



8 October 2019

The Honourable Peter Russo MP
Chair
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane QLD 4000

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

Dear The Honourable Mr. Russo MP,

**Re: *Police Powers and Responsibilities and
Other Legislation Amendment Bill 2019 (Qld)***

Introduction

1. Rape & Domestic Violence Services Australia thank the Legal Affairs and Community Safety Committee (**'the Committee'**) for the opportunity to comment on the *Police Powers and Responsibilities and Other Legislation Amendment Bill 2019 (Qld)* (**'the Bill'**) or (**'the proposed amendments'**).
2. Rape & Domestic Violence Services Australia is a non-government organisation that provides a range of specialist trauma counselling services to people who have been impacted by sexual, domestic or family violence¹ and their supporters. Our services include being a referral option for Queensland Police when they attend domestic violence incidents. In the 2018/19 year, Rape & Domestic Violence Services Australia provided 1,645 occasions of service to those who had experienced domestic violence in Queensland and were referred to us by Queensland Police. Other services offered include NSW Rape Crisis counselling service for people in NSW who have been impacted by sexual violence and their professional or non-professional supporters; Sexual Assault Counselling Australia for people accessing the Redress Scheme

¹ Generally, Rape & Domestic Violence Services Australia prefer the term *people who have experienced sexual assault and/or domestic and family violence* to describe individuals who have suffered this type of violence, rather than the terms survivors or victims. This is in acknowledgement that, although experiences of sexual assault and/or domestic and family violence are very significant in a person's life, they nevertheless do not define that person. However, in this submission, Rape & Domestic Violence Services Australia will sometimes use the term victims as this accords with the language used in the legislation.

P 02 8585 0333 F 02 9555 5911
PO Box 555 Drummoyne NSW 2047

Funded by NSW Health, the Commonwealth Bank,
and the Australian Government Department of
Social Services.

ABN 58 023 656 939

Counselling Services

24/7 NSW Rape Crisis 1800 424 017

CBA Domestic &

Family Violence Line 1800 222 387

Sexual Assault

Counselling Australia 1800 211 028

rape-dvservices.org.au

resulting from the Royal Commission into Institutional Responses to Child Sexual Abuse; and the Domestic and Family Violence Counselling Service for the Commonwealth Bank of Australia customers and staff who are seeking to escape domestic or family violence. Our services operate from NSW; however, they are available for individuals around Australia who may have experienced sexual, domestic or family violence.

3. In providing this submission, Rape & Domestic Violence Services Australia do not propose to address every piece of legislation where there are proposed amendments.
4. Rape & Domestic Violence Services Australia support the key objective of the Bill in providing clarity around “powers of law enforcement to access information on or through electronic devices.”² It is our position that there should not be any uncertainty regarding the scope of information that can be lawfully accessed on an electronic device. This is of particular importance in accessing information that may be held by an individual in their commission of an offence, including an offence of a sexual nature.

Access to Information on or through electronic devices

5. Rape & Domestic Violence Services Australia states that the language within each piece of legislation should be as simplified as much as possible to reduce any ambiguity or confusion as to interpretation.
6. It was highlighted in the *UN Study on the Effects of New Information Technologies on the Abuse and Exploitation of Children* (2015) that:

“Advances in ICTs (information and communication technology) can also facilitate criminal collaboration and communication, while law enforcement agencies may frequently lack the human and financial resources, technical capacity and appropriate legal tools to investigate digital crime.”³

The Queensland Government should be commended on taking proactive steps in relation to the investigation of criminal activity and incorporating legislative amendments to reflect the digital age we now live in.

7. Rape & Domestic Violence Services Australia is supportive of the insertion of definitions as to ‘access information’ and ‘device information’ within the scope of the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* (Qld). These definitions as well as the examples included go directly to the policy objective of these amendments and ensures that the “legislation keeps pace with technological innovation.”⁴

² Queensland Parliament Legal Affairs and Community Safety Committee, ‘Explanatory Notes – Police Powers and Responsibilities and Other Legislation Amendment Bill 2019’ September 2019, 1.

³ United Nations Office on Drugs and Crime, *Study on the Effects of New Information Technologies on the Abuse and Exploitation of Children*, (2015), <https://www.unodc.org/documents/Cybercrime/Study_on_the_Effects.pdf> at 2.

⁴ *Ibid* at xi.

8. Our organisation is supportive of the proposed amendments to the *Police Powers and Responsibilities Act 2000 (Qld)*, *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004 (Qld)* and the *Criminal Code Act 1899 (Qld)* in relation to access to information on or through electronic devices. This is given that the “access information powers” in the *Police Powers and Responsibilities Act 2000 (Qld)* and the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004 (Qld)* are utilised within the scope of search warrant or crime scene warrant provisions regarding previously convicted offenders.
9. We are also reassured by the proposed amendments to the *Criminal Code Act 1899 (Qld)* as to contravening an ‘Access Information Order’. It is important that the Committee are enliven to the practical application of Police having the power to obtain an ‘Access Information Order,’ and still not being able to access a mobile device in circumstances where, for example, an offender provides an inaccurate passcode etc. It will be of benefit to Police to have this offence available where these circumstances present themselves.
10. Rape & Domestic Violence Services Australia do, however, have concerns that the ‘access information powers’ will also be used against those who have experienced sexual, domestic and/or family violence in an attempt to gain access to their electronic device to investigate the crime committed. We assert that the Police should only use these ‘access information powers’ where complainants consent to their electronic devices being accessed in an effort to gather information against the offender.
11. Our organisation is supportive of the proposed amendments on the basis that the re-traumatisation of those who have experienced sexual, domestic and/or family violence is contained as far as possible through the process. Amendments should be used only for their intended purpose in clarifying the powers of law enforcement agencies to access information on alleged offenders’ electronic devices.

Recommendation 1: That the proposed amendments to the *Police Powers and Responsibilities Act 2000 (Qld)*, *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004 (Qld)* and the *Criminal Code Act 1899 (Qld)* are utilised for the intended policy objective being to clarify the scope of powers of law enforcement agencies to access information held on or through electronic devices of alleged offenders.

Information Sharing

12. Rape & Domestic Violence Services Australia state that it is necessary to legislate that there be information sharing in the context of domestic and family violence between government agencies and non-government agencies who are providing domestic and family violence support services. It is our understanding that this occurred in 2016 when amendments were made to Part 5A of the *Domestic and Family Violence Protection Act 2012 (Qld)* (**Part 5A**).
13. Australia’s National Research Organisation for Women’s Safety (**ANROWS**) (2015) highlighted that a critical theme for the enforcement of protection orders not only included information sharing, it also included “interagency coordination and

*cooperation; knowledge, skills and attitudes of professionals; and risk assessment and risk management.*⁵

14. Rape & Domestic Violence Services Australia note that research indicates that “a coordinated or integrated response allows awareness of the risk to the victim and the behaviour and dangerousness of the perpetrator,”⁶ and the Queensland Police Service are an integral part of this information sharing approach.
15. Interagency cooperation and coordination, particularly where information is shared can be a powerful tool to ensure the safety of those who have experienced sexual, domestic and/or family violence.
16. Our organisation states Part 5A should include civilian staff members of the Queensland Police Service to ensure their duties can be carried out effectively.
17. Rape & Domestic Violence Services Australia would also urge the Committee to recommend that the *Domestic and Family Violence Information Sharing Guidelines* be amended to reflect this change to Part 5A.
18. Rape & Domestic Violence Services Australia recommend that if the proposed amendment is made to Part 5A, civilian staff members should receive comprehensive initial and ongoing training as to privacy laws, confidentiality needs of those who have experienced traumatic events, and what information can and cannot be shared.

Recommendation 2: That if Part 5A of the *Domestic and Family Violence Protection Act 2012* (Qld) is amended to include civilian staff members of the Queensland Police Service, sharing information with government and non-government agencies as to domestic violence matters; then these staff members should receive initial and ongoing training as to privacy laws, confidentiality needs of those who have experienced traumatic events and information sharing guidelines.

Ongoing monitoring and evaluation of the proposed amendments

19. Rape & Domestic Violence Services Australia recommends that if any changes are made to the existing legislation then there should be a mechanism for ongoing monitoring and evaluation of these changes. This is especially pertinent in the context of these proposed amendments as new technologies will continue to emerge in the future. The process for ongoing monitoring should include an opportunity to examine the effectiveness of any change to the legislation and ensure that no unintended consequences have arisen.

⁵ Australia’s National Research Organisation for Women’s Safety, *Domestic and family violence protection orders in Australia: An investigation of information sharing and enforcement: State of Knowledge Paper*, (December 2015), <https://d2rn9gno7zhxqg.cloudfront.net/wp-content/uploads/2019/02/19024752/16_4.1-Legal-WEB_FINAL_0-1.pdf> at 45.

⁶ Finn & Compton-Keen, (2014) cited in Australia’s National Research Organisation for Women’s Safety, *Domestic and family violence protection orders in Australia: An investigation of information sharing and enforcement: State of Knowledge Paper*, (December 2015), <https://d2rn9gno7zhxqg.cloudfront.net/wp-content/uploads/2019/02/19024752/16_4.1-Legal-WEB_FINAL_0-1.pdf> at 40.

20. Given the context of the proposed amendments to accessing information on or through electronic devices is specific regarding child sex crime perpetrators,⁷ it may also be pertinent to consider the proposed amendments in line with International instruments such as the *United Nations Convention on the Rights of the Child (CRC)* or the *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*. In doing so, it would be imperative to monitor any changes in policy or practice at an international level and consider any emerging relevant protocols that may be adopted in the future by the United Nations.

Recommendation 3: That there be a further mechanism for ongoing monitoring and evaluation of any changes to law and legal processes, with an opportunity to examine the effectiveness of any such changes, including seeking to address any unintended consequences.

Recommendation 4: That the Queensland Government consider the proposed amendments in line with the relevant International Instruments and continue to monitor any changes in policy or practice at an international level that may be adopted in the future by the United Nations.

Conclusion

21. In conclusion, Rape & Domestic Violence Services Australia urge the Committee to consider the above and to always consider those impacted by sexual, domestic and family violence when making any amendments or additions to current legislation.
22. We again thank the Committee for the opportunity to comment on the *Police Powers and Responsibilities and Other Legislation Amendment Bill 2019 (Qld)*.
23. If you have any questions or would like to discuss further, please do not hesitate to contact me on (02) 8585 0333 or by email at [REDACTED]

Yours faithfully,



Karen Willis

Executive Officer

Rape & Domestic Violence Services Australia

⁷ Queensland Parliament Legal Affairs and Community Safety Committee, 'Explanatory Notes – Police Powers and Responsibilities and Other Legislation Amendment Bill 2019' September 2019, 1.