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The Committee Secretary
Legal Affairs and Safety Committee
Parliament House
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By email: lasc@parliament.qld.gov.au

8 October 2021

RE: INQUIRY INTO THE POLICE POWERS AND RESPONSIBILITIES AND OTHER LEGISLATION BILL 2021

We welcome and appreciate the opportunity to comment on the Bill. We particularly note and welcome the proposed changes to fix the language of the *Police Powers and Responsibilities Act* 2000 and the *Police Powers and Responsibilities Regulation* 2012 to now refer to Aboriginal person, Torres Strait Islander person, and Aboriginal and Torres Strait Islander peoples.

Preliminary Consideration: Our background to comment

The Aboriginal and Torres Strait Islander Legal Service (Qld) Limited (ATSILS), is a community- based public benevolent organisation, established to provide professional and culturally competent legal services for Aboriginal and Torres Strait Islander people across Queensland. The founding organisation was established in 1973. We now have 24 offices strategically located across the State. Our Vision is to be the leader of innovative and professional legal services. Our Mission is to deliver quality legal assistance services, community legal education, and early intervention and prevention initiatives which

uphold and advance the legal and human rights of Aboriginal and Torres Strait Islander people.

ATSILS provides legal services to Aboriginal and Torres Strait Islander peoples throughout Queensland. Whilst our primary role is to provide criminal, civil and family law representation, we are also funded by the Commonwealth to perform a State-wide role in the key areas of Community Legal Education, and Early Intervention and Prevention initiatives (which include related law reform activities and monitoring Indigenous Australian deaths in custody). Our submission is are informed by nearly five decades of legal practise at the coalface of the justice arena and we therefore believe we are well placed to provide meaningful comment, not from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences.

COMMENT

We note that the proposed *Police Powers and Responsibilities and Other Legislation Bill* 2021 has a number of objectives and wish to draw the Committee's attention to a few key areas.

CHANGES TO THE POLICE POWERS AND RESPONSIBILITIES ACT 2000

Clause 54 and Schedule 1: Changes to the wording contained in the *Police Powers and Responsibilities Act* 2000 and the *Police Powers and Responsibilities Regulation* 2012

We welcome the proposed changes to fix the archaic language of the *Police Powers and Responsibilities Act* 2000 and the *Police Powers and Responsibilities Regulation* 2012 to now refer to Aboriginal **person**, Torres Strait Islander **person**, and Aboriginal and Torres Strait Islander **peoples**. Section 15 of the *Human Rights Act* 2019, *Equality before the law*, draws upon Article 16 of the *International Covenant on Civil and Political Rights* that everyone shall have the right to recognition everywhere as a person before the law. The changes are also congruent with section 28 of the *Human Rights Act* 2019 which affords recognition and respect for the distinct cultural identity of Aboriginal peoples and Torres Strait Islander peoples.

Clauses 33-35: Provisions for banning notices for possession of knife offences

The provisions propose to extend the banning notice regime to allow police to issue banning notices to an adult for an offence of unlawfully possess a knife in a relevant public place. The need for such a provision is clear in the circumstances of disarming those who attend licensed premises, safe night precincts, and special public events and the proposal is said to be aimed at reducing the opportunity for people with a knife to make poor choices in a high risk area.

The *Weapons Act 1990* section 51, *Possession of a Knife in a Public Place or School,* provides that *a person must not unlawfully possess a knife unless that person has a reasonable excuse*. Subsection 2 identifies a number of situations which would be regarded as a reasonable excuse. Those exceptions are limited and fail to take into account a broader number of circumstances in which a person may reasonably be in possession of a knife. Reasonable excuse needs a broader ambit for being reasonable in the circumstances, or even adopting broader legislative language that there was a lawful purpose and the person's conduct was, in the circumstances, reasonable for that purpose.[1]

Thus a homeless person (or any other person) who needs a steak knife to cut up meat cooked on the public barbeques at Southbank is technically committing an offence. The reality of homelessness is that many people carry their worldly goods with them wherever they go. Not only would a charge be deeply unfair but a banning order on top of that would be deeply oppressive. A more proportionate measure would require an actual nexus between the possession of a knife and an entry onto or into a public place where alcohol is being served.

Clause 37: Alternative to destruction of drug matter as a thing used in the commission of an offence

We note the proposal to amend section 707 to allow samples of drug to be used to participate in the Enhanced National Intelligence Picture on Illicit Drugs (ENIPID) program. Our only concern is the need for an assurance that powers for intelligence gathering should not come at the expense of fair trial guarantees. The right to a fair hearing is a cardinal requirement of the rule of law and fair trial rights arise under common law, they are also recognised under section 31 of the *Human Rights Act* 2019. Drugs should not be destroyed or dispensed in another fashion until appeal avenues have been exhausted or come to an end. We are aware of the difficulties faced by incarcerated prisoners to access legal representation for appeals, frequently appeal courts have to consider whether to allow an appeal out of time as well as to consider the appeal itself. So for that reason some latitude in time should be given so that a sample of the drug should survive until the completion of the appeal process.

Clause 38: Extension of protection of methodologies for persons who are not police officers .

Currently, section 803 provides limited protection to police officers in a court proceeding by allowing them to claim privilege and not disclose certain information about a police methodology unless directed.

Clause 38 of the draft Bill will amend section 803 (Protection of methodologies) of the PPRA to also afford QPS staff members a legal protection from revealing police methodologies in court.

[1] See for example the format of Section 10D Defence for s 10C contained in the *Summary Offences Act* 2005

The aim is to protect confidential methods by police and staff members from the QPS Electronic Evidence Unit to access devices and download information from them when they have been seized by police. The locking and encrypting of electronic storage devices, such as mobile telephones and computers, are common strategies used by criminals to defeat investigating police should the device be seized.

The scrutiny of the court as to how convictions are secured through evidence is a central tenet of the fairness of trial. Clearly the supervision of the courts is essential in making determinations as to whether the explanation of a methodology is essential to afford a fair trial, and to ensure the legitimacy of convictions.

Further, the legislation is unclear as to what additional measures of accountability are to be put into place for non-police officers who carry out activities anticipated in clause 38 and who will no longer be supervised by a police officer as envisaged in clauses 36 and 41.

CHANGES TO THE CORRECTIVE SERVICES ACT 2006

Part 3 – Proposed changes to the *Corrective Services Act* with respect to matters of parole – Publication of parole decisions

We note *"The draft Bill provides a new power for a regulation to prescribe certain parole decisions that must be made public. This amendment will support transparency and public accountability of the Board's decisions."*.

In our view decisions to publicise parole decisions should not be made lightly and should not be subject to some automatic rule. There are serious concerns about blanket publication of parole decisions, including interfering with rehabilitation and controlled re-integration into the community.

Vigilantism is an ever-present threat. Only recently there has been a tragic death caused by vigilantism so the concern is grounded in experience. A further consideration not contained within the statement of compatibility with Human Rights is the operation of section 16 in these circumstances. Section 16 with respect to protection from arbitrary interference with life is likely to impose additional duties on any public authority that has people under its care, custody or control. Failure to protect from risk, especially risk created by the actions of a public authority, is an important consideration. In our submission, the sort of publication envisaged would be incompatible with human rights.

Part 3 – Proposed changes to the Corrective Services Act with respect to matters of parole – provisions concerning no body no parole.

While the objectives of the changes are understandable, there will often be situations where the logic of no body no parole is circular. The Innocence Project has led to the overturning of wrong convictions for murder. In some circumstances the person simply will not know. Had the matinee jacket not been found a few years after Azaria Chamberlain's disappearance and presumed death, the life sentence imposed upon her mother would have continued and the situation of a Lindy Chamberlain trying to satisfy no body no parole laws would have been hopeless and unjust.

Part 3 – Proposed changes to the Corrective Services Act with respect to matters of parole – Increasing of times between the making of parole applications

Increasing the time between certain parole applications from 12 months to three years is an unacceptable length of time in our view – all the more so given that currently there is at least an 8-month waiting period to be heard post the lodgement of an application! Such is clearly unacceptable – and this proposal would exacerbate an already untenable situation.

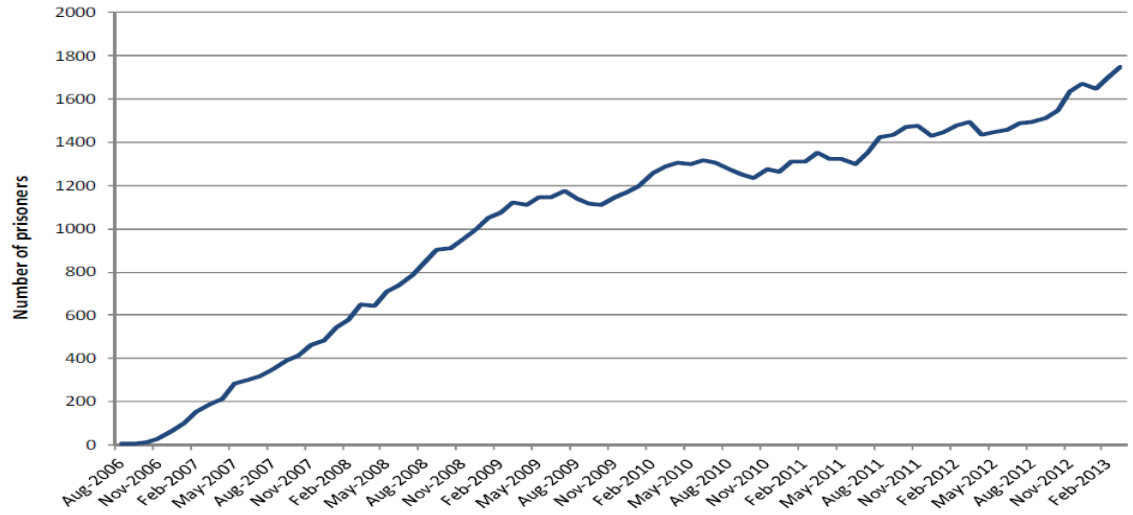
Parole changes as a disproportionate response

As noted in the *Queensland Parole System Review* in 2017, the substantial increases in incarceration and re-incarceration figures that followed changes to the Corrective Services Act had not been anticipated at the time of the passage of those changes through Parliament in 2006.

At the time of the writing of the report, the number of prisoners retained in the prison system due to suspensions and cancellation of court ordered parole had risen steeply. The graph printed in the Parole System Review shows what words alone would fail to express.[2]

[2] W. Sofronoff QC, *Queensland Parole System Review Final Report*, para 447, ("Sofronoff Report") available at https://parolereview.premiers.qld.gov.au/assets/queensland-parole-system-review-final-report.pdf

Figure 4.5: Prisoners in custody due to court ordered parole suspension or cancellation



The Queensland Productivity Commission similarly noted a number of factors that had contributed to the very large increases in-incarceration including the introduction of further limitations to the availability of parole.[3]

Since both those reports were published the parole system has become even more overloaded, the prisons are overcrowded due to prisoners facing extraordinary delays to get parole applications considered at all, and consequently the parole system has effectively become logjammed. Any further restrictions to applying for parole would have a disproportionate effect and introduce procedural unfairness where none need exist. For that reason alone, all the proposed changes to the *Corrective Services Act* should be removed from this bill.

CONCLUSION

We thank you for the opportunity to comment on the proposed legislation We would urge that any options to increase powers should be both necessary and proportionate and that accountability measures are put into place for police staff who will no longer be supervised by police officers due to clauses 36 and 41.

Yours faithfully,

[3] QPC *Report on Imprisonment and Recidivism* available at https://www.qpc.qld.gov.au/inquiries/imprisonment/

Shane Duffy – Chief Executive Officer