

Corrective Services (Promoting Safety) and Other Legislation Amendment Bill 2024

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Submission by Legal Aid Queensland

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Review of the Corrective Services (Promoting Safety) and Other Legislation Amendment Bill 2024

Introduction

Legal Aid Queensland (LAQ) welcomes the opportunity to make a submission to the Community Safety and Legal Affairs Committee on the Corrective Services (Promoting Safety) and Other Legislation Amendment Bill 2024.

LAQ provides input into State and Commonwealth policy development and law reform processes to advance its organisational objectives. Under the *Legal Aid Queensland Act 1997*, LAQ is established for the purpose of “giving legal assistance to financially disadvantaged persons in the most effective, efficient and economical way” and is required to give this “legal assistance at a reasonable cost to the community and on an equitable basis throughout the State”. Consistent with these statutory objects, LAQ contributes to government policy processes about proposals that will impact on the cost-effectiveness of LAQ’s services, either directly or consequentially through impacts on the efficient functioning of the justice system.

LAQ always seeks to offer policy input that is constructive and is based on the extensive experience of LAQ’s lawyers in the day-to-day application of the law in courts and tribunals. LAQ believes that this experience provides LAQ with valuable knowledge and insights into the operation of the justice system that can contribute to government policy development. LAQ also endeavours to offer policy options that may enable government to pursue policy objectives in the most effective and efficient way.

This submission calls upon the experience of LAQ’s lawyers in Criminal Law Services, which is the largest criminal law practice in Queensland, and LAQ’s Prison Advice Service, and is informed by their knowledge and experience. LAQ regularly provides legal advice and representation services to prisoners, as well as offenders supervised under the *Dangerous Prisoner (Sexual Offenders) Act 2003 (Qld)* (‘DPSOA’).

Submission

Clause 32

Clause 32 seeks to insert new s.340AA into the *Corrective Services Act 2006 (Qld)* to govern the disclosure of sensitive information by a decision-maker. LAQ understands the impetus for this amendment arises from the decision of Brown J in *McQueen v Parole Board Queensland* [2022] QSC 27. LAQ is concerned that an information notice provided to a prisoner making an application for a parole order that refers only to ‘confidential information’ as a reason or a substantial reason amongst others for parole cancellation, does not give the prisoner any information to which they can meaningfully provide a response. LAQ is concerned that the provision is drafted too broadly and is at risk of being overused and abused, and applied more extensively than is necessary, in circumstances where there is no transparency. LAQ encourages the reconsideration of terms used in Clause 32, particularly the use of “prejudice public safety” in 340AA(1)(d), to ensure that only the most exceptional cases are subject to this limitation. This would be consistent with considerations when limiting human rights in accordance with s.13 *Human Rights Act 2019 (Qld)*.

Clauses 51 and 57

LAQ is concerned the amendments proposed to the *Corrective Services Act 2006* (Qld) ('CSA') and the *Police Powers and Responsibilities Act 2000* (Qld) ('PPRA') contained in clauses 51 and 57 have the potential for overuse or be abused with respect to a group of prisoners whose movements are already heavily monitored and restricted.

Clause 57 will amend s.21A PPRA to provide an unfettered power to enter a residence of a person subject to a supervision order pursuant to the DPSSOA, for the purposes of checking the personal details they provided as required by a DPSSOA supervision order. There is no requirement that the exercise of the power is reasonably necessary to monitor compliance with the order.

Clause 51 amends the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* (Qld) ('CPOROPOA') to permit police to compel access to a digital device if there is a reasonable suspicion a person has committed any indictable offence under the DPSSOA. Both s.43AA (1) and (2) of the DPSSOA (contravention offences) are indictable offences, however the particulars of the offence can vary greatly. As currently drafted the power to access a digital device could be exercised if a person was suspected of consuming alcohol or cannabis in breach of an order or direction, or for not taking their medication as directed by their doctor, as there is no requirement that accessing a device is reasonably necessary to investigate the suspected breach.

LAQ is concerned that without the legislative power requiring a consideration of a tangential or real connection between the need to access the device and the investigation of the alleged indictable offence, that it provides a blanket authority for police to access a device where it is not reasonably necessary to investigate the indictable offence under the DPSSOA, and therefore unreasonably infringes upon the prisoner's right to privacy¹ in circumstances where it is gratuitous. A human right may be subject to reasonable limits, however it must be considered whether there are any less restrictive and reasonably available ways to achieve the purpose² and LAQ urges that the legislative power enabling access to digital devices require a consideration that exercising the power is reasonably necessary to investigate the alleged offence.

An offender supervised under the DPSSOA is subject to significantly more restrictive conditions than a reportable offender only subject to the requirements of the CPOROPOA. They are subject to more rigorous scrutiny, and mandatory requirements of a supervision order (contained in s.16 DPSSOA) include that the prisoner:

- (a) report to a corrective services officer at the place, and within the time, stated in the order and advise the officer of the prisoner's current name and address; and
- (b) report to, and receive visits from, a corrective services officer as directed by the court or a relevant appeal court; and
- (c) notify a corrective services officer of every change of the prisoner's name, place of residence or employment at least 2 business days before the change happens; and
- (d) be under the supervision of a corrective services officer; and

¹ *Human Rights Act 2019* (Qld) s. 25.

² *Human Rights Act 2019* (Qld) s. 13(2)(d).

(da) comply with a curfew direction or monitoring direction; and

(daa) comply with any reasonable direction under section 16B given to the prisoner; and

(db) comply with every reasonable direction of a corrective services officer that is not directly inconsistent with a requirement of the order; and

Examples of direct inconsistency—

If the only requirement under subsection (2) contained in a particular order is that the released prisoner must live at least 1km from any school—

1A proposed direction to the prisoner would be directly inconsistent if it requires the released prisoner to live at least 2km from any school.

2A proposed direction to the prisoner would not be directly inconsistent if it requires the released prisoner to live at least a stated distance from something else, including, for example, children's playgrounds, public parks, education and care service premises or QEC service premises.

3A proposed direction to the prisoner would not be directly inconsistent if it requires the released prisoner not to live anywhere unless that place has been approved by a corrective services officer.

(e) not leave or stay out of Queensland without the permission of a corrective services officer; and

(f) not commit an offence of a sexual nature during the period of the order.

Further, s.16(2) *DPSOA* provides that an order may contain any other requirements the court considers appropriate to ensure adequate protection of the community or for the prisoner's rehabilitation or care or treatment. It is the experience of LAQ's practitioners that supervision orders regularly contain extensive and thorough conditions in excess of the mandatory conditions outlined above.

LAQ is concerned about the risk that the powers proposed by clauses 51 and 57 will be overused or abused in respect of residents of the precincts subject to a supervision order, whose personal details are generally confined and well known to their supervising QCS officers. Considering the additional level of scrutiny already afforded to persons supervised under the *DPSOA*, the amendment to these provisions should be confined to circumstances where it is reasonably necessary to monitor compliance with the order or to investigate the potential indictable offence.

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