Queensland Community Safety Bill 2024

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Queensland Community Safety Bill 2024

Submission by Legal Aid Queensland

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Review of the Queensland Community Safety Bill 2024

Introduction

Legal Aid Queensland (LAQ) welcomes the opportunity to make a submission on the **Queensland Community Safety 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 lawyers in LAQ's Criminal Law Services which is the largest criminal law legal practice in Queensland, representing disadvantaged persons charged with the full range of indictable and summary offences. It is also informed by lawyers in the Youth Legal Aid teams, who have significant experience in the provision of legal advice and representation services to children within the criminal justice system, and LAQ's Family Law and Civil Justice Services.

Submission

Amendments relating to online criminal content & emergency vehicles

The Bill proposes to introduce an offence of damaging emergency vehicles to capture "ramming" of emergency vehicles[1] and driving which injures or endangers the safety of a police officer.[2] LAQ submits that the creation of these offences is unnecessary as offending of this nature can already be captured under current provisions, ranging from wilful damage,[3] dangerous operation of a motor vehicle with circumstances of aggravation,[4] serious assault police officer[5] and attempted murder.[6] These charges provide an appropriate sentencing range to reflect the spectrum of seriousness for this conduct.

[1] Proposed s 328C.
[2] Proposed s 328D.
[3] Criminal Code (Qld) 469.
[4] Ibid, s 328A.
[5] Ibid, s 340.
[6] Ibid, s 306.

Proposed amendment to *Summary Offences Act* section 19C

The proposed amendment to s 19C explicitly adds spectating in a group hooning activity as an offence under this section, where it is done without a lawful excuse. LAQ submits that this is unnecessary. It is LAQ's experience that police have charged offenders under the current section 19C provisions for spectating at a group hooning activity, on the basis that to spectate is to participate, therefore satisfying s 19C(1)(a)).

Proposed amendments to *Weapons Act* section 51

The proposed amendments increase the maximum penalty for the offence of possession of a knife in a public place and create a circumstance of aggravation with a higher maximum penalty for subsequent offences. The Explanatory Notes outline that the intention of this is to create a strong deterrent message to potential offenders,[7] however there is no evidence that this would achieve such a result.

These proposals also raise concerns about their consistency with human rights provisions including freedom of religion[8] and cultural rights.[9] LAQ also notes that in *Athwal v State of Queensland* [2023] QCA 156, section 51(5) of the *Weapons Act* was found to be inconsistent with section 10 of the *Racial Discrimination Act* 1975 (Cth) and therefore invalid. This case concerned the conflict with the prohibition on carrying a knife with the Sikh religious practice of carrying a kirpan.

Expansion of the use of handheld scanners

The proposed amendments significantly expand where handheld scanners can be used without a warrant (39C(1)). The proposed 'relevant places' are very broad, as are the circumstances where a senior police officer may authorise the use of handheld scanners in such places. These proposals greatly expand police powers and may expose a large cohort of people to being subject to handheld scanning in most public places. These proposals infringe on human rights including the right to privacy,[10] freedom of movement[11] and right to liberty.[12] The Explanatory Notes do not address the inconsistency of these provisions with the HRA. LAQ recommends a review of the operation of these provisions in the context of the HRA, given the broadening of police powers with limited safeguards.

Firearm Prohibition Orders

LAQ has concerns that the proposed section 141ZD provides police with the power to search persons, vehicles and premises without a warrant where a person is subject to a firearm prohibition order and the exercise of the power is reasonably required to determine whether the individual is committing an offence under s 141Y(1) or (2). It is LAQ's concern that there is no requirement for a police officer to form a reasonable suspicion that the person is committing such an offence prior to conducting a search, as is usually required for a police officer to conduct a search without a warrant. This additional consideration to the exercise of the power would to some degree address concerns associated with abuse of police power and the consequential infringement of human rights associated with the exercise of them.

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[7] Page 4.
[8] Human Rights Act, s 20.
[9] Ibid, s 27.
[10] Ibid, s 25.
[11] Ibid, s 19.
[12] Ibid, s 29.

Proposed amendment to *Domestic Violence and Family Protection Act (DVFPA)* s 105

The Bill proposes to amend section 105(2) of the DVFPA to provide that a hearing for a protection order be heard within 14 business days after the police protection notice is issued, where the current legislation provides that this must occur within 5 business days. The intention of this proposal is to allow further time for the preparation of application material. It is unclear how the period of 14 days has been settled on as the necessary time frame to achieve this.

This amendment is likely to present disproportionate challenges to respondents, particularly where they are subject to ouster conditions or conditions to have no contact with children. During the period before the protection order application is heard a respondent has no avenue to vary these conditions. This could have a further inflammatory effect on the relationship where a respondent is unable to attend their home address, contact children or access property with no legal avenue to vary these conditions until the matter is brought before the court. It is ultimately in the interests of both the aggrieved and respondent to have the matter brought before the court as soon as possible for the court to make a decision about the matter.

However, it is also LAQ's view that allowing police to thoroughly investigate allegations of domestic and family violence and put more thorough material before the court would be beneficial. In LAQ's experience, it is common practice for the Queensland Police Service (QPS) to take only brief oral statements about 'current incidents' they are called out to rather than taking proper statements about the full domestic violence history between the parties. The objects and principles of the act are to:

(a) maximise the safety, protection and wellbeing of people who fear or experience domestic violence, and to minimise disruption to their lives; and
(b) prevent or reduce domestic violence and the exposure of children to domestic violence; and
(c) ensure that people who commit domestic violence are held accountable for their actions.

These objects are harder to achieve within the DFVPA framework with more limited investigations by QPS. Where deficient material is put before the court, it can impact the outcomes for aggrieved persons in achieving safety. The definition of 'domestic violence' in s 8 refers to "a behaviour, or a pattern of behaviour", and in LAQ's experience courts are becoming increasingly interested in establishing whether there are patterns of behaviour/coercive control rather than isolated incidents, and so where full histories are not included in police material the conditions included on orders may not provide sufficient protection for the aggrieved.

It is LAQ's submission that the proposed extension to 14 days is too long, but that the current position of 5 days is likely insufficient based on current outcomes. Any period of extension should be decided through balancing the prejudicial impact of the length of time on the respondent and the requirement for police to prepare adequate material for court.

LAQ notes that an extended period would allow more time for both aggrieved persons and respondents to seek legal advice ahead of the hearing.

Service of documents and related matters

1. *Corrective Services Act* 2006 - proposed section 348B

LAQ is concerned that by allowing the chief executive to serve the documents on a person, the person would not be afforded the same level of explanation of the document as if it were served by a police officer. This is of particular concern where a person may require an interpreter or suffer from an impairment. LAQ notes that persons in custody are vulnerable and are more likely to suffer from impairments, including poor literacy. LAQ also notes the overrepresentation of First Nations persons in custody. The onus would be on the chief executive to assess a persons' capacity to understand the document. It is LAQ's concern that while police officers are trained in making such assessments, this is not something frequently required of corrective service officers. If such an amendment were made, it would be critical that Queensland Corrective Service (QCS) staff undergo training to adequately make such assessments and also provide sufficient explanation of the document, as well as be provided with additional resources to ensure the service occurs in a timely but adequate way within the officers' existing responsibilities. This may also require the engaging of interpreters or other professionals to assist with facilitating the service.

An offence of contravening a domestic violence order[13] cannot be made out unless the respondent was present in court when the order was made, was served with a copy of the order or told by a police officer about the existence of the order. The onus is on the prosecution to prove beyond a reasonable doubt that the respondent was told about the order or a condition of an order. The intention of this proposed amendment is to improve operational efficiencies; however, it is LAQ's view that this amendment could create inefficiencies later in the court process as a result of documents served without sufficient explanation or consideration of a person's vulnerabilities as well as impose on QCS resourcing to undertake the service and then to prove such factors.

2. Police Powers and Responsibilities Act - proposed s 789E

The Bill proposes to allow a police officer to serve a prescribed document on a person electronically in certain circumstances where that person has provided their electronic address and consents to the electronic service. It is LAQ's experience that the cohort of people who are served with prescribed documents, such as notices to appear, often struggle with transience or homelessness and other vulnerabilities, including impairments and poor literacy. It is not uncommon for people appearing in the Magistrates Court to lose their phone or not have sufficient access to the internet. It is LAQ's concern that this cohort of people would consent to the electronic service of documents, but subsequently may not be able to access the document, which could result in serious consequences such as missing a court date.

LAQ notes that under s 184(a) of the DVFPA the court already has the power to order that police serve in a manner other than personal service if attempts at personal service have failed. This proposed amendment would also be consistent with other jurisdictions, for example in family law proceedings personal service is required of an initiating application unless the respondent consents to being served in another manner or the court orders substituted service.

[13] Domestic and Family Violence Protection Act 2012, s 177.

Proposed amendment to s 20 Childrens Court Act

LAQ does not support the proposed amendments to section 20 of the *Childrens Court Act* (CCA), as they remove important safeguards for vulnerable children appearing in court. Removing these safeguards would have a prejudicial impact on children to the extent of hindering rehabilitation and could expose children to serious harm. The existing provisions under the CCA appropriately balance the principles of the *Youth Justice Act 1992* (YJA) against the principle of open justice and should be retained.

Currently, section 20(2) of the CCA allows a court to exclude victims or victim representatives where their presence would be prejudicial to the child. Under the proposed amendments there is no mechanism for victims or relatives of deceased victims to be excluded. Except for NSW, every other state and territory has a provision for victims and victim families to be excluded. LAQ is concerned that while the proposed amendments do provide some examples of a 'victim representative,' this could be interpreted broadly, with the same potential for prejudicial impacts on the interests of the child.

It is notable that these provisions would apply to any criminal proceeding for a child and would mean that such persons may be present in court for proceedings where a child has not been convicted of an offence, such as bail applications and committal hearings. The presence of media in proceedings could result in curtailment of submissions made by defence, for example sentencing submissions in relation to sexual or domestic abuse suffered by the child. LAQ notes that during submissions, confidential information about child safety or *Mental Health Act 2016* proceedings may be ventilated.

While prohibitions on publishing a child's identifying information to the public are retained, LAQ has concerns about what other use media representatives, victims and victim representatives might make of a child's information. LAQ's practitioners have recently been involved in matters where the media have attended at children's addresses to attempt to speak with them about the offending. The proposed amendments could expose children appearing in proceedings to breaches of their privacy and also potentially serious harm.

LAQ notes that the proposed amendments do not provide any mechanism to limit the number of media representatives, victims or victim representatives who are present during proceedings. This could result in a gallery full of such people, which would be daunting to a child appearing in court and may mean they are less likely to be open and forthright. This would be counterintuitive to rehabilitation.

The proposed amendments place insufficient weight on the rights of children and are inconsistent with the Youth Justice principles and *Human Rights Act* (Qld) 2019 (HRA). Relevantly, the Charter of Youth Justice Principles protects the rights of children,[14] and provides that they should be treated with respect and dignity[15] and with consideration of their vulnerability during proceedings.[16] The principles in the Charter are not arranged so that any principle has precedence over any of the others.[17]

The HRA provides that a child charged with a criminal offence has the right to a procedure that takes into account their age and desirability of promoting their rehabilitation[18] and that if

[14] Principle 2.
[15] Principle 3.
[16] Principle 4.
[17] *R v EI* [2011] Qld R 237.
[18] Section 32(3).

convicted, they should be treated in a way that is appropriate for their age.[19] More broadly, the HRA also enshrines the right to privacy and reputation,[20] the right to protection of families and children.[21] Section 31(1)&(2) of the HRA provides that a person charged with a criminal offence has the right to a fair hearing, and that a court may exclude members of media organisations, other persons and the general public in the public interest or the interests of justice.[22] The proposed amendments restrict a court's power to exclude persons from proceedings and are therefore incompatible with this provision of the HRA. Safeguards such as those contained in the current s 20(2) and 20(3)(c)(i) are necessary to protect the rights of children and should at minimum be retained.

Proposed amendment to Principle 18 - *Youth Justice Act* 1992

LAQ does not support the proposed amendment to the Charter of Youth Justice Principles, principle 18. While the explanatory notes identify the proposed amendments to this principle as "clarification" of the principle, it is LAQ'sview that the amendment goes further than clarifying the current principle and in effect removes the principle of detention as a last resort.

The proposed amendment to this principle puts children, for a number of offences, to a higher standard than adults. For an adult, section 9(2)(a) of the *Penalties and Sentences Act* applies, which provides that a sentence of imprisonment should only be imposed as a last resort. This provision applies unless a court is sentencing an offender for an offence of violence against another person, or that resulted in physical harm to another person. This is discriminatory on the basis of age under the *Anti-Discrimination Act 1991* (Qld) and the *Age Discrimination Act 2004* (Cth).

The principle of detention as a last resort comes from the Convention on the Rights of the Child which provides that "the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time."[23] Australia is a signatory to this convention, and section 26(2) of the HRA enshrines this in Queensland legislation. The proposed amendment to the Charter significantly infringes on the internationally recognised rights of a child. It is also inconsistent with other HRA provisions for the rights of children in the criminal process.[24] Given the inconsistency of this proposal with HRA provisions, an override declaration under section 43 of the HRA would likely be required. It is LAQ's submission that the exceptional circumstances that require an override declaration have not arisen here.

The removal of the principle of detention as a last resort is not necessary. In the 2022-23 financial year, there was a decrease in the number of individual children appearing in courts.[25] While youth crime is a prominent issue in the media, the concern relates predominantly to a small cohort of serious repeat offenders.[26] The removal of the principle of detention as a last resort will have a broad reaching and likely detrimental impact on all children who come into contact with the Youth Justice system, not just the small high-risk cohort of serious repeat offenders. The goal of the proposed amendments is to protect the safety of the community; however the statistics indicate that children who are detained are highly likely to re-offend on

[19] Section 33(3).
[20] Section 25(a).
[21] Section 26(2).
[22] Section 31(1)&(2).
[23] Article 37.
[24] Sections 32(3) and 32.
[25] Childrens Court Annual Report 2022-23, table 3, page 23.
[26] In 2022-2023, 20% of young people were responsible for 54.5% of charges before the courts. This was an increase from the previous year (Childrens Court Annual Report 2022-23, page 2).

release.[27] LAQ's experience is that while in detention children have disrupted access to education, training and mental health support as a result of overcrowding in detention centres and the use of watch houses. The conditions in detention are not supportive of rehabilitation. In these circumstances, eroding the principle of detention as a last resort is unlikely to curb recidivism and consequently would not achieve the goal of community protection.

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[27] Youth Justice Reform Select Committee, Interim Report: Inquiry into ongoing reforms to the youth justice system and support for victims of crime, Report No. 1, 57th Parliament, pages 43-44.

Queensland Community Safety Bill 2024

Further submission by Legal Aid Queensland

25 June 2024

Introduction

Legal Aid Queensland (LAQ) welcomes the opportunity to make a further submission in relation to the Queensland Community Safety Bill 2024. LAQ thanks the Community Safety and Legal Affairs Committee for accepting a further submission.

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 it 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 specific experience of our lawyers in the Information and Advice Services, who provide telephone and face to face legal advice in relation to traffic matters.

Submission

Proposed amendment to the Transport Operations (Road Use Management) Act 1995 section 79H

Clause 96 of the *Community Safety* Bill provides for the insertion of a new section 79H to the *Transport Operations (Road Use Management) Act* 1995. The new section 79H provides for an infringement notice to be served on a person for driving while over the general alcohol limit but not over the middle alcohol limit, where that person has not committed a drink driving offence within the last five years.

Proposed section 79H(3)(c) provides that a person receiving this infringement notice will be disqualified from holding or obtaining a Queensland driver licence for a period of two months (unless that person elects to have the matter dealt with in a Magistrates Court).

LAQ notes that this proposed amendment increases the mandatory minimum penalty for this category of drink driving offence from the current period of one month to two months.

Based on LAQ lawyers' experience advising clients in traffic matters, LAQ considers that this is likely to result in a significant increase in applications for work licences. After receiving advice, many clients who have been charged based on low alcohol readings decide not to

apply for a work licence given their disqualification period is likely to be limited to one month. This is because:

- For blood alcohol readings of 0.05-0.07%, applying for a work licence currently means a risk of disqualification period of up to two months. If a work licence application was not made, the likely disqualification period would be only one month for offenders with a good traffic history.
- An application for a work licence requires an affidavit from an employer setting out why the client needs a work licence.
- In the experience of LAQ lawyers, many clients choose to accept a one-month disqualification period rather than go through the procedural burden of applying to the court for a work licence.

However, if the mandatory minimum penalty were to increase to two months, the courts would face a significantly increased workload from dealing with applications for work licences. LAQ submits that this factor should be considered when determining whether to amend the *Transport Operations (Road Use Management) Act*.

The proposed new section 79H also provides that a person can receive an infringement notice for a section 79(2)(a) or (b) offence (i.e., for driving over the general alcohol limit but not over the middle alcohol limit), but not for the offence of driving while a relevant drug is present in blood or saliva.

LAQ notes that this means that infringement notices can be issued for the least serious drink driving offence but not for the equivalent drug driving offence (i.e., driving with a relevant drug in the saliva or blood for open licence holders). LAQ suggests that this has the potential to create confusion for clients who may question why the option of an infringement notice is not available for the equivalent drug driving offence.

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