

Police Powers and Responsibilities and Other Legislation Amendment Bill 2024

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Hon Nikki Boyd MP
Minister for Fire and Disaster Recovery
and Minister for Corrective Services
Queensland Parliament
2A George Street
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By online submission

By email: cssc@parliament.qld.gov.au

To the Minister,

Submission – Police Powers and Responsibilities and Other Legislation Amendment Bill 2024

Pride in Law thanks the Honourable Nikki Boyd MP, Minister for Fire and Disaster Recovery and Minister for Corrective Services and the Queensland Government (**'Government'**) for the opportunity to provide feedback on the *Police Powers and Responsibilities and Other Legislation Amendment Bill 2024* (**'Bill'**).

Pride in Law is Australia's first and only national non-political legal association, aimed at connecting lesbian, gay, bisexual, transgender, queer, questioning, intersex, and asexual (**'LGBTQIA+'**) members of the legal community and their allies. We work to increase visibility, education and advocacy on LGBTQIA+ issues in the law and the legal profession. This submission has been compiled by our Queensland Chapter, whose members have expertise on the law as it affects the LGBTQIA+ community in Queensland.

Background

The LGBTQIA+ community faces many systemic challenges and unjust discrimination due to the unique vulnerabilities of its members¹, including in the criminal justice system.² Pride in Law acknowledges the many diverse views that exist in our society, but ultimately believes that LGBTQIA+ individuals, like everyone in Queensland, deserve to feel safe and respected. This includes equal protection under the law and the fundamental right to recognition before the law.³

As such, Pride in Law makes the following comments on the Bill's potential impact on the LGBTQIA+ community.

¹ See generally: Australian Human Rights Commission, *Resilient Individuals: Sexual Orientation Gender Identity & Intersex Rights: National Consultation Report* (Report, 2015) 14; J Horner, *In their own words: Lesbian, gay, bisexual, trans* and intersex Australians speak about discrimination* (Report, NSW Gay and Lesbian Rights Lobby, November 2013); Jess Rodgers et. al., *'Cisnormativity, criminalisation, vulnerability: Transgender people in prisons'* (Briefing Paper No. 12/Feb 2017, Tasmanian Institute of Law Enforcement, February 2017).

² Matthew Ball, *Criminology and Queer Theory: Dangerous Bedfellows?* (MacMillan Publishers, 2016) 3.

³ *Human Rights Act 2019* (Qld) s 15(1).

Same gender safeguards in search provisions

Pride in Law generally supports the adoption of a 'same gender safeguard' to replace the 'same sex safeguard' in the amendments to the personal search provisions of the *Police Powers and Responsibilities Act 2000* (Qld) ('PPRA')⁴ and the *Crime and Corruption Act 2001* (Qld) ('CCA').⁵ We commend the Government on seeking to implement a modernised approach to these provisions which, with the proposed amendments, recognise that gender is not binary and gender can be and is expressed in various ways.

Pride in Law notes that clause 42 at subsection 5 and clause 22 at subsection 5 do not place a burden on the police officer conducting the search to explain that an individual being searched may state a preference in a way which would require different officers to search different sections of the body. As such, Pride in Law recommends that subsection 5 should become subsection 4(c) instead as this would place a positive burden on police officers to inform individuals being searched of the option to have different officers search different parts of their body. We believe this will overall aid in ensuring an individual's dignity is maintained throughout the search process.

In a 2015 report on sexual orientation, gender identity and intersex rights, the Australian Human Rights Commission commented on the importance of having strong Government policy in place to support law reform from the ground up.⁶ As such, in further support of the search provisions, Pride in Law recommends having regard to the following considerations prior to the implementation of the Bill:

- the implementation of practical guidance within the Police Operational Procedures Manual ('OPM') or the legislation itself to provide clarification on when the 'improper purpose' provision is applicable;
- a commitment to ongoing training for the Queensland Police Service ('QPS') and associated staff that focuses on diversity and intersection of LGBTQIA+ individuals encountering the criminal justice system;
- the allocation of resources to specifically examine the intersection of LGBTQIA+ identities and criminalisation to inform the policies and practices of the QPS; and
- a commitment to ongoing consultation with LGBTQIA+ stakeholder groups to inform the policies and practices of the QPS.

We also support the adoption of the 'same gender safeguard' as proposed in each the *Public Health Act 2005* (Qld) and *Mental Health Act 2016* (Qld) and believe the above to be applicable to the amendment of those acts as well.

⁴ *Police Powers and Responsibilities and Other Legislation Amendment Bill 2024* (Qld) cl 42.

⁵ *Ibid* cl 22.

⁶ See generally Australian Human Rights Commission, *Resilient Individuals: Sexual Orientation Gender Identity & Intersex Rights: National Consultation Report* (Report, 2015), retrieved online from <<https://humanrights.gov.au/our-work/lgbti-publications/resilient-individuals-sexual-orientation-gender-identity-intersex>>.

Amendment to the Corrective Services Act

In addition to the commentary above, Pride in Law notes that the personal search provision⁷ in the *Corrective Services (Promoting Safety) and Other Legislation Amendment Bill 2024* ('CSA') takes a different approach to the proposed provisions in the Bill. We do not endorse that approach. In the public hearing for the CSA held on 18 March 2024 where Pride in Law were called as a witness, we recommended that the CSA adopt a 'same gender safeguard' similar to the one proposed in the Bill, however that recommendation has not yet been adopted in the CSA.

Pride in Law believes that disparity in the two arms of the justice system is not practical and will cause unnecessary confusion. This would become particularly apparent when individuals are being transferred between police custody and the custody of a prison where the lines between when the PPRA applies, when the CCA applies and when the CSA applies become blurred. While perhaps not necessarily a common occurrence, if an individual is being searched by a police officer at a prison, rather than a corrective officer, which act would apply and therefore, which search provision? We believe this would not only lead to confusion, but potentially arbitrary decision-making.⁸

As such, Pride in Law urges the Government to consider these two reforms together, noting that we do not endorse the approach which has been adopted in the CSA.

Breast photography

Pride in Law does not endorse clause 48(4) of the Bill which provides for the removal of breast photography from the definition of 'intimate forensic procedure'⁹ nor do we support clause 5 of the Bill which would allow an officer to take photographs of a reportable offender's breasts. Breasts are a sensitive part of one's body which are consistently hypersexualised.¹⁰ The enforcement of any such provision whereby an individual is forced to expose their breasts, and therefore putting themselves in an extremely vulnerable position, must be dealt with sensitively. This is particularly so for any minority group such as the LGBTQIA+ community. Interacting with police and corrective service officers in such a way is likely traumatic for many LGBTQIA+ individuals due to the historical context of the LGBTQIA+ community's interactions with the police being 'discriminatory and violent',¹¹ and sexual assault survivors would likely be vulnerable to re-traumatisation as well. Indeed, re-traumatisation is an important consideration in working with vulnerable individuals. To quote a report from the Australian Institute of Family Studies which examined the re-traumatisation of victims in the criminal justice system: "Victim/survivors' experiences of the criminal justice process have often been so negative as to warrant reference to the justice system as the site of a 'second rape'."¹²

⁷ *Corrective Services (Promoting Safety) and Other Legislation Amendment Bill 2024* (Qld) cl 39A.

⁸ See for example Mandy Wilson et. al. 'You're a woman, a convenience, a cat, a poof, a thing, an idiot: Transgender women negotiating sexual experiences in men's prisons in Australia' (2017) 20(3) *Sexualities* 380 at 389, a study which identified instances "where inconsistencies in the application of trans policy where placement was left to the discretion of those involved in the decision-making."

⁹ *Police Powers and Responsibilities and Other Legislation Amendment Bill 2024* (Qld) Sch 6.

¹⁰ Aimee Grant, 'I...don't want to see you flashing your bits around': Exhibitionism, othering and good motherhood in perceptions of public breastfeeding' (2016) 71 *Geoforum* 52, 59; see also *Noble v Baldwin & Anor* [2011] FMCA 283 (28 April 2011) at 255-256 and *Ross v Australia's Pizza House Pty Ltd and Pugliese* [1998] HREOCA 11 where comments about breasts were found to be sexual harassment within the meaning of s28A of the *Sex Discrimination Act 1998* (Cth).

¹¹ Dwyer, Angela et al, 'Barriers Stopping LGBTI People from Accessing LGBTI Police Liaison Officers: Analysing Interviews with Community and Police' (2020) 33(3) *Criminal Justice Studies* 256, 258.

¹² Nicole Bluett-Boyd and Bianca Fileborn, 'Victim/survivor-focused justice responses and reforms to criminal court practice' (Research Report No 27, Australian Institute of Family Studies, April 2014) 12, retrieved online from <<https://aifs.gov.au/research/research-reports/victim-survivor-focused-justice-responses-and-reforms-criminal-court>>.

Pride in Law therefore recommends the following:

- If clause 48(4) must be introduced without the safeguards from the 'intimate forensic procedure' definition, at minimum, a 'same gender safeguard' should be adopted to support the clause. Likewise, if clause 5 must be introduced, we recommend a 'same gender safeguard' should be adopted to support the clause as well.
- To ensure the dignity of persons of all identities and experiences is respected, 'breasts' should be defined in the PPRA and the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* (Qld), and that definition should include the chests of transgender, gender diverse and nonbinary people and the chests of all people who have had a mastectomy.
- Practical guidance should be introduced to the Custodial Operations Practice Directives and the OPM so that an individual's preference as to how their chest area is referred to is respected and that individual's dignity is maintained.
- The use of hand-held scanners should be introduced into the definition of an 'intimate forensic procedure' in schedule 6 of the PPRA.
- Ongoing training for police and health officers conducting intimate forensic procedures with a commitment to consultation with LGBTQIA+ stakeholder groups to inform the policies and practices of officers in this area. Pride in Law notes the importance of consulting with intersex stakeholder in this respect, as it is important not to conflate intersex with gender identity.

Conclusion

Again, we commend the Government for seeking to implement changes to acknowledge the LGBTQIA+ community's experience of the world and note the recommendations above which we urge the Government to consider before enacting the Bill. As always, we thank the Government for the opportunity to provide feedback on the Bill and remain ready to assist in its implementation. If you have any queries regarding the contents of this submission, please contact the Vice President (Qld) by phone on [REDACTED] or by email at vicepresident.qld@prideinlaw.org.

Yours sincerely,

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This submission was drafted on the lands of the Yuggera and Turrbal people of Meanjin by volunteers of various backgrounds identities and faiths