

Police Powers and Responsibilities and Other Legislation Amendment Bill 2024

Explanatory Notes

FOR

Amendments to be moved during consideration in detail by the Honourable Mark Ryan MP, Minister for Police and Community Safety

Title of the Bill

Police Powers and Responsibilities and Other Legislation Amendment Bill 2024 (the Bill)

Objectives of the Amendments

The objective of the amendments to be moved during consideration in detail of the Bill is to provide additional clarity to the community and public officials on the intended operation of the new safeguards for personal searches, inspections of particular people's belongings and some forensic procedures.

On 10 May 2024, the Community Support and Services Committee (the Committee) tabled its report on the Bill. Recommendation 3 was to provide further clarification of the circumstances in which it is not "reasonably practicable" to accommodate a gender preference under the new safeguards. The amendments address this recommendation and further respond to stakeholder views expressed throughout the Committee's consideration of the Bill.

These amendments do not change the stated policy objectives of the Bill as outlined in the Explanatory Notes to the Bill. Rather, they clarify the intended operation of the safeguard provisions in the Bill.

Achievement of the objectives

The amendments to be moved during consideration in detail will amend clauses in the Bill which amend:

- the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* (CPOROPOA);

- the *Crime and Corruption Act 2001* (CC Act); and
- the *Police Powers and Responsibilities Act 2000* (PPRA).

The Bill inserts a new, consistent framework for the exercise of some powers under the CPOROPOA, CC Act and PPRA to recognise gender and provide responsive protection to people against whom powers are exercised.

These amendments clarify the intended operation of the safeguard provisions by inserting a note to provide:

- examples of what an “improper purpose” includes; and
- clarification as to how the “reasonably practicable” threshold is to apply.

Improper purpose

The phrase “improper purpose” is intended to operate broadly. It could capture the circumstances where a subject might:

- make lewd comments or gestures about the particular officer they prefer to exercise the power;
- express an offensive preference to have the power exercised by a person of a gender they do not identify as, including where the person holds beliefs inconsistent with the legal recognition of trans and gender diverse people;
- not genuinely have a preference to have the power exercised by a person of a particular gender and express a preference solely to frustrate the searching officer from performing their duties.

Some powers, particularly personal searches, are exercised in various uncontrolled environments and there may be any number of ways in which a person may attempt to misuse the safeguard for an improper purpose. As such, one of the purposes of the exception is to protect officers from potential physical harm or degradation by a person being searched.

To assist public officials in determining what may constitute an improper purpose when a person expresses a preference, the amendments insert a legislative note that outlines such behaviour includes—

- a lewd or otherwise offensive purpose;
- an attempt to frustrate the purpose.

Reasonably practicable

The purpose of the term “reasonably practicable” is to address the need to allow a power to be exercised where:

- an officer, or appropriate person, of the *same gender* may not be available; or
- an officer, or appropriate person, of the person’s *preferred gender* may not be available.

To assist with interpretation of the new framework, the amendments insert a legislative note to provide that ordinarily it will be reasonably practicable to accommodate a preference if the preference is for a man or woman to exercise the power.

The note further clarifies that, in other cases, when considering what is reasonably practicable, the availability of a suitable person may be a determining factor.

Alternative ways of achieving policy objectives

There are no alternative ways to achieve the policy objectives.

Estimated cost for government implementation

There is no cost to Government to implement the amendments.

Consistency with fundamental legislative principles

The amendments to the Bill have been prepared with due regard to the fundamental legislative principles outlined in the *Legislative Standards Act 1992* (LSA).

The amendments do not propose any changes to the underlying policy intention or intended operation of the Bill and are therefore consistent with the analysis of fundamental legislative principles provided in the Explanatory Notes for the Bill.

Consultation

Consultation was undertaken with stakeholders before introduction of the Bill as outlined in the Explanatory Notes for the Bill and during the Committee process.

Notes on provisions

Amendment 1 amends clause 6 of the Bill to insert a note for new section 31A. The note provides that an improper purpose includes a lewd or otherwise offensive purpose or an attempt to frustrate the process. The note also states that it is expected that it will be reasonably practicable to accommodate a genuine preference expressed in terms of a preference for a man or a woman. In other cases, the availability of a suitable person may be a determining factor.

Amendment 2 amends clause 22 of the Bill to insert a note for new section 100A. The note provides that an improper purpose includes a lewd or otherwise offensive purpose or an attempt to frustrate the process. The note also states that it is expected that it will be reasonably practicable to accommodate a genuine preference expressed in terms of a preference for a man or a woman. In other cases, the availability of a suitable person may be a determining factor.

Amendment 3 amends clause 36 of the Bill to insert a note for section 517. The note provides that an improper purpose includes a lewd or otherwise offensive purpose or an attempt to frustrate the process. The note also states that it is expected that it will be reasonably practicable to accommodate a genuine preference expressed in terms of a preference for a man or a woman. In other cases, the availability of a suitable person may be a determining factor.

Amendment 4 amends clause 37 of the Bill to insert a note for new section 519A. The note provides that an improper purpose includes a lewd or otherwise offensive purpose or an attempt to frustrate the process. The note also states that it is expected that it will be reasonably practicable to accommodate a genuine preference expressed in terms of a preference for a man or a woman. In other cases, the availability of a suitable person may be a determining factor.

Amendment 5 amends clause 40 of the Bill to insert a note for new section 553A. The note provides that an improper purpose includes a lewd or otherwise offensive purpose or an attempt to frustrate the process. The note also states that it is expected that it will be reasonably practicable to accommodate a genuine preference expressed in terms of a preference for a man or a woman. In other cases, the availability of a suitable person may be a determining factor.

Amendment 6 amends clause 42 of the Bill to insert a note for new section 624A. The note provides that an improper purpose includes a lewd or otherwise offensive purpose or an attempt to frustrate the process. The note also states that it is expected that it will be reasonably practicable to accommodate a genuine preference expressed in terms of a preference for a man or a woman. In other cases, the availability of a suitable person may be a determining factor.

Amendment 7 amends clause 46 of the Bill to insert a note for new section 644A. The note provides that an improper purpose includes a lewd or otherwise offensive purpose or an attempt to frustrate the process. The note also states that it is expected that it will be reasonably practicable to accommodate a genuine preference expressed in terms of a preference for a man or a woman. In other cases, the availability of a suitable person may be a determining factor.