

Tackling knife crime in South Australia

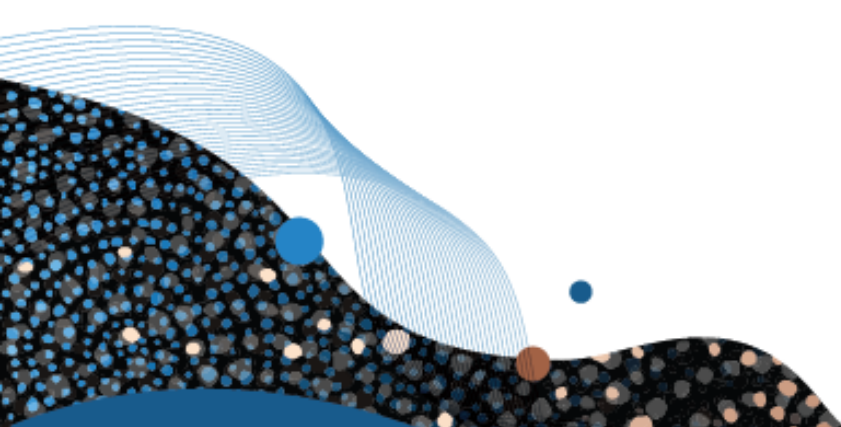
Discussion paper

July 2024



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The Attorney-General's Department acknowledges Aboriginal people's ongoing connection to the land and waters of South Australia. We recognise the importance of Country to Aboriginal identity, community and wellbeing. We pay our respects to Elders, past and present, and recognise the key role they play in caring for Country, community and culture.

A message from the Attorney-General

The safety of the community is a top priority for the South Australian Government, and the criminal law is an important tool in our efforts to ensure public safety.

Recent events have reminded us all of the dangers that weapons pose in the wrong hands.

South Australia has tough laws to address knife crime. These include criminal offences for carrying knives and other offensive weapons, and measures to keep knives out of the hands of children. In particular, the former Weatherill Labor Government passed significant law reform in this area.

This discussion paper provides an opportunity for our state to ensure we remain at the forefront of addressing knife-related crime, and for stakeholders and the general public to share their ideas about this area of the law.

Importantly, the criminal law is only one component of community safety. The work of South Australia Police, education and awareness-raising in schools, workplaces and community groups, and the example we set for young South Australians, are all important parts of addressing issues such as this.

I encourage all interested South Australians to have their say, and to work with us in maintaining the safety of our community.



Kyam Maher MLC

Attorney-General of South Australia

Introduction

The safety of the community is a top priority for the South Australian Government. In line with this, the Government is considering potential reform to South Australia's knife laws.

These reforms aim to:

- better target the possession of knives for unlawful purposes
- reduce knife crime
- keep the community safe.

This discussion paper outlines options for legislative change to knife laws under the *Summary Offences Act 1953* (Summary Offences Act) that are being considered by the Government as a result of significant incidents interstate and in South Australia involving knives.

It is intended to encourage the community to comment on potential options for reform and to provide information that will assist the Government formulate a fair and workable law.

How to make a submission

Submissions in response to this discussion paper can be made until Sunday 25 August 2024. Individuals and organisations can make a submission (confidentially if desired) by email to LLPsubmissions@sa.gov.au.

You can also complete our survey on YourSAy – the survey is a simplified version of the discussion questions posed in this paper. Visit www.yoursay.sa.gov.au/knife-crime

Submissions and confidentiality

Please be aware that, unless a request for confidentiality is made, information contained in any submission may be referred to publicly or published. Any material identified as 'confidential' is still subject to the *Freedom of Information Act 1991* and, while efforts will be made to keep the material confidential, in some circumstances it may be disclosed under that Act.

Where disclosure of information may identify you attempts will be made to consult with you under the *Freedom of Information Act 1991* before the documents are disclosed.

Knife crime in South Australia

Statistics from the Australian Bureau of Statistics for 2022 indicate that in South Australia:

- 44%¹ of *attempted murder* victimisations involved a knife
- 1,169 *assault* victimisations involved a knife, an increase of 32 compared with the previous year
- 6% of all *assault* victimisations involved a knife
- 21 *sexual assaults* involved a knife, an increase of 5 compared with the previous year
- 171 *robbery* victimisations involved a knife, an increase of 39 compared with the previous year
- 35% of all *robbery* victimisations involved a knife.

In addition, between April 2019 and April 2024, 834 individuals were found guilty of, or pleaded guilty to, possessing a knife in a school or public place.

Year of finalisation	Number of individuals
2019 (from 13 April)	98
2020	167
2021	178
2022	174
2023	208
2024 (to 12 April)	58
Total	834

¹ Note: There was a total of 16 attempted murder victimisations in 2022.

What is the law in South Australia?

The criminal law in South Australia has a tiered approach to weapons offences. There are three categories of weapons:

- offensive weapons
- dangerous articles
- prohibited weapons.

A knife (including a blade) is, by definition, an offensive weapon. Some types of knives can also fall into the category of prohibited weapons or declared to be dangerous articles.

While the definition of an offensive weapon is set in legislation supplemented by the common law, the list of items that are prohibited weapons, or dangerous articles are prescribed by regulation. This allows for the rapid inclusion of additional items where, for example, new weapons or articles are invented.

Offensive weapons and dangerous articles

The definition of offensive weapon under the *Criminal Law Consolidation Act 1935* is an article or substance made or adapted for use for causing, or threatening to cause, personal injury or incapacity.

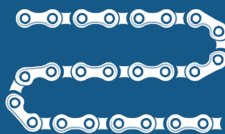


A knife (including a blade) is, by definition, an offensive weapon.

An offensive weapon also includes a rifle, gun, pistol, sword, machete, club, bludgeon, truncheon or other offensive or lethal weapon or instrument.



Many items can be an offensive weapon if carried with the intention of hurting someone or carried in a threatening way.



Examples of things that have been found by the Courts to be offensive weapons under the wider definition of 'other offensive or lethal weapon or instrument' include screw drivers, hammers, baseball bats and bicycle chains.

The only knife that has been declared a dangerous article is a gas injector device, which can include a WASP Injector Knife.

Related offences

Offence	Maximum penalty
Carrying an offensive weapon without lawful excuse. If an accused person claims to have a lawful excuse, they need to prove it. There is no exhaustive list of what may or may not constitute a lawful excuse, however it is generally not a lawful excuse to carry an offensive weapon for self-defence. A person is taken to be carrying a weapon or article if they have the weapon or article on or about their person or if it is under their immediate control.	A fine of \$2,500 or 6 months imprisonment. The Court may also order that the weapon be forfeited to the Crown.
It is an offence to, without lawful excuse, use or carry an offensive weapon in the presence of any person in a school or public place in a manner that would be likely to cause a person of reasonable firmness present at the scene to fear for their personal safety (whether or not a person of reasonable firmness is actually present or likely to be present at the scene).	A fine of \$10,000 or 2 years imprisonment.
It is an offence for a person to use or have possession of a dangerous article unless they do so in a safe and secure manner.	A fine of \$1,250 or 3 months imprisonment.
It is an offence to, without lawful excuse, manufacture, sell, distribute, supply or otherwise deal in dangerous articles - or use or have possession of a dangerous article.	A fine of \$7,500 or 18 months imprisonment.
It is an offence to, without lawful excuse, carry an offensive weapon (which includes a knife) or dangerous article while in, or attempting to leave or enter, a licensed premises or the carpark of a licensed premises at night. It is a defence for an accused person to prove that they did not know (or had no reason to believe) that the premises were of a kind where liquor was sold or supplied, or did not know that the carpark was the carpark of a licensed premises.	A fine of \$7,500 or 18 months imprisonment.

Prohibited weapons

Some knives are classified as prohibited weapons.



These include ballistic knives, butterfly knives, daggers, dirk or sgian dhu, fighting knives, flick knives, knife belts, push knives, star knives, throwing knives, trench knives, undetectable knives, and bayonets.

Related offences

It is an offence to manufacture, sell, distribute, supply, or otherwise deal in, or use or have possession of, a prohibited weapon. The maximum penalty is a fine of \$20,000 or 2 years imprisonment.

There is no defence of lawful excuse for a prohibited weapons offence. However, it **is** a defence for an accused person to prove that they were an exempt person in the circumstances of the offence. A person (or class of persons) may be exempt if they fall under the categories contained in Schedule 2 of the Summary Offences Act.

Exemption categories include:

- police officers
- emergency services
- business purposes
- religious purposes
- sport and recreation.

A person cannot be exempt if they have been found guilty of an offence involving violence for which the maximum term of imprisonment is 5 years or more, or an equivalent offence involving violence under the law of another State or Territory, the Commonwealth or another country.

A person who is not covered by the exemptions in the Act can apply for a declaration that a person or class of persons be exempt in the circumstances specified in the declaration.

A person who is exempt must not use or have possession of a prohibited weapon unless they do so in a safe and secure manner. The maximum penalty is a fine of \$1,250 or 3 months imprisonment.

Other knife laws

South Australia also has laws specific to knives.

It is an offence to sell a knife to a minor who is under the age of 16 years. The maximum penalty is a fine of \$20,000 or 2 years imprisonment.

It is a defence for an accused person to prove that:

- the seller requested the minor to produce evidence of age²; and
- the minor made a false statement or produced false evidence in response to that request; and
- in consequence, the seller reasonably assumed that the minor was of or above the age of 16 years.

This offence does not apply to a razor blade permanently enclosed in a cartridge or a plastic or wooden knife used for, and intended to be disposed of after, eating.

Offence	Maximum penalty
Marketing a knife in a way that indicates or suggests that the knife is suitable for combat; or is otherwise likely to stimulate or encourage violent behaviour involving the use of the knife as a weapon.	A fine of \$20,000 or 2 years imprisonment.
Have possession of a knife in a school or public place without a lawful excuse.	For a first offence - a fine of \$2,500 or 6 months imprisonment. For a subsequent offence - a fine of \$5,000 or 12 months imprisonment.

If a medical practitioner or nurse has reasonable cause to suspect a person who they have seen in their professional capacity is suffering from a wound inflicted by a knife, they must, as soon as practicable after forming the suspicion, make a report to the South Australia Police. This is unless, in the opinion of the medical practitioner or the nurse, the injuries are not serious and they believe on reasonable grounds that the injuries were accidental.

² For example, a current driver's licence, student identification, passport or Keypass identification.

Criminal Law Consolidation Act 1935

It is an offence under the *Criminal Law Consolidation Act 1935* (CLCA) to go armed at night with a dangerous or offensive weapon, intending to use the weapon to commit an offence against the person. The maximum penalty is 10 years imprisonment where the offender has a previous conviction, and in any other case, 7 years imprisonment.

The definition of offensive weapon under the CLCA is an article or substance made or adapted for use for causing, or threatening to cause, personal injury or incapacity, and therefore includes knives.

In addition, the offences under the CLCA and other Acts will be deemed to be aggravated and will attract a higher penalty if an offender used, or threatened to use, an offensive weapon to commit or when committing an offence.

Generally, if a knife is used violently, then one of a range of more serious offences under the CLCA will have likely been committed.

Options for tackling knife crime

The Government is considering options to strengthen these existing laws and to assist in the prevention and reduction of knife-related crime.



Expanding police metal detector search powers

Under the existing laws in South Australia, police have a variety of search powers, contained within the Summary Offences Act. They may conduct a search under a general search warrant or a specific search warrant, or they may conduct a search without a warrant in certain circumstances. Searches without a warrant are generally founded on the basis of the police officer having a reasonable suspicion of certain matters before being authorised to conduct a search.

In addition to the general search powers, police have enhanced powers to conduct searches without reasonable suspicion in respect of weapons in specific circumstances. Some examples of circumstances in which police may conduct searches without reasonable suspicion are outlined below.

Under section 72A of the Summary Offences Act, police officers can, without reasonable suspicion, conduct a metal detector search of any person at a licensed premises, a public place holding an event declared by the Commissioner, or a car parking area specifically or primarily provided for the use of patrons of those areas. If a person does not produce items detected by the metal detector upon request, the police officer may conduct a further search of the person (which need not be a metal detector search) as if the police officer reasonably suspected the person of having an object, possession of which constitutes an offence.

Declared public precincts

The Attorney-General can, on his own motion or on the recommendation of the Commissioner of Police, declare public areas (including public transport stations and shopping centres) to be a declared public precinct for a specified period. Examples of declared public precincts include the city east area during the Adelaide Fringe Festival and the Glenelg foreshore area during New Years Eve.

Within declared public precincts, police have certain additional powers for maintaining public order and safety, and members of the public have additional obligations.

One of the enhanced police powers is that police may conduct a metal detector search of a person without reasonable cause to suspect the commission of an offence.

As with metal detector searches conducted at licensed premises, if a person does not produce items detected by the metal detector upon request, the police officer may conduct a further search of the person (which need not be a metal detector search) as

if the police officer reasonably suspected the person of having an object, possession of which constitutes an offence.

Due to the enhanced powers of police and additional obligations of members of the public within these areas, there are certain safeguards in place. For example, before declaring an area to be a declared public precinct, the Attorney-General must be satisfied that there is a reasonable likelihood of conduct posing a risk to public order and safety in the area, and that the inclusion of the public place in the area is reasonable having regard to that identified risk.

In addition, a police officer above the rank of Superintendent may authorise the exercise of certain powers, including a search without reasonable suspicion (which need not be a metal detector search), in relation to an area for up to 24 hours. An area can only be so authorised if the police officer has reasonable grounds to believe that an incident of serious violence involving a group, or groups of people may take place in the area and that such powers are necessary to prevent the incident.

This power is rarely used as its primary aim is to prevent rare occasions of serious acts of violence such as riots. Nevertheless, given the nature of this power, there are several safeguards in place, including that:

- certain guidelines must be followed
- the area must be specified (and must not be larger than is reasonably necessary)
- the grounds for granting the authorisation must be stated.

Developments in other jurisdictions

- In 2022, the **Queensland** Government introduced ‘Jack’s law’, named in honour of 17-year-old Jack Beasley, who was killed in an incident involving a knife in Surfers Paradise in 2019. Part 3a of the *Police Powers and Responsibilities Act 2000* (QLD) provides for the use of handheld scanners without a warrant in safe night precincts and public transport stations following authorisation by a senior police officer. Under Jack’s Law, a senior police officer may authorise the use of a handheld scanner in a safe night precinct or a public transport station and on public transport vehicles travelling to and from the station (a ‘handheld scanner authority’) under certain circumstances.
- The **Western Australia** Government has announced that it will introduce new knife laws. Using handheld metal detectors known as ‘wands’, officers will be able to carry out non-invasive scans of people anywhere, anytime within a specified Knife Wandering Area declared by a senior police officer ranked Inspector or above.
- On 15 May 2024 the **New South Wales** Government introduced the Law Enforcement (Powers and Responsibilities) and Other Legislation Amendment (Knife Crime) Bill 2024. This will provide for a trial of powers for police officers to use, without warrant, handheld scanners on persons in certain areas to detect knives and other weapons.

- On 18 June 2024 the **Victorian** Government announced proposed changes to Victoria's knife laws which would enable areas in which metal detector searches may be conducted without warrants to be designated faster and with fewer limitations.

Potential reform in South Australia

The Government is considering whether allowing police officers to conduct metal detector searches at public transport stations and on public transport vehicles would provide South Australian Police with increased flexibility to proactively prevent knife-related violence.

Public transport is a unique environment where potential victims of crimes are not easily able to remove themselves from potential threats, including the potential threat posed by people carrying knives and other weapons. Vulnerable members of the community such as school children and the elderly are regular consumers of public transport.

In addition, the Government is considering whether the power to conduct metal detection searches on public transport vehicles may reduce the number of knives brought into the city, sporting venues and entertainment precincts.

The Government acknowledges that enhancing police powers should be carefully considered and should not unnecessarily intrude on the personal rights of individuals, nor disproportionately affect vulnerable members of the community. The Government welcomes comment on how to avoid such occurrences.

Discussion questions

Should South Australia enhance its existing laws to allow police officers to conduct metal detector searches without reasonable suspicion at public transport stations and on public transport vehicles travelling to and from those stations?

If the laws are expanded what further safeguards might be necessary, if any?



Increasing the age for prohibition of sale of knives to minors from 16 to 18 years

It is an offence to sell a prohibited weapon or a dangerous article to any person, including persons under the age of 18. It is also an offence to sell a knife to a minor who is under the age of 16 years pursuant to section 21D of the Summary Offences Act.

The Government is considering increasing the age from 16 years to 18 years in order to bring South Australia in line with other jurisdictions, and to help prevent knife crimes committed by young people.

Developments in other jurisdictions

- In **New South Wales** it is currently an offence to sell a knife to a child under the age of 16 years. However on 15 May 2024 the New South Wales Government introduced the Law Enforcement (Powers and Responsibilities) and Other Legislation Amendment (Knife Crime) Bill 2024, which if passed will make it an offence for a person to, without reasonable excuse, sell a knife to a child who is 16 or 17 years of age. The Bill will also increase the maximum penalty for an offence from 50 penalty units to 100 penalty units or imprisonment for 12 months, or both.
- In **Victoria** it is an offence for a person to sell a prohibited or controlled weapon to another person knowing the other person is a child under 18 years.
- Similar to South Australia, the laws in both **Victoria** and **New South Wales** contain an exemption where the knife is a disposable knife made of wood or plastic, designed for eating purposes.
- In **Western Australia**, a person who sells a controlled weapon to a child, being a person under 18, commits an offence. In Western Australia, it is also an offence to supply a controlled weapon to a child.
- **Queensland** has recently passed reforms to the *Summary Offences Act 2005* (QLD) which will make it an offence for a person to sell a controlled item or spray paint to a minor, being a person under 18 years. The Queensland reform will also make it so that commercial sellers must instruct employees about sale of controlled items, and makes it an offence for an employee to sell a controlled item to a minor if a commercial seller has instructed its employees about the sale of controlled items.
- In the **Australian Capital Territory**, it is currently an offence to sell a knife to a person under 16 years old.
- In the **United Kingdom**, it is an offence to sell to a person under the age of 18 years any knife, knife blade, razor blade, axe or other article which has a blade or which is sharply pointed and which is made or adapted for use for causing injury to a person. A knife is not defined, and so could include kitchen and cutlery knives, and disposable knives.

In raising the age to 18, the main issue will be what exemptions or defences should apply, if any.

Under the NSW reform, it will be a reasonable excuse for a person to sell a knife to a child who is 16 or 17 years of age if the person is satisfied the child reasonably requires the knife for the lawful pursuit of the child's occupation, education or training.

In Western Australia, it is a defence to a charge of *supply* to prove the accused believed on reasonable grounds that the possession would be lawful in that the child had a lawful excuse, or the child supplied with the weapon intended to use it only to commit lawful acts in the course of a sporting or recreational activity.

Potential reform in South Australia

Should the age be raised to 18, the Government is considering an exemption or defence where the purchase of the weapon required for the child's employment, education, training, or for use as part of a sporting activity.

For example, an apprentice butcher may need to purchase a knife to meet the requirements of their employment.

The Government is aware that there may be circumstances where an exemption may be required for other reasons such as cultural, religious, or other genuine reasons and welcomes comment on what these may be.

Discussion questions

Should South Australia increase the age under which it is an offence to sell a knife to a minor from 16 to 18 years.

If the age is increased, what exemptions or defences might be appropriate?



Requiring the safe storage of knives for sale and the display of prohibition notices

The Government is considering amending the Summary Offences Act to bring the laws around the sale of knives in line with the laws around the sale of graffiti implements.

Under the *Graffiti Control Act 2001*, a person selling graffiti implements from premises by retail must ensure that such implements stored in a part of the premises to which the public are permitted are kept in a securely locked cabinet or in a manner prescribed by regulation, such that members of the public are not able to gain access to the implements without the assistance of the person or an agent or employee of the person. Certain graffiti implements may be excluded by regulation.

Further, persons selling graffiti implements from premises must ensure that a notice is displayed in a prominent position in premises from which graffiti implements are sold. The notice must display the following:

'It is unlawful to sell graffiti implements to persons under the age of 18 years. Persons may be required to produce evidence of age when making a purchase'.

The words must appear on the notice in legible letters or numerals not less than 15 millimetres in height and be of a colour that contrasts with the background colour of the notice.

Developments in other jurisdictions

Some jurisdictions already have, or will soon have, similar requirements in respect of sale of knives to minors.

- In the **Australian Capital Territory** it is a requirement that a person who sells knives by retail ensures that a sign is clearly visible to the person at the place where a sale is made.
- In addition, **Queensland** has recently passed reforms to the *Summary Offences Act 2005* (QLD) which will require commercial sellers of controlled items (including knives) to display prohibition signs in relation to minors. Further, under the Queensland reform, commercial sellers will be required to ensure that controlled items (including knives) are securely stored at all times except when a person is in physical possession of the item.

Potential reform in South Australia

The Government is considering implementing similar requirements for the secure storage of knives and the display of prohibition notices as currently exist for graffiti implements.

The Government is aware that such provisions would impose additional regulatory burdens on those businesses that sell knives and welcomes comment on what those burdens might be.

Discussion questions

Should South Australia mandate the display of prohibition signs in respect of knives, similar to Queensland and the Australian Capital Territory, and South Australian laws related to graffiti implements?

Should South Australia introduce laws that will make it so that commercial sellers must ensure knives are securely stored at all times, except when a person is in physical possession of the knife, similar to the approach in Queensland and South Australian laws related to graffiti implements?

If such laws are enacted, what sort of exemptions should apply?



Expanding definition of ‘school’ in s 21A for the purpose of possession of a knife in a school or public place

Under s 21E of the Summary Offences Act it is an offence to, without lawful excuse, have possession of a knife in a school or public place.

School is defined in s 21A of the Act as a primary or secondary school.

Public place is defined as:

- a place to which free access is permitted to the public, with the express or tacit consent of the owner or occupier of that place;
- a place to which the public are admitted on payment of money, the test of admittance being the payment of money only; and
- a road, street, footway, court, alley or thoroughfare which the public are allowed to use, notwithstanding that that road, street, footway, court, alley or thoroughfare is on private property.

Consideration is being given to amending the definition of ‘school’ to extend to universities or other tertiary education facilities, as well as pre-schools and child-minding centres.

Developments in other jurisdictions

New South Wales, Queensland, the Northern Territory and the **Australian Capital Territory** each have similar provisions in respect of knives in schools or public places.

In **New South Wales**, school is defined as:

- A government school or registered non-government school within the meaning of the Education Act 1990 (NSW), and
- A school providing education (whether secular or religious) at a pre-school or infants’ school level or at a primary or secondary level, and
- A place used for the purposes of an establishment commonly known as a child-minding centre or for similar purposes, and
- The land, and any building, occupied by or in connection with the conduct of such a school or place,

and includes any part of such a school or place, but does not include any building that is occupied or used solely as a residence or solely for a purpose unconnected with the conduct of such a school or place.

In **Queensland**, school means a State educational institution or a non-state school, and does not include childcare centres or universities.

In the **Northern Territory**, school is defined as a government school or a non-government school, and does not include universities or childcare centres.

In the **Australian Capital Territory**, school means a government or non-government school or an educational institution conducted by the Canberra Institute of Technology.

Discussion questions

Should South Australia extend the definition of 'school' to include TAFE, universities and other tertiary institutions?

Should South Australia extend the definition of 'school' to include preschools and childminding centres?

Other options to tackle knife crime

The Government is considering other potential reform across knife laws to better target the possession of knives for unlawful purposes as the safety of the community is a top priority.

One potential option is the prospect of a licensing or registration scheme for types of knives or categories of knives, applying to people of all ages seeking to purchase a certain type or category of knife.

The Government is concerned to ensure that any such scheme would not operate in an overly burdensome manner on members of the public but is effective in tracking knives that might be used for an unlawful purpose to enhance the safety of members of the community.

Discussion questions

Comment is invited on the efficacy of the introduction of a scheme for the licensing or registration of particular types of knives or category of knife. What are the advantages or disadvantages of introducing such a scheme?

If such a scheme were to be introduced, what types or categories of knife should be included or excluded?

Are there other options for reform to make it harder for people to possess knives for an unlawful purpose?



Government
of South Australia

Attorney-General's
Department



Have your say

Visit www.yoursay.sa.gov.au/knife-crime for the discussion paper and more information.

You can also have your say by providing a written submission to LLPSubmissions@sa.gov.au by 25 August 2024.