Police Powers and Responsibilities and Other Legislation Amendment Bill 2024

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Submission by Legal Aid Queensland

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Review of the Police Powers and Responsibilities and Other Legislation Amendment Bill

Introduction

Legal Aid Queensland (LAQ) welcomes the opportunity to make a submission to the **Police Powers and Responsibilities and Other Legislation Amendment Bill 2024.**

LAQ provides input into State and Commonwealth policy development and law reform processes to advance its organisational objectives. Under the *Legal Aid Queensland Act 1997,* LAQ is established for the purpose of "giving legal assistance to financially disadvantaged persons in the most effective, efficient and economical way" and is required to give this "legal assistance at a reasonable cost to the community and on an equitable basis throughout the State". Consistent with these statutory objects, LAQ contributes to government policy processes about proposals that will impact on the cost-effectiveness of LAQ's services, either directly or consequentially through impacts on the efficient functioning of the justice system.

LAQ always seeks to offer policy input that is constructive and is based on the extensive experience of LAQ's lawyers in the day-to-day application of the law in courts and tribunals. LAQ believes that this experience provides LAQ with valuable knowledge and insights into the operation of the justice system that can contribute to government policy development. LAQ also endeavours to offer policy options that may enable government to pursue policy objectives in the most effective and efficient way.

This submission calls upon the experience of our lawyers in the Criminal Law Services Division and Family Law and Civil Justice Services Division.

Submission

Amendment of Police Powers and Responsibilities Act 2000 ('PPRA') and Crime and Corruption Act ('CCA')

Same gender safeguards in searches

LAQ supports the modernisation of gendered language in police legislation and operations. Using 'same gender' as a starting point for determining an appropriate officer to conduct a lawful search, as differentiated from same sex, promotes respect and recognition for people of diverse genders. The same gender starting point recognises social, cultural, and religious expectations about personal dignity, boundaries, and reasonable accommodations. Where expectations are not met or boundaries are interfered with, particularly by someone in a position of authority, a person's psychological safety can be compromised. LAQ considers the inclusion of the same gender starting point to promote safety for persons of diverse genders and social, cultural, and religious backgrounds.

The proposed personal search policy is appropriate, however LAQ considers that practical guidance is needed, either within the legislation itself or within the Police Operational Procedures Manual (OPM) to clarify the circumstances in which the preference expressed by a person to be searched need not be accommodated, as the term 'improper purpose' is vague. LAQ also considers training on the proposed policy should be provided to officers.

Where a person does not express a preference or their preference cannot be reasonably accommodated, LAQ considers that further practical guidance is required, either within the

legislation itself or within the OPM to clarify the circumstances in which the preference expressed by a person to be searched need not be accommodated, particularly in relation to the 'improper purpose' exemption.

In addition, LAQ suggests that clause 42 (proposed new s 624A PPRA) and clause 22 (proposed new s 100A CCA) should be amended so that subsection (5) is removed and instead inserted as (4)(c) and re-phrased as "a reasonable opportunity to express a preference in a way that would require different persons to search the upper body, lower body or head of the person". The reason for this recommendation is that subsection (5) as it currently stands does not place any onus on police to explain a preference can be expressed in this way (i.e., requiring a different gendered officer to conduct the "top" vs "bottom" search).

The feedback in this section can be taken to apply to the corresponding gender safeguard amendments of the *Public Health Act 2005* and the *Mental Health Act 2016*.

Photographing breasts

LAQ does not support the introduction of clause 48(4), which proposes to remove photography of breasts from the definition of "intimate forensic procedure" in the Schedule 6 (Dictionary) PPRA. LAQ considers it is not appropriate to allow a police officer to photograph the breasts of any person without their consent without the safeguards of the intimate forensic procedure provisions.

LAQ does not agree that photography of breasts should be classified as a 'non-intimate forensic procedure' merely because photography does not require physical touch. LAQ notes that breasts are an inherently sexualised part of the body, and many people may feel extremely humiliated, embarrassed, and violated by having their breasts exposed and photographed in this manner.[1] Those issues may be compounded where the person has a history of sexual assault.

At a minimum, if the safeguards of the intimate forensic procedure provisions are not to be retained for the photography of breasts, then gender safeguards that allow for the person being photographed to be photographed by a person of their preferred gender should be implemented. In these circumstances LAQ supports clause 37 (proposed new section 519A PPRA).

Amendment of Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004 ('CPOROPOA')

LAQ does not support clause 5 (the removal of section 31(2)(c) CPOROPOA) to allow a police officer to require a photograph of a reportable offender's breasts. Please refer to the feedback under "*Photographing breasts*" above.

At a minimum, if the photography of breasts is to be permitted then gender safeguards that allow for the person being photographed to be photographed by a person of their preferred gender should be implemented. In these circumstances LAQ would support clause 6 (proposed new section 31A CPOROPOA).

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[1] See, for example: *Ross v Australia's Pizza House Pty Ltd and Pugliese* [1998] HREOCA 11 (7 April 1998) where comments about an employee's breasts and their size were found to be "conduct of a sexual nature" within the meaning of s 28A(1A)(b) of the *Sex Discrimination Act 1984* (Cth) (**SDA**). See also *Noble v Baldwin & Anor* [2011] FMCA 283 (28 April 2011) at 255-256 where comments about selecting employees based on their breast size were also found to amount to sexual harassment within the meaning of s 28A of the SDA. Similar considerations would apply to cases of sexual harassment brought under the *Anti-Discrimination Act 1991* (Qld).

Amendment of Corrective Services Act 2006 ('CSA')

Changes to Parole Application process

LAQ is concerned that the amendments to s 193 which increase the maximum timeframe for the parole board to set for prisoners to re-apply for parole are overly onerous, inconsistent with human rights, and potentially discriminatory because:

- The increase for those serving a life sentence from 3 years to 5 years is excessive.
- The increase for those serving 10 years or more from 6 months to 3 years is excessive.
- The increase for other prisoners from 6 months to 1 year is excessive.

These concerns are significant in circumstances where we are aware that:

- Queensland prisons are experiencing ongoing issues with prison overcrowding (noting that delaying the timeframe to re-apply – and potentially be granted – parole will increase the amount of time people spend in custody) and noting that prison overcrowding has a disproportionately detrimental impact on prisoners with disabilities.[2]
- Aboriginal and Torres Strait Islander persons are overrepresented in the criminal justice system.
- There are significant delays in the availability of programs for prisoners which are required to be completed before a prisoner will be able to successfully apply for parole (which will only be further exacerbated if prisoners are incarcerated for longer due to being ineligible to re-apply for parole).

LAQ is concerned that changes may have the practical effect of imposing further serious disadvantages on prisoners who are Aboriginal and/or Torres Strait Islander, and/or prisoners with psycho-social disabilities.

To encompass a proper 'proportionality' assessment, the factors that the board **must** consider under s 193(8)(a) should also include an explicit reference to the obligations of the parole board to make decisions under s 58 of the *Human Rights Act 2019* (Qld) to ensure consistency in approach and that the rights of prisoners are observed.

Changes to Safety Order Process

LAQ does not support suicide/self-harm assessments being conducted by an 'authorised practitioner' rather than a qualified and registered medical doctor or psychologist. This is because not all persons who fall within the scope of the definition of 'authorised practitioner', such as a speech pathologist, are necessarily qualified or capable of making these assessments.

LAQ is concerned that less qualified persons may, out of an abundance of caution, assess a person as being at risk of self-harm/suicide in circumstances where a doctor or psychologist would not make that assessment, and this could result in a large increase in the number of safety orders being made (which, when made, impose significant limitations on a person's liberty and ability to access rehabilitation programs, etc. while subject to the order). In particular this is likely to have a disproportionate impact on prisoners with psycho-social disabilities and Aboriginal and/or Torres Strait Islander prisoners who may have different

[2] Human Rights Watch Report: "I needed help, instead I was punished" Abuse and Neglect of Prisoners with Disabilities in Australia: https://www.hrw.org/report/2018/02/06/i-needed-help-instead-i-was-punished/abuse-and-neglect-prisoners-disabilities)

communication styles or cultural needs that an 'authorised practitioner' is not adequately trained in. LAQ recommends the doctor/psychologist qualification be retained as the appropriately qualified persons to be making those assessments for the purpose of informing safety order decisions.

Further, LAQ is concerned that the proposed amendments to s 57 and s 58 CSA would mean that persons who do not even fall within the broader scope of an 'authorised practitioner' would be able to give advice in relation to the making of temporary safety orders. This means that even less qualified persons would be conducting those assessments. LAQ suggests that an 'authorised practitioner' could be an appropriate person to give advice in relation to temporary safety orders.

LAQ does not consider that the power to develop an 'authorised practitioner policy' is appropriate, as it would grant too broad of a discretion to the Chief Executive to determine what categories of health service providers could be defined as 'authorised practitioners', and what their competency/training requirements should be. For example, this could result in a policy that allows NDIS providers or podiatrists to be appointed as authorised practitioners. LAQ recommends that if the power to make an authorised practitioner policy is to be retained in the Bill, the Bill should at least legislate a minimum standard of competency/training in relation to mental health that must be achieved before a person can be appointed an authorised practitioner.

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