COMMUNITY SUPPORT AND SERVICES COMMITTEE

Members present:
Mr A Tantari MP—Chair
Mr SA Bennett MP
Mr MC Berkman MP
Ms CL Lui MP
Dr MA Robinson MP
Mr RCJ Skelton MP

Staff present:
Ms L Pretty—Committee Secretary
Dr A Lilley—Assistant Committee Secretary

PUBLIC HEARING—INQUIRY INTO THE POLICE POWERS AND RESPONSIBILITIES AND OTHER LEGISLATION AMENDMENT BILL 2024

TRANSCRIPT OF PROCEEDINGS

Monday, 29 April 2024

Brisbane

MONDAY, 29 APRIL 2024

The committee met at 8.31 am.

CHAIR: Good morning. I declare open this public hearing for the committee's inquiry into the Police Powers and Responsibilities and Other Legislation Amendment Bill 2024. My name is Adrian Tantari, member for Hervey Bay and chair of the committee. I would like to respectfully acknowledge the traditional custodians of the land on which we meet today, and pay our respects to elders, past and present. We are very fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander people, whose lands, winds and waters we all share.

With me here today are: Mr Stephen Bennett MP, member for Burnett and the deputy chair; Mr Michael Berkman MP, member for Maiwar; Dr Mark Robinson MP, member for Oodgeroo; Ms Cynthia Lui MP, member for Cook; and Mr Robert Skelton MP, member for Nicklin.

This hearing is a proceeding of the Queensland parliament and is subject to the parliament's standing rules and orders. Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath or affirmation, but I remind witnesses that intentionally misleading the committee is a serious offence.

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LEAVERS, Mr Ian, General President and Chief Executive Officer, Queensland Police Union of Employees

MOORE, Mr Luke, Policy and Projects Officer, Queensland Police Union of Employees

CHAIR: I now welcome representatives from the Queensland Police Union of Employees. Good morning, Mr Leavers and Mr Moore. Would you like to make an opening statement of five minutes before we start our questions?

Mr Leavers: Thank you for having us here today. The Queensland Police Union welcomes the opportunity to comment on the Police Powers and Responsibilities and Other Legislation Amendment Bill 2024. At the outset, I speak on behalf of the 12,500 members of the Queensland Police Union who are made up of staff members and sworn police officers.

There are a number of elements in the bill that I will provide comment on. Some of the matters that the union seeks are particularly important. The QPU supports the modernisation approach that the legislation is taking to be respectful and inclusive of transgender and gender diverse people in Queensland. The Queensland Police Service has a workforce that is rich with diversity from First Nations, LGBTIQ+ persons, and culturally and linguistically diverse communities. The QPU is here today to speak on behalf of the women and the diversity inside our workforce who will be impacted by the changes in the bill.

It must form part of the record that watch house officers and police officers derive no joy from conducting searches. They are one of the most horrible things that you have to do in the course of your duty. No-one takes any pleasure in any way, shape or form from having to do a search. However, the duty of all our members in conducting these searches is to promote the safety and wellbeing of the person being searched, other detainees and the workforce servicing those who are in custody. The framework to conduct these searches must be based on common sense. While consideration for the safety of the person being searched is paramount in the legislation, the QPU is singularly focused on the rights of our members who must conduct these searches.

QPU members must be able to refuse to conduct a search if they are uncomfortable, and a commonsense approach must be adopted to ensure that an appropriate officer is found to conduct the search. I can go back to my time in policing when we often used to have to call—because there was not a lot of diversity; it was predominantly a male workforce—for a female, and there would be just one female within the district who would have to come and do a search. That was problematic

but that had to be the case, and I support that. In fact, unless there was imminent danger or death, I would not conduct a search on someone of the other gender. I think that would be totally inappropriate and I would not feel comfortable, not for myself but for the person being searched.

The concept of improper purpose is not well defined in the legislation. The legal grey area represents an unreasonable risk to the safety and wellbeing of officers conducting a search. The QPU believes the definition of 'improper purpose' should include (a) a purpose designed to frustrate, prevent or unreasonably delay a search and (b) a purpose to cause embarrassment or offence to an officer.

The QPU is concerned that each of the proposed amendments contain a second provision in the alternative to the improper purpose provision which allows an officer, or other individual authorised to search, to conduct the search, despite not being of the same gender as the person to be searched. That exception arises if it is not reasonably practicable to accommodate the preference. The QPU is particularly concerned that this provision will allow persons of different genders to conduct a search, despite a gender preference being stipulated, simply because no person of the stipulated gender is on duty or reasonably available.

At this point in time, current provisions provide that, outside of an emergency, a male can only search a male and a female can only search a female. The QPS, at least in major centres, ensures there are a number of male and female officers rostered on duty at watch houses so the search safeguards can be complied with. That is in major centres; that is not in regional centres. The QPU believes that the proposed amendments are considerably loose and would allow the QPS to have a person who identifies as male search a person who identifies as female simply because there is not an officer who identifies as female rostered on duty. Clearly, this is not the intent of the legislation, but its current drafting would allow such to occur.

The QPU calls out these provisions because we have a workforce of gender diverse and transgender members, women, people of faith and people who are victim-survivors who should not be exposed to harm or risk because of loose drafting. I am really concerned about victim-survivors being put in a situation that may retraumatise them or people of faith going against their religious beliefs. I support their views regardless of their faith. Common sense has to reign in the scenario and the government must ensure that these proposals are operationalised. It is essential that we see that operational procedures be updated, that we provide appropriate guidance to our members and that we ensure that the QPS must roster these new laws in a manner that protects our members. Police are subject to a robust review and complaints system, and this legislation must not result in more complaints and vicarious trauma being inflicted on hardworking police and watch house officers who do their jobs every day to keep the community safe.

The QPU believes that there must be clear recognition in the legislation that an officer need not disclose their own gender to the person being searched and nor can such officer be required to undertake a search if the officer themselves feels that undertaking the search would make them feel uncomfortable or embarrassed. This should not be limited to gender grounds but should also allow an officer to decline to conduct a search due to cultural, religious or even officer safety concerns.

Respecting the rights of people being searched necessitates that officers have a right to decline to conduct a search and appropriate steps should be taken. There must continue to remain a capacity for multiple officers to conduct a search to meet their own personal safety needs and the personal safety needs of someone being searched. The committee must understand that individuals who are searched by members of the QPU often have a number of disadvantages that are factors in their lives. Often these people are sleeping rough, have a lack of access to personal hygiene and suffer from substance abuse or mental illness.

It must be emphatically rejected that police are searching individuals because of an interest in doing so. Summarily, the experience of the QPU demonstrates that individuals who have no respect for the law could potentially flaunt the good intentions behind these laws. People of ill repute have in the past attempted to identify as women or as transgender to provoke discomfort for the people conducting the search or to get access to people in custody who identify with that gender.

The committee must ensure that drafting the legislation protects the safety of police and continues to give police the power to resist this behaviour and take the best course of action. The legislation must respect and protect personal safety of police and ensure that police are able to undertake any search in a manner that is efficient and respectful.

The QPU has had cause to review the thoughts of other submitters and has the following comments. The QPU has supported calls for watch house facilities to have full body scanners which would serve as the preferred step to conducting searches. If someone can be scanned to enter the airport or even the parliamentary precinct then those facilities can be provided in watch houses and other facilities.

The QPU does not share the concern of other submitters about the changes to wanding provisions proposed in this bill. Wanding does not involve physical contact between police officers and a person being wanded. The concerns of other submitters are not shared by the QPU. The risk of knife violence in our community looms large in the minds of the community after the events at Bondi Junction. These sensible proposals are not a knee-jerk reaction to the event but timely.

The QPU recognises the need for personal safety but also knows how wanding has successfully taken a number of weapons out of the hands of people in the community. I have seen that firsthand. At Surfers Paradise there was a young person—15—who had a replica Glock. It was only when I felt the Glock that I realised it was a replica. It certainly has its place within society. That is legislation where the complaints against police are absolutely minimal and people are generally compliant across the board.

It has to be clearly articulated that no-one in our community needs to carry a knife for their safety, and the use of wanding has been very successful. The QPU is dedicated to ensuring that the needs of police are met by laws that will have implications for all officers. While supportive of this legislation, we ask that common sense prevails. I am happy to take any questions. I was trying to rush through that because I only had five minutes.

CHAIR: I am sure we have plenty of questions for you. I turn to the deputy chair for the first question.

Mr BENNETT: I note the issues around camera surveillance being taken out. I previously raised issues about officer safety. Where I come from a lot of the smaller stations do not even have CCTV at all. When these searches are done, would that be in a major centre where there is a watch house facility? Is it not unusual for, say, Emerald Police Station or Bargara Police Station to do these searches?

Mr Leavers: Possibly Emerald, yes; Bargara, no. Bargara would generally refer to Bundaberg. There are a lot of smaller stations within your electorate. We certainly do not have the facilities. There is an argument about whether things should be recorded on a body worn video. It is not that we want to look at body worn video; it is for transparency down the track should an allegation be made. I suggest that any body worn video or CCTV would certainly have to be locked down and that only in the most extreme circumstances should it ever be viewed. I am about protecting the police as well as others.

Mr BENNETT: That was my point. When these feeds are not being viewed for safety, particularly if someone is violent or under the effect of some substance, how do we make sure that police officers are safe in this process?

Mr Moore: We do share your concerns specifically around the proposal to remove the video review mechanism that currently exists. That is one of the points we make in our submission, and Mr Leavers touched on—that is, if it is, say, for personal safety for our members that there is more than one person in the room while the search is being conducted, then we are very supportive of that. The personal safety of police is paramount here in the same way that the personal safety of people who are being searched is paramount.

We have a robust system of complaints review inside the QPS. The last thing in the world we want to see is police who are just doing their jobs dealing with something that is very uncomfortable for them generally. We have canvassed our membership. People do not rate this as their No. 1 reason why they do the job. We do not want them feeling like this is another thing that is being thrown at them for not doing it right because there has been some uncertainty or grey area that has arisen out of the good intentions behind the legislation.

Mr BENNETT: I just want to clarify that the CCTV is turned off but the body worn cameras are allowed to be left on during that process; is that right?

Mr Leavers: I would personally prefer to see that—if there is CCTV, why turn it off? If you forget to turn it back on, the allegations will come in. I have been an operational police officer. You will be shocked; I have had a complaint here or there. At times you want all the evidence available which will help vindicate you. That is why I was so passionate when I fought for body worn cameras. If we have CCTV, whenever we exercise a power we must turn on the body worn camera. We have

nothing to hide. We would rather not do it. It depends on where a police officer wears it. Generally if it is on the vest it is on the chest, but some police such as those in a watch house may not have it. If it is on their belt and it is skewing to a certain direction, it may not see what your eyes see. I am comfortable with all technology to be used to protect everyone.

Ms LUI: Your submission states that there is ambiguity in the bill that might present a risk to your members. For example, you state the bill's goal of creating 'flexibility'—

> ... should not be envisioned as an opportunity for police to decline to respect the expressed gender identity of a person in custody.

You mentioned the risk of complaints. Could you provide more detail about the ambiguity and the potential risks it brings?

Mr Leavers: The ambiguity is about how a person might identify, whether as a male or a female, or what the situation may be. That is quite complex for us because you try to please everyone you possibly can. In the circumstances in which we are operating where people are often affected in one way or another, this presents a real problem for us. We share concerns. We want to do the right thing but in some ways we feel like we may very well be set up to fail through no fault of the legislation. However, at the end of the day a complaint can be made against a police officer. When the complaints are made, you are open to not only criminal but civil litigation, which can put your life on hold. I am concerned. We want to do the right thing. Our preference is never to search anyone again but that is not practical.

Mr Moore: To elicit your point, when you think about it, we are talking about the gender diverse and transgender communities which are a very small percentage of our society. I would wager that there is a section of that population that does interact with police, but there will be a large section of that population that does not. The last thing we want to see is the good intentions behind this legislation—the intentions about respecting people, about recognising that inside our own workforce we have diversity, we have people who are undergoing their transition, who have transitioned, who are proudly transgender serving police officers. We do not want to see a scenario where someone comes in who uses the ambiguity we see in this legislation to say, 'Hey, you look alright. I'm going to identify as a woman for the purpose of asking a female officer to search me.' I understand there are provisions in the legislation that attempt to try to manage that. Our concern, though, is if we look at how we operationalise that, if I am saying, 'I identify as a woman,' that may very well be the case, but no-one should have to assume anyone else's gender, which is part of this legislation. Similarly, no-one should be assuming the gender of our members and no-one should be assuming what the gender of our members means in terms of how comfortable they feel in what they are being asked to do.

Also we do not want to see a scenario where someone identifies a certain way as a means to just get a female officer to conduct a search on them. We are really interested in common sense prevailing here and recognising we are not necessarily talking about the people we are trying to respect here. Let's be real; criminals will become aware of this and they will use this to be cheeky. We want to make sure that whatever the legislation is, that cheekiness is not allowed to occur because this is well intentioned. This is actually about respect and it is 100 per cent in the remit of what the Queensland Police do every single day. This is why our men and women join the Queensland Police Service: to respect their communities and to support people who, let's be honest, the people we are conducting searches on, as Mr Leavers has said, are not always the healthiest members of our society. Those searches have to be conducted in heightened environments and in custody. We just want to make sure that common sense is the main factor and any ambiguity is what we are laser light focused on.

Mr Leavers: Sometimes just asking someone if they identify can be offensive to the person you ask. If you assume a gender, that can be wrong. If you assume a culture, that can be wrong. Depending upon the complexion of your skin, you can get it incredibly wrong and that can be incredibly offensive and suddenly you end up in a civil arena. It is a real challenge for us.

Mr BERKMAN: I do not mean to labour this too much but we appreciate your concerns around the definition of 'improper person' and the definition that you have suggested. You would not have seen yet—it will very shortly be published—the QPS response to submissions. Essentially, without meaning to verbal them, it says that the definition is left undefined because any attempt to define it might inappropriately narrow its application. I am curious as to your response to that QPS position. They have referred very explicitly to the explanatory notes, which obviously would be relevant in the case of ambiguity. What is the QPU's position on that?

Mr Moore: I would say as in all things—and we are the union, so employers and the union are always going to draw different lines on what is important to us—we need to see this operationalised. I appreciate that is the perspective and I understand that yes, if this was to go to a court, a court might form a view about what the scope here is. For us it is about making sure that whatever our membership are expected to do, it is operationalised, that they are able to say, 'This is in and this is out.' I note other submitters have made the point—and we share their concerns—that under these new provisions there is a possibility to say, 'We will not roster women on.' Do I think that is what is going to happen? No, but that ambiguity is the risk that we are trying to head off here by asking for an operationalised understanding of how the QPS actually expects this to operate. Does that make sense?

Mr BERKMAN: Yes.

Mr Moore: We can skin a cat a hundred different ways in terms of how this is going to land if it goes to court. However, in terms of our response to that, I would say one of our responses is, 'How is this going to work in practice?' We are happy to do it—of course, this is the job of our members—but how are they going to do it?

Mr Leavers: If there is too much grey it puts our people at risk; that is my concern. Although I do not expect it to be definitive one way or the other, we need to support our people when they make a judgement call where it is grey.

Mr BERKMAN: I should add for the record that the response to submissions is now online. Apologies, the order of proceedings has left you without that in your hands.

Dr ROBINSON: One of the stated objectives of the bill is to replace unnecessary gendered language with gender-neutral terms. I note you referenced in your opening statement your concerns about people of faith—officers—about people being searched and appropriate treatment of them. How do you feel about the potential of gendered language becoming more mandated? If so, how do you feel about police officers perhaps of faith who do not want to use particular terms—say, for example, if they are more comfortable using the biological sex, male and female, as opposed to particular gendered language, is there the capacity that that may end up being mandated and then they may be disciplined for not using particular correct terms?

Mr Leavers: It could be a concern. My experience with people from various different cultures and faiths is that as a police officer they perform their function as required by law whether or not they agree with the legislation. When it comes to a search such as this, depending upon one's faith—and I do not profess to be an expert on all faiths—a devout Muslim female having to search a male may cause some distress. I have also heard from my colleagues from the First Nations backgrounds who have concerns when it comes to the searches. I would be concerned they would be disciplined because I think we need to respect their faith. There are some things that need to be done, but when you come to searches they are very personal and it certainly takes it to another level. It is a bit different to saying you will not enforce the legislation when it comes to drink driving, failing to wear a seatbelt or an offence of a break and enter. That is black and white, but when it comes to these grey areas and searches with different cultures and faiths, there are certainly different values that probably would not be—in terms of a male and female, their role within their cultures and faith is certainly different to mainstream in terms of what we have in our country. I do not take away from their values, but I believe we need to accept it and understand it and support it.

Mr Moore: To address the point I think you are trying to make, as Mr Leavers has said, police will conduct the searches and follow the law. The law recognises and respects people of all genders and diversity in the community. As a union, we recognise and respect our members who are gender diverse. We have members who serve who are non-binary, we have members who serve who are transgender, we have members who serve who are men and who are women. At the end of the day, police will conduct their searches and will use the language that is operationalised for them, and that is our priority: making sure that it is clear in the operational procedures manual what police are expected to do and also what is consistent with the law. The law is very consistent in this manner.

Mr Leavers: If it is an emergent situation where life or death is an issue, we will do what we have to do. I think any police officer, regardless of their background, would do that. Where other methods or other procedures could be put in place where it is not life or death, I think that is where we share the concern.

Mr SKELTON: Thank you for your comprehensive opening statement. I am particularly interested in the no CCTV and body worn camera issue. I have an officer in my district who has undergone huge trauma with vexatious complaints made by people in the course of his duties and he is still undergoing that. My view is how can we still record so as to protect police but make it a privacy issue as well so as to protect the people being searched?

Mr Leavers: I come from an area of policing where I was issued with a pen and a notebook and it was a different era and we did things differently. I have now advocated some years later that every police officer wants a body worn video and if they exercise a power it should be utilised. Certainly for that particular search it should be locked down, and there are certain mechanisms within the police systems where it can be locked down and there is only authorised access; it cannot be accessible to just anyone and it has to be justified as to why it is accessed. To tell someone not to use a body worn camera would be of great concern to me and would certainly put the police officer in a very difficult situation and open them up to a criminal or a civil complaint. These activities we have to conduct are not pleasant. They are far from pleasant. It is a fact of life; it happens. It should be recorded. It should be locked down. It not only protects the police officer but also protects the person who is in our care. It also maintains community confidence because should a complaint come in, it can be accessed accordingly. If we lose community confidence, we lose a lot of things. For a lot of reasons like that, I am supportive of the body worn video and any other technology which protects everybody.

Mr Moore: You may have seen in our submission we noted that there is a robust and complex system. The example that you have provided is an example that we are very familiar with: people who have vexatious complaints made against them which go for nine months only to result in nothing.

Mr SKELTON: Longer.

Mr Moore: It is very distressing for our members. If the committee is willing to consider the possibility of body worn cameras being used appropriately and how that works at law and how that works to protect people's personal safety and privacy on both sides of the exchange, we are extremely open to that. I think the reality is our concern with the changes around CCTV is you are losing someone in the other room who at least can provide a statement that says, 'This person is saying X. The officer who has conducted the search is saying Y. I'm backing what the officer has said.' Having body worn camera footage is a really hard piece of evidence to get around. It is what it is; it is the recording of what has happened. How we manage and protect people's personal safety and their dignity is something that the committee will have to consider. If I am understanding your question correctly, we share your concerns and we would really appreciate some way forward on that one.

Mr Leavers: In fact, some police do not want to leave the station or perform any function unless they have a body worn video with them. That is more important than any other use of force option they have. They will not leave home without a body worn video because of the environment they live in.

CHAIR: You raised wanding in your opening statement. You have indicated your support for wanding, in comparison to some of the other submitters who have put forward their position regarding wanding. Can you elaborate a bit more on the wanding provisions and if your members are happy with them, and what have they done since they have been introduced?

Mr Leavers: Initially it was in safe night precincts. Now it is on all public transport infrastructure and public transport. I am seeing it as a real positive. We predominantly did a lot of work down on the Gold Coast; that is where the issues came out of. I have seen it in a very positive way with the interaction with police and people within the community—and that is identifying people who may be carrying weapons on them. I do note it is generally a younger cohort or other cohorts that do carry weapons. It is being used in a preventive way. In fact, it is sending a message to people that you may be wanded. It is a bit like drink driving—anywhere, any time, you don't know. It is sending that clear message into the community that if you are carrying a weapon in an environment where you should not be you may very well be stopped and wanded.

In saying that, I do not want it to be going out to Charleville to the farmer who has a pocketknife on their belt. That is not what we are trying to target. This is in specific areas where we have seen great success and very limited complaints. It is all done on body worn video. It is authorised. Generally, across the board the compliance has been very good and the satisfaction with police has been very good. It has been received well not only by police but by the persons who are being wanded as well. It is probably one of the greater things. I wish we did not have to expand it how we are, but the fact is that the world is changing and it is about community safety. I think it certainly has its place. I think wanding is a great tool and it is not an invasive tool either.

CHAIR: I want to thank you both for coming.

CORKHILL, Ms Heather, Principal Policy Officer, Queensland Human Rights Commission

LEONG, Ms Rebekah, Principal Lawyer, Queensland Human Rights Commission

CHAIR: Welcome. Would you like to make an opening statement of around five minutes before we go to questions?

Ms Corkhill: Good morning and thank you for the opportunity to be here today to speak on the Police Powers and Responsibilities and Other Legislation Amendment Bill 2024. I would like to start by acknowledging the traditional custodians of the lands on which we are meeting here in Brisbane Mianjin, the Yagara and Turrbal people. I want to also acknowledge any Aboriginal and Torres Strait Islander people here today or tuning in.

The Queensland Human Rights Commission recognises the importance of implementing modernised safeguards to respect gender diversity and ensure the safety and dignity of all people during searches and other invasive procedures. In part, the bill relates to the use of strip searches on people in custodial and mental health settings. As a starting position, the Queensland Human Rights Commission opposes the routine use of strip searches as a risk management strategy and urges the government, much as the QPU did in the last session, to invest in less intrusive alternatives to searches, including the use of body scanners, in watch houses and mental health facilities. As recently explored in our human rights review of the practice entitled *Stripped of our dignity*, strip searches cause unjustifiable limitations on privacy and dignity and are harmful to both those who are subjected to them and the staff who must undertake them in the course of their duties.

In relation to the same-gender safeguards framework within the bill, we are in general support of the approach. Some of the benefits are that there is no requirement for anyone involved in the search to disclose their gender identity and that a person may express their preferences, including in relation to particular parts of the body to be searched. However, like many other stakeholders, we expressed concerns about some of the vague language in the bill, including the terms 'improper purpose' and also 'reasonably practicable', which could lead to ambiguity and may be open to potential misuse. In particular, we have concerns about removing some of the mandatory language about a person must be searched according to their sex and replacing that with only accommodating people based on where it is reasonably practicable to do so.

The bill needs to be clearer generally that, except in a genuine emergency, women should be able to select a woman to undertake an invasive search of their body. We think this can be achieved by some changes to the bill, including removing any unwarranted references to 'reasonably practicable', providing examples where accommodating preferences may not be reasonably practicable and perhaps providing explicit definitions or examples of what constitutes an improper purpose. Other stakeholders have also suggested a removal of doubt clause, which we also think might be another way to achieve this.

Secondly, in relation to changes to parole to extend reapplication periods, the commission shares stakeholder concerns that these changes disproportionally affect certain marginalised groups, including First Nations peoples and people with disabilities who already struggle to navigate the parole system. Flow-on effects may be that the prisoners will spend longer periods in custody and then miss out on the opportunity for parole altogether. This can have negative consequences for rehabilitation and for community reintegration efforts. These changes are happening only three years after the 2021 extension to reapplication periods and may therefore serve to also reduce community safety. Alongside other stakeholders, including the Prisoners' Legal Service and ATSILS, the commission calls for broader reforms to be implemented to ensure greater transparency and fairness in the parole process.

Thirdly, the bill's amendments regarding safety orders highlight the potential to hold prisoners in separate confinement for weeks at a time to address the risk of self-harm, despite the breadth of evidence that prolonged separate confinement can have severe negative effects on an individual's mental health and wellbeing. The commission stresses the need for a human rights compatible and evidence-based approach and calls as well for an independent inquiry into the use of safety orders more generally. At a minimum, expert advice should be sought to inform the policy development about ensuring that health professionals are suitably qualified to assess the risk of self-harm or suicidality. That is our opening statement and we are happy to take any questions.

CHAIR: Thank you.

Mr BENNETT: I note in your submission you talk about some contradictions to the explanatory notes, particularly around safeguards for women. Could you help me understand your concerns about women's safety in this process?

Ms Corkhill: Absolutely. One of the main provisions is under clause 42, section 624A, 'Gender safeguard for searches of persons'. You will see subsection (3) refers to—

… the person conducting the search must, if reasonably practicable, be of the same gender as the person being searched.

That replaces the current position which does not include the words 'if reasonably practicable'. We really question if that is necessary, considering if you also turn to subsection (6) of the same section it says—

A preference must be accommodated unless … it is not reasonably practicable to accommodate the preference.

It really doubles up that wording there. We are concerned—particularly as the QPU was talking about this morning—when it comes to rostering, it has always been critical to ensure there are enough women to conduct searches on women. There is a possibility that that safeguard may be eroded over time, particularly in regional and rural areas where there is perhaps a smaller number of female officers available. We just want to make it very clear that, even though we do not think it is actually the intention—and the explanatory notes in fact say that is not the intention—over time we are concerned about the erosion of that really fundamental principle that women are searched by women. In our process of conducting a human rights review on this topic, even searches that are conducted of women by women create such a degree of trauma, discomfort and degradation so we really would not want to see a situation where there are more women being subjected to searches potentially by men. That is really the source of our concern.

Mr BENNETT: I probably should have asked the police union this but I guess the search is for weapons—oh, drugs. I have answered my own question. I was just curious. That non-invasive body scan seems to be where we need to go.

Ms Corkhill: That is right because it actually does an internal X-ray. It is essentially like X-ray technology of the body so you will see any secreted object at all, including drugs, that are held inside the body and cannot be found through a visual search, and a strip search is a visual search of someone's body. We found that they were incredibly ineffective. The studies of this practice have shown that it is less than 0.01 per cent of detection. It is clear that, unfortunately, there still are drugs and weapons in prisons at least, and possibly watch houses too. If there is a more effective and less invasive way to do this, we think that is where people need to be moving.

Ms LUI: You mentioned rural and regional communities and I look after one of the most remote communities in Far North Queensland. I think the options that are available for people living in those communities are quite limited. I am interested to know your thoughts about how we could best work around the limitations and still protect people's dignity and respect.

Ms Corkhill: I think it really would be ideal to actually change the legislation rather than try to work around it. Of course there are things that can be done. When the Operational Procedures Manual is updated to follow through with these changes, that is one mechanism to make the changes and have it flow through to officers.

It is probably worth noting that these same-gender safeguards have already been in operation under the Operational Procedures Manual since 2020, so we are seeing a practice that was developed in consultation with the QHRC and other stakeholders at that time now being implemented into law, but we want to make sure we have got it right in the legislation. If there is any question as to whether there has been something improper, the first thing you would look to is the legislation. If it is not a breach of that then, as great as your policies and procedures can be, it does not have the same weight. We do think it is important to make the changes to the legislation itself.

Dr ROBINSON: In terms of the human rights of police officers and gendered language or search situations, could the legislation potentially reduce the protections for police officers who do not want to particularly use that language or for faith reasons or cultural reasons? Could there ever be the situation here where their human rights are reduced and the potential discipline of officers?

Ms Corkhill: I do not think so because, as I said, those changes have really been in effect since 2020. In fact, protections for trans and gender diverse people, really for transgender people, have been in place since 2002 in terms of the anti-discrimination protections. As of today, there have been updates to ensure that non-binary people are also protected by the law under separate legislation, so not within the scope of this bill per se. This is a matter of policy. It is well established in policy and the OPM and there is a *Policing for people from LGBTIQ+ communities* document from 2023 that makes it very clear what the expectations are already on officers in terms of respecting people's names, pronouns and all of those sorts of things. I do not think this represents anything new.

Should there be consideration of people's cultural background, religion and things like that when it comes to development of policy? I do think that is really important, particularly when we found in talking to people in prisons that there was a really big gap—or it was not clear at all—about what was to happen if someone had religious headwear, whether that is a Sikh man or a Muslim woman perhaps. Those considerations do need to be spelt out. I do not think they currently are in the OPM so I would suggest that they could be a matter of policy to update.

If there are certain officers with a level of discomfort working with LGBTIQ+ communities, it probably does not serve a person who is being searched by someone if they have that level of discomfort. I think there need to be some sensible decisions around who is actually allocated the task of doing searches, if at all possible, to ensure that everyone feels comfortable through the process. I think it would be very clear to trans or gender diverse people if someone was sort of feeling like they were forced to conduct a search and it was making them uncomfortable. It needs to be worked out in practice but also some clear practice guidelines need to be developed after this.

Dr ROBINSON: Are you saying you do not think there is any uncertainty or question around the rights of police officers, for their own particular faith or cultural reasons, to not use particular pronouns or gendered language, which may be something they are uncomfortable with? You do not think there is any reduction of their human rights?

Ms Corkhill: I do not think that is in the scope of this legislation. Those rights for trans and gender diverse people are already contained in the anti-discrimination legislation. I do not think that is really what we are talking about.

Dr ROBINSON: You are not answering my question. I am not asking about the rights of trans people. I am asking about the rights of police officers who are not trans to not participate in something.

Ms Corkhill: What I am suggesting is that, under anti-discrimination law, police don't currently have the right to choose whether or not they want to respect someone's name and pronouns. That is already a matter dealt with through other legislation. This makes no changes to that position.

Mr SKELTON: This issue also came up with the police witnesses, so it is probably belabouring the point. The preference to be served by a person of specific gender is not required to be met if it is not reasonably practicable. Your submission states that the term 'reasonably practicable' appears to weaken protections. Similarly, you suggest the term 'improper purpose' used throughout the bill lacks clarity. The QPU also concurred with that. From a regional and rural perspective, can you tell us a bit more about your concerns and any way we can improve that?

Ms Corkhill: In relation to improper purpose, we are not suggesting that it gets tightly defined because I accept the point that the government previously made, that is, that will possibly constrain the meaning too much. We do think it would be helpful to simply provide an example and take that out of the explanatory notes. For example, if someone has made lewd or inappropriate comments towards a particular officer and they say, 'I want that person to search me,' that is the scenario that would be helpful as an example in the legislation. There is an example already of what is required for an immediate search, which is where someone may have a knife or a bomb. Something like that is really instructive. We are not necessarily suggesting, in the way that the QPU did, that that be tightly defined.

I think that 'reasonably practicable' should apply to a person's preference but not, as I articulated earlier, generally the starting point of searches based on gender. Another option that was suggested by the LGBTI Legal Service—they are here and you can ask them about it—was a removal of doubt clause that said something like 'there is no doubt that a woman will be able to be accommodated by being searched by another woman.' Those are the particular suggestions we have about how it could be addressed.

Mr BERKMAN: That was essentially the question I wanted to ask, so I invite any additional comments you want to make around the implications of the wanding provisions in the bill.

Ms Corkhill: When it comes to wanding, we are not suggesting that it is an intimate process or anything like that. In some cases it may cause intimidation to some people to be wanded by someone of a particular gender, but it is not going to be widespread. It is certainly nothing like strip searching a person. Our concerns more went to what happens if there is something detected. As I said earlier, there is already the exception for an immediate search. If there is a reasonable suspicion because the wand goes off and indicates there is some type of metal, what happens then? If it is a woman, is there going to be a woman ready and available to do a more invasive search that will involve touch and then possibly escalate to a strip search? Our concern is more the flow-on effects

once you take that away as a starting point. Again, will there be enough people of different genders doing the wanding in order for it to not escalate to a situation where a woman is being searched by a man? That is where our concern lay.

Mr BERKMAN: I take it from your response that there is broad support for non-invasive measures like body scanning. That preference is not really met by any increase in the use of wanding. It still creates that further risk of invasive and very uncomfortable—

Ms Corkhill: I think you are in such a different circumstance. If you are wanding then you are going to be mostly out on the street, so you are going to be in a safe-night precinct or somewhere where it occurs, whereas body scanning really replaces what is now the invasive search or strip search of a person so it will not arise in exactly the same circumstance.

CHAIR: In your submission you recommended amending clause 8 of the bill so the Parole Board is required to provide written reasons for the time period imposed under the act. Can you speak to why you consider this important and how it impacts human rights?

Ms Leong: We are concerned about the extension of the Parole Board time frames because it limits a person's ability to apply for parole for a particular time period. We want to make sure that, if that time period is set down, it is not arbitrary. Even though the person has been sentenced to a particular period of time, they are eligible to apply for parole and be released if parole is granted. There is a risk of the limitation of the right to liberty and security because they are arbitrarily detained if this time period is determined in a way that is arbitrary. Our key concern is that we make sure these time limits are properly considered and reasonable in the circumstances.

The reason we suggested that reasons be provided for applying the time period is so that prisoners can be clear about why a particular time period has been applied to them for not coming back to make a further application and to make sure that that is reasonable so they have the ability to challenge that decision if that is appropriate; also, so they would be in a position to perhaps apply earlier for parole within that time frame in circumstances that are appropriate, which they are entitled to do under the proposed provision. I think it is a transparency issue, it is an accountability issue and it is making sure that people understand the purpose and the reasons for a particular decision.

CHAIR: My assumption is that the timeliness of that process would be an issue as well.

Ms Leong: You would want timely decisions being made, of course, yes.

Mr BENNETT: I did ask the Police Union about my concerns with filming and protections. I am interested in the Human Rights Commission's thoughts on everyone having some level of security and safety in this process. I am interested in your comments about that.

Ms Corkhill: Fortunately, it is something that we do cover in some detail in our *Stripped of our dignity* report because we found in prisons there are a whole range of situations: sometimes there was a fixed CCTV camera and sometimes there was not in the place where there was a search. We thought that on balance, particularly with the availability of body born cameras, if something is going wrong that can be used as a point of evidence then there really is not a need to have CCTV cameras operating at a time when someone is being searched. When we spoke to women in prison, it was incredibly embarrassing and traumatising. The sense that there could be a man watching or a third party watching was a real invasion of people's privacy. There was a real range of different things where someone might look away from the screen, someone might leave the booth—all sorts of things. The lack of clarity there was an issue. I cannot speak for watch houses because it was not within the scope of our review.

I do think that simply omitting that clause, which is that you no longer monitor the CCTV, is not in itself enough because that creates a vacuum where it is not really clear what people need to be doing. I think, like with body worn cameras, there is a double-edged sword here. It is beneficial in a sense for the prisoner or the person in custody if something is going wrong and also for the police officer, but at the same time that needs to be weighed up against the right to privacy. There are a lot of things around storage of the footage, who can access it and all of that, which is really way too in-depth to get into now. Certainly I think there should not be a need for those fixed CCTV cameras. The fact that a lot of watch houses, particularly in rural and regional areas, do not have them indicates a piecemeal approach. Where some do and some do not, the preference potentially is not using that facility. There is always a way to have a second officer standing just outside the door when someone is being searched, which is the safeguard usually used in prisons and can be used in watch houses, rather than a person remotely watching. This is where the sense of real degradation and embarrassment is caused because they sort of sense someone is watching, and that is a lot worse than just having someone outside the door.

Mr BENNETT: I could imagine how complicated writing those operational procedures would be.

Ms Corkhill: They are, yes.

Mr BENNETT: There are problems everywhere, I guess.

Ms Corkhill: Absolutely. We are not necessarily opposing the omission of that clause, but I think there is some work still to be done here to make it really clear to everyone involved as to what is the role of body worn cameras and how will it all work in practice once you take the CCTV out.

Ms LUI: The QHRC noted several risk factors relating to the proposed broadening of the list of health professionals who can provide risk assessments for prisoner safety orders. Your submission noted that safety orders often involve the solitary confinement of prisoners. You also referred to your own report, which shows that Aboriginal and Torres Strait Islander residents are disproportionately subject to safety orders. Do you think broadening this list of professionals might lead to misuse, and if so what might be an alternative?

Ms Leong: We are not experts on safety orders or Corrective Services practice and policy, but I think broadening the number of people who can provide advice that can lead to a safety order must make safety orders more accessible. It will potentially increase the number of safety orders being made.

Our concern is that, because safety orders are so commonly linked to separate confinement and isolation, we want to make sure that the evidence base for putting somebody on a safety order is sufficient to justify placing somebody in solitary confinement. Bearing that in mind, the opinion of an allied health professional or a nurse—currently proposed by the bill—on an issue of self-harm is potentially not sufficient evidence to justify separating that prisoner for self-harm reasons. We already have temporary safety order provisions that allow for a person to be temporarily confined for five days until a relevant professional can be obtained.

Also bear in mind that these safety orders can go on for many weeks and it is not just a short-term safety order that is made for a short period of time to ensure the safety of the individual and the safety of corrective service officers—it can be for a very long period of time—so we just want to make sure that the advice that provides the evidence to justify the safety order is sufficient. It might be that the policy that is provided underneath the legislation that says who can be approved might be appropriate, but it does raise alarm bells as to whether there are sufficient protections in place under the new amendments.

Mr BERKMAN: Given the opportunity, I will turn to the question of improper purpose and reasonably practicable. You did have a brief opportunity to see the QPS response to submissions which address improper purpose but not, as I read it, the question of reasonably practicable. Is there anything more you wanted to add on those issues in light of the QPS response specifically?

Ms Corkhill: Yes. I have not had a lot of time to really read the response so I am not sure there is too much more to add. I cannot think of anything at this time. If we do, we can always take that on notice.

Mr BERKMAN: Of course.

Ms Corkhill: I am happy to do that. If we do see more after the response and we wish to respond to the response, we would like that opportunity.

CHAIR: There being no further questions, I would like to thank you both for being with us today and providing your evidence to the hearing.

CRAMP, Kathryn, President, LGBTI Legal Service Inc

HARDING, Bowen, Project Officer, LGBTI Legal Service Inc

SAMPFORD, Jo, Director and Principal Solicitor, LGBTI Legal Service Inc

CHAIR: I now welcome representatives from the LGBTI Legal Service Inc. Good morning to you all. I invite you to make an opening statement of five minutes before we ask you any questions.

J Sampford: Thank you, Chair. By way of introduction, my name is Jo Sampford. I am the Director and Principal Solicitor of the LGBTI Legal Service. I am joined today by our president, Kathryn Cramp, and Bowen Harding, our policy officer. I would also like to acknowledge the traditional owners of the land on which we meet, the Yagara and Turrbal people.

Overall, we welcome the intention of the bill and note the Police Union, Queensland Health and the overwhelming majority of submitters share a commitment to ensuring public servants who are authorised to conduct searches of their fellow citizens do so in a manner that reduces harm for trans and gender-diverse people. Study after study shows that trans and gender-diverse people experience violence at higher rates than their cisgender peers across all domains, from family and intimate partner violence, to online harassment, abuse and institutional abuse. The vast majority of criminalised people have already experienced violence against them of some kind in their lives, and non-consensual invasive searches carry an inherent risk of retraumatisation. It is critical that in these conversations we keep front and centre the experiences and needs of trans and gender-diverse people, and ensure these reforms are not only respectful of gender but also responsive to trauma. I will hand over to my colleague, Bowen.

B Harding: I identify as non-binary and transgender. I was assigned female at birth and I now let people assume that I am male for my own safety and convenience. Last year, I attended a protest and was searched by the police. When approached by a male officer, I requested that a female officer conduct the search. It was very simple and reasonable for the police to follow this. They briefly paused the search and waited a short amount of time for a female officer to become available. I chose this option because I felt more comfortable having this part of my body touched by a female officer. I was very anxious about the search and whether I should disclose my gender identity to the police. I was not sure if the police would find out through the search what genitals I have, and I was worried about my privacy being respected and potential transphobic comments. I also wanted the officer to know that I am transgender before the search began so they would not be surprised and could show appropriate sensitivity. This accommodation was very helpful to me as the search did not trigger a traumatic response and I felt that my privacy and dignity were respected.

However, if this had happened to me 10 years ago when I was earlier in my transition, it would have been a very difficult experience. At that time, I was experiencing high levels of day-to-day distress because my gender was not recognised and I had recently experienced traumatic violence. If the police had approached me then, it is likely they would have been unsure of my gender and addressed me as a woman. Given the stress and the power disparity of the situation, it is likely I would have entered a panic state and not been able to advocate for myself appropriately. If I were searched then, I may have screamed as parts of my body were being touched or tried to run away.

Non-binary, transgender and gender-diverse people experience sexual violence at disproportionately high rates and I, like 39 per cent of non-binary people, have experienced sexual violence. The combination of gender dysphoria and sexual assault can make police searches traumatic for gender-diverse people. Alongside the choice of the gender searching officer, the way that a search is conducted can lessen the trauma gender-diverse people are exposed to during the search.

On the topic of improper use, poor discretion could result in the denial of rights for gender-diverse people. When a police officer sees me, they would not be able to tell from my appearance what primary sex characteristics I have or what my gender identity is. When police have stopped me for a random breath test or to check my ticket on public transport, they have been very surprised to find out that I was assigned female at birth after running my licence, and they have made comments to me about it. One officer told me that he did not believe it. After a police officer has incorrectly guessed your gender, there is a moment of fear and tension, worries about what could happen next and the resurfacing of negative experiences. If improper purpose is inadequately defined, discretionary powers could mean that police do not believe trans people when we disclose our trans status or gender. We might be denied our right to request a search from an officer of the

appropriate gender. To avoid this, 'improper purpose' should be defined so the officer must have a reason to suspect improper purpose that is separate from their assumptions about the person's gender or body.

K Cramp: Hello, committee. Thank you for your time today. I reiterate that the LGBTI Legal Service does welcome these reforms and thanks the committee for the opportunity to suggest further amendments today. Along with other submitters, we do not support the recategorisation of photography of breasts as a non-intimate forensic procedure. The breasts and chests of women and gender-diverse people can be incredibly intimate and sensitive areas, even if they are not subject to physical touch. The non-consensual sharing of images to humiliate, control and intimidate victims is a prevalent feature of abuse for being an LGBTIQ+ people. An example of such an attempt to humiliate trans and gender-diverse people can be seen with the recent news story of the sharing of images of former AFL coach Danielle Laidley whose photographs were shared by a Victorian police officer. We would also welcome the changes to extend to people who have top surgery, whose mastectomy scars may identify them as transgender and be used to out them.

Retaining the process requiring police to seek a forensic procedure order or a forensic procedure consent ensures oversight by the justices who would grant such an order, and can typically be obtained within a reasonable time. This would also create an impetus to only seek such an order where there is sufficient reason for the procedure to be carried out, and it would increase protections for transwomen in particular. We are happy to answer any questions.

Mr BENNETT: This is the same line of questioning—I am a predictable sort of guy—but it is in regards to the protections for both people identifying and police officers with CCTV footage. Would you also comment on the changes in the bill with respect to the non-intrusive use of hand wanding? From what I have been hearing—I am not trying to verbal you—I suggest that that is a preferred option now as opposed to the very intrusive strip search. I am curious for your thoughts on that, please, Jo or Bowen.

J Sampford: Regarding the CCTV footage, I would agree with the comments of the Human Rights Commission, and it is something that requires some further work. There is a balancing of rights between the right to privacy and dignity and also the importance of having appropriate evidence and protections for both police and people who are being searched. This is something that I think we would be happy to provide a further response to if taken as a question on notice. It is one of those balancing exercises. This is also an area where there needs to be deeper consultation with community people affected. But I note, for example, the Human Rights Commission's work with women in prisons who did report how the sense that someone could be watching can cause significant embarrassment. I am not a fan of creating policy on the fly, but the idea of maybe some balance where the material is recorded, but there are procedures and assurances in place that someone will not be live watching that and also that there are strict and stringent protections around the use, distribution and storage of that material to prevent the instance like we saw in Victoria. I appreciate that is Victoria, but these stories and experiences have big impacts on people across the country when there are interaction with police.

K Cramp: As the Queensland Human Rights Commission suggested, it may be that requiring the body camera footage to be kept on is one way to provide those protections to both parties.

Mr BENNETT: Do you mind commenting on the hand wanding process being changed in the bill to 'non-intimate'? I am curious as to your thoughts on that. You raised concerns, as I understand.

J Sampford: Yes. We also would not agree it is a non-intimate procedure because any investigation, even if it does not involve touch, that involves an intimate area, can be invasive and traumatising. The police even recognise this in their definition or redefinition of 'non-intimate forensic procedure'. The photography of some areas could be intimate because they took out 'breasts', but then they reput in 'photography of buttocks and genital areas'. I think the police recognise that even if you are not touching an area, it can be invasive, and the same principle would apply for handheld scanners and wanding. I appreciate there needs to be a balance in terms of what is achievable in an operational sense, but certainly having a trauma informed approach would suggest that having choice and options and information about where and how handheld scanners and other searches are conducted and giving an option, we have advocated to have that if wanding is used in an intimate area, that that same gender protection as in safeguards should also apply. That just introduces opportunities for people like my colleague to be able to give an indication to provide information that will be helpful for both police and the searched person about what to expect so that no-one is uncomfortable. We would advocate for a same-gender protection or safeguard around the use of handheld scanners or wanding.

Ms LUI: The LGBTI Legal Service proposed a positive duty requiring searching officers to take reasonable steps to minimise distress and embarrassment and preserve a person's dignity. How should this be implemented, in your view, and does it need to be legislated?

J Sampford: The positive duty in our submission has been reflected in the way in which the police invite someone to be able to express a preference about the way in which searches should be conducted. I would point out broadly as well that the sense of a positive duty and the requirement to provide a trauma informed and trauma responsive approach is not a radical or new idea; it was recommended by the Mental Health Select Committee which tasked the Queensland Mental Health Commission with doing a whole-of-government, trauma informed strategy, and the police have also reflected that in their own operational procedures as well. That specific amendment to enable a person to express a preference is not just about the gender of the person, but also how the search is to be conducted is a meaningful step. There could certainly be a broader duty that could be included, but I appreciate that is not being put forward in the specific amendments to this bill.

Ms LUI: In terms of regional and remote communities where the options are quite limited, I am interested to know your thoughts about how we could preserve and protect people's rights and dignity in that space?

J Sampford: The same-sex safeguard which has been in place for decades and has been followed in regional areas, I understand, from viewing a 20-year-old review into strip searching and also data that are provided in our submissions suggested that the same-sex safeguard has not provided any concern across Queensland, including in regional areas. Therefore, we are proposing that the starting position and fallback position is always that a person of the same gender or, as our avoidance of doubt clause suggests, that the fallback would be that a woman would search a person who identifies as a woman and that that reflects the existing resourcing in roster, and it has already been put in place across the state, in support of the 20-plus-year-old same-sex safeguard.

K Cramp: It is important to note for this that our primary concern has been that it does seem to reduce protections for women by reducing mandatory language: where there is a concern about perhaps there being non-binary people or staff who identify as non-binary in remote or regional areas, or in fact most police stations, it would just be a matter of having the same conversation and asking about a preference.

Dr ROBINSON: Are you satisfied with how the consultation process of the bill was undertaken?

J Sampford: I would note that the Births, Deaths and Marriages Act was passed in June last year. It was disappointing that exposure drafts were not provided until the first quarter of this year, and, in our case, we were granted only five business days to respond during a very busy period for our service, which is a very under-resourced service. We have insufficient funding to provide a statewide service for LGBTIQ+ Queenslanders. That said, I do appreciate that the QPS did invite us to a consultation. Queensland Health unfortunately did not provide any advance consultation, unfortunately, and only introduced them to the LGBTI round table the week before the legislation was introduced. So, I would hope that through the process of developing the operational procedures manual and operational guidance that better consultation could be embedded through those processes.

Mr SKELTON: The bill states—and it has already been touched on by other groups—that the detainee's preference for the gender of persons searching them must be accommodated unless there are reasonable grounds to believe the preference is expressed for an improper purpose. There is also an exception where it is not 'reasonably practicable'. Your legal service submission called for greater clarity in the definitions of 'improper purpose' and 'reasonably practicable'. We already know why this is important. Like the Human Rights Commission has suggested, would insertions of examples into an amendment be sufficient to give meaning to those two phrases and, thus, protect both parties?

K Cramp: We would support that proposal, that the example be included in the legislation and not really in the explanatory memorandum so it does carry more weight. Ultimately we do think the biggest change for this is the reduction in protections for women without the mandatory clause, so we would want to ensure that if there was scope to be amending the definitions in a workable format that is the primary objective. If not, the examples would certainly be the second best solution.

Mr BERKMAN: We really value your time here today and especially the very personal evidence that you shared that helps contextualise these changes and the operations as they stand. It is so valuable, so thank you. I was going to ask a similar question to the member for Nicklin but perhaps it will broaden the consideration there. It sounds as though, Bowen, your experience broadly reflects the extent to which these issues are already dealt with operationally in police procedures. Do you see

any risk if there are not appropriate changes made to both those definitions of 'reasonably practicable' and 'improper person'. Do we actually run a risk of almost loosening rather than tightening the protections that might already be in place through police operations?

K Cramp: I think it might be useful if you wanted to address that experience of not being believed. Certainly in the case of people in different stages of transition, other people may not recognise them as their gender. If a police officer sees somebody who they believe is a man presenting and asking for these accommodations, their lack of belief may affect how the entire interaction proceeds and they may suggest that is an improper purpose. That is why we look to the examples of the behaviour to ensure there are protections for police against sexual harassment and other improper uses. If they have made comments that refer to the officer's appearance, anything else lewd or suggestive, that is an excellent way of protecting the police officer's rights in the workplace. I think this concept of not being believed is very common and particularly for clients that we have seen have interactions with police. If it is maybe that police officer's first interaction with a transgender person that they are aware of, they might be quite surprised; they might make unprofessional comments that otherwise do not reflect how they would speak to a member of the public that could take them off guard. Do you have any comments as to how you see it is to be believed or not believed in those circumstances?

B Harding: Yes, I guess our main worry is that the reason that an officer might suspect that a person is asking this for an improper purpose is because they do not believe the person when they tell them about their identity and tell them about their own body. If 'improper purpose' is not adequately defined, that will be the main reason the police will use to deny a person their rights.

CHAIR: With regard to your submission, one of your foundational concepts was simply that degendering legislation does not guarantee inclusion. Would you like to further elaborate on that statement? Why do you believe that simply degendering legislation does not guarantee inclusion?

K Cramp: There are certainly aspects that various members here have brought to our attention today that are echoed in our comments. We are very mindful of balancing human rights for staff, for people of religious or cultural convictions—there may be a variety of reasons that you do continue to recognise gender—but also just for more simple reasons including that, statistically, if we want to gather information about who the victims of domestic violence are, for example, degendering would not result in a more just outcome. You still need to recognise that women and gender diverse people will have particular experiences and maybe particular responses to achieve a just outcome. This is also true in statistics and approaches taken to men and solutions to not just men's violence but men's victimisation. It is not always a matter of taking a completely degendered approach.

Mr BENNETT: I will go off script a little bit, mainly for the committee's benefit. Would the legal service be able to give me an overview of the work you are predominantly doing and where you see the work that you do is adding benefit to the community?

K Cramp: We have three primary areas of law that most of our time is taken up with: family law, which includes domestic violence aspects; we also have criminal law; and discrimination is the third major area. We are quite uniquely positioned to be gathering case studies, to be gathering examples of comments people might make to a service they know is inclusive and does have their protections in mind compared to another service. Something that is particular to us is that people will say, 'We've actually come across from another service. Comments were made. It was perfectly acceptable legal representation in terms of our case, but feeling respected on a day-to-day matter and having our identity respected is not always something that is present.' Australia-wide there are not many LGBTI legal services available and we are the only—

Mr BENNETT: In terms of Queensland geographically, are you based only in Brisbane?

J Sampford: We provide a statewide service but obviously the ability to provide regional outreach is limited by our resourcing. We also do a lot of work in terms of sector capacity building and development to drive inclusive practice across the sector. We are the only legal service in the country that has achieved rainbow tick accreditation, which is an independent, evidence-based assessment of a service's cultural capability to provide inclusive and safe practice. We are one of only four services in Queensland to have achieved that. A lot of our work is also around building the cultural capability and knowledge of other legal and community assistance services because we only have capacity to see 0.3 per cent of the LGBTIQ+ Queenslanders who experience a legal problem in any one year. Driving that culturally safe practice across the sector is a really core commitment and we are informed by our work with clients and also our work in policy advocacy and law reform. We do all that on a very modest budget. It would be great to be able to do more of that work.

Ms LUI: Your organisation recommends a more inclusive definition of 'breast' be included in the bill. Can you speak to the need for this definition?

K Cramp: We are concerned about the reduction of protections and where certain procedures are no longer mandatory. While there is a recognition that the definition does apply to all chests, it is particularly those comments I referred to in my opening statement. If somebody has partial breast tissue, if they have mastectomy scars, they may have started taking oestrogen and be developing breasts—these are all potential photographs, potential images that are actually very sensitive and invasive. If a person presented as a man and the staff did not know they were not cisgendered and suddenly there are people questioning why they have scars, or they may not have had a mastectomy—they may not want to—they may be questioning why their chest looks the way it does. It just simply means that, where there is a vulnerability to ridicule, humiliate or the photography be used in a way that outs their identity in circumstances where they will feel more exposure to discrimination, we want to make sure there are still protections in place.

Mr BERKMAN: I want to broaden the question again. Jo, you said you are funded for one FTE solicitor?

J Sampford: One solicitor to provide a statewide service.

Mr BERKMAN: That is quite extraordinary. Even as a one-time CLC lawyer myself, I do not know that we can conceive of how stretched that leaves you. How often do you find yourselves in a situation where you cannot provide legal support or advice that is sought purely due to those resourcing constraints?

K Cramp: Weekly I would assume. We are always triaging which work can be done and which work we do not have scope for.

J Sampford: Yes, on a daily basis. Particularly balancing the need to respond to people in need and distress and also to respond to really important law reform work that will change the law, policies and rights for people is a real tension. That is particularly so where we know that, if we do not assist, the other mental health, DV and support services are really under-resourced so we do not have safe pathways to refer people. Then the number of times I need to step in to support our intake workers for clients who are in distress and threatening self-harm is a major challenge. It is a real challenge and it is a constant balance and juggling act in terms of where we put our energy to be the most helpful. We are really grateful for the committee's time in allowing us to provide those lived experience insights and these practice insights. We would be really happy to provide any further information if there are questions on notice or if you would like any further detail about any of our submissions.

CHAIR: Thank you for your time.

K Cramp: If I may provide an extra comment, one of the consistent questions that the member for Oodgeroo has been asking is around gendered language and what are the rights of police and other public servants. We would like to echo the comments of the Queensland Human Rights Commission to say that these are legally recognised genders already. There is an expectation that the same protections apply under the legislation to trans and gender diverse members of the community but also to trans and gender diverse police officers and other public servants performing these searches. Beyond this, we would refer to the Police Union's statements that there are guidelines being developed. We are also mindful of where these procedures may be abused by people. Beyond that, it is beyond the scope of this particular bill and these protections already exist.

CHAIR: Thank you very much for your time. Thank you for coming along and providing your evidence to the hearing.

NORMAN, Mr Rob, Queensland Director, Australian Christian Lobby

CHAIR: Good morning. Thank you for coming along, Mr Norman. I welcome you as a representative of the Australian Christian Lobby. I invite you to make an opening statement of five minutes before we have some questions for you.

Mr Norman: Thank you, Chair and committee members, for allowing me to present to this public hearing. The Australian Christian Lobby currently has around 250,000 supporters Australia-wide, almost 45,000 of whom are Queenslanders. We are one of the largest and most active grassroots political movements in Australia and our mission is to bring truth to the public squares.

The ACL is particularly concerned with the Queensland government's attitude towards women safety in enacting legislation that enables biological males to intrude upon females' privacy and expose females to inappropriate situations. Some of the problems in this bill come from a direct consequence of the flawed Births, Deaths and Marriages Registration Act 2023 which, when it commences, will allow biological males to legally identify as female. The Police Powers and Responsibilities and Other Legislation Amendment Bill 2024 is part of the slippery slope that will inevitably lead to unintended consequences that flow from compromising the integrity of natural birth sex.

In our submission we refer to a report by the Queensland Human Rights Commission called *Stripped of our dignity*. It acknowledges the compromise of human rights that women in particular are subjected to when strip searched whilst in prison. The report under the heading 'Protected human rights' on page 34 says—

> Women experience disproportionately negative effects from strip searches compared to men because of their statistically higher chances of being victims of violence, including sexual violence. Many women experience further degradation when compared with men, such as if they are menstruating when being strip searched or through the invasive process of providing a urine sample.
>
> Prisoners who experience marginalisation because of their race, gender identity, pregnancy, parental status, disability, or cultural and religious background may be disproportionately affected.
>
> Positive measures and special accommodations to prevent discrimination, such as through separate and different policies, procedures, and practices for female prisoners, are not discrimination for the purposes of the Human Rights Act.

This bill must protect females subjected to strip searches potentially by biological male officers identifying as female. The so-called gender safeguards of clause 22 of the bill are far too vague to provide the kinds of protections necessary to protect the integrity and dignity of women. For example, it is not good enough to say under clause 22 of the bill in proposed new section 100A(3)—

> ... the person conducting the search must, if reasonably practicable, be of the same gender as the person being searched.

The bill must specifically protect the dignity and integrity of women being held by providing for the unambiguous right of a woman to request a biologically female officer.

The bill must also protect the right of a female officer to conscientiously object to conducting a strip search on a biological male identifying as a female. Again, we believe this vague language does not suffice. The bill leaves female police officers with previous traumatic experiences or strict cultural or religious beliefs without the right to conscientiously object to strip searching a male identifying as a female.

In summary, the ACL recommends the introduction of a clear definition of natal or biological sex in context involving strip searches; secondly, provisions to ensure the safety, privacy, cultural and religious convictions of women, especially in strip search situations where they might feel compromised by individuals whose gender or sex identity differs from their biological sex; and, thirdly, comprehensive guidelines emphasising the preservation of human dignity, the reduction of trauma and the establishment of clear procedures for addressing preferences regarding the biological sex of search personnel. Thanks again, Chair and members.

CHAIR: Thank you, Mr Norman, for your opening statement. I turn to the deputy chair for the first question.

Mr BENNETT: I think it is important to get on record our congratulations to the member for Oodgeroo for his birthday today.

Dr ROBINSON: Thank you, Steve, I think.

Mr BENNETT: Sorry, Mr Norman. We have to look after our colleagues, especially when you get to the ripe old age of the member for Oodgeroo.

In all seriousness though, I understand that you are talking about a comprehensive list of procedures around the issues that you have just been through. What I have heard over a period of time is that there is no silver bullet in how we are going to protect women police officers and other representatives in our community. I am curious about how you would see that working at an operational level.

Mr Norman: From our perspective, we are looking at the introduction of a definition that enables women, whether they be apprehended women or whether they be police officers, to be able to identify the person they are dealing with on the basis of their biology, not their gender identity or even their sex. Since the introduction of the Births, Deaths and Marriages Registration Act, 'sex' has been legally changed. The definition of sex is no longer that a male is biologically a person with testicles. We are looking for that kind of clarity. We think that the dangers that have been introduced and imposed on women are bigger than this bill gives credit to. It is a significant consequence that obviously has cultural, religious and all sorts of other issues that the Queensland Human Rights Commission has flagged as being problematic for women who have been in previous abusive situations et cetera.

Mr BENNETT: The comprehensive guidelines in relation to strip searches are not just gender based though or issues that could be debated in another bill. I think it is a very complex area.

Mr Norman: Indeed it is.

Ms LUI: You recommend a clear definition of 'sex' in the bill. What would this look like in your view?

Mr Norman: I think it would have to be unfortunately a fairly coarse basic biological definition in terms of the biology of the person. It was interesting listening to the previous presenters—I think it was Bowen—talk about their experience. Even though they had changed gender effectively, he was still asking to have a biological woman do the strip search when it came to his particular case. That is an interesting situation. We should not underestimate the degree of trauma, particularly as the Human Rights Commissioner flagged, that women are subject to and the particular risks that they carry. We just do not think it is good enough to have a bill like this that flows in on the back of the Births, Deaths and Marriages Registration Act without addressing some of the specific issues related to biological sex. We are looking for the definition of natal or biological sex to be included.

Dr ROBINSON: You mentioned clause 22 of the bill and you have elaborated to some degree. What do you suggest to better protect women undergoing strip searches?

Mr Norman: Clause 22 is probably the focus of our submission. It attempts to offer safeguards by introducing a new section 100A, which I mentioned in my opening statement. The vagueness of the language used in this section leaves women vulnerable, we believe, to significant human rights abuses. We recommend a rewrite of the clause that at the very least allows women who are held to have the right to request, and reasonably expect, a biological female officer and also for officers to have the right to object to conducting a strip search on a person of the opposite biological sex. We think that this clarity is necessary to respect the particular vulnerabilities of women, as outlined in the *Stripped of our dignity* document, but also to respect the personal convictions which could be cultural, religious or history related to traumatic situations et cetera. We think that clause 22 is a real problem in terms of its vagueness. By firming that up, it could introduce some comfort.

Dr ROBINSON: If this is in your submission, my apologies. In terms of any wording or suggested amendments, do you have anything further you might be able to provide the committee on notice?

Mr Norman: We would be very happy to do that if you are happy for us to do that.

CHAIR: Could you take that question on notice?

Mr Norman: Yes, I am happy to do that.

Mr SKELTON: Your submission asserts—

> Male individuals involved in criminal activities are likely to exploit gender identity claims to demand a female officer for a strip search ...

Notably there are provisions in this bill allowing an officer to reject an individual's preference if they are deemed to have an improper purpose. Is it your view that this provision does not provide sufficient protection and how might it be improved?

Mr Norman: Again, I think what you are referring to there is the number of examples that we raised in our submission. We are dealing with criminal minds here basically. These are people who will find ways to exploit the system. I think we quoted multiple situations where males identifying as females violated their privilege, if you want to call it that, and that resulted in crimes being committed against women. Sorry, can you repeat the second half of your question?

Mr SKELTON: This has come up for all submitters, including the police. How could we tighten it in that instance? The police were very adamant that might be the case. My view is that that is basically being an impersonator or something like that whereas the people who are genuinely defined as what they are are adamant. There is scope to make a definition there that gives police the ability to go, 'No, this is not right.' I think the police also made it clear that, where possible, if an officer wants to decline doing that particular search because they do not enjoy it at all, as you can imagine, they do have that provision. I just want to drill down on how we can really make it so that unlawful purpose is defined.

Mr Norman: There is a whole lot behind this question, obviously. Again I think this is a case of introducing that extra definition of biological sex. I know that is politically incorrect and it probably goes against all the currents et cetera, but our concern here is that we have a whole lot of bills that are protecting the rights of trans and gender diverse people—and it is fantastic that that is happening—but in the process of doing that the consequences are that we are then exposing vulnerable people. Our major concern in this instance is women, not because of any sexist view but, according to the report, women are obviously more prone to the kinds of issues we are talking about. I think the answer to the question is probably similar to the answer to the member for Oodgeroo: it is a definition situation. We need to have a third definition of biological sex introduced into the bill.

Mr BERKMAN: For clarity, it is clear that ACL opposes the births, deaths and marriages reforms. I am just after an explicit position on this bill. It is my assumption that ACL opposes this bill based on the comment in your submission that it will only exacerbate a flawed and dangerous situation; is that the case?

Mr Norman: We are happy with any bill that brings extra protections in. We think this bill can be significantly improved, particularly by firming up those definitions. The bill does not really introduce anything new, but it removes gendered language and it introduces a level of vagueness when identifying people on the basis of natal sex. That is basically the centre of our protest of the bill. We are not against the bill full stop, but we think it can be significantly improved to protect women.

Mr BERKMAN: I have read various material prepared by ACL that refers to gender ideology, and I understand that to be essentially a refutation of the idea of gender identity almost as a concept. Is that a fair observation?

Mr Norman: In our opinion, adults can identify however they wish. Ideologically we would be opposed to that, but that is more a religious and ideological view. What we are opposed to is gender-neutral language that dehumanises people or makes their identity ambiguous. It is quite a practical thing, because in that instance we are endangering others, particularly women. Our fears are founded on documents like the Queensland Human Rights Commission's *Stripped of our dignity* report. I do not believe any of us have the right to tell a vulnerable or fearful woman that they are transphobic or irrational. If they are feeling that way, then that is what they are. By putting them in a situation where the identity of the person who is strip searching them is not clearly understood, then that woman particularly will be triggered by the strip search if they are being searched by a biological male. Our opposition to the bill is very practical. Yes, we have ideological views. I think we all understand that we are influenced by our religious and ideological views, but our particular focus on this bill is very practical: we are concerned about women.

Mr BERKMAN: Does that concern for the potential harm to women extend to the same level of concern, the same kind of concern, for trans people?

Mr Norman: Absolutely, yes. As I mentioned, the guy who was sitting in my seat here, Bowen, addressed exactly the same kinds of fear. This was a female who has transitioned, identifies as non-binary, and still when that person is put in the situation of a strip search they are asking for a person to search them who has the same genitalia. It is as basic as that. Yes, we are concerned about people in general. We flagged women because of the peculiar and particular vulnerabilities that women have statistically.

Mr BERKMAN: I cannot help but note that in your answer there is this inevitability of making assumptions about what genitals people have, which is, I think—

Mr Norman: We are not the only ones doing that. Even the previous people, the LGB group that was before me, did the same thing.

Mr BERKMAN: I do not know that is the case. That is a moot point at this stage.

Dr ROBINSON: Mr Norman, Mr Leavers from the police union made the point that he would potentially have some concerns—and I think I am quoting him correctly—particularly about people of faith. He mentioned other potential victims or terms like that. He talked about people of faith and the need for this legislation to ensure, roughly, that people of faith do not have their human rights reduced or limited. Do you believe there is the potential for police officers who are people of faith or some cultural background to have their human rights limited and perhaps the potential of this bill and others to impact on their protections and their rights—freedom of religion, if you like? Is there the potential of this balance being skewed in this legislation in your view?

Mr Norman: Yes, that is always a concern that we have. Obviously police officers are made up of all kinds of people from diverse backgrounds as much as anyone else, and among them are people of faith, people of different cultures. Sometimes culture and faith are interchangeable. Embedded within many of those cultures is a very different view than we may have when it comes to people of the opposite sex. Their views are definitely being compromised in situations like this. We believe that police officers particularly should have the right of conscientious objection in these situations to ask not to be involved in a strip search of someone of the opposite sex.

Dr ROBINSON: Do you see that extended to the use of particular language? If they are comfortable or not comfortable with something, do you think that should be respected and protected?

Mr Norman: Yes, for sure. I mean, it is the same thing. Again, I guess it goes back to the example I used before of the woman who is feeling triggered. The bottom line is that whatever language she uses needs to be respected because it is actually real to her, and I think it is the same with police officers. If they have a particular background and refer to people in particular ways—and older people will be another example of this; they are just going to say it like they say it—they need to be protected in doing so.

CHAIR: Mr Norman, I have to raise this question because it is of some concern. I have read through your submission. Some of the examples you show there, particularly from other jurisdictions, tend to cite the trans community and particularly some sexual misconduct by individuals. Surely there are examples that can be found of people with various other gender identities, sexual identities, social groups or religious denominations. Are you of the view that such behaviours are more prevalent in the trans community?

Mr Norman: No, definitely not. What we are saying is that this bill—

CHAIR: I will not badger you, but the examples you show are clearly trans examples. It concerns me that there is not a balance in there.

Mr Norman: This particular bill is addressing trans issues. The reason those examples are there is because they are specifically referring to real examples in the world where people were hiding behind their trans identity, if you like, or operating out of a criminal base behind that. That is not an inherent issue with trans people; we are not saying that. It is inherit to criminal people that they will exploit the situation. If it is a criminal person trans identifying, then we should expect that they are going to operate in criminal ways, and the examples actually show that.

CHAIR: I could put the argument to you, Mr Norman, as I have indicated, that there could also be other groups that identify that could perpetrate these heinous situations as well.

Mr Norman: Absolutely; yes, that is correct. The exclusion of other examples does not mean we are biased; it just means we are focusing on the issues contained in this bill. This is a trans bill. It is relating to trans people, so we have used those examples. Had it been a bill for another situation, we would have used another group of people. I do not want you to hear that we are transphobic or anything like that. We believe that adults have the right to choose how they identify, but women also have the right to safety.

CHAIR: Thank you for putting that on the record, Mr Norman. There being no further questions, thank you for your attendance here and giving your evidence to the hearing. I believe we have a question on notice: more information on improvements to clause 22 with regard to gender safeguards and searches. There is a requirement that, for any questions taken on notice, the response is provided by Friday, 3 May.

Dr ROBINSON: If I can just clarify that. My request was that if Mr Norman had a specific amendment or particular terminology or wording that he wanted to further provide to the committee that he have the opportunity to do that. However, if he did not want to exercise that opportunity, I did not want it to be mandated on Mr Norman.

CHAIR: That is fine. Thank you, Mr Norman.

BLABER, Ms Helen, Director/Principal Solicitor, Prisoners' Legal Service

CHAIR: Good morning. I invite you to make an opening statement of around five minutes before we start our questions.

Ms Blaber: Thank you. I would like to first acknowledge the traditional owners of the land on which we meet and pay my deep respect to eldest past and present. I would also like to acknowledge the chronic and increasing over-representation of Aboriginal and Torres Strait Islander people in prison who now make up over 38 per cent of the prison population in Queensland. Over-representation of First Nations people in prison is directly relevant to the proposed amendments in the bill, as we consider they will compound existing problems in the system that disproportionately impact Aboriginal and Torres Strait Islander people. Prisoners' Legal Service is particularly concerned about two of the proposed amendments to the Corrective Services Act: first, the creation of new restrictions on parole applications; and, second, extending the range of professionals who can place prisoners on 28-day safety orders.

In relation to the parole amendments, our written submissions set out several specific concerns about how we think they will actually operate in practice. Our overarching concern is they do not consider the findings of the 2023 review into the parole system commissioned by the government and completed by former District Court judge Milton Griffin KC. The purpose of that review was to examine whether previous reforms have enhanced safety, improved outcomes and reduced reoffending. It also involved considering closing the gap targets. These amendments are based on an assumption that the system is working as it should be without considering the findings of the recent review. PLS considers these amendments do not address existing deficiencies within the parole system and will in fact make some issues worse.

In relation to the safety order amendments, the bill proposes to extend the range of professionals who are authorised to make assessments about the use of safety orders for people who may be at risk of self-harm and suicide in prison. The reason provided in the explanatory notes for this expansion is due to the national shortage of psychologists. In PLS's view, these amendments are unnecessary because the Corrective Services Act already allows temporary safety orders to be made for five-day periods if a corrective services officer or a nurse believes a prisoner is at risk of self-harm or suicide. Five-day periods for safety orders provide time for longer term management strategies to be implemented for prisoners who are at risk of self-harm or suicide that do not involve placing them on safety orders.

In most cases, safety orders involve placement in solitary confinement. PLS is very concerned about the prevalence of solitary confinement in Queensland prisons. There is unequivocal evidence that it has a profound, adverse impact on the health and wellbeing of individuals subjected to it, particularly those with pre-existing mental health conditions. There is evidence that safety orders are disproportionately used for First Nations women and people with disability. Safety orders are also not an effective means of preventing self-harm and suicide in prisons. In PLS's view, these amendments are taking a step in the wrong direction. Instead of broadening the cohort of professionals who can place prisoners at risk of self-harm or suicide on safety orders, efforts should be redirected to implementing alternatives to solitary confinement. My written submission contains more detailed evidence about each of the concerns I have raised. I am happy to take any questions.

Mr BENNETT: While appreciating you are a legal service, could you explain safety orders and what they may be issued for? I could guess but it would be best to hear it.

Ms Blaber: Safety orders can be made for a range of reasons under the Corrective Services Act. The provisions that we are talking about are in relation to safety orders when they are used for the purpose of protecting someone from harming themselves. If a person is in prison and they are considered to be at risk of harming themselves, one of the options available to corrections is to place that person on a safety order.

Safety orders are also used for other reasons. They are used if a person is considered to be at risk of harming another person. If they have been violent or they are considered to be a risk of violence to other prisoners or correctional officers, safety orders are also used for that purpose. Safety orders can also be used for the security and good order of a correctional centre.

They are very broadly used for a range of different things. Unfortunately, the placement of a safety order often results in a person being put in a detention unit regardless of the reason for their placement. You might have somebody being put in a detention unit because they are at risk of self-harm or they may have self-harmed, but that is the same place a person may go if they have assaulted another person in prison.

Some prisons will have different units called safety units. Brisbane women's, for example, has something called a padded cell. I should have brought a photo of it for you so you could see it. It has 24-hour lighting and padded walls. You can see that that environment is designed to prevent someone from being able to use tools and implements to harm themselves. That is quite often the reason that people on safety orders are put on safety orders—that is, you are in a more barren and sparse environment so you do not have access to tools and things that you could use to harm yourself with.

The reality is that people who want to harm themselves will often find a way to harm themselves even in the absence of tools. If you are putting them in an environment that adversely impacts them, they may in fact be more likely to harm themselves. I have seen prisoners do things like break the lights in the rooms so they can use the plastic or the glass to harm themselves, or to just use their own hands, teeth, anything, to harm themselves. When I say they are not effective, it is because I am aware of many people on safety orders who have successfully self-harmed and suicided. In our view, it is not actually an effective way of addressing the problem and it just makes it worse.

Mr BENNETT: In suggesting an alternative, is that as you said before just more intense, professional intervention?

Ms Blaber: Yes. There are a lot of alternatives available that are being implemented in other jurisdictions. We published a report about that in 2020 with the University of Queensland, with an entire chapter on alternatives to solitary confinement generally. Of course, your alternatives need to be based on what is the specific reason for solitary in each individual case. In cases where it is mental health related concerns, you see examples of more therapeutic housing options, more intensive monitoring of people, more support for people who are experiencing those emotions, rather than placing them in an environment where it is just more difficult for them to self-harm.

Ms LUI: In your submission you wrote—

PLS has observed increasing numbers of people with disability and First Nations people entering prison and becoming enmeshed in the parole system, because of the disadvantage they face, not because they pose an unacceptable risk to the community.

Could you elaborate on this and tell us how the proposed bill might impact these communities?

Ms Blaber: Specifically, in relation to the amendments around parole, what these amendments do is that if a person receives a parole refusal then the Parole Board will have more discretion about how long they have to wait before they can reapply. A major problem with the parole system as it currently stands is that prisoners are required to participate in writing. Parole decisions take place in closed hearings. With the exception of no-body no-parole hearings, which is about one per cent of matters, prisoners do not attend the hearings with the Parole Board.

If the Parole Board are thinking about not releasing somebody, the way they will communicate that to someone is that they will send them a lengthy, complex letter with a bundle of documents with a whole bunch of information about why they think that person might pose a risk to the community. The prison population is characterised by people with profound levels of disadvantage. Most people in prison have not finished high school; a huge number of people in prison cannot read and write, with 44 per cent of people we represented last year being illiterate. You then have issues around acquired brain injury, cognitive impairment, some diagnosed, some undiagnosed, and disability amongst First Nations people in prison is higher.

When people are expected to navigate a system when they actually cannot, the consequence is that parole decisions are made on the basis of inaccurate or incomplete information. To give you an example, I was up in Townsville recently talking to a First Nations man who had received a preliminary parole refusal. It was thought that he did not have any insight into his offending. I was sitting there talking to him and it was quite evident that he had insight and remorse—the other concern was that he did not have remorse. It was quite evident talking to him that he did, but the Parole Board had not spoken to him. He could not respond to that. He was not capable of understanding or responding to the correspondence he had received. If somebody does not respond to a letter like that, they are going to be refused parole. These amendments are not going to fix that but they will make it worse by compounding the consequences of how long you might have to wait before you might get another shot. That is an example specifically of how it impacts First Nations and people with disability.

Mr BERKMAN: I really appreciate your time here today. I want to first touch on the general resourcing question. Obviously, that complexity and dealing with parole processes requires support from legal representatives, predominately CLC and staff like yourself. How many staff are you funded for through the state government?

Ms Blaber: In terms of parole work, we have funding for about three staff. That is also prison work. We miss over 20,000 calls a year on our advice line. We turn the majority of people away. Parole does not have legal aid in the way that the frontend of the criminal justice does so people who cannot navigate the system are generally going to be left on their own. We touch the tip of the iceberg in terms of the assistance that we provide. Interestingly, legal representation makes a huge difference to the outcome of parole decisions. I do not have our current stats, but it is somewhere around 90 per cent of the time we change the decision from a no to a yes. Just having not only a legal representative but somebody who can advance your case for you, because you cannot advance your own case, has a huge impact.

Yes, resourcing is a massive issue. I would say the lack of oral hearings is also a massive issue. Ideally, you should have both. You should have oral hearings but you should also have legal representation. Even if you have an oral hearing and no legal representative, at least you might be able to communicate or at least the Parole Board might be able to see this person does have insight, this person does have remorse. Some deficiencies can be remedied by oral hearings; some cannot.

Mr BERKMAN: In terms of the specific changes proposed by the bill, as you have said in your submission, it is likely to have those consequences of increased instances of refusal or longer terms of imprisonment, with more prisoners seeing their sentence right through to the end. What are the consequences of this likely to be in terms of the opportunity for prisoners and ex-prisoners to undergo community reintegration or supervision activities, and how might that flow on to reoffending rates?

Ms Blaber: We have to think about what is the primary purpose of parole. The primary purpose of parole is to reduce risk. It is considered to reduce risk because it provides gradual reintegration into the community, rather than abrupt discharge at the end of your sentence. When you are released on parole, you have a whole set of conditions which will regulate what you can and cannot do. They will often regulate where you can and cannot live and you will have to report. You will often have to engage in rehabilitation programs, and you will have support and supervision from community corrections. That is why parole exists.

Obviously, by making prisoners wait longer before they can reapply, the length of that sentence they are serving is continuously getting shorter, so the period that is going to be left that is available for them to serve any time on parole keeps getting shorter. We see quite often people being refused parole and the consequence is they will get out in two months anyway and have no supervision and will go and live wherever they want. It is not always in the interests of community safety to refuse someone release on parole. In fact, parole enhances community safety. I hope that answers that.

Mr BERKMAN: Aside from the resourcing concerns for PLS and other support services for prisoners, obviously there has been a lot of media in recent times about the resource constraints of the Parole Board for parole proceedings themselves. A cynical view might consider these changes to be one way to kind of stretch those resources for the Parole Board further. Is that a fair criticism in your view?

Ms Blaber: I do not know, to be honest. Certainly, I have seen the impact of additional resourcing going to the Parole Board improving things somewhat, but our view always was that increased resources is not the answer. One of the things that is driving up the Parole Board's workload is the increasing number of people being returned to prison on parole suspensions.

When I was talking about parole reforms, back in 2016 a whole suite of reforms came into place to try to reduce the number of people being returned to prison for low-level parole suspensions. What we have seen since those reforms is actually, after a brief period of the numbers going down, the numbers are now consistently going up on parole suspensions so more and more people are being returned to prison for what we would describe as low-level contraventions. Again, we published a report about this with the University of Queensland last year with a whole range of evidence and case studies about that.

By taking this attitude of continuing to return people to custody for low-level suspensions, the workload drives up and up and up, and the resourcing problem will never go away. Without taking a different attitude to how to manage risk—and our view is actually returning people to custody for parole suspensions often is not the best way to manage risk long term—I do not think resourcing is the ultimate problem here. I can see that these amendments mean the Parole Board has to do less; they have to consider people less regularly.

Mr BERKMAN: Thank you.

Mr SKELTON: Obviously we are trying to get a balance here between victims' rights and prisoners' rights. You have mentioned a few things in terms of how the parole system works. I had no understanding of that, so I thank you. You said that it is not about resourcing. What could we do

to make it fair for both? With the current media around crime and youth crime, we have always had a punitive justice system since day dot. That is part of our English ways. What can we do that will find that balance?

Ms Blaber: Again, I think it is important to understand what parole is for. Traditionally the criminal justice system has said that the elements of sentencing involve punishment and deterrence and rehabilitation. The way sentencing works in Queensland in a lot of jurisdictions is that the punitive element of your sentence is the point up to where you become eligible for parole. Once you have served that punitive element, the primary factor for consideration is rehabilitation and risk. The punitive element is taken care of, so to speak, at the sentencing process. That is where victim impact statements are tendered. That is where victims' voices are most heard—at that stage.

At the parole point, the primary factor is most people are getting out. That is the reality. Very few people are serving whole life sentences, so most people are going to be released. The question then becomes: what is the safest way to release them? The victim provisions that exist in the parole system allow victims to make submissions, not just victims but people who register who want to be notified each time a person applies for parole. If they are considered to be eligible—usually victims or secondary victims—then they can be notified and they can make submissions. They have recently put a bill before parliament to enable victims to make oral submissions as well in relation to those matters, recognising that victims may not be able to make written submissions.

When you look at the reason that those provisions were introduced at the parole stage, it is primarily to try to avoid things like a prisoner being released on parole so they are living in the same neighbourhood as a victim. It is about managing proximity and risk issues; it is not about resentencing the person and repunishing them essentially. When they are getting out, what do we want that to look like?

I know there was a lot of attention in January about some victims and the Parole Board. These amendments do not fix what happened there. Under the legislation, there is a 21-day period for victims to make submissions to the Parole Board after a person applies for parole. In this case what was reported in the media—whether it is true or not I do not know—is that the victims were not given the 21-day period and the decision was made prior to the 21-day period. These amendments simply allow the Parole Board to consider the likely affect further application parole orders will have on victims when further parole applications are made.

One of my major concerns about it is that it is starting to muddy the waters between what is relevant at sentencing and what is relevant at parole. Also, it does not fix the issues that were reported by the media and they are really speculative. With this raw drafting, there does not need to be any evidence from any victim. The Parole Board can consider the likely effect it may have on a victim. I am really concerned about speculation being engaged in when there is not any evidence. We are looking at similar provisions in relation to the restricted prisoner process which has been in force for some years and I am concerned that I will see similar things happening with speculation taking place in the absence of evidence.

Mr BENNETT: It has been a consistent question of mine about CCTV and monitoring. Within the prison system are you able to comment on the complaints that come under your remit about the filming of searches? We were talking about tools used when they are in solitary. It is a balancing act. Are many complaints about human rights violations and those sorts of things raised with you?

Ms Blaber: You are talking about complaints about people being searched when there is CCTV footage of them?

Mr BENNETT: I am talking about people feeling that their rights have been violated. That is the second part of this bill. Obviously we are concentrating on prisoners here.

Ms Blaber: In terms of human rights violations in prison, we receive a huge number of complaints generally. In terms of complaints about CCTV, not really. We get some complaints about searches and the way searches are conducted, but I would not say it is a massive area of concern that is raised with us.

The reason our submissions have focused on the parole amendments and the safety order amendments is that the parole amendments impact thousands of people. About 85 per cent of what people are asking for our help with is parole because people want to get out. That does not mean there are not problems in the system. We certainly receive a lot of complaints, but I cannot say that we receive huge numbers of complaints about CCTV issues. We do get some and we do get some complaints about searches.

CHAIR: I am a little conflicted by a comment you made earlier. Obviously we are in a heightened state within the community around community safety and in particular what the community expectations are, particularly from victims of crime, for people who are seeking parole. You just stated that the longer a person waits for parole because their sentence is reducing it may not be in the best interests of the safety of the community. There has been a call recently within some parts of the community for mandatory sentencing. If you go through a full mandatory sentence, obviously your options for parole would be reduced. Based on your comments, in your view would mandatory sentencing, because there may be no option for parole, mean that there is a greater risk to the community if they do not get parole?

Ms Blaber: I think it would depend on the mandatory sentencing regime that is being discussed because there are so many different types of mandatory sentencing. Mandatory sentencing might still mean you can get parole after a certain period of time. If you are talking about a mandatory sentencing regime which would require someone to serve the entirety of their sentence in prison—

CHAIR: Some people are publicly making those comments.

Ms Blaber: The problem with that is that all of the research shows that that will increase the likelihood of more offences being committed. The research shows that parole reduces the likelihood of reoffending. That is why it exists. I think possibly there needs to be education around what parole is, what the purpose of it is—it is primarily for the community. It is to reduce crime. If you get out on parole and you can go and live anywhere you want—there are no restrictions on you—compared to, 'You're not allowed to live in the Townsville region because your victims live there. We want you to engage in these programs and want you to see a psychologist every week,' you can see the difference. Mandatory sentencing without parole will still mean inevitably people getting out of prison—just without supervision.

Mr BERKMAN: You mentioned before your concerns about the blurring of the distinction between sentencing principles and parole. Can you elaborate on that?

Ms Blaber: As I said, the way sentencing has traditionally worked in Queensland—and I think Australia and probably the UK—is that there is a punitive element to the sentence. There is a whole range of sentencing considerations under the Penalties and Sentences Act. People need to be punished. That is a community expectation. That is why punishment and punitive factors are taken into account at sentencing. The sentencing judge is in the best position to know how victims are impacted after an offence has taken place because victims are invited to participate in that process and the judge is allowed to take into account the impact on victims. There is a provision in the Corrective Services Act which talks about the way that victim considerations are taken into account for parole are essentially not to resentence them, not to repunish them, but to try to reduce the impact on victims when they get out. I do not know if that helps.

Mr BERKMAN: That is helpful. Thank you.

CHAIR: There being no further questions, I thank you for your attendance here today and for providing your evidence to the committee. That concludes this hearing. I thank everyone who has attended and participated today. Thank you to our Hansard reporters. A transcript of these proceedings will be available on the committee's webpage in due course. There have been no questions taken on notice. I declare this public hearing closed.

The committee adjourned at 10.54 am.