

Police Powers and Responsibilities and Other Legislation Amendment Bill 2024

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Submitted by: Nerang Neighbourhood Centre
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Committee Secretary
Community Support and Services Committee
Parliament House, George Street
Brisbane Qld 4000

Dear Secretary

Re. Consultation on the *Police Powers and Responsibilities and Other Legislation Amendment Bill 2024 (Qld)* (“the Bill”)

Thank you for the opportunity to make a submission to the public consultation on the proposed legislation, specifically with reference to the emergent technologies and their impact on security.

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

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

Outline

This submission addresses several discrete challenges if the Bill were to be passed in its present form: largely the concerns relate to a lack of legal definition around the concept of “gender”, a term which has been introduced into numerous pieces of legislation without providing a legal definition.

The lack of a legal definition of gender

The Bill proposes to make several amendments to Acts which provide for the exercise of statutory powers by law enforcement and related officers and organisations. The purpose of the Act is said to be following the Legal Affairs and Safety Committee Report No. 41, which required Queensland government agencies to review legislation ‘to assess the use of gendered language and identify any amendments required as a result of the introduction of the new laws’.¹

Numerous amendments are made by the Bill, to the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*; the *Crime and Corruption Act 2001*; the *Mental Health Act 2016*; the *Police Powers and Responsibilities Act 2000*; the *Public Health Act 2005*; the *Summary Offences Act 2005*; and the *Terrorism (Preventative Detention) Act 2005*.

Commendation 1: The Government should be commended on the policy it has adopted to remove gendered language from its legislation, and seek to promote the acceptance of all peoples as equal before the law.

However, throughout the numerous amendments that the Bill seeks to make, there is a distinct lack of legal definitions of the term “gender”, to which many of the amended legislative provisions will now refer and upon which certain critical law enforcement and justice powers will be reliant. The lack of a specific definition of gender brooks ambiguity and uncertainty in the exercise of crucial law enforcement and protective powers for the people of Queensland.

¹ Explanatory Notes to the Police Powers and Responsibilities and Other Legislation Amendment Bill 2024, 1.

This lack of definition is somewhat surprising considering the policy history of the proposals in the Bill.

Of key relevance here is the amendment of the *Anti-Discrimination Act 1991* (Qld) (“AD Act”) provided by the *Births, Deaths and Marriages Registration Act 2023* (Qld), which will commence on proclamation. Accordingly, the AD Act will include a new definition, that of “gender identity”, which includes:

a. the person’s internal and individual experience of gender, whether or not it corresponds with the sex assigned to the person at birth; and

b. the person’s personal sense of the body; and

i. if freely chosen—modification of the person’s bodily appearance or functions by medical, surgical or other means; and

ii. other expressions of the person’s gender, including name, dress, speech and behaviour.

This definition is critical to the operation of the AD Act, as the AD Act prohibits discrimination on the basis of gender identity,² proscribes ‘vilification on grounds of race, religion, sexuality or gender identity’³ and criminalises ‘serious racial, religious, sexuality or gender identity vilification’.⁴ The new definition in the AD Act will continue thus to protect persons of the diverse LGBTIQ+ community by providing a legal definition for gender identity that is worthwhile of protection.

Curiously, none of the modifications in the Bill seek to adopt the AD Act’s definition of gender identity. It seems nonsensical that a person fearing discrimination or vilification can so easily rely upon a legal definition of a precious part of their personality, but that same definition does not flow readily through into invasive and intrusive applications of police and like powers. For example:

- The safeguard imposed by the new section 31A of the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* and section 519A of the *Police Powers and Responsibilities Act 2000* risk not adequately recognising persons whose gender may include the possession of breasts (by way of section b.i. of the AD Act definition), and does not otherwise require the presence of a support person for the person subject to the photography;
- The “gender” safeguard sought to be imposed in the new section 100A of the *Crime and Corruption Act 2001* does not appropriately define the term “gender”, when describing the presence of support persons that may be conducted by authorised commission officers;
- The “gender” safeguard sought to be imposed in the new sections 399(2)(a) and 400(2) of the *Mental Health Act 2016* does not adequately capture the notion of “gender identity” that could be protected in respect of persons being searched under that Act;
- There are insufficient safeguards in the new sections 553A, 624A and 644A of the *Police Powers and Responsibilities Act 2000* to adequately recognise the precise parameters of what may be considered part of an individual’s gender identity, leading to the possibility that police officers may (inadvertently) compromise an individual’s emotional safety or security whilst conducting such a search, or exceed the parameters of an otherwise lawful and authorised search.

² AD Act, s 7(m).

³ AD Act, s 124A(1).

⁴ AD Act, s 131A(1).

For that reason, I recommend that the Bill should be amended to include the definition from the AD Act to ensure that a legal definition of “gender identity” is included for reference in the Acts to which the Bill intends to make changes.

***Recommendation 1:** The Bill should be amended to carry over the definition of “gender identity” from the AD Act (as amended by the BDMR Act) to the new amendments provided by the Bill.*

Conclusion

I believe that the Bill addresses some of the policy concerns which it sets out to achieve, but that the objectives of the legislation could be fulfilled with a legal definition of the word “gender” and associated protections that flow to that status.

Thank you for the opportunity to make this submission.

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