate to searches occurring in custodial locations, not public places, as would occur under this bill. It is my understanding that the *Youth Justice Act 1997* does not prevent or constrain the searches that are authorised in this bill. There is no override of this bill by the *Youth Justice Act*. Perhaps the government could confirm that this is the case, just to clarify, particularly to ensure that in the event that inaccurate statements were made in the other debate, they could be corrected on the record here.

The failure to consult directly with the Commissioner for Children and Young People, as I have previously mentioned, is all the more shocking in light of the inclusion of educational facilities as a prescribed place under Part 3 of the bill before us. I know an amendment has been

circulated on that matter for us to consider by the member for Hobart and that she has spoken about this in some detail in her contribution. I am not going to speak directly on that proposed amendment here.

I want to take the opportunity to mention in my contribution a recent piece of joint correspondence that was sent to all members in this place from TasCOSS and Community Legal Centres Tasmania. The correspondence highlights the inclusion of educational facilities in the bill as a particularly concerning thing. It identifies it as this:

> a significant expansion of the places where wand searches are permitted to be carried out, and is not consistent with other Australian jurisdictions.

They go on to say:

> Our existing laws already grant police powers to search schools where they hold a reasonable belief that a search is warranted.

I am going to come back to that last sentiment. I think there is more to be discussed there. There is more nuance to be discussed there about what is possible currently and what may be required and then what we may do to meet that need. In relation to my stated requirement for evidence to inform our considerations, the CLC and TasCOSS letter to us on 8 April states:

> We are not aware of any publicly available evidence put forward by the Bill's proponents that there exists a heightened risk of knife crime in schools, such that the current threshold is unduly onerous.
>
> We are concerned that the Bill, as it relates to places of education, may have profound and unwanted societal consequences. That is, it has the potential to make our schools less safe. We are concerned for the Bill's impact on our youth, and on the culture of our schools.

Also this:

> Indeed, findings are emerging that the introduction of routine law enforcement practices into schools, such as electronic searches, may not only fail to meet their objective, but may have other unintended and unwanted consequences.

These risks to children and young people in our schools are very serious. When experts in these fields tell us that there is a concern these risks exist, we must take notice of that. Again, we are challenged with the question of how to appropriately balance risks against protections. I heard the explanation provided by the department in briefings yesterday that while there has not yet been an incident of significant knife violence in a school setting, like some of the other things that we look to and point to as having been an impetus behind this law reform, they did not necessarily want to wait for such a tragic incident to occur in a school setting to then prompt the inclusion of educational settings in this bill. They identified that, rather than only including types of locations where incidents had already occurred, they broadened their scope to cover all public spaces where people may congregate and interact, in which it could be anticipated that people may carry a dangerous weapon for the purposes of doing violence, and where we would, therefore, want to ensure we provided the best protection possible.

I understand that thinking. I accept those statements as a pointer towards why we might think about schools. I think all of us accept that we want children to be safe at school. We want staff and others in those environments to be safe. A risk would certainly exist if there are knives and weapons of that nature being taken into schools, and we may well want to understand the degree of that risk and to inform ourselves about how we might best proceed to address the risk. I do not see evidence that that work has been done. We have not been provided in relation to this bill and because we skipped over that robust, appropriate, good practice policy development process, we do not have that earlier discussion necessarily of, 'Do we need to think of schools as areas that we need to provide greater protection in, and what other considerations do we have to have in mind when we look at measures we might apply to schools?' Of course, in the briefings we also heard that there would be no expectation that under the really expansive powers of this bill, the police would be entering schools and wand-searching all students and staff on a broad scale.

Nor was there any expectation that police would be marching into kindergartens and wanding small children. I hear those sentiments and I believe them to be made in good faith and reflective of what Tasmania Police genuinely expect the approach would be. I accept that absolutely.

Regardless of those expressed expectations and what we might anticipate as reasonable behaviour from our police - which is what we all understand that they are aiming for - the fact is that the bill before us provides the police with virtually unfettered power to do things that are not expected to happen. They can happen under this bill and we need to think that through for ourselves. If we are relying on discretion rather than safeguards in legislation, if we are relying on a policy that sits in a manual or an instruction that is provided by senior officers, that is going to be all well and good probably for 98 per cent of the time. That is not an evidence-based data point. I am just making a broad point. What we also know, however, is that when we expand the powers available to police, those powers tend to be used. That is what evidence tells us as well. So, while those expectations will be there and, I imagine, upheld in good faith almost always, the fact that we have provided them in an unfettered sense is concerning, and we should be asking whether it was right and appropriate to do it.

In light of the evidence-based concerns presented to us by many expert stakeholders about anticipated negative impacts that could flow from police involvement in schools, we must ask ourselves whether the degree of the unfettered power is appropriate and necessary. The approach should most appropriately be based on providing police with sufficient power to respond to identified public safety instances to which they currently find themselves unable to effectively respond under the current law, while minimising the potential to trigger the identified and anticipated negative consequences.

It is a balancing act. There is nothing that is easy about this. It is nuanced. In short, we have to ask ourselves, how we can best empower the police to effectively protect children in these settings and circumstances, whilst keeping the expansion of powers to the least degree necessary? That is responsible law reform in an area like this, and where we could have looked at the approaches other states have taken to achieve responsible law reform here, in relation to schools in particular.

Under an approach that is more like in those other jurisdictions - and to try to meet needs on both sides and achieve the balance - I imagine we might have identified that educational facilities need to be designated areas in which a time-limited and geographically specific

declaration could be made to empower police to respond to specific situations that have arisen that our current laws do not allow them to respond to effectively. That kind of approach would immediately alleviate most concerns about the potential for unwarranted overreach by police under this bill's unfettered powers in relation to educational settings and schools in particular.

What I am suggesting would have been a proportionate responsible approach that I have no doubt would have arisen as a good way forward, something to think about, if we had been following a robust, good practice, good-faith policy development process from the start. I would much prefer it if we had a bill in front of us, in relation to school settings in particular, that said, 'Okay, there are going to be instances' - and from the briefings I have a much clearer understanding now that under current laws there are going to be instances - 'where there might be a concern about a dangerous weapon, like a knife, present in a school.' Police are called about it, they are not empowered under current laws, if the requisite detail is not there about the suspect with the weapon, they cannot just go in and wand to try to find it.

There is something more needed, but we could have done that in a way that was very targeted and did not open it up for anybody to suggest that police might go in and wand willy-nilly. We could have done it in a way where a declaration could be made for a specific school at a specific time, on the day that an issue arose and police need to respond to it. That would be proportionate, it would be targeted, it would be an appropriate balance. That is what we should have done and I am incredibly disappointed that that is not the bill that we are looking at. That would be a bill that I would have been able to seriously be confident in supporting.

The risks to children and young people expand beyond the locational problem created by the attempt here to include educational facilities as prescribed places for the purposes of this bill and the unfettered powers given in those places. We have also heard concerns from stakeholders and during briefings that the net widening and the risks of profiling potentially have enormous ramifications for our young people, as well as other vulnerable and disadvantaged Tasmanians.

In particular, I want to mention the TasCOSS submission made on the draft bill. On page 4 of that submission, under a subheading 'Impact on groups who are vulnerable to misuse of police powers,' they say,

> As we have noted in previous submissions, several inquiries, reports and academic research have raised significant concerns about the impact of public order offences on groups experiencing disadvantage or over-policing. For example, in their submission to the recent Victorian inquiry into the criminal justice system, the Victorian Aboriginal Legal Service noted, '[e]xpansion of police powers, and the disproportionate use of these powers and of heavy public health fines against already marginalised communities, leads to engagement with police which ultimately lead to more arrests, more people unnecessarily taken into custody and higher incarceration rates'. The Yoorrook Justice Commission heard evidence from a number of stakeholders in relation to the misuse of police powers and subsequent impact on Aboriginal people, families and communities. In relation to children and young people, the National Children's Commissioner has recently noted, '[s]ome children and young people reported feeling unsafe when interacting with police. They recalled incidents of abuse and mistreatment, racial

> profiling, and lack of support…'. They noted these findings were consistent with other research examining children's negative experiences with police.
>
> Recent research has also highlighted that early police contact actually makes it more likely that a child or young person will become (or continue to be) involved in the criminal legal system. The criminogenic risk is higher for Aboriginal children and young people, with reports noting Aboriginal people 'were significantly more likely than their non-Indigenous peers to have contact with police at a younger age as both victim and offender and to go on to have higher rates of ongoing contact with criminal justice agencies'. Therefore, while there may be a perception that increasing police presence in locations where children are present (for example, schools or public spaces such as retail precincts) may promote public safety by increasing interactions between police and children in those locations, the evidence suggests the new provisions may in fact be harmful to children and community safety in the long term.

I take very seriously what that puts forward as a concern here. It points to the need for a much more nuanced consideration of balance. I also note - I am going to mention briefly from the Community Legal Centres Tasmania's submission on the draft bill - the comments they made in a similar area of this concern about a broadening out of impact and on vulnerable people, in particular. They said on page 2:

> We are concerned that the broadening of police search powers will disproportionately target vulnerable groups, including Aboriginal and Torres Strait Islander persons, young people, people who have impaired intellectual or physical functioning, people of non-English speaking backgrounds… We are also concerned at the risk of 'net widening' with vulnerable groups not only likely to be disproportionately targeted but also finding themselves at risk of further police interaction.
>
> Both these concerns are well-founded, with a recent review in Queensland finding 'evidence of inappropriate use of stereotypes and cultural assumptions by a small number of officers in determining who to select for wanding' and 'net-widening among minor offenders who are not carrying weapons, but nevertheless come to police attention purely because of wanding practices'.

These are some of the concerns being brought to our attention explicitly here, in terms of the impact on vulnerable and disadvantaged Tasmanians - another matter that should be part of our weighing up of the best way forward here.

I note that a proposed amendment in the other place to legislate safeguards, such as the requirement that a police officer engaged in wanding must have their body cam operating and recording, was defeated on the grounds that the body cam requirement is detailed in the Police Manual. We did have some discussion about the police manual in the briefings. The Tasmania Police Manual is not a prescribed legislative instrument. It would be described, I believe, by police as sitting under legislative instruments, but it is not a prescribed legislative instrument. In fact, the latest copy that I find, dated 8 April 2024 - I do not know if it is the most recent one

but it is the one I was able to find most readily - was issued by former commissioner Darren Hine. The manual states:

> Content outlining procedures and guidelines is provided to assist members in the discharge of their duties and responsibilities. These additional provisions are not intended to be prescriptive and may not necessarily provide the optimum solution in all circumstances. Members are expected to apply judgement and discretion and, on all occasions, must be able to demonstrate any action taken was reasonable and justifiable in the circumstances.

When I read that, I see it says 'not intended to be prescriptive'. It is my understanding that the repercussions, should a police officer be found to have not complied with the police manual, could only be considered at most a breach of the code of conduct as specified under the *Police Service Act 2003*, so more a matter for possible disciplinary action, a complaint, than a prosecution matter, which is what we would be looking at if we were legislating certain requirements and then a police officer failed to actually take the legislated actions.

Having a police manual, which may or may not be updated regularly - I am not sure how often it is - is not sufficient replacement for clear, transparent and accountable safeguard measures enshrined in law, in my view. I do note that other jurisdictions with certain matters specified in their legislation are probably, I assume, also likely to have equivalent police manuals in their states. But they still saw fit to put certain requirements in legislation because that is the level of prominence they wanted to give those safeguards.

Again, if we had gone through good-practice policy development process on this law reform matter, there would no doubt have been worthwhile transparent discussion and consideration of how best to deal with these matters in legislation or otherwise. But that is not the opportunity we were provided with here.

I now wish to discuss how the proposed bill is different to universal public safety measures, such as random alcohol and breath testing. Analogies have been made between electronic wanding in public places as being the same as airport security checks or even security checks, for example, for the public entering Parliament House here. I think that those comparisons are simplistic and misleading and it is a shame. We do not need to be simplistic and misleading. We can acknowledge the complexity of these matters we are considering here, the nuance we are trying to apply to the central principle of achieving balanced effective outcomes without having to dumb it down to simplistic comparisons.

For a start, we have to be really clear - let us take random breath testing or airport security - neither of those measures are done in targeted ways. They are done for everybody. Everybody goes through the scanners at the airport. We are driving along the street, every car could be pulled over.

That is not the case with these wanding measures necessarily. Of course, theoretically, anybody could be, but that is not the way they are going to be applied.

When people are driving their car and are pulled over for a random breath test, there is no way the officer pulling them over could know anything about them in terms of their demographics, for example. The only thing that the officer knows is that they are driving a car, so they are already engaged in part of the activity that we are trying to screen for, which is

driving under the influence. The only category that they all have to meet is they are driving a car. That is whom we are going to test randomly, genuinely randomly, in a random breath test.

If we are in a public place and officers are choosing who they might do a wand search on, it is not going to be an entirely random exercise. It is simply not what is going to happen. It is a targeted exercise and that means that we then are confronted with the inevitable. It is not a criticism, it is just human nature. There is an inevitable bias that can come into that. So we have to be alert to this fact that we can have things like racial profiling come into it; we can have other inherent biases coming to it.

We cannot just compare a measure that will have the risk of those things present at all times with something like screening at an airport or random breath testing. It is simply not the same.

Again, it is why we would be thinking to ourselves, how do we best make sure that legislation here has the right level of safeguards and specificity about this to protect everyone, to protect officers who are engaging in the activities that it empowers and to protect the citizens who are going to be the subject of those actions as well? When we are protecting rights and outcomes, we are protecting it on both sides of this equation.

As I stated at the beginning of my contribution, I am focused on evaluating from an evidence-informed basis this proposed legislation with this significant expansion of powers to coincide with the expansion of technology that we have available for Tasmania Police to go about their job under the *Police Offences Act* and to seek to identify and confiscate dangerous items which none of us want to think and see being present in our community, in our public spaces. But the more I consider the matter and consider the written submissions made, as well as the matters raised during yesterday's briefings, the more I seriously believe we should have had a much more nuanced and evidence-informed consideration of this expansion of police stop-and-search powers and the delivery of greater public safety via that. Instead, we have a problematic, demonstrable overreach in this bill.

If what we are presented with here was actually what the minister said it was, aligned with the approach in other jurisdictions, then I think there would have been far less concern from key expert stakeholders and some members in this place. Not zero concern necessarily, I could not have guaranteed that, but far less concern. Certainly, I would have had far less concern.

Such a bill would have been a closer fit to the current Queensland model, for example, and therefore could claim to be more rigorously tested. Such a bill may then have resembled more closely that of Western Australia or the Northern Territory or New South Wales or South Australia, but at the moment, because of the lack of good-practice policymaking, this has led to a draconian overreach indulged in this bill and the failure to provide legislative safeguards that we would reasonably expect to see in a balanced approach.

This bill makes Tasmania an outlier and an outlier in the worst possible way. Ideally, what I think should happen from here is this bill should be withdrawn and I agree with the children's commissioner on that. That is what she said when she made a submission on the draft bill. I think it should be withdrawn, reconsidered and redrafted.

In the interim, we could see an independent evaluation of the recent Tasmania Police trial of wanding and that would be undertaken to assist in informing a redrafting and consultation process. There could then be the release of a further draft bill, a more nuanced one that shows balance which provides Tasmania Police with the capacity to use the non-invasive electronic handheld wands, but strictly and only with the prescribed, say, temporal and geographical frameworks and corresponding safeguards legislated along with the reporting and independent review provisions that we would want to see in there.

A draft bill along those lines put out for consultation with the community, with legal experts and with civil society stakeholders, I think, would be very informative. Then there would be meaningful comparative data and analysis we could derive from our interstate character counterparts, which we do not have the ability to do now as we are not comparing apples with apples.

Just to be clear, I am not trying to predict that there still would not be concerns with such a revised approach. However, it would be a more sensible and respectful pathway to seeking to provide those greater safety outcomes that we all want for the community and with the appropriate tools that Tasmania Police need to do their job well.

It is a serious indictment on the government. It has failed so manifestly to deliver evidence-based, good-practice, accountable law reform in such a sensitive area of civil liberties and on such an important matter of public safety. To conclude, based on the bill before us now and after a lot of careful consideration, I find it very difficult to say that I am able to support the bill in its current form.

[end of excerpt]