

## Police Powers and Responsibilities and Other Legislation Amendment Bill 2024

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Queensland  
**Human Rights**  
Commission

# Police Powers and Responsibilities and Other Legislation Amendment Bill 2024

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Submission to Community Support and Services  
Committee

12 April 2024

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# About the Commission

1. The Queensland Human Rights Commission (**the Commission**) is an independent statutory authority with functions under the *Anti-Discrimination Act 1991* (**Anti-Discrimination Act**) and the *Human Rights Act 2019* (**Human Rights Act**), including dealing with complaints of discrimination and contraventions of the Human Rights Act, and promoting an understanding, acceptance and public discussion of human rights in Queensland.

## Introduction

2. This is a submission to the Community Support and Services Committee in relation to their consideration of the Police Power and Responsibilities and Other Legislation Amendment Bill 2024 (**the Bill**).
3. The Bill proposes a variety of amendments regarding searches, parole processes, prisoner safety orders and prison infrastructure management.
4. The focus of this submission is on changes to gendered language in various legislation following a government audit of legislation prior to the commencement of several provisions of the *Births, Deaths and Marriages Registration Act 2023* (BDMR Act).
5. The Commission recognises and endorses the need for legislative updates to ensure greater flexibility in conducting searches and other procedures involving trans and gender diverse people following passage of the BDMR Act.
6. The Commission's primary submissions are that:
  - 'reasonably practicable' exceptions throughout the Bill in relation to the same-gender starting point for conducting searches and other procedures, reduces the extent of human rights protections when compared with existing same-sex safeguards.
  - to ensure that the provisions are correctly interpreted, there should be greater clarity about the meaning of 'improper purpose' as an exception to when a person's preference should be carried out.
  - omission of safeguards for the use of hand-held scanning searches may unjustifiably limit human rights because of the potential for these situations to escalate to require a more invasive search.
7. The Commission also makes submissions on the Bill's proposed amendments to the *Corrective Services Act 2006* (**CS Act**) regarding restricting prisoners from reapplying for parole after being refused, and safety orders.

# Searches

8. The Bill amends several provisions across police and health legislation involving searches of people and their belongings. Those affected by changes will include people in custody of the police, and patients and visitors to mental health facilities. Searches may involve operating a scanner, the physical inspection of clothing or belongings, or a search involving the removal of clothing (strip searches).
9. The Commission recently completed a human rights review of the practice of strip searching women in Queensland prisons.<sup>1</sup> This submission is informed by that review, including what we heard from people during our visits to prisons about the negative effects of searches requiring the removal of clothing on prisoners and prison staff. While falling outside of the scope of our review, we heard regularly from women that strip searches conducted in watch houses were more invasive, inhumane, and degrading than those conducted by Queensland Corrective Services staff.<sup>2</sup>
10. Consistent with international human rights guidance, strip searches should only occur on the basis of reasonable suspicion that a person has a dangerous item, after a person has been given a reasonable opportunity to hand over the item. Aside from when a person is first admitted to a watchhouse or mental health facility, routine searches should not occur.<sup>3</sup> Even on first admission, strip searches should only occur where it is the least restrictive option available, and where other searches such as body scanning searches are not available.<sup>4</sup>
11. Strip searches are not proven to be effective and cause humiliation and trauma to many people, particularly those who have experienced sexual abuse or violence in the past.<sup>5</sup>
12. Wherever feasibly possible, the Queensland Government should install body scanners in places where strip searches are frequently taking place in Queensland, including all large watch houses and mental health treatment facilities. Body scanners are not only proven to be much more effective, but they also allow for the preservation of the dignity and human rights of those subjected to searches, and those who must perform them as part of their work duties.<sup>6</sup>
13. In cases in which a strip search is the least restrictive option available, such as where a body scanner is not available, searches should be done in a way that

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<sup>1</sup> Queensland Human Rights Commission, *Stripped of our dignity: A human rights review of policies, procedures, and practices in relation to strip searches of women in Queensland prisons* (September 2023).

<sup>2</sup> Ibid, 10.

<sup>3</sup> Ibid, recommendation 3

<sup>4</sup> Ibid, Recommendation 4.

<sup>5</sup> Ibid, 40 – 115.

<sup>6</sup> Ibid, 142 – 144.

accommodates the needs of the person being searched. Those most likely to be vulnerable to harm from searches include women and girls, and gender diverse people.<sup>7</sup>

## Relevant human rights

14. The Statement of Compatibility for the Bill has correctly identified that the rights limited by search provisions include:
  - privacy and reputation (section 25)
  - freedom of thought, conscience, religion, and belief (section 20)
  - cultural rights generally (section 27)
  - right to humane treatment when deprived of liberty (section 30).<sup>8</sup>
15. The Commission considers that further consideration should have been given to how searches affect the right not to be subjected to cruel, inhuman or degrading treatment (section 17) and the cultural rights of Aboriginal and Torres Strait Islander people (section 28).
16. The Commission does not agree with the proposition in the Statement of Compatibility that protections from cruel, inhuman or degrading treatment are not affected by the Bill because 'conduct authorised by the amendments does not rise to the level of limiting the rights protected under section 17'.<sup>9</sup>
17. In the final report on our recent human rights review regarding strip searches in women's prisons, the Commission determined that all strip searches of women limit the right not to be subjected to degrading treatment in section 17.<sup>10</sup>
18. According to the Explanatory Notes for the Human Rights Bill 2018, the right to cruel, inhuman or degrading treatment must involve severe pain or suffering but it need not be intentionally inflicted.<sup>11</sup>
19. Strip searching limits rights to protection from cruel or inhuman treatment because of the demonstrable harm it can cause for some women. Strip searches are also likely to limit the right not to be subjected to degrading treatment, which is focussed less on the severity of suffering but rather on humiliation and damage to self-esteem, and it is a subjective test.<sup>12</sup>

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<sup>7</sup> Ibid, 58 – 63, 107 – 108.

<sup>8</sup> Statement of Compatibility, Police Powers and Responsibilities and Other Legislation Amendment Bill 2024 (Qld) 5-6.

<sup>9</sup> Ibid, 6.

<sup>10</sup> Queensland Human Rights Commission, *Stripped of our dignity: A human rights review of policies, procedures, and practices in relation to strip searches of women in Queensland prisons* (September 2023) 35, 65, App B.

<sup>11</sup> Explanatory Notes, Human Rights Bill 2018 (Qld) 19.

<sup>12</sup> Ibid.

20. The European Court of Human Rights found that routine strip searches of a prisoner in the absence of a convincing security need ‘diminished his dignity and led to feelings of anguish and inferiority capable of humiliating and debasing him.’ The Court decided that the strip searching regime along with other harsh security measures amounted to inhuman degrading treatment in violation of Article 3 of the European Convention on Human Rights.<sup>13</sup>
21. Further to the general cultural considerations discussed in the Bill, the Statement of Compatibility has not mentioned or addressed the particular cultural sensitivities for First Nations people, protected in section 28 of the Human Rights Act. First Nations people are not only more likely to be subject to searches because of the overrepresentation in custodial settings, there are unique considerations for this cohort because of traditional cultural practices in relation to men’s and women’s business.<sup>14</sup>

## Benefits of the same-gender safeguards

22. The Commission supports several aspects of the Bill’s framework for the exercise of powers to search persons, their belongings and to conduct other procedures that limit the privacy and sense of dignity of the person involved.
23. A shift from the language of ‘sex’ to ‘gender’ in certain legislative provisions is a necessary change to create more clarity for trans and gender diverse people. The Commission notes that accommodating the needs of trans and gender diverse people in watch houses has already been the policy position of Queensland Police Service following 2020 changes to the police Operational Procedural Manual.<sup>15</sup>
24. The Commission supports the dialogue approach where an explanation of the process is offered, allowing for the opportunity for a person to express an informed preference about the gender of staff members/s involved.
25. The Commission also supports the requirement to uphold individual preferences, in the majority of cases, to improve privacy and reduce the risk of harm.
26. Other benefits of the approach reflected in the Bill include that:
  - there is no requirement for any person involved in a search or other procedure to disclose their person’s gender identity unless they wish to
  - there is no requirement for a person to have altered their sex legally to be afforded protections
  - a person can express a preference for a split search depending on the part of the body to be searched (upper body, lower body or head<sup>16</sup>).

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<sup>13</sup> *Van der Ven v Netherlands* [2003] ECHR 62, 61–63.

<sup>14</sup> For detailed commentary on this topic see Queensland Human Rights Commission, *Stripped of our dignity: A human rights review of policies, procedures, and practices in relation to strip searches of women in Queensland prisons* (September 2023) 93 – 96.

<sup>15</sup> Explanatory Notes, Police Powers and Responsibilities and Other Legislation Amendment Bill 2024 (Qld) 2.

<sup>16</sup> See also Queensland Human Rights Commission, *Stripped of our dignity: A human rights review of policies, procedures, and practices in relation to strip searches of women in*

## Problems with the same-gender safeguards

27. The Commission's key concern with the Bill is that it appears to weaken protections because of the introduction of the term 'reasonably practicable' in relation to the 'starting point'<sup>17</sup> for searches based on gender (formerly 'sex') and because of a lack of clarity about what an 'improper purpose' may include.

### Reasonably practicable

28. Under police powers and other legislation including the Mental Health Act there are current safeguards in which a person performing a search or another procedure that limits the right to privacy of a person<sup>18</sup> *must* be of the same sex as the person.
29. The Commission accepts that changes are necessary to ensure the preferences of trans and gender diverse people are respected and upheld, and that in some circumstances this may involve a person not being searched according to their sex/gender. For instance, a transgender man may be more comfortable being searched by a woman, rather than a man. At other times, it may not be possible to find another staff member of the same gender, particularly if a person has a non-binary identity.
30. However, the Commission has concerns about removing the mandatory language in which a staff member *must* currently accommodate a person based on their sex/gender,<sup>19</sup> and reducing this protection to only needing to accommodate people based on their gender where 'reasonably practicable' to do so.
31. For instance, in section 624A(3), the inclusion of the term 'reasonably practicable' shifts the existing legal position that a person must not be subjected to a search by a police officer who is not of their sex unless an immediate (i.e. urgent) search is required.
32. Removal of the mandatory requirement to conduct a search of someone based on their sex/gender is unnecessary considering that section 624A also contains further exceptions from the need to search based on gender:
- where it involves an immediate search (an urgent situation arises)
  - there are reasonable grounds to believe the preference is made for an improper purpose
  - it is not reasonably practicable to accommodate a stated preference.

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*Queensland prisons* (September 2023) 114, for commentary on the cultural needs for people subjected to searches who wear religious headwear (e.g. hijab, turban). While outside the scope of this Bill inquiry, greater clarity in police and health policies and procedures about the process for searching people with religious headwear would be beneficial.

<sup>17</sup> This is the term referred to in the Statement of Compatibility, Police Powers and Responsibilities and Other Legislation Amendment Bill 2024 (Qld) 4.

<sup>18</sup> Such as, forensic procedures (*Police Powers and Responsibilities Act 2000* s 517) and taking photographs of breasts (*Police Powers and Responsibilities Act 2000* s 519A).

<sup>19</sup> For police legislation it currently refers to 'same sex', whereas in health legislation (e.g. *Mental Health Act 2016*) it already refers to 'same gender'.



33. The Explanatory Notes state that there is no intention to weaken existing safeguards for women, and all reasonable steps should still take place to ensure that women are searched by women.<sup>20</sup> However, this is not reflected in the Bill itself, which has undergone a shift in language that may affect how the provisions are interpreted in future.
34. The Commission is concerned at how broadly ‘reasonably practicable’ could be interpreted – e.g. could it include situations where no women are rostered on to work that day? If this is the case, it is most likely that women in police custody in regional and remote areas which have fewer staff available, and fewer female staff employed, could be adversely affected by the change.
35. Many routine searches are not urgent, and the Commission considers that all reasonable steps should be taken to delay searches to accommodate the preferences of individuals.
36. However, there will be times that an officer is not available who matches the gender of the person being subject to a search or other procedure. In that instance, practicability may be a factor. For instance, a person may prefer that a non-binary officer search them in a regional police station. If there is no one of that gender who works at that station, or in close proximity to that station, it may not be possible to accommodate that preference, even if the search was delayed.
37. Amendments should be made throughout the Bill to ensure that the caveat of ‘reasonably practicable’ only applies to the narrower circumstance of *accommodating a preference*.
38. Applying the exception of ‘reasonably practicable’ only to a person’s preference is a less restrictive and reasonably available way to achieve the purpose of carrying out searches and other procedures where necessary, while ensuring that safeguards included in legislation to protect the privacy and dignity of individuals are not weakened in the process.
39. The inclusion of an example about what is meant by ‘reasonably practicable’ would also assist with interpretation.

## Improper purpose

40. The term ‘improper purpose’ appears throughout the Bill<sup>21</sup> to address situations in which a preference for the gender of a staff member need not be accommodated by Queensland Police Service. The Commission understands the need to potentially divert from a person’s preference because of an improper purpose. This will require a necessary degree of discretion on the part of the staff member/s involved.
41. The Explanatory Notes provides three examples of where this is intended to apply, where the person might:

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<sup>20</sup> Explanatory Notes, Police Powers and Responsibilities and Other Legislation Amendment Bill 2024 (Qld) 3.

<sup>21</sup> Police Powers and Responsibilities and Other Legislation Amendment Bill 2024 (Qld) cls 6, 22, 36, 37, 40, 46.

- make lewd comments or gestures about the particular officer they prefer to exercise the power
  - express an offensive preference to have the power exercised by a person of a gender they do not identify as, including where the person holds beliefs inconsistent with the legal recognition of trans and gender diverse people
  - not genuinely have a preference to have the power exercised by a person of a particular gender and express a preference solely to frustrate the searching officer from performing their duties.<sup>22</sup>
42. However, the Commission is concerned if further detail is not provided in the Bill itself for what an ‘improper purpose’ may include, then this term could be interpreted too broadly.
43. To address this, we suggest replicating the same approach to explaining the meaning of ‘immediate search’ in current section 624 of the PPR Act.

#### *Recommendation 1:*

- The Committee should recommend that the Bill be amended to:
  - omit the exception of ‘reasonably practicable’ as it applies in relation to the same-gender starting point throughout the Bill
  - in relevant sections provide an example of where it is not ‘reasonably practicable’ to accommodate a preference, for instance:

#### *Example –*

‘Reasonably practicable’ includes where there is no staff member available to conduct the search who is known to be of the gender requested, even if the search was delayed for a reasonable time to make this accommodation.

- in relevant sections provide an example of what is meant by an improper purpose, for instance:

#### *Example --*

An ‘improper purpose’ includes where a person has made lewd comments or gestures about the particular officer they requested to conduct the search.

## Hand-held scanning searches

44. In clause 34, the Bill makes changes to the *Police Powers and Responsibilities Act 2000* (section 39H (3)) to remove a requirement that a police officer conducting a hand-held scanning search must be of the same sex as the person being scanned. This provision already contains the exception ‘if reasonably

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<sup>22</sup> Explanatory Notes, Police Powers and Responsibilities and Other Legislation Amendment Bill 2024 (Qld) 3.

practicable.’ The effect is that an officer of any gender may conduct a hand-held scanning search.

45. Although hand-held scanning searches do not involve bodily contact and only require waving a wand over a person’s outer garments and body, the Commission nonetheless does not support this change because of the potential flow on effects of removing this safeguard.
46. As acknowledged by the Statement of Compatibility, the right to privacy and reputation and cultural rights may be affected, in instances where modesty is part of a person’s religious or cultural beliefs.<sup>23</sup>
47. Hand-held searches without a warrant are increasingly common since expanded police powers have been authorised in recent years to address knife crime.<sup>24</sup> While the Statement of Compatibility is correct in stating that hand held scanners are less invasive because do not require a person to be touched or the removal of clothing,<sup>25</sup> issues may arise when the scanner detects an object and the person refuses to hand anything over, or a situation arises in which the scanner detects something, but it is a harmless item such as a bobby pin.
48. This may prompt officers to increase the invasiveness of the search to a pat down or strip search to check whether they do in fact have a weapon. While the Statement of Compatibility points out that an escalated search would be subject to the new gender safeguards in which a person may state a preference for the gender of the searching officer, this may be swiftly overridden by the ‘immediate search’ exception – particularly because this type of search is looking for weapons. The example provided in the legislation justifying an immediate search specifically refers to ‘reasonable suspicion’ that a person has a concealed knife.<sup>26</sup>
49. The Commission considers that the word ‘sex’ should be substituted for ‘gender’ in the provision, rather than this safeguard being omitted entirely.

#### *Recommendation 2:*

- The Committee should recommend that clause 34 of the Bill be amended to:
  - no longer omit section 39H(3) of the *Police Powers and Responsibilities Act 2000*, but instead retain the provision while changing the word ‘sex’ for gender’.

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<sup>23</sup> Statement of Compatibility, Police Powers and Responsibilities and Other Legislation Amendment Bill 2024 (Qld) 19.

<sup>24</sup> *Police Powers and Responsibilities (Jack’s Law) Amendment Bill 2022*.

<sup>25</sup> Statement of Compatibility, Police Powers and Responsibilities and Other Legislation Amendment Bill 2024 (Qld) 19.

<sup>26</sup> See clause 42, s 624A(2) as an example.

# Restricting prisoners from reapplying for parole after being refused

50. Clause 8 of the Bill amends section 193 of the CS Act which deals with decisions on applications for parole. Under current section 193(5), if the parole board refuses to grant the application, the board must (other than in an application for an exceptional circumstances parole order) decide a period of time within which a further application for a parole must not be made without the board's consent. The period cannot be more than 3 years for a prisoner serving a life sentence, or otherwise 6 months.
51. The Bill extends these maximum time periods to:
- a. For a prisoner serving a term of imprisonment for life – 5 years
  - b. For a prisoner serving a term of 10 years or more – 3 years
  - c. Otherwise – 1 year.
52. The Bill also prescribes that in deciding this time period, the parole board *must* consider:
- a. the nature, seriousness and circumstances of each offence for which the prisoner is serving the period of imprisonment the subject of the application; and
  - b. the reasons the application has been refused;
- and *may* have regard to:
- c. the likely effect that the making of a further application for a parole order may have on an eligible person or victim; and
  - d. the extent to which delaying the making of a further application for a parole order is in the public interest. (the **prescribed matters**)

## Relevant human rights

53. Under section 29 of the Human Rights Act, every person has the right to liberty and security, and a person must not be subjected to arbitrary detention. While detention pursuant to sentence is lawful, a decision to refuse parole can still limit the right to liberty if the refusal is 'arbitrary', such as where a decision is inappropriate, unjust, lacks predictability or due process.<sup>27</sup> Similarly, a decision that prevents a person from applying for parole for a particular time period must not be arbitrary or disproportionately limit human rights.

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<sup>27</sup> Explanatory Notes, Human Rights Bill 2018 24.

54. The Bill gives the parole board discretion to impose time periods *up to* specified maximums which are double what is currently authorised. In the case of prisoners serving a term of 10 years or more, the maximum period is 6 times what is allowed under the current CS Act. The longer the time period imposed, the higher the justification needed to demonstrate the decision is not arbitrary or disproportionate with human rights.

### *Recommendation 3:*

The Statement of Compatibility for the Bill identifies a number of safeguards to ensure that the amendments are least restrictive of human rights.<sup>28</sup> To maximise these safeguards, and support the parole board to exercise its discretion compatibly with human rights, the Committee should recommend:

- Clause 8 of the Bill be amended so that the parole board is required to provide written reasons for the time period imposed under s 193(5)(b) of the CS Act.
- Clause 8 of the Bill be amended so that the prescribed matters for determining the time period allows the parole board to consider all relevant matters, including matters relevant to human rights. The current drafting of proposed subparagraphs (6) and (7) could be interpreted as limiting the board's consideration to only those factors specified, and not to, for example, the impact of the decision on the prisoner's human rights. This would be inconsistent with the statement of compatibility which identifies as a safeguard 'the Board itself, in setting a period, must make a decision that is compatible with human rights'.<sup>29</sup>
- The criteria and process for obtaining the board's consent to making a parole application within the restricted period under section 193(5)(b) is clearly articulated and communicated to prisoners, so that prisoners are not arbitrarily denied the opportunity to apply for parole in appropriate circumstances.

## Expanding who can advise on safety order decisions

55. Safety orders impose additional restrictions on a prisoner than those generally in custody to ensure their safety and wellbeing. These restrictions, including separate confinement, may affect their psychological integrity.<sup>30</sup>
56. Under the CS Act, the Chief Executive may make a safety order if a *doctor or psychologist* reasonably believes there is a risk of the prisoner harming themselves. The safety order must be referred to another doctor or psychologist for review. While safety orders must not be for longer than 1 month, the chief executive may make consecutive safety orders for a prisoner. If a doctor or

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<sup>28</sup> Statement of Compatibility, Police Powers and Responsibilities and Other Legislation Amendment Bill 2024 29-30.

<sup>29</sup> Ibid 30.

<sup>30</sup> Ibid 32.

psychologist is not available to provide advice, temporary 5-day safety orders can be made. The chief executive may also make safety orders without a doctor or psychologist advice if the prisoner risks harm to, or from, someone else, or for the security or good order of the corrective services facility.<sup>31</sup>

57. Clause 17 of the Bill proposes to insert section 305B, which will enable 'authorised practitioners' to assess prisoners at risk of self-harm for the purposes of a safety order. The chief executive may appoint an accredited health service provider (defined as including a social worker or speech pathologist), a doctor, a nurse, an occupational therapist or a psychologist to be an authorised practitioner. The chief executive can only make the appointment if satisfied the person has the necessary competencies and training, in accordance with published policy, to perform the functions of the authorised practitioner.

## Relevant human rights

58. Safety orders imposing solitary confinement have a significant impact on human rights. In the prison context, Queensland courts have accepted that the adverse health effects of solitary confinement have been 'well established' in research and literature.<sup>32</sup> Prolonged solitary confinement may amount to torture or cruel, inhuman or degrading treatment or punishment<sup>33</sup> and its use, other than in cases of 'urgent need' and in 'exceptional circumstances and for limited periods', may be in breach of the right to humane treatment when deprived of liberty.<sup>34</sup> In *Owen-D'Arcy v Chief Executive, Queensland Corrective Services* [2021] QSC 273, the court considered a decision to place a prisoner on orders which would continue his solitary confinement of more than 7 years. While the applicant led insufficient evidence to demonstrate limitation of his right against torture and cruel, inhuman or degrading treatment, he successfully argued the decision limited his right to humane treatment when deprived of liberty. The respondent could not justify the limitation, as it did not provide evidence that there were no less restrictive alternatives available. The Inspection Standards for Queensland Prisons, also acknowledges that separating a prisoner from the general prison population can result in serious psychological harm to the prisoner, and carries the risk of harm and mistreatment.<sup>35</sup>

59. The Commission's 2019 Women in Prison report noted that Aboriginal and Torres Strait Islander women were disproportionately subject to safety orders,

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<sup>31</sup> *Corrective Services Act 2006* (Qld) Chapter 2, Part 2, Division 5.

<sup>32</sup> *Callanan v Attendee Z* [2014] 2 Qd R 11, [33]-[37].

<sup>33</sup> United Nations Office of the High Commissioner for Human Rights, *CCPR General Comment 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, 44<sup>th</sup> sess, (10 March 1992) [6].

<sup>34</sup> United Nations Human Rights Committee, *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee: Denmark*, UN Doc CCPR/CO/70/DNK (15 November 2000) 3 [12].

<sup>35</sup> Inspector of Detention Services, *Inspection standards for Queensland prisons* (August 2023) 12.

and were statistically more likely to be on a safety order than their male counterparts (from 2016 statistics).<sup>36</sup> Based on site visits, the report states:

At the time of our visits in 2017, the physical environment of the safety unit at BWCC was worn out, oppressive, and depressing. It is clearly a very difficult place for prisoners to be in, and must also be a challenging environment for prison officers who work there. The unit has no therapeutic purpose; it is simply physical space in which to place a prisoner to ensure she does not hurt herself or others, or suffer harm from other prisoners. Supervising staff in the safety unit we spoke with were attempting to assist women placed in this environment, but their capacity, resources, and training to do so, is extremely constrained.

Prisoners who have difficulty coping with prison regimes can self-harm, or hurt other prisoners, which results in them being placed on a safety order or in the detention unit. The overcrowding issues at BWCC appear to be impacting on the ability of some prisoners to cope with the already difficult life inside prison. ...

One woman we spoke with at BWCC in 2017, who disclosed she had mental health issues (low moods and self-harm issues), has on occasion voluntarily requested QCS to place her in the detention unit in order to gain some quiet space and to safeguard her mental health.

60. A person at risk of self harm should be provided with support to mitigate that risk, in protection of their rights including to equality, protection from torture and cruel, inhuman or degrading treatment, privacy, security of a person, humane treatment when deprived of liberty, and the right to access health services. However, separation to provide this support should only occur in exceptional circumstances where the limitation of rights it imposes can be demonstrably justified. Standard 14 of the Inspection Standards for Queensland Prisons provides prisoners at risk of self-harm or suicide are treated with dignity and respect, and are to be held under the least restrictive regime based on their assessed risk, needs, health and wellbeing.
61. Safety orders made because of risks of self harm can currently only be made on the advice of a doctor or psychologist, who are accepted as having the expertise and experience to provide this advice. The proposed amendments enable expansion of this pool of professionals. While individual professionals will be subject to specific authorisation by the Chief Executive, there is a risk that the amendments erode existing safeguards against separate confinement, where separate confinement is a significant and serious limitation of human rights.

## An evidence-based approach

62. The stated purpose of the amendments is to address the deficit in corrective service psychologists, so that timely safety orders can be made to promote the

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<sup>36</sup> Anti-Discrimination Commission Queensland, *Women in prison 2019: A human rights consultation report* (2019) 63.

rights of prisoners to humane treatment when deprived of liberty and the right to access health services.<sup>37</sup>

63. While the Commission strongly supports the expansion of health professionals available to provide prisoners with assessment, treatment and care, it does not follow that it is appropriate or necessary for these professionals to advise on safety orders. Restrictions under a safety order should not be a prerequisite for a prisoner to access appropriate health services.
64. The Commission has not been able to find recent statistics or published reviews on the use of safety orders.<sup>38</sup> The proposed amendments will increase the accessibility of safety orders, however, based on the information available, the Commission is unable to comment on whether such an amendment is justified. For example, it would be relevant to understand the current unmet need for safety orders on the basis of self harm, the effectiveness of safety orders to address self-harm, the nature and number of the restrictions imposed, and the availability of less restrictive alternatives to address these issues. An independent review of the use of safety orders in Queensland corrective services facilities would clarify these issues and provide the evidence-base for reform both in law and practice.
65. At the least, the Commission urges the need for expert advice to inform the chief executive's policy about the appointment of authorised practitioners, to ensure only health professionals suitably qualified and experienced to assess risk of self harm and restrictions are authorised.

#### *Recommendation 4:*

66. The Committee should recommend:
  - That there be an independent inquiry into legislative framework and operation of safety orders in Queensland corrective services facilities, to assess their compatibility with human rights and provide the evidence-base for reform.
  - The authorised practitioner policy proposed by clause 17 of the Bill (inserting section 305C of the CS Act) must be informed by expert health advice on who is appropriate to assess risks of self harm and risks of

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<sup>37</sup> Explanatory Note, Police Powers and Responsibilities and Other Legislation Amendment Bill 2024 14; Statement of Compatibility, Police Powers and Responsibilities and Other Legislation Amendment Bill 2024 31-32.

<sup>38</sup> The Official Visitor reports having reviewed 873 consecutive safety orders in 2022-23: Queensland Corrective Services *Annual Report 2022-23* (29 September 2023) 44. There has been some general commentary on safety orders which impose separate confinement in the following reports: Human Rights Watch *"I Needed Help, Instead I Was Punished" Abuse and Neglect of Prisoners with Disabilities in Australia* (2018); Anti-Discrimination Commission Queensland, *Women in prison 2019: A human rights consultation report* (2019); University of Queensland and Prisoners Legal Service, *Legal perspectives on solitary confinement in Queensland* (2020).



restrictions that may be imposed under a safety order, including solitary confinement.