Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Bill 2024

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Submitted by: Nerang Neighbourhood Centre

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Committee Secretary

Community Support and Services Committee

Parliament House, George Street

Brisbane Qld 4000

Dear Secretary

Re. Consultation on the Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Bill 2024 (Qld) ("the Bill")

Thank you for the opportunity to make a submission to the public consultation on the Bill, specifically with reference to recommendations made by the Women's Safety and Justice Taskforce relating to sexual violence and women and girls as accused persons and offenders, and the clarification of law as it relates to the admissibility of recorded statements in particular proceedings relating to domestic violence offences.

This submission has been prepared by me on behalf of the Nerang Neighbourhood Centre Inc. However, the views expressed below are those of the Centre and are not necessarily representative of the Centre's divisional leadership, or any other person, organisation or agency.

I am happy to provide further clarification on any area of the submission.

Inadmissibility of admissions made during programs while prisoners are remanded

The Bill proposes to make several amendments to the *Corrective Services Act 2006* (Qld) ("CSA") which are suggested to 'reduce perceived barriers to participation in programs and services for women who are remanded in custody' as well as 'provide additional clarity for prisoners that are not sure whether a program includes discussion of their offending and encourage program participation'.[1]

The policy objectives are said to be achieved by a two-step process involving a.) the Chief Executive providing prisoners on remand with notice under the newly proposed section 344AB(7) that the program is ineligible for the protections outlined in the new section 344AB(2); and b.) placing a statutory bar on the admission of evidence into any proceedings that is disclosed by a prisoner on remand in any eligible program under section 266 of the CSA.

Yet there are three problems with the proposed CSA amendments which threaten to undermine the stated policy objectives and may, at worst, place more vulnerable persons at risk of serious harm or death.

The first – and arguably most grave – problem with these amendments is that they make no allowance for the disclosure of admissions of, or with respect to, conduct which could lead to a serious risk to the health or safety or a child or vulnerable person. Where a disclosure could arguably be made, the amendments will instead ensure that no action (protective or otherwise) may be taken with respect to that child or vulnerable person. Given that (as will be discussed below) these provisions will also apply to male offenders on remand, there is a need to ensure that the Taskforce's

[1] Explanatory Notes to the Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Bill 2024, 3.

Some of the provisions which will be affected include:

- *Child Protection Act 1999* (Qld), section 13E (mandatory reporting by persons engaged in particular work of reasonable suspicions of a child at risk of harm of physical or sexual abuse);
- *Youth Justice Act 1992* (Qld), section 292 (disclosure to ensure someone's safety) and section 297G (disclosure in relation to a child charged with an offence for prescribed purposes);
- *Disability Services Act 2006* (Qld), section 138N (requirement to notify the chief executive); and
- CSA, section 324A (right of eligible persons to receive particular information), section 340A(3)(c) (right to disclose sensitive law enforcement information if the use or disclosure of the information is likely to prevent a serious threat to a person's life, health or safety) and section 341(3)(e) (disclosure by Chief Executive because a person's life or physical safety could otherwise reasonably be expected to be endangered).

Whilst abrogation of the common law right to silence in the face of unproven criminal charges should only be done in the most extreme of circumstances, by simply voiding admissibility for <u>all</u> admissions made by a prisoner participating in a section 266 program these amendments will inevitably lead to more violence against women and children in the State of Queensland, not less.

Parliament should consider a "safety valve" which allows for the admissibility of evidence where a person's life, health or safety is at serious or imminent risk, or alternately reframing the protection such that participation in the program (rather than any admissions offered as part of it) is not itself admissible in a proceeding in relation to the accused.

> ***Recommendation 1:*** *The Bill should be amended to include a provision (for example, at a new section 344AB(9)) which states that "Subsection (2) does not apply if the admission contains information which must be disclosed or reported under another Act, or discloses a reasonable suspicion that a person's life, health or safety is at serious or imminent risk", or similar wording.*
>
> ***Recommendation 2:*** *If Recommendation 1 is not supported, the Bill should be amended such that section 344AB(2) instead be framed with words to the effect of "Participation or enrolment in a section 266 program or service is not admissible in evidence against the prisoner in any civil, criminal or administrative proceeding for the facts constituting the alleged offence for which the prisoner is detained on remand".*

The second problem with the proposed amendment is its proposed position in the Act. Strangely, the Parliament intends to position this amendment in Part 13 (Information) in Chapter 6 (Administration) of the CSA, instead of alongside section 266 in Part 2 (Chief Executive) of Chapter 6 (Administration). Part 13 of Chapter 6 provides for various forms of information gathering and disclosure both to and from the Chief Executive and his or her delegates, persons performing functions under the Act, and "relevant persons" for the purposes of notifications with respect to violent or sexual offenders.

There is no apparent reasoning in the Explanatory Memorandum for placing provisions which involve the provision of information to prisoners in this Part, and doing so risks the potential for misinterpretation of Parliament's intention in establishing these provisions. Doing so would also be more consistent with the proposed delegation of proscribing ineligible services under section 344AB(8) in subordinate legislation.

> ***Recommendation 3:*** *The Bill should be amended to relabel the proposed sections 344AA and 344AB as sections 266AA and 266AB to better align those provisions with the section on programs required to be offered by the Chief Executive.*

The third problem with these sections in the Bill is that the amendments – consistent with the laudable aim of the Queensland legislature to remove gendered language from legislation – are targeted at 'women who are remanded in custody', they will also be accessible by men in the same circumstances. This seems to run counter to the purpose of the amendment ('[t]he Government can remove this anxiety by providing legislative confirmation to women and girls that their participation in rehabilitation programs and any admissions made will not be used against them in future legal proceedings'[2]) and Recommendation 131 of the Taskforce ('The Queensland Government better meet the health and wellbeing needs and disability support needs of women and girls in adult correctional centres and youth detention centres. This will include ensuring there is a gendered response to meet the particular needs of women and girls in custody'[3]).

There is no way to avoid the use of these provisions by male prisoners on remand without resorting to gendered language of the kind that Queensland Parliament has evidenced a clear and unambiguous intention to remove.

If it is the intention of Parliament to allow – even implicitly – male prisoners access to the protections in the proposed sections 344AA and 344AB, the impact and consequences of this intention should be a specific focus of the Attorney-General's review of the amendments contemplated by the new section 14 of the *Attorney-General's Act 1999* (Qld).

> ***Recommendation 4:*** *That the Attorney-General's Department, on conducting the review of the amendments in five years' time, give specific attention to the use of the amendments by male prisoners and/or by prisoners in a manner that was not contemplated by the Taskforce in proposing those amendments.*

Conclusion

I believe that the Bill addresses some of the policy concerns which it sets out to achieve, but that the objectives of the legislation could be fulfilled with better consideration of the legal implications of blanket inadmissibility of admissions made during remand programs and services.

The Parliament should otherwise be commended for its swift action in protecting women and girls from the horrific consequences of acts of sexual violence.

Thank you for the opportunity to make this submission.

Catherine Walker-Munro

Email [redacted]

[2] Women's Safety and Justice Taskforce, *Hear Her Voice: Women and girls' experiences across the criminal justice system* (Final report), 640.
[3] Ibid, 31 and 597.