

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

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Community Safety and Legal Affairs Committee
Queensland Parliament
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Brisbane QLD 4000

By online submission

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To the Community Safety and Legal Affairs Committee

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

Pride in Law thanks the Community Safety and Legal Affairs Committee ('the Committee') for the opportunity to provide feedback on the *Corrective Services (Promoting Safety) and Other Legislation Amendment Bill 2024* ('the Bill').

Pride in Law is Australia's first and only national non-political legal association, aimed at connecting lesbian, gay, bisexual, transgender, queer, questioning, intersex, and asexual ('LGBTQIA+') members of the legal community and their allies. We work to increase visibility, education and advocacy on LGBTQIA+ issues in the law and the legal profession. This submission has been compiled by our Queensland Chapter Executive Committee, whose members have expertise on the law as it affects the LGBTQIA+ community in Queensland.

Background

The LGBTQIA+ community faces many systemic challenges and unjust discrimination due to the unique vulnerabilities of its members¹, including in the criminal justice system.² Pride in Law acknowledges the many diverse views that exist in our society, but ultimately believes that LGBTQIA+ individuals, like everyone in Queensland, deserve to feel safe and respected. This includes equal protection under the law and the fundamental right to recognition before the law.³

As such, Pride in Law endorses the Bill's policy objective to promote the safety of frontline corrective services officers, victims of crime, offenders and the broader community. However, we make the following comments on the Bill's potential impact on the LGBTQIA+ community.

¹ See generally: Australian Human Rights Commission, *Resilient Individuals: Sexual Orientation Gender Identity & Intersex Rights: National Consultation Report* (Report, 2015) 14; J Horner, *In their own words: Lesbian, gay, bisexual, trans* and intersex Australians speak about discrimination* (Report, NSW Gay and Lesbian Rights Lobby, November 2013); Jess Rodgers et. al., *'Cisnormativity, criminalisation, vulnerability: Transgender people in prisons'* (Briefing Paper No. 12/Feb 2017, Tasmanian Institute of Law Enforcement, February 2017).

² Matthew Ball, *Criminology and Queer Theory: Dangerous Bedfellows?* (MacMillan Publishers, 2016) 3.

³ *Human Rights Act 2019* (Qld) s 15(1).

Ambiguity in the amendments to body search provisions

According to the Explanatory Notes, the Bill's aim in amending the body search provisions in the *Corrective Services Act 2006* (Qld) ('the CSA') is to provide flexibility for the diverse needs of prisoners, including trans and gender diverse prisoners. Pride in Law commends the Queensland Parliament on this policy objective and on the amendments which modernise the gendered language of the CSA. However, we note that the vague language of the proposed amendments may result in an arbitrary application of the amendments.

Following the introduction of the *Births, Deaths and Marriages Registration Act 2023* (Qld), an individual may apply to alter their record of sex on their birth certificate by nominating a 'sex descriptor',⁴ where 'sex descriptor' is defined as 'male', 'female', or 'any other descriptor of sex' and provides 'agender', 'genderqueer' and 'nonbinary' as examples of any other sex descriptor.⁵ To align the CSA with this act, the Bill proposes to omit the current provisions in the CSA which mandate that at least one of the health practitioners present during a body search of a prisoner must be of the 'same sex' as the prisoner being searched⁶ and that if another person is required to assist in a body search, they must also be the same sex as the prisoner (except in emergencies).⁷ Additionally, to supplement the omission of these provisions from the CSA, the Bill proposes to introduce a new section 39A which allows regulations to prescribe additional requirements and procedures for conducting searches of prisoners.

Pride in Law acknowledges that the omission of these provisions from the CSA removes the uncertainty they create in circumstances where a prisoner is being searched but has chosen a sex descriptor other than male or female on their birth certificate. However, without clear guidelines, there is a risk of arbitrary decision-making, potentially leading to discrimination against the people which the amendments are aimed at protecting, such as LGBTQIA+ individuals (particularly trans and gender diverse individuals) or other marginalised groups or individuals who may be vulnerable during body searches (such as people who are pregnant, breast-feeding or those with religious beliefs).

The proposed section 39A provides that regulations can be made to supplement the search provisions to consider the "special or diverse needs of a prisoner".⁸ However, the provision does not provide any concrete protections for the search process itself, merely relies on the potential creation of subordinate legislation to do so. This may undermine the privacy and dignity of prisoners without strong policy and guidelines as safeguards to support the amendments, particularly for prisoners such as trans and gender diverse individuals who are particularly vulnerable in the criminal justice system.⁹

Factors which contribute to a greater risk of criminalisation for trans and gender diverse individuals include forms of social exclusion, abuse, harassment and discrimination which can lead to criminal behaviour and cause trans and gender diverse individuals to be vulnerable to incarceration.¹⁰ Once in the criminal justice system, the experiences of trans and gender diverse individuals are underexamined.¹¹ However, the 2017

⁴ *Births, Deaths and Marriages Registration Act 2023* (Qld) s39(2)(b).

⁵ *Corrective Services Act 2006* (Qld) sch 2.

⁶ *Corrective Services Act 2006* (Qld) s 39(2).

⁷ *Ibid* s 39(4).

⁸ *Corrective Services (Promoting Safety) and Other Legislation Amendment Bill 2023* (Qld) s 37.

⁹ Jess Rodgers et. al., '*Cisnormativity, criminalisation, vulnerability: Transgender people in prisons*' (Briefing Paper No. 12/Feb 2017, Tasmanian Institute of Law Enforcement, February 2017), 4.

¹⁰ *Ibid*.

¹¹ See Jess Rodgers et. al., '*Cisnormativity, criminalisation, vulnerability: Transgender people in prisons*' (Briefing Paper No. 12/Feb 2017, Tasmanian Institute of Law Enforcement, February 2017), 4-5; Matthew Ball, *Criminology and Queer Theory: Dangerous Bedfellows?* (MacMillan Publishers, 2016) 57.

study of the experience of transgender women in male prisons in Australia identifies that the individuals in the study experienced “daily sexual harassment and coercion attempts” which caused mental distress, with one individual in the study referring to their experiences of harassment as “mentally stripping”.¹² The study also identified “inconsistencies in the application of trans policy where placement was left to the discretion of those involved in the decision-making.”¹³ It is therefore imperative to establish clear and comprehensive guidelines that accommodate the unique challenges faced by LGBTQIA+ individuals (in particular, trans and gender-diverse individuals) as well as other vulnerable individuals to ensure they are protected from harm in this space, particularly because of the “significant ways in which vulnerability is institutionalised, and to a great extent endemic to criminal justice processes.”¹⁴

Recommendation

Thus, Pride in Law supports the removal of the gendered language in the search provisions in the CSA, however we recommend robust policy and guidelines be introduced to support these amendments, including the following:

- a commitment to ongoing training for Queensland Corrective Services staff and any associated staff that focuses on trans and gender diverse identities and the experiences of LGBTQIA+ individuals in the criminal justice system, including unique vulnerabilities which members of the LGBTQIA+ community face;
- the allocation of resources to specifically examine the experiences of LGBTQIA+ individuals in the criminal justice system to inform the policies and practices of Queensland Corrective Services; and
- a commitment to ongoing consultation with LGBTQIA+ stakeholder groups to inform the policies and practices of Queensland Corrective Services.

Again, we thank the Committee for the opportunity to provide feedback on the Bill and remain ready to assist in its implementation. If you have any queries regarding the contents of this submission, please contact the Vice President (Qld) by phone on [REDACTED] or by email at [REDACTED].

Yours sincerely,

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This submission was drafted on the lands of the Yuggera and Turrbal people of Meanjin by volunteers of various backgrounds, identities, and faiths.

¹² Mandy Wilson et. al. ‘You’re a woman, a convenience, a cat, a poof, a thing, an idiot: Transgender women negotiating sexual experiences in men’s prisons in Australia’ (2017) 20(3) *Sexualities* 380, 389.

¹³ Ibid, 397.

¹⁴ Jess Rodgers et. al., ‘Cisnormativity, criminalisation, vulnerability: Transgender people in prisons’ (Briefing Paper No. 12/Feb 2017, Tasmanian Institute of Law Enforcement, February 2017), 4.