

Police Powers and Responsibilities and Other Legislation Amendment Bill 2024

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Committee Secretary
Community Support and Services Committee
Parliament House
George Street
Brisbane Qld 4000

By email cssc@parliament.qld.gov.au

Dear Secretariat

Police Powers and Responsibilities and Other Legislation Amendment Bill 2024

Thank you for the opportunity to make a submission in response to the *Police Powers and Responsibilities and Other Legislation Amendment Bill 2024* ('the Bill'). We welcome the Government's commitment to recognising the rights of trans and gender diverse Queenslanders and to modernising legislation to ensure that trans and gender diverse Queenslanders are fully included in our laws, and the policies and practices that flow from them and have material impacts on people's lives, safety, health and wellbeing.

The LGBTI Legal Service is a not-for-profit statewide specialist community legal service established by and for the LGBTIQA+ community in Queensland. We are the only LGBTIQA+ community controlled legal service in Australia and the only legal service (across community legal, legal aid, and private law firms) to have achieved Rainbow Tick accreditation, an independent evidence-based assessment of an organisation's capability to provide culturally safe, accessible and inclusive services to LGBTIQA+ people.

Our practice regularly brings us into contact with LGBTQ+ clients and the communities who have had significant experience with policing and corrections, and this practice experience informs this submission. Many of our staff and management committee members identify as trans, non-binary and gender diverse, and bring invaluable living expertise. We also have strong linkages with stakeholders across the LGBTIQA+ community, legal assistance, violence prevention, and community services sectors. We thank our clients, colleagues and partners for entrusting us with their stories and perspectives. We also thank our allies, including pro bono barristers specialising in criminal law, human rights and policing, for their input into this submission.

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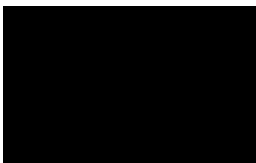


Timing and resources have limited our capacity to consult as widely and deeply as these reforms deserve, however we have consulted with organisations working to prevent and address violence against women, including the rights of criminalised women, the vast majority of whom are carry significant trauma from domestic, family and sexual violence. In particular, we are grateful for the input of Queer and Trans Workers Against Violence, a collaborative project of professionals working across LGBTIQ+ community organisations and Domestic, Family and Sexual Violence services in Queensland, Queensland Positive People, Respect Inc and DVConnect.

We have not undertaken sufficient work with people with innate variations in sex characteristics (**IVSC**) – often referred to as intersex – who are subject to involuntary search powers by police and health practitioners, nor have we had the opportunity to consult with intersex representative organisations to comment on how these bills impact people with IVSC. There is insufficient research on the ways that intersex people experience policing, incarceration, and search powers. The Bill have specific impacts for intersex persons subject to intimate and forensic searches under both police and health systems, and we strongly recommend that Intersex Human Rights Australia is invited to consult and co-design reforms impacting people with IVSC, and that that consultation is properly considered, resourced and respectfully timed having regard to IHRA's limited resources and large workload.

Please don't hesitate to contact us at reform@lgbtielegalservice.org for further questions or information. We would be pleased to provide evidence to the committee at the public hearing.

Yours sincerely



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Executive Summary

Foundational concepts

- A. **Simply de-gendering legislation does not guarantee inclusion:** Removing gendered language in laws does not, in itself, guarantee that legislation is inclusive, particularly where it relates to experiences of violence and coercion that are disproportionately gendered. De-gendered legislation risks further obscuring the ways gendered experiences impact marginalised communities in complex and specific ways that can remain invisible through application and implementation of legislative frameworks.
- B. **Human rights are indivisible:** It is vital that we do not reduce safeguards for women when implementing Births Deaths and Marriages Act 2023. Human rights are indivisible and any attempt to justify the removal of one group's right to satisfy the rights of another is not supported. Careful and clear drafting can achieve this.
- C. **If our aim is to promote inclusion, we must look at ways to reduce trauma in non-consensual searches:** research and the expertise of people with lived experience have shone a light on the high proportion of criminalised women, trans and gender diverse people who have experienced domestic, family and sexual violence, and how complex trauma is triggered and compounded by non-consensual searches by police, correctional and health staff.
- D. **In order to minimise the significant risk of trauma, effective safeguards must address not just who conducts a search, to how it is done:** To minimise the significant risk of trauma, effective safeguards must go beyond the gender of the searching officer to consider how search powers are exercised. Same gender search protocols are a starting point, not an end point.
- E. **Strip searches carry an inherent risk of trauma and must be carried out in accordance with human rights law:** consistent with the weight of evidence and human rights organisations, our primary overarching position is that strip searching is an outdated and unnecessary practice and should not be performed where alternatives exist. International human rights guidance and minimum standards¹ regarding the right to privacy² state that effective measures should be in place to ensure searches are carried out in a manner consistent with the dignity of the person who is being searched. Technology exists (such as full body scanners) that is both more effective and less invasive and should be adopted wherever possible.

¹ United Nations Human Rights Committee, General Comment No.16: The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation, 32nd sess (8 April 1988); United Nations General Assembly, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), UN Doc A/Res/65/457 (21 December 2010) rule 19.

² International Covenant on Civil and Political Rights, UN Doc A/RES/2200(XII) (16 December 1966) art 17, reflected in Human Rights Act 2019 (Qld) s 25.

Our key recommendations

Overall, we support the replacement of a sex-specific safeguard with a gender-responsive safeguard. Our recommendations highlight ways in which the safeguards ought to be improved to ensure that safeguards are responsive to the specific needs of trans and gender diverse people, close loopholes for women, trans and gender diverse people subject to searches, reduce trauma and protect dignity for searched. We recommend the bill is further amended by:

1. providing a mechanism for a searched person to **express a preference about the way in which a search is to be conducted** which will give effect to the dialogue model and support trauma-informed policing practice;
2. clarifying the term '**reasonably practicable**' through an example and an avoidance of doubt clause;
3. clarifying the term '**improper purpose**' through an example and operational guidance;
4. retaining the **same-gender safeguards for hand-held scanners**;
5. retaining the **photography of breasts** within the definition of intimate forensic procedure and **defining 'breasts' inclusively** to protect women who have undergone a mastectomy and the breasts and chests of transgender, nonbinary and gender diverse people.

Consultation and co-design

The extremely limited information provided and impossibly rushed timeframes during the 'targeted consultation' stage prevented any meaningful input from LGBTIQ+ organisations and other key stakeholders. Appropriate and respectful consultation brings valuable lived expertise, identify blind-spots, and suggest valuable improvements, and is critical to the success of any reform. We call on the committee to recommend that appropriate consultation and co-design is embedded in the process of updating the Operational Procedures Manual and developing training for police officers to support effective implementation of the reforms.

Who we are

About the LGBTI Legal Service

The LGBTI Legal Service is a not-for-profit statewide specialist community legal service established by and for the LGBTIQA+ community in Queensland. We are the only LGBTIQA+ community controlled legal service in Australia and the only legal service (across community legal, legal aid, and private law firms) to have achieved Rainbow Tick accreditation, an independent evidence-based assessment of an organisation's capability to provide culturally safe, accessible and inclusive services to LGBTIQA+ people.

Recognising the significant gaps in culturally safe and inclusive services for LGBTIQA+ people and barriers to access legal and other support services, we operate a 'no wrong door approach', brokering solutions and referral pathways for LGBTIQA+ people in Queensland (and around Australia) no matter what problems they present with. We provides information, referrals, advice and limited representation across a wide range of legal problems, with the majority of problems falling under the areas of discrimination, employment, family law and domestic violence, criminal law and victims of crime. We also develop and distributes legal information and resources for the community, and is currently developing an online information hub for non-binary people to understand how to the laws that apply in different areas of life.

LGBTILS' expertise is regularly sought out to comment on law and policy reform, and representatives sit on key stakeholder forums, including the LGBTI+ Roundtable, the Independent Ministerial Advisory Council and the LGBTIQ Consortium.

Experiences of LGBTQ+ people with criminal justice and mental health systems

What we know

Insights from research

There has been extensive Australian research by Miles-Johnson³ examining transgender community experiences and perceptions of policing in general all of which indicate pervasively challenging interactions and relationships between police and trans, gender diverse and non-binary people as accused persons and offenders in particular.

Trauma related to sexual violence and gendered violence amongst trans, gender diverse and non-binary people is high. Recent survey data analysis from the Australian Research Centre in Sex, Health and Society continues to suggest that Trans, Gender Diverse and Non-Binary people experience rates of domestic and family violence, and sexual violence that is at least comparable if not higher than rates faced by the general population of Australian women.⁴

The same report⁵ provides some insight into the broad experiences of LGBTQ+ communities experiencing family violence and intimate partner violence. Specifically, we highlight that of those who have experienced DFV or IPV, only 5.9% reported that experience to police, and of this 5.9%, only 45% felt supported by police (including LGBTI Liaison Officers). For trans people, the reporting rates were similar (6%) but the reported poorer police responses (just 32% felt supported by police).⁶

The Australian Institute for Criminology⁷ surveyed LGBTIQ+ people regarding their views of police and found that only:

- 37% found that police were helpful and supportive
- 36% thought that the police were still homophobic and transphobic
- 12% thought that police were respectful of LGBTI people
- 8% thought that police were working hard to support LGBTI people

These views were not reflective of a general distrust of or opposition to police as an institution; only 14% agreed with the statement 'I do not trust anyone in a police uniform', which was significantly less than NSW participants (20%).

³ Miles-Johnson T (2015) '[Policing Transgender People: Discretionary Police Power and the Ineffectual Aspirations of One Australian Police Initiative](#)', *Sage Open*, 5(2); Miles-Johnson T (2015) '["They Don't Identify With Us": Perceptions of Police by Australian Transgender People](#)', *International Journal of Transgenderism*, 16(3):169–189; Miles-Johnson T (2015) '[Policing Diversity: Examining Police Resistance to Training Reforms for Transgender People in Australia](#)', *Journal of Homosexuality* 63(1):103–36; Miles-Johnson T (2016) '[Perceptions of group value: how Australian transgender people view policing](#)', *Policing and Society*, 26(6): 605–626; Miles-Johnson T and Death J (2020) '[Compensating for Sexual Identity: How LGB and Heterosexual Australian Police Officers Perceive Policing of LGBTIQ+ People](#)', *Journal of Contemporary Criminal Justice*, 36(2):251–273.

⁴ Amos N et al (2024) [Rainbow Realities: In-depth analyses of large-scale LGBTQ+ health and wellbeing data in Australia](#), La Trobe University.

⁵ *Ibid*, pp 94–111.

⁶ Email from Dr Natalie Amos to LGBTI Legal Service dated 18 April 2024 providing extracts of data from Private Lives 3 specific to transgender participants (n=1494).

⁷ Dwyer A et al (2017) [Exploring LGBTI Police Liaison Services: Factors influencing their use and effectiveness according to LGBTI people and LGBTI police liaison officers](#). Australian Institute of Criminology, p 11.

Other contemporary research provides more direct insight into trans, gender diverse and non-binary communities' experiences of policing. For example, the experiences of trans women of colour who are victim-survivors of sexual violence, research interviews tended to confirm negative experiences of and interactions with police⁸.

Insights from practice

Our work with our clients and consultation with our partners have identified several instances of inappropriate, discriminatory, humiliating and degrading treatment of LGBTQ+ people during searches by police.

- A transwoman strip searched, finger printed and made to hold a placard with her deadname when photographed for minor possession offence (despite the police already having a photograph on record)
- During a sentencing hearing, police prosecutors refused to refer to a transwoman accused of minor drug offences by the correct pronouns, despite being corrected by the woman's barrister and the Magistrate.
- A trans woman who needed to use the toilet during a search was made to use the bathroom in front of a male police officer who made transphobic comments about the person's body.
- During a raid on a LGBTQ+ Asian sex worker workplace no translator was offered or provided, minimising their capacity to understand their rights.
- HIV prevention medication found on a LGBTQ+ person during the search was used to assume the person was living with HIV.
- An LGBTQ+ sex worker called the police when fearing for her safety, was subsequently searched.
- Derogatory comments were made to LGBTQ+ sex workers during raids (including a search) and a random vehicle search.
- An LGBTQ+ sex worker experienced multiple occasions when raids (including searches) resulted in up to eight officers in their hotel room or work room while the person is dressed in their work attire (lingerie).
- Irrelevant health information about a person's positive status (or assumptions about a person's status) obtained through search powers, have been documented and included in evidence in criminal proceedings
- LGBTQ+ person who are – or are presumed to be – HIV-positive, have had medications seized and confiscated, subjected to unnecessary and inappropriate mandatory disease testing of individuals and detained for longer periods in police custody without basis.
- for individuals who are not HIV-positive, but used medication such as PrEP prophylactically to prevent transmission, seizure of this medication prompts inaccurate and discriminatory assumptions being applied to them by police officers
- disease test orders under s 322(2) of the PPRA are ordered inappropriately for spitting offences, despite 30 years of studies of HIV transmission concluding that there is no risk of transmitting HIV through spitting, even where that fluid contains significant quantities of blood.

8

<https://static1.squarespace.com/static/5ec22305dc6caa06d376e009/t/5ee7705a27fc162ae13e9725/1592225951311/RP.17.03-Experiences+of+trans+women+and+DV+RR.PDF>

These instances have all occurred whilst and despite the existence of:

- a general duty on police officers to ensure that the way in which a person is searched causes minimal embarrassment and protects the dignity of the person;⁹
- guidelines for policing for people from LGBTIQ+ communities;¹⁰
- specific guidance in the Operational Procedures Manual for searching gender diverse, transgender and intersex persons;¹¹
- a long-standing LGBTI Liaison Officer program.

These practice insights suggest that the *way in which* a search is conducted is as important as the gender of the searching officer. They also point to the need for improved monitoring, oversight and accountability mechanisms for searches.

What we don't yet know

Whilst there is research around LGBTIQ+ communities' relationships with, and perceptions of police generally, there has not been sufficient qualitative research or community-led research into the specific concerns, needs and preferences of trans, gender diverse and non-binary people when they are subject to searches by police and health practitioners exercising powers under the PPRA. Whilst for transgender, non-binary and gender-diverse people who have not yet had their gender legally affirmed, being able to express a preference about the gender of the searching officer is an important element in reducing the distress and trauma caused by personal intimate searches, the insights from research and practice suggest that more is required.

To the best of our knowledge there are also no studies in relation to LGBTIQ+ peoples experiences with the involuntary mental health system.

Hear Her Voice 1 gave substantial focus to the experiences of women and girls in the criminal justice system as victim-survivors, accused persons and offenders. Unfortunately, the Women's Safety and Justice Taskforce itself was ultimately quite limited in its engagement with LGBTIQ+ communities and community organisations – a result at least in part from a limiting Terms of Reference. This created a significant gap in understanding the experiences of trans, gender diverse and non-binary communities in particular as victim-survivors, accused persons and offenders. *Hear Her Voice 1* acknowledged this gap directly, noting:

“Although the Taskforce received 27 submissions from individuals identifying as LGBTIQ+, details of their experience were scant. This has made it difficult to identify the characteristics of abuse experienced. From the limited details provided in submissions, it appears more work needs to be done to ensure people identifying as LGBTIQ+ are treated with dignity and empathy in a trauma-informed way.”¹²

The findings of landmark reports into police powers and the experience of women and LGBTIQ+ people in the criminal justice system suggests that the exercises by police of searching powers warrants a fresh review.

⁹ *Police Powers and Responsibilities Act 2000*, section 624.

¹⁰ [Policing for people from LGBTIQ+ communities \(police.qld.gov.au\)](https://www.police.qld.gov.au/policing-for-people-from-lgbtiq-communities)

¹¹ Operational Procedures Manual, section 16.10.4.

¹² https://www.womenstaskforce.qld.gov.au/data/assets/pdf_file/0014/700601/volume-2-the-mountains-we-must-climb.pdf

COMMENTS ON THE BILL

Gender Safeguard provisions

A trauma-informed dialogue model requires ability to express a preference not just about who conducts a search, but how it is conducted

To minimise the significant risk of trauma, effective safeguards must go beyond the gender of the searching officer, to consider how the search is conducted.

The same-gender starting point is an important and necessary change and – if implemented properly with training, championship, monitoring and evaluation and accountability mechanisms – should assist officers and searched persons to understand the process and reduce the incidents of inappropriate searches.

However, the provisions go no further than providing for the ability to express preference about *who* conducts the search, it says nothing about the way in which the search is conducted. The PPRA contains a general provision about searches requiring that police officers “must ensure, as far as reasonably practicable, the way the person is searched causes minimal embarrassment to the person, and take reasonable care to protect the dignity of the person”.¹³ However it is concerning that practices and experiences such as those outlined under ‘Insights from Practice’ above are still occurring.

There are specific and gendered ways in which disrespect is shown during searches of LGBTQA+ people, and to trans and gender diverse people, people living with (or presumed to have) HIV/AIDS and sex workers in particular. There are also specific ways in which greater respect can be shown during a search, which is personal to each individual.

The model in the bill also assumes that a police officers of a particular gender will have the knowledge and cultural competence to conduct the search in a way that reduces trauma, distress and embarrassment. This framing is problematic because:

- the assumption that female police officers have greater cultural competence with LGBTQA+ communities is unsupported by evidence
- the assumption will likely place additional occupational strain on female police officers, and LGBTQA+ police officers, to drive cultural change and compensate for inappropriate practices and previous traumatic experiences of LGBTQA+ people, which risks contributing to cultural load and psychosocial hazards experienced by police officers, in particular officers who identify as women and officers from minority backgrounds.

The gender diverse safeguards developed by police were developed with the intention to implement a dialogue model between police and searched persons. That intention is to be applauded. However the extremely limited information provided and impossibly rushed timeframes during the ‘targeted consultation’ stage prevented any meaningful input from LGBTQA+ organisations into how the dialogue model could be framed.

¹³ *Police Powers and Responsibilities Act 2000*, section 624.

We recommend that the gender safeguard provisions are amended to provide an ability for a searched person to express a preference about the way in which searches are conducted.

The person to be searched must be given –

- (a) an explanation of the search process; and
- (b) a reasonable opportunity to express a preference about:
 - (i) the gender of the person who is to conduct the search; **and**
 - (ii) **the way in which the search is conducted.**

Further operational guidance can be included in the OPM, which should be based on further consultation work with LGBTIQ+ and organisations working with victim-survivors of domestic, family and sexual violence.

“Reasonably practicable” requires clarification

We understand that there will be times that an officer is not available whose gender aligns with preference expressed by the person being searched, for example where a person searched in a regional station asks to be searched by a non-binary person. We understand that the inclusion of the words ‘reasonably practicable’ is intended to reflect these rare scenarios where it is not possible to accommodate those preferences.

However we are concerned that the removal of the ‘same-sex’ safeguard in combination with the ‘reasonably practicable’ exception has the effect of reducing current safeguards in the Act for (cisgender) women to be searched by a female officer.

The Explanatory Notes state that:

“It is not intended that the retention of such discretion in any way weaken the existing safeguards for women. All reasonable steps should be taken to ensure that, where a contrary preference has not been expressed, a woman searches a woman.

Where an immediate exercise of the powers is not necessary, it could be delayed until an appropriate officer is available to meet the same-gender starting point or accommodate the preference of the subject person.

However, the **effect** of both the provision and the current permissive wording of the language in the Explanatory Notes, requiring ‘reasonable steps’ to be taken and merely suggesting that the search ‘could be delayed’ is a reduction in protection from the mandatory language of the current Act.

It is vital that we do not reduce safeguards for women when implementing Births Deaths and Marriages Registration Act reforms. Human rights are indivisible and any attempt to justify the removal of one person’s right to satisfy the rights of another is not supported. The LGBTIQ+ community has never and will never call for the rights of criminalised women to be reduced to implement reforms for the benefit of LGBTIQ+ people.

Careful drafting can avoid this unfortunate – and we presume unintended – outcome.

Recommended amendments

We recommend amending the proposed clauses regarding the accommodation of preferences¹⁴ to include:

- a sub-clause requiring that reasonable and good faith attempts are made to accommodate the preference
- clarification of steps that should be taken before determining that a search, as requested, is not reasonably practicable
- an ‘avoidance of doubt’ clause to retain the same-gender safeguard for women subject to searches.

Clarification about the steps that should be taken before determining that a search is not reasonably practicable could be included in the Explanatory Notes and ought to be included in the OPM. These steps could include:

- contacting an LGBTI liaison officer
- delaying the search for a specified period of time
- contacting other police stations

We have suggested possible drafting below (***bolded and italicised***):

A preference must be accommodated unless—

(a) there are reasonable grounds to believe the preference is expressed for an improper purpose; or

(b) ***reasonable and good faith attempts have been made to accommodate the preference, and*** it is not reasonably practicable to accommodate the preference; ***and***

(c) ***for the avoidance of doubt, it will not be considered impracticable for a person identifying as a woman to be searched by someone who identifies as a woman.***

We further recommend strengthening the language in the Explanatory Notes (proposed amendments ***bolded and italicised***):

*“It is not intended that the retention of such discretion in any way weaken the existing safeguards for women. ***Unless*** contrary preference has been expressed, ***it is expected that a woman will be searched by a woman officer.***”*

*Where an immediate exercise of the powers is not necessary, it ***must*** be delayed until an appropriate officer is available to meet the same-gender starting point or accommodate the preference of the subject person.*

Operational concerns

We note that the mandatory same-sex search safeguards have been in place for decades without presenting operational difficulties.

In its 2000 report into police strip searches, the Criminal Justice Commission found in relation to same-sex search safeguards that:

¹⁴ For completeness the relevant sections of the Bill that require amendment are: s31A(5), s100A(5), s 517(3B), 519A(4), s553A(5), s624A(6), s 644A(5).

It appears that the requirements for strip searches have rarely been difficult to fulfil even though in isolated and small communities where there are few, if any, female QPS officers there may be a delay in searching a female detainee while a female officer travels from another area or is called from off-duty.¹⁵

QPS today employs 59% more operational staff than when that report was prepared, with a 72% increase in the proportion of sworn female officers.

We respectfully suggest that if the QPS rarely found it difficult to accommodate the same-sex safeguards 24 years ago, when the police force had almost half the proportion of sworn female officers than it does at present¹⁶ then it is difficult to see how operational requirements would support a reduction in the same-gender safeguard that provides for women to be searched by officers who identify as women.

Improper purpose

We recognise that criminalised people sometimes express their frustration and resistance to policing in ways that are offensive and can impact the safety and wellbeing of police officers, including through degrading language and lewd remarks. We respect and affirm QPS officers' right to safety in their places of work.

However we are concerned at the lack of clarity in the term 'improper purpose'. Improper purpose is not defined or further explained and on its ordinary meaning is vague. Without further clarification, in legislation and operational guidance, there is a risk that this exception will be interpreted through the lens of discriminatory views and prejudices against LGBTIQ+ people.

We recommend including a specific example via amendment to the clause or a legislative note.

We suggest the following drafting to the gender safeguard provisions (**bolded and italicised**):

A preference must be accommodated unless—

- (a) there are reasonable grounds to believe the preference is expressed for an improper purpose, ***for example where the person has made lewd or offensive remarks towards a particular officer or officers of the gender requested;***

Handheld scanners

Same gender safeguards ought to be retained and strengthened when used in intimate areas

We do not support the removal of the same-sex safeguard for the use of handheld scanners.

We recommend that section 39H(3) is retained and strengthened, by introducing a the same-gender safeguards where a handheld scanner is proposed to be used on an intimate area.

¹⁵ Criminal Justice Commission (2000) [Police Strip Searches in Queensland: An Inquiry Into the Law and Practice](#), p 61.

¹⁶ According to data from the [Report on Government Services 2000](#), 16% of sworn police officers in Queensland were recorded as female: see Table 7A.15 in the [Police Services Attachment](#). In the most recent Report, 27% of sworn officers in Queensland are recorded as female (see Table 6A.2 in the [Police Services Data Tables](#) to the [Report on Government Services 2024](#).

The fact that a police officer is not physically touching a person does not mean that the risk of trauma is nullified.

We support and endorse DVConnect's submissions which highlighted how evaluations had shown that scanning for hidden weapons did not improve community safety and expressed concern that the recategorisation of handheld scanners as non-intimate procedures would further "expose over-policed populations to indifferent policing approaches".

Intimate forensic procedures

Removal of photography of breasts from definition not supported

The Bill amends the definition of intimate forensic procedures in ways that reduce safeguards and respect for people subject to photographing of breasts. The Bill seeks to substitute a same gender safeguard provision for the photography of breasts which removes the requirement to obtain consent, and the same-sex/same-gender safeguard currently in the legislation.

We do not support the photographing of breasts being recategorized as a non-intimate forensic procedure. This is an invasive procedure and there should remain a degree of oversight. Removal of this requirement creates a risk that it will occur more frequently without due regard to the potential for harm. Retaining the process requiring police to seek a forensic order ensures oversight by the justices who would grant such order and can typically be obtained within a reasonable time frame. This would also create an impetus to only seek such an order where there is sufficient reason for the procedure to be carried out.

Inclusive definition of breasts required

The Bill seeks to remove gendered language surrounding references to breasts, with the aim to of extending protections to all persons who have breasts, no matter their gender. However, the simple act of removing references to gender does not necessarily promote inclusion.

The chest is an intimate and sensitive area for gender diverse people, and women who have undergone mastectomy, even if there is no breast tissue present.

Currently 'breasts' is not defined in the PPRA, and word will take its 'ordinary meaning', which is likely to still be interpreted through a gendered lens.

We recommend including breasts as a defined term, either in the Dictionary of as a sub-clause or legislative note to the relevant provisions. The definition should reflect the following:

Breasts should include the chests of women who have undergone a mastectomy as well as breasts and chests of transgender, nonbinary, and gender diverse people.

We also recommend that the OPM is updated to provide guidance to support gender diverse people to ask for their breasts or chests to be referred to using their preferred language throughout the forensic procedure. We recommend that amended operational guidance is specifically consulted with organisations representing trans and gender diverse people.