Police Powers and Responsibilities and Other Legislation Amendment Bill 2024

Explanatory Notes

Short title

The short title of the Bill is the Police Powers and Responsibilities and Other Legislation Amendment Bill 2024.

Policy objectives and the reasons for them

The Queensland Government is committed to recognising the rights of trans and gender diverse Queenslanders.

On 14 June 2023, the Queensland Parliament passed the *Births, Deaths and Marriages Registration Act 2023* (BDMR Act) to improve the registration of life event services in Queensland and strengthen legal recognition of trans and gender diverse people. The BDMR Act will commence by proclamation.

Upon commencement, the BDMR Act will introduce a new framework for a person to register an alteration of their record of sex and a sex descriptor that matches their identity and is most meaningful to them. This removes the requirement for a person to undergo sex reassignment surgery before their gender identity can be legally recognised.

In response to Recommendation 3 of the then Legal Affairs and Safety Committee Report No. 41, 57th Parliament *Inquiry into the Births, Deaths and Marriages Registration Bill 2022*, Queensland Government agencies reviewed portfolio legislation to assess the use of gendered language and identify any amendments required as a result of the introduction of the new laws.

The objective of the Bill is to make the necessary amendments to ensure that trans and gender diverse people receive the same protections as other Queenslanders without making specific reference to gendered language, unless absolutely necessary. The Bill, in making the necessary amendments, aims to achieve operational improvements in legislation administered by the Queensland Police Service (QPS), the Department of Justice and Attorney-General, and Queensland Health.

The Bill enacts a range of amendments to the following legislation to ensure that all Queenslanders are equally recognised by law and afforded the same rights and protections:

- the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*;
- the *Crime and Corruption Act 2001*;

- the *Mental Health Act 2016;*
- the *Police Powers and Responsibilities Act 2000*;
- the *Public Health Act 2005;*
- the *Summary Offences Act 2005*; and
- the *Terrorism (Preventative Detention) Act 2005*.

Creating same-gender safeguards

Queensland has some of the most stringent safeguards in relation to police powers in Australia, including those that protect the dignity of people who are searched by members of the QPS.

A review of the *Police Powers and Responsibilities Act 2000* (PPRA) and *Crime and Corruption Act 2001* (CC Act) identified several provisions that require amendment to ensure the continued lawfulness of personal searches and promote the rights of trans and gender diverse people.

Currently, some existing safeguards refer to the "sex" of the subject person and the officer exercising the power. Upon commencement of the BDMR Act, the application of these same sex safeguards becomes impractical. In some cases, it may not be possible to apply the same sex safeguards.[1] The terminology proposed is intended to be broad enough to recognise the diversity of people who are of a gender *other* than 'male' or 'female', while still respecting the individual's self-identity.

In 2020, the QPS updated its operational procedures in consultation with the Queensland Human Rights Commission, Queensland Government LGBTI Roundtable and the LGBTI Legal Service as part of a human rights review to create a model for searching gender diverse, trans or intersex people. This model promotes the rights of trans and gender diverse people by allowing them to raise concerns about who will conduct a personal search.

The Bill extends on these principles and will ensure these safeguards are enshrined in primary legislation by:

- replacing existing same sex safeguards to create flexibility in the exercise of powers, enabling an officer to consider a person's gender and acknowledge that there may be circumstances where a person may prefer a person of a different gender to exercise the power;
- removing the ability for any police officer or authorised commission officer to view the monitor of a video camera in the area where the person is searched;
- providing that a person subject to the exercise of a power must be given an explanation of the process and a reasonable opportunity to express a preference about the gender of the officer, and the preference must be accommodated unless an exception applies.

When a person is asked if they have a preference about who will exercise the power, the person has a choice to disclose their gender identity or raise why they would rather have another person, or a person of a particular gender, conduct the search. There is no requirement for a

[1] For example, where a person has altered their record of sex and there is no officer in Queensland with the same recorded sex as the person.

subject person or an officer to provide information about their gender at any stage of the process.

However, an officer retains a limited discretion about who may exercise the power. There are two main purposes for this:

a. the need to allow a power to be exercised in certain situations where an officer of the person's preferred gender may not be available or the emergent nature of the situation warrants immediate action; and
b. to allow the officer to not accommodate a preference which is made in bad faith or for ulterior or nefarious reasons.

The Bill provides that a preference does not need to be accommodated if the officer considers there are reasonable grounds to believe the preference is expressed for an improper purpose. The phrase "improper purpose" is intended to operate broadly. For example, it could capture the circumstances where a subject might:

- 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.

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.

It is considered necessary that officers retain discretion about who exercises the power for several reasons. These are:

- to keep the community safe where an immediate search is necessary or it is not reasonably practicable to find an officer of the same gender or to accommodate a preference;
- to keep officers safe where a subject person expresses a preference for an improper purpose.

In circumstances where no one of the person's preferred gender is reasonably available to exercise the power, the amendments provide that the power can be exercised by two officers (or helpers) of different genders depending on the area of the body. This allows flexibility to address a person's preference, particularly where they are required to expose parts of their body to someone of a particular gender.

The Bill also amends the *Mental Health Act 2016* (Mental Health Act) and the *Public Health Act 2005* (Public Health Act) to update requirements for certain searches under those Acts to reflect a contemporary understanding of gender, promote a person-centred approach and ensure that searches necessary for safety can be lawfully conducted. This is to be achieved by providing that, in general, a person being searched is given an opportunity to express their

preference about the gender of the person carrying out the search, and the gender of the searcher is the gender preferred by the person. Where this is not reasonably practicable — for example because the person being searched is not able or does not wish to express a preference — the amendments provide that a search is to be conducted by a person of the same gender as the person being searched, to the extent that this is reasonably practicable.

The amendments recognise gender diversity, support safety and improve the operation of health legislation.

Amendments to the *Mental Health Act 2016*

Chapter 11, Part 7 of the Mental Health Act deals with security of authorised mental health services and public sector health service facilities, including searches of patients and visitors. The primary purpose of the search provisions is to reduce the risk of harm to patients, staff and visitors.

Under these provisions, searches may be conducted to detect or remove a harmful thing. *Harmful thing* means anything that may be used to threaten a person's health or safety, or the security or good order of the service, or anything that, if used by a patient in the service is likely to adversely affect their treatment and care.

The requirements for searches differ between patients, and visitors. If a doctor or health professional believes the person may be in possession of a harmful thing, a search may be conducted for involuntary patients and voluntary classified patients in an authorised mental health service and for persons detained in a public sector health service facility pending a recommendation for assessment being made. A search may also occur for involuntary patients, to detect whether any harmful things are in their possession, on admission or entry into a high security unit or other authorised mental health services approved by the Chief Psychiatrist as a place where a search on admission or entry may be required. Searches of visitors can also be carried out, to detect whether the person may have a harmful thing, on admission or entry into a high security unit or other authorised mental health services approved by the Chief Psychiatrist as a place where a visitor may be asked to participate in a search or submit their possessions to a search.

The Mental Health Act currently provides that personal searches that require the searcher to touch the clothing worn by the person in order to detect things in their possession, and searches requiring the removal of clothing, must be carried out by a person or persons of the same gender as the person being searched. This requirement does not reflect modern understandings of gender or recognise the transgender and gender diverse community. If a person identifies with a gender other than male or female (for example, non-binary, agender, or genderqueer), it may not be possible or practicable to have a person of the same gender conduct the search because there are no staff in the relevant facility who are known to have the same gender identity. However, the search may be essential for the safety of the person and others. In some circumstances, the person being searched may feel more comfortable having a person of a different gender conduct the search — for example, a transgender man may feel more comfortable being searched by a woman. There is currently no ability to accommodate a request by a person to be searched by someone of a different gender.

Amendments to the search provisions are required to ensure proper consideration can be given to a person's gender-related and mental health needs, while allowing appropriate flexibility to account for related operational and safety risks.

Amendments to the *Public Health Act 2005*

Chapter 4A of the Public Health Act provides powers for dealing with the health of persons with major disturbances in mental capacity caused, for example, by mental illness, disability, injury or intoxication by drugs or alcohol.

If a person appears to be at immediate risk of serious harm because of this major disturbance, and appears to require urgent examination, or treatment and care, an ambulance officer or police officer may take the person to a treatment or care place such as a public sector health service facility.

If a doctor or health practitioner in the treatment or care place believes the person may have possession of a harmful thing, they can search the person. *Harmful thing* is defined in section 157X of the Public Health Act to mean anything that may be used to threaten the security or good order of a public sector health service facility, threaten a person's health or safety, or that, if used by a patient in a public sector health service facility, is likely to adversely affect the patient's treatment or care.

As with the Mental Health Act, the Public Health Act requires that personal searches that require the searcher to touch the clothing worn by the person in order to detect things in their possession and searches requiring the removal of clothing must be carried out by a person or persons of the same gender as the person being searched.

This does not reflect modern understandings of gender. If a person identifies with a gender other than male or female, it may not be possible or practicable to have a person of the same gender conduct the search. However, the search may be essential for the safety of the person experiencing the mental disturbance, other patients and staff. There are also circumstances in which the person being searched may prefer that a person of a different gender conducts the search.

Amendments are required to ensure there is flexibility to have searches conducted by a person or persons of a different gender to the person being searched, if the person being searched has a preference for a searcher of a different gender which can be accommodated, or if it is not practicable or possible to comply with the 'same-gender' requirement. The objective is to better recognise the non-binary understanding of gender in modern society, respect the gender-related needs of the individuals being searched and ensure searches that are essential for the safety of patients, staff and others can be carried out in circumstances where it is not reasonably practicable to meet the 'preferred gender' or 'same-gender' requirements.

Amendments relating to photographing reportable offenders

The *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* (CPOROPOA) requires reportable offenders to report their personal details to the police commissioner, including any tattoos or permanent distinguishing marks the reportable offender has. Police officers are empowered to require a reportable offender, other than a female or a transgender person who identifies as a female, to expose their breasts for photography. These

photographs may be retained for law enforcement, crime prevention or child protection purposes.

The amendments in the Bill extend that power to a person of any gender. The Bill requires that the person taking the photo must, if reasonably practicable, be of the same gender as the reportable offender. The reportable offender must be given an explanation of the process and a reasonable opportunity to express a preference about the gender of the photographer. This allows a police officer to consider the diverse needs and take into account the specific circumstances of any person when their breasts are photographed.

Amendments relating to the use of hand held scanners

In prescribed circumstances, a police officer may, without a warrant, require a person to stop and submit to the use of a hand held scanner. A police officer does not need reasonable suspicion that the person is carrying a knife or doing anything unlawful.

A police officer does so by passing the hand held scanner in close proximity to the person or the person's belongings. A person is not touched by the police officer using the hand held scanner.

The current PPRA provisions require that the police officer is of the same sex as the person to be scanned, where reasonably practicable.

The amendments in the Bill remove this safeguard because the person is not touched by the officer during the procedure.

Amendments relating to forensic procedures

Chapter 17 of the PPRA sets out a framework for a qualified person to conduct forensic procedures on a person, including examinations, photographs and samples taken of a person's genitals, buttocks or breasts, and taking identifying particulars. Usually, a qualified person is a doctor, dentist, forensic nurse examiner, or for taking identifying particulars, a police officer. Some police officers are authorised by the police commissioner to perform non-medical examinations.

Section 517 of the PPRA enables a qualified person to ask another person to give reasonably necessary help with performing a forensic procedure. Currently, this helper must be of the same sex as the person to undergo the procedure, unless the helper is also a doctor, dentist or forensic nurse examiner (a ***forensic examiner***).

The Bill removes the references to sex and instead inserts a same gender safeguard in relation to a helper who is not a forensic examiner.

The Bill removes the requirement in section 502 that a forensic nurse examiner must be of the same sex as the person who is to undergo the procedure. This harmonises section 517 of the PPRA with this section.

Under Schedule 6 of the PPRA, there are currently several definitions that refer to the breasts of a female. These are specified for the terms "DNA sample", "identifying particulars" and "intimate forensic procedure".

The Bill removes references to sex in relation to breasts. In this way, the Bill extends several safeguards to apply to all people, including:

- the prohibition on taking a DNA sample (a hair sample) from a breast;
- the prohibition on taking a measurement of a person's breasts as an identifying particular; and
- some of the existing safeguards for women by ensuring that a forensic procedure performed on any person's breasts, other than photography, is considered an intimate forensic procedure.

The Bill also recategorises the photography of female breasts from an intimate forensic procedure to a non-intimate forensic procedure, enabling a police officer to take a photograph of the breasts of a person of any gender without requiring forensic procedure consent.

Because photography does not involve touching the person, this can be considered a "non-intimate forensic procedure". The Bill inserts a same gender safeguard in relation to the photography of the breasts of a person of any gender.

Amendments to remove unnecessary gendered language

Body piercing of minors

It is an offence against the *Summary Offences Act 2005* (SO Act) to perform body piercing on particular parts of the body of a child. The offence uses gendered language to refer to the external genitalia.

The Bill removes the gendered language and refers only to the "external genitalia". This amendment is not intended to change the underlying policy of the offence.

Preventative detention orders

The *Terrorism (Preventative Detention) Act 2005* (TPD Act) provides that a person who is subject to a preventative detention order has the right to contact other people during detention, including a family member. The term "family member" is currently defined to include a spouse or same-sex partner.

Under the *Acts Interpretation Act 1954*, the term "spouse" includes a de facto partner or civil partner.[2] It also declares that the gender of two people in a de facto relationship is irrelevant.[3]

Under federal law, a marriage can be between two people regardless of gender.[4] There is no eligibility criterion related to gender or sex in the *Civil Partnerships Act 2011*.

The Bill removes the reference to a same-sex partner. This amendment is not intended to change the underlying policy of the provision.

[2] *Acts Interpretation Act 1954* sch 1 (definition of 'spouse').
[3] *Acts Interpretation Act 1954* s 32DA.
[4] *Marriage Act 1961* (Cth) as amended by the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* (Cth).

Minor miscellaneous amendments

The Bill, through schedule 1, makes minor amendments to various provisions. These amendments replace gendered language with gender neutral language, reflecting a contemporary approach in a manner that accords with the principles of plain language drafting. These amendments are not intended to change the underlying policy of the provisions.

Touching garments of watchhouse entrants

The Bill includes an amendment to insert a power to allow a watchhouse officer or an assistant to touch the garments an entrant to a watchhouse is wearing to inspect the entrant's belongings.

The Bill also inserts a provision validating any inspection purportedly made under section 644 of the PPRA involving the touching of a garment the entrant was wearing.

Miscellaneous amendments to the *Corrective Services Act 2006*

Restricting prisoners from reapplying for parole after being refused

Under the current parole framework, prisoners are able to frequently reapply for parole after their parole application has been refused. This occurs even though the risk they pose to the community has not diminished, or they have not demonstrated remorse for their actions, or meaningfully engaged in rehabilitative activities. These frequent parole reapplications, where prisoners have limited prospects for parole, cause repeated and unnecessary stress on victims and Eligible Persons (EP) registered against them.

The Bill amends the *Corrective Services Act 2006* (CSA) to provide the Parole Board Queensland (Board) with broader discretion to set a longer period during which a prisoner cannot reapply for parole after having an application refused. This will provide the Board with discretion to set an appropriate limit on prisoners reapplying for parole, considering the individual circumstances of the case and the need to maintain prospects of parole release for the prisoner.

Promoting timely prisoner safety order decisions

The increasing number of prisoners presenting with complex needs in addition to a national shortage of psychologists is impacting on Queensland Corrective Services' (QCS) ability to assess prisoners at risk of self-harm or suicide for the purpose of a safety order. Under the CSA, only a doctor or psychologist can assess a prisoner's risk of self-harm or suicide to inform a decision about managing the prisoner on a safety order. In practice, this function is only performed by QCS employed psychologists.

There are a range of broader professionals with suitable and relevant expertise and training in mental health that could be engaged to successfully complete these assessments, including social workers, speech pathologists, occupational therapists and appropriately qualified registered nurses. The legislation currently acts as a barrier to engaging additional suitable professionals to perform this function.

To support QCS to assess prisoners at risk of self-harm or suicide in a timely manner, the Bill amends the CSA to expand the range of suitably qualified professionals that can be appointed

by QCS to assess this risk. Efficient clinical assessments result in decision makers issuing timely safety orders for prisoners at risk of harming themselves or others.

Achievement of policy objectives

The Bill will achieve the policy objectives by making amendments to the CPOROPOA, CC Act, Mental Health Act, PPRA, Public Health Act, SO Act, TPD Act and CSA.

Searching people and inspecting entrants' belongings

The Bill inserts new sections 553A, 624A and 644A of the PPRA and new section 100A of the CC Act to replace the sex-specific safeguard with a gender-responsive safeguard which provides that:

- as a starting point, a search or inspection must be conducted by an officer of the same gender as the subject person;
- before searching or inspecting anyone, an officer must explain how the search will be conducted and ask the subject person if they have a preference about the gender of the officer;
- a preference may be expressed in a way that would require a split search or inspection;
- the officer must accommodate a preference unless there are reasonable grounds to believe the preference is expressed for an improper purpose or it is not reasonably practicable to accommodate the preference;
- the search or inspection, or part of it, may be conducted by a different officer, or by a person acting under the direction of the officer, for particular purposes.

The Bill introduces a consistent approach for personal searches across the PPRA and CC Act.

The Bill also expands the safeguard requiring a police officer, watchhouse officer or authorised commission officer conducting a personal search in an area monitored by a video camera to ensure the camera is turned off or conduct the search out of view of the camera. It does so by removing the exception where the person viewing the monitor is a police officer or authorised commission officer of the same sex as the person being searched.

Entrants to watchhouses

The Bill amends section 644 of the PPRA to provide express power for a watchhouse officer or a helper to touch the garments an entrant is wearing to inspect the entrant's belongings. This clarifies the previous understanding of the section.

A corresponding validation provision is also included.

Searches in clinical settings

The Bill amends sections 399 and 400 of the Mental Health Act to provide that a personal search that requires the searcher to touch the clothing worn by the person in order to detect things in their possession, or a search requiring the removal of clothing, may only be carried out if, to the extent reasonably practicable, the person has been given an opportunity to express, and has expressed, their preference about the gender of someone carrying out the search (the *gender preferred* by the person), and the gender of the searcher is the gender preferred by, or otherwise the same gender as, the person.

This replaces the current strict 'same-gender' requirement with a person-based approach that is focused on considering the person's gender-related and mental health needs as far as possible. It also meets the operational need of allowing the search to be conducted in all circumstances where it is necessary for the safety of patients, visitors, staff and others.

The amendments aim to ensure that, where it is necessary for a person to be searched, the search will be conducted in a way that preserves the person's dignity, in relation to their gender, as far as possible. This approach acknowledges that gender is complex, and that flexibility may be required to ensure consideration of a person's gender can be appropriately respected. In addition, the amendments introduce a level of flexibility to enable a search to occur if required, recognising that there may be circumstances where it would create an unacceptable level of risk to all involved to not undertake the search.

The amendments to the Mental Health Act differ from the search requirements in policing and other legislation in the Bill. This reflects the particular operating environment and priorities of authorised mental health services. In a mental health environment, a person is not being searched in relation to an alleged or suspected offence, but in relation to a risk of harm. Patients in an authorised mental health service may be acutely unwell and the search framework must take into account instances where a person has a limited capacity to express their views, wishes or preferences.

The requirement for a person to be searched by a person of the same gender has been retained as an alternative option to the new requirement allowing a person's preferences to be accommodated to the extent reasonably practicable. It is acknowledged that this may rely on making assumptions about a person's gender. However, it provides an important safeguard for staff and patients (in particular for women), especially in circumstances where a person is unable to communicate to express a preference. There may also be circumstances where it may be more clinically appropriate for a searcher of the same gender to carry out the search.

Where it is not reasonably practicable to accommodate a person's preferences, or to have a person of the same gender carry out the search, the search may still be carried out. This is essential for the safety of patients, visitors, staff and others at the authorised mental health service.

For consistency, the safeguards regarding gender considerations for personal searches are applied for both patients and visitors, given the invasive nature of personal searches that require the searcher to touch the clothing worn by the person.

It is intended that the amended search provisions will be supported by policies and procedures that ensure that, wherever it is reasonably practicable, a person's expressed preference in relation to gender and search is met. Guidance will support the importance of a person-centred approach and take into account a range of clinical scenarios. It is intended that policies and procedures will also take into account the safety and dignity of staff in relation to the performance of searches. For example, there is no intention that a staff member will be required to disclose their gender to accommodate a person's gender preference for the purpose of a search.

There are significant existing protections in the Mental Health Act relating to personal searches and searches requiring the removal of clothing which will continue to apply. These protections are detailed below under the heading 'Consistency with fundamental legislative principles'.

The Bill also amends sections 157Z and 157ZA of the Public Health Act to provide that a personal search that requires the searcher to touch the clothing worn by the person in order to detect things in their possession, or a search requiring the removal of clothing, may only be carried out if, to the extent practicable, the person has been given an opportunity to express, and has expressed, their preference about the gender of someone carrying out the search (the *gender preferred* by the person), and the gender of the searcher is the gender preferred by, or otherwise the same gender as the person.

This will ensure that there is flexibility to consider and accommodate a person's specific gender-related needs on a case-by-case basis, promoting human dignity and autonomy.

The amendments also recognise that a person who is experiencing a major disturbance in mental capacity may not be able or willing to express a preference as to the gender of their searcher, or the preference expressed may not be able to be accommodated, either for practical and operational reasons (for example, there are no staff in the relevant facility who are known to have the preferred gender identity) or because the request is not appropriate (for example, accommodating the request would present a risk to the safety or dignity of a staff member). For this reason, the amendments retain sufficient flexibility to provide that a searcher of the same gender may also carry out the required search, if practicable.

There may be circumstances where it not practicable to meet the 'same-gender' requirement, and there has not been an expressed preferred gender or it is not practicable to accommodate that preference. For example, there may be no staff member of the preferred gender, or same gender available at a facility when a search must be performed. There may also be instances where, in order to protect the dignity of patients and the safety of staff, it is not appropriate to accommodate a preference. For example, circumstances where an acutely unwell, disinhibited patient makes a request that presents a risk to a staff member's safety and dignity. In these circumstances, the search can still be carried out. This is essential for the safety of patients (including the person experiencing the major disturbance in mental capacity), staff and others in the public sector health service facility or other location that the person has been transported to for urgent examination, or treatment and care.

Given the wide range of clinical scenarios that may be present, it is appropriate for specific procedures to be addressed in policies and guidelines, not prescribed by legislation.

As with the amendments to the Mental Health Act, these amendments differ from the amendments to search requirements in policing and other legislation also in the Bill. This reflects the difference in operating environment and priorities. A person who is experiencing disturbances in mental capacity, caused, for example, by mental illness, disability, injury or intoxication by drugs or alcohol, is not being searched in relation to an alleged or suspected offence, but in relation to a risk of harm. As noted above, due to the wide range of clinical scenarios that may present, a prescriptive approach to the search procedure is most appropriately outlined in policy and guidelines.

Current protections relating to personal searches and searches requiring the removal of clothing will continue to apply. These protections are detailed below under the heading 'Consistency with fundamental legislative principles'.

Photographing reportable offenders

The Bill amends the CPOROPOA to repeal section 31(2) that prohibits a police officer from requiring a reportable offender to expose particular parts of their body, including their breasts if they are a female or a transgender person who identifies as a female. This amendment enables a police officer to require a reportable offender of any gender to expose their breasts for a photograph.

The Bill inserts a new gender-responsive safeguard into the CPOROPOA for photographing the breasts of a reportable offender which provides that:

- as a starting point, a photograph must be taken by a person of the same gender as the reportable offender;
- before photographing a reportable offender, an officer must explain how the process will be conducted and ask the reportable offender if they have a preference about the gender of the person;
- the officer must accommodate a preference unless there are reasonable grounds to believe the preference is expressed for an improper purpose or it is not reasonably practicable to accommodate the preference;
- the photograph may be taken by a different officer, or by a person acting under the direction of the officer, for particular purposes.

The Bill also provides that, where an officer requires a photograph of a reportable offender's breasts, the officer:

- must not require a reportable offender to remove more clothing than is necessary for the photograph to be taken; and
- if reasonably practicable, must ensure the photograph is not taken in the presence of someone whose presence is not required while the photograph is being taken, or where someone not involved in taking the photograph can see the photograph being taken.

Use of hand held scanners

The Bill repeals section 39H(3) of the PPRA that requires, where reasonably practicable, a police officer must be of the same sex as the person to be scanned.

Forensic procedures

The Bill inserts a new gender-responsive safeguard into the PPRA for the conduct of forensic procedures by a person other than a doctor, dentist or forensic nurse examiner (the ***helper***) which provides that:

- the helper must be of the same gender as the person undergoing the procedure;
- the person undergoing the procedure must be given an explanation of the procedure and reasonable opportunity to express a preference about the gender of the helper;
- the police officer must accommodate a preference unless it is not reasonably practicable;

- if it is not reasonably practicable to accommodate the preference or if no preference is expressed, a helper may be chosen to address a concern related to gender in a way that minimises embarrassment and offence.

The Bill amends schedule 6 of the PPRA to omit gendered language from the definitions of *DNA sample*, *identifying particulars* and *intimate forensic procedure*.

The Bill also amends schedule 6 of the PPRA to remove the photography of breasts from the definition of *intimate forensic procedure*. The result is that this procedure is considered a non-intimate forensic procedure. The Bill inserts new section 519A which adopts a new gender-responsive safeguard in relation to the photographing of a person's breasts which is not performed by a doctor or forensic nurse examiner. This provides that:

- as a starting point, a photograph must be taken by a person of the same gender as the person being photographed;
- before photographing a person, an officer must explain how the process will be conducted and ask the person if they have a preference about the gender of the person;
- the officer must accommodate a preference unless there are reasonable grounds to believe the preference is expressed for an improper purpose or it is not reasonably practicable to accommodate the preference;
- the photograph may be taken by a different officer, or by a person acting under the direction of the officer, for particular purposes.

This framework is consistent with the amendments to the CPOROPOA for photography of a similar nature.

Body piercing of minors

The Bill amends the SO Act to remove gendered language related to genitalia.

Preventative detention orders

The Bill amends the TPD Act to omit the reference to same-sex partner from the definition of *family member* under section 56(3).

Restricting prisoners from reapplying for parole after being refused

The Bill amends the CSA to provide the Board with broader discretion to set a longer period during which a prisoner cannot reapply for parole after having an application refused. The Bill provides that after having a parole application refused, the Board may direct a life sentenced prisoner to not reapply for parole for up to five years. For a long-term prisoner (serving an individual sentence of ten years or more imprisonment for a single offence) the Board may set a period of up to three years, and for all other prisoners, up to twelve months.

The amendments in the Bill enable the Board to set an appropriate timeframe that is proportionate to the length of the sentence for the prisoner to address rehabilitative needs and provide the victim with assurance that another parole application or release is not imminent. The amendment also aims to create an efficiency for the Board by reducing the number of parole reapplications where there are limited prospects of parole being granted.

As a safeguard, the amendments in the Bill do not impact on a prisoner's ability to apply for exceptional circumstances parole, and the Board may give consent for an application to be made within the restricted period. The Bill also establishes criteria to guide the Board in setting the restriction.

Promoting timely prisoner safety order decisions

The Bill amends the CSA to enable a suitably qualified professional to be employed by QCS and appointed to assess prisoners that are at risk of self-harm or suicide and advise QCS on the making of a safety order. Existing requirements permit only doctors and psychologists to make these assessments. The Bill expands the list of suitable qualifications to include social workers, occupational therapists, nurses and speech pathologists. The flexibility to appoint professions outside of doctors and psychologists responds to the national critical psychology workforce shortage. Efficient clinical assessments result in decision makers issuing timely safety orders for prisoners at risk of harming themselves or others.

The Bill provides safeguards to ensure that no practitioner without the clinical capacity to provide these assessments can be approved for this function. In addition to being one of the practitioners listed, the individual must also meet specific professional registration, competency and training requirements set out in an accompanying policy which will exclude those not suitable for this role.

Clarifying the application of planning legislation to corrective services infrastructure

The Bill includes a technical amendment to clarify that infrastructure established by QCS on prescribed lots of land to support its functions under the CSA or other legislation is "accepted development" that cannot be categorised as assessable development for the purposes of the *Planning Act 2016* (Planning Act) and *Planning Regulation 2017* (Planning Regulation). An amendment to the CSA is included to validate previous development on the lots of land in line with the clarified application of the planning legislation to future development.

This amendment will ensure the development of infrastructure on prescribed lots of land owned by QCS on behalf of the State, such as the QCS Academy or Electronic Monitoring and Surveillance Unit, is subject to appropriate approval processes that reflect the need for the continued safe delivery of these services.

Alternative ways of achieving policy objectives

The policy objectives can only be achieved by legislation.

Estimated cost for government implementation

There are no costs associated with implementation of the amendments.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles (FLPs). Potential breaches of FLPs are addressed below.

Whether the legislation has sufficient regard to the rights and liberties of individuals (*Legislative Standards Act 1992*, s 4(2)(a))

The amendments represent a potential departure from the FLP that legislation has sufficient regard to the rights and liberties of individuals as they will, in limited cases, allow for searches or inspections to be conducted against the same-gender starting point or without accommodating a subject person's preference about gender. This impacts on a person's rights under the *Human Rights Act 2019*, including their right to privacy.

While the amendment impacts the rights of the person being searched, the purpose is to ensure that searching officers can continue to conduct lawful searches to protect the community, while also protecting searching officers.

A search or inspection can be conducted for a range of reasons, including to find weapons on a person and prevent them from harming a member of the public or a searching officer. It can also be conducted to find things on a person that a searching officer believes the person unlawfully possesses or to find evidence.

In the healthcare setting, searches are conducted to detect or remove a harmful thing as defined in the Mental Health Act and Public Health Act. These searches are conducted to keep patients, visitors, staff and others at authorised mental health services and public sector health service facilities safe.

There is a strong public interest in ensuring that searches and inspections are conducted in a timely and effective manner, provided an appropriate balance is struck with promoting the human rights of a subject as far as possible.

The retention of the searching officer's discretion about who conducts the search in these limited circumstances also protects searching officers from potential physical harm or degradation by a person being searched. This protects the searching officer's right to security of the person and their right to privacy and reputation. The protection of searching officers from harm and the protection of their dignity in performing their duties is consistent with the values of a free and democratic society.

While the limitations on rights resulting from a subject person being searched or inspected by a person of a different gender or contrary to their preference may be significant—particularly in relation to unclothed searches—the amendments ensure that the dignity of the subject person is paramount. Searches or inspections are only conducted by a person of a different gender or contrary to a person's preference in circumstances where this is necessary to achieve legitimate aims.

Existing safeguards in the legislation will continue to apply to searches involving the removal of clothing. Section 630 of the PPRA and section 106 of the CC Act require a searching officer to give the subject person the opportunity to remain partly clothed during the search. The sections also require the search to be conducted as quickly as reasonably practicable and the searching officer to allow the subject person to dress as soon as the search is finished. Further, given the nature of searches that may be required to be conducted by police officers, the provision prohibits the officer making physical contact with the genital and anal areas of the subject person.

Under the Mental Health Act, searches of visitors to a high security unit, or other authorised mental health services approved by the Chief Psychiatrist as a place where a visitor may be asked to participate in a search or submit their possessions to a search, allow that the person may decline to submit to a search. If consenting to the search, an authorised security officer may request that the visitor leave anything they believe to be a harmful thing with the officer until the visitor leaves the service. Alternatively, visitors may choose to leave their possessions with a security officer if they do not wish for them to be searched. Before conducting the search, the authorised security officer must tell the visitor in general terms their powers in relation to the search, how the search is to be carried out and the visitor's rights in relation to the search.

Under both the Public Health Act and Mental Health Act, a personal search must be carried out in a part of a building that ensures the person's privacy. The searcher must tell the person the reasons for the search, and how it is to be conducted, and carry out the search in a way that respects the person's dignity to the greatest possible extent and cause as little inconvenience to the person as is practicable in the circumstances.

Under both Acts, a search requiring the removal of clothing may only occur if approved by the administrator of the authorised mental health service or person in charge of the public sector health service facility where the search is taking place. The search must be carried out by at least two people. At least one of the people undertaking the search must tell the person why it is necessary to remove clothing. The search must be carried out in a part of a building that ensures the person's privacy, cause minimal embarrassment to the extent practicable and carry out the search as quickly as practicable. The searcher must also take reasonable care to protect the person's dignity, including if reasonably practicable allowing the person to remain partly clothed during the search and dress as soon as the search is finished.

The Public Health Act and Mental Health Act both require that for a search requiring the removal of clothing or where anything found during a search is seized from a person, a written record must be made including the reasons for the search, the names of the people present, how the search was carried out and any details of things seized.

It is considered that the potential for any infringement of a person's rights is minimised by the application of a range of important safeguards.

Restricting prisoners from reapplying for parole after being refused

Extending the maximum period the Board can limit a prisoner from reapplying for parole for after a parole refusal may be considered inconsistent with the rights and liberties of individuals because it makes rights and liberties dependent on administrative power (section 4(3)(a)). This is because the proposed amendment provides additional discretion for the Board to extend restricted periods and applies legislated criteria to that decision (such as the reasons the prisoner has been refused parole and the impacts on the victim, and public interest).

This is considered justified because the administrative power is clearly defined, subject to clear maximum limits proportionate to sentence length, including legislated criteria to guide the decision making and is subject to *judicial review.* The Board is also able to provide consent to wave the restricted period and allow an application to be made earlier. The amendment aims

to support and protect victims from retraumatisation experienced through repeated parole applications and support the efficient administration of the Board by providing the Board with greater discretion to set a period that better reflects the prisoner's prospects of release. For these reasons any inconsistencies with fundamental legislative principles are considered justified.

Promoting timely prisoner safety order decisions

Providing flexibility for the chief executive to appoint a broader cohort of authorised practitioners to provide advice regarding the risks and needs of prisoners in relation to safety orders may be considered inconsistent with the rights and liberties of individuals. Whether the provision has sufficient regard to the rights and liberties of individuals will depend on whether the delegation of administrative power in this regard is appropriate in this case and to appropriate persons (section 4(3)(c)). The amendment may also be considered inconsistent with the rights and liberties of individuals (section 4(3)(k)) because the legislation alone may be considered ambiguous as to what qualifications are considered suitable to be providing advice with respect to the safety orders.

However, it is considered that the approach ensures only those appropriately trained and qualified to make safety order assessments can be provided with this function. The Bill provides for a list of practitioners that may be approved to provide safety order assessments, but further requires the chief executive to be satisfied the individual has the clinical capacity to make those assessments. A policy will step out the relevant accreditation, qualification and training requirements for practitioners to be approved, working to exclude any practitioners that do not have the requisite experience.

The amendment may also be considered inconsistent with the Institution of Parliament by delegating the power to provide for qualifications and training requirements in a policy, rather than in legislation, or subordinate legislation (section 4((4)(a) and (b)). This is considered justified because the nature of this information is too detailed to be prescribed in legislation, and operational flexibility is required to update the requirements over time, such as when new training courses are available. Further guidance is included in the Bill to shape the making of the policy.

The amendment may also be considered inconsistent with the Institution of Parliament by providing for additional transitional provisions to be prescribed in regulation (section 4((4)(a)). The approach to the transitional regulation-making power has been limited to the extent that it may only be made within one year after the commencement and will expire two years after the commencement. Such a transitional regulation-making power simply allows for the effective transition from the former provisions to the operation of the amendments to the extent additional transitional arrangements are necessary.

For these reasons any inconsistencies with fundamental legislative principles are considered justified.

Clarifying the application of planning legislation to corrective services infrastructure

Clarifying that infrastructure on prescribed lots of land established by QCS to support its functions under the CSA or other legislation is 'accepted development' that cannot be categorised as assessable development for the purposes of the Planning Act and Planning Regulation may be considered inconsistent with the rights and liberties of individuals (section (4)(3)). In particular, the amendments may be considered inconsistent with the principles of natural justice (section 4(3)(b)). Consistency with the principles of natural justice would require any person with some right, interest or legitimate expectation (such as neighbouring landowners and locals) to be consulted and heard prior to development of infrastructure by QCS for purposes under the CSA or another Act. However, the intention of the amendments is to ensure the chief executive of QCS can fulfil obligations under section 263 of the CSA or another Act to deliver community safety in line with the purpose of the CSA. Enabling QCS to establish functions such as the QCS Academy and escort and security branch promotes the right to security for the community.

For these reasons any inconsistencies with fundamental legislative principles are considered justified.

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether the legislation does not adversely affect rights and liberties, or impose obligations, retrospectively (*Legislative Standards Act 1992,* section 4(3)(g))

Clause 47, which inserts a validation provision for inspections purportedly made under section 644 of the PPRA involving the touching of a garment the entrant was wearing, adversely affects rights and liberties retrospectively. It will do so for any person against whom the power was exercised before the commencement.

The amendment in clause 45 clarifies the intended application of the section to enable a watchhouse officer to touch a garment the entrant is wearing to inspect it. This is necessary because the broad definition of "inspect" in the section applies only in relation to "articles". Because of the framing of the section, it may be considered that a "garment" is not an "article". This could lead to an interpretation that it is not within power to touch a garment the entrant is wearing. This becomes more likely because of the later insertion of section 552 of the PPRA in substantially similar words.

The purpose of the amendment in clause 47 is to provide adequate protections for those watchhouse officers who have acted on the previous interpretation to maintain the security and good order of a watchhouse as if the amendment in clause 45 had been law since the commencement of the amended section.

Consultation

A consultation draft of the Bill and a consultation paper in relation to amendments to police and Crime and Corruption Commission legislation was provided to targeted external stakeholders.

All feedback received was considered in the development of the Bill.

Regarding amendments to legislation administered by Queensland Health, stakeholders were not consulted on changes to the Mental Health Act for personal searches and searches requiring

the removal of clothing that amend the same-gender rule so that it applies if reasonably practicable and introduces a requirement that a person's gender preference takes precedence where clinically or otherwise appropriate. The opportunity to include these amendments in the Bill did not allow sufficient time to conduct separate consultation. However, it was considered appropriate for the amendments to proceed to ensure the Mental Health Act continues to be compatible with human rights and to address current operational and clinical risks associated with searches under the current framework.

In November 2023, statewide mental health services were provided information to highlight gender considerations in the context of searches, and an opportunity to discuss operational challenges with the existing framework which informed the amendments.

There will be an implementation period before the amendments commence, to allow Queensland Health to finalise operational matters including through consultation with interested stakeholders. Stakeholders will also have the opportunity to provide feedback on guidance materials, including lived experience representatives and staff involved in the performance of searches.

Further, stakeholders were not consulted on the changes to the Public Health Act. The opportunity to include these amendments in the Bill did not allow sufficient time to conduct separate consultation. However, it was considered appropriate for the amendments to proceed to ensure the Public Health Act continues to be compatible with human rights and to address current operational and clinical risks associated with searches under the current framework.

Consideration will be given to seeking stakeholder feedback on guidance materials relating to the implementation of the amendments.

Consistency with legislation of other jurisdictions

The amendments in the Bill are specific to the State of Queensland and are not uniform with, or complementary to, legislation of the Commonwealth or another State.

Notes on provisions

Part 1 Preliminary

1. Short title

Clause 1 provides that the Act may be cited as the *Police Powers and Responsibilities Other Legislation Amendment Act 2024*.

2. Commencement

Clause 2 states that the following provisions commence on a day to be fixed by proclamation—

(a) part 2;

(b) part 3, division 3;

(c) parts 4 and 5;

(d) parts 7 to 10;

(e) schedule 1, part 2.

Part 2 Amendment of Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004

3. Act amended

Clause 3 provides that part 2 amends the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*.

4. Amendment of s 27 (Right to privacy and support when reporting)

Clause 4 omits the existing section 27(6)(a) definition of *special needs* of a person, to remove 'sex' and replace with 'gender'.

5. Amendment of s 31 (Power to take photographs)

Clause 5 omits the existing section 31(2)(c) that provided a police officer can not require a reportable offender if they are female or a transgender person who identifies as female to expose their breasts.

6. Insertion of new s 31A

Clause 6 inserts section 31A that sets out the procedure for when a police officer requires a reportable offender to expose the offender's breasts to enable the taking of a photograph.

31A Safeguards for certain photographs

Section 31A(1) provides that this section applies if, under section 31, a police officer requires a reportable offender to expose the offender's breasts to enable that part of the body to be photographed.

Section 31A(2) provides that the police officer must not require the reportable offender to remove more clothing than is necessary for the photograph to be taken; and if reasonably practicable, must ensure the photograph is not taken in the presence of someone whose presence is not required while the photograph is being taken, or where someone not involved in taking the photograph can see the photograph being taken.

Section 31A(3) requires, subject to this section, the person taking the photograph must, if reasonably practicable, be of the same gender as the reportable offender.

Section 31A(4) provides that a reportable offender must be given an explanation of the process and be given a reasonable opportunity to express a preference regarding the gender of the person taking the photograph.

Section 31A(5) provides a preference need not be accommodated if there are reasonable grounds to believe the preference is made for an improper purpose or it is not reasonably practicable to do so.

Section 31A(6) provides that without limiting the power under section 31(1)(b) for the photograph to be taken by a person authorised by the officer to accommodate a preference expressed, to ensure the person taking the photograph and the reportable offender are the same gender or to address a concern related to gender in a way that minimises embarrassment and offence.

Part 3 Amendment of Corrective Services Act 2006

Division 1 Preliminary

7. Act amended

Clause 7 provides that this part amends the *Corrective Services Act 2006*.

Division 2 Amendments commencing on assent

8. Amendment of s 193 (Deciding parole applications–general)

Clause 8 amends section 193 to support an efficient and effective parole process that limits further trauma for victims of crime.

Subclauses (1) and (2) amend cross references and are consequential to the amendments.

Subclause (3) replaces subsection (5A) with a new subsection to prescribe the maximum periods of time the Board may restrict a prisoner from reapplying for parole after a parole application made under section 180 has been refused. Maximum periods of time have been prescribed relative to the length of the prisoner's sentence. Any period the Board may set could not exceed the time remaining on the prisoner's period of imprisonment.

The new subsection provides that the period of time must not be more than 5 years if the prisoner is serving a life sentence.

If the prisoner is not serving a life sentence, but is serving a term of imprisonment of 10 years or more, the maximum period the Board may set is 3 years. It is the intention of

this provision to limit the application of a 3 year maximum to prisoners that are serving a term of imprisonment of 10 or more years for a single offence, to reflect the seriousness of that offence.

For all other prisoners, the maximum period the Board may set is 1 year.

During the period set by the Board, the prisoner is able to apply for exceptional circumstances parole under section 176 of the CSA. The Board may also give consent for the prisoner to apply within the period under section 180(2)(a)(ii).

Subclause (3) also inserts legislative criteria that the Board must and may consider when deciding what period of time to set for a prisoner. The Board must consider the nature and seriousness of the offences the prisoner is in custody for. While the maximum period the Board may set may only relate to a term of imprisonment for a single offence, the Board should consider the totality of the prisoner's offending when determining the appropriate period to set. The Board must also consider the reasons that parole has been refused, such as whether the prisoner should complete additional programs or take other steps to address their risks and how long those steps may take.

The Board may have regard to the likely effect that the making of a further application for parole may have on an eligible person or victim when determining the period if this information is relevant to the consideration. The Board may also have regard to the extent to which delaying the making of a further application for a parole order is in the public interest. This could include, as relevant, consideration of providing protection and security for the community and victims, but also the efficient and effective administration of the parole system.

Subclause (4) renumbers section 193(1A) to (7) as a consequence of the amendment.

9. Insertion of new s 267A

Section 267A Establishing an operating particular infrastructure

Clause 9 inserts a new s 267A to clarify the chief executive's authority to establish and operate particular infrastructure on relevant premises to be used for a purpose relating to QCS' functions under section 263 of the CSA or functions under another Act. While the majority of QCS' functions are performed under the CSA, some examples of other Acts that include functions for QCS include the *Youth Justice Act 1992* and the *Dangerous Prisoners (Sexual Offenders) Act 2003*.

Subsection (1) provides a non-exhaustive list of examples of infrastructure that may be established, including a community corrections office (defined in scheduled 4 (Dictionary)), an education and training facility for corrective services officers (such as the QCS Academy) and a facility used for a purpose associated with a corrective services facility (such as an administration office, staff accommodation, storage, or escort branch).

Subsection (2) defines 'relevant premises' for the section to be land owned or leased by QCS on behalf of the State.

10. Insertion of a new ch 7A, pt 18

Chapter 7A, Part 18 Transitional and validation provisions for Police Powers and Responsibilities and Other Legislation Amendment Act 2024

Clause 10 inserts transitional provisions for amendments to the CSA that commence on assent.

New section 490ZJ inserts a transitional provision in relation to amendments to section 193.

Subsection (1) provides that this section applies to an application for a parole order made under section 180 that has not been decided before the commencement.

Subsection (2) provides that section 193 as amended applies to the applications prescribed in subsection (1).

New section 490ZK inserts a validating provision in relation to prescribed development on relevant premises.

Subsection (1) provides that the validating provision applies to development on prescribed lots of land for infrastructure mentioned in section 267A(1) that was assessable development but occurred without a development permit at the time the development occurred.

Subsection (2) validates previous development that falls within the scope of subsection (1).

Subsection (3) provides definitions for ‘development’, ‘development permit’ and ‘planning Act’ for this part.

Division 3 Amendments commencing by proclamation

11. Amendment of s 53 (Safety order)

Clause 11 replaces references in section 53 to ‘doctor or psychologist’ with ‘authorised practitioner’. The intention of this amendment is to provide that an authorised practitioner has the same functions as a doctor or psychologist would have had prior to the amendment.

Clause 11 also replaces a reference to ‘prescribed under a regulation’ with ‘prescribed by regulation’ in line with modern drafting standards.

12. Amendment of s 54 (Consecutive safety orders)

Clause 12 replaces subsection 54(2) to replace references to ‘doctor or psychologist’ with ‘authorised practitioner’. The intention of this amendment is to provide that an authorised practitioner has the same functions as a doctor or psychologist would have had prior to the amendment.

13. Amendment of s 55 (Review of safety order—doctor or psychologist)

Clause 13 replaces references in section 55 to 'doctor or psychologist' with 'authorised practitioner'. The intention of this amendment is to provide that an authorised practitioner has the same functions as a doctor or psychologist would have had prior to the amendment.

14. Amendment of s 57 (Health examination)

Clause 14 amends existing section 57 to clarify that this section refers to a health practitioner who is not an authorised practitioner.

15. Amendment of s 58 (Temporary safety order)

Clause 15 amends subsections 58(1)(a), 58(3), (4) and (5) to replace references to 'doctor and psychologist' with 'authorised practitioner'. The intention of this amendment is to provide that an authorised practitioner has the same functions as a doctor or psychologist would have had prior to the amendment.

Clause 15 also amends existing section 58(1)(b) to omit reference to 'nurse' and replace with 'health practitioner, who is not an authorised practitioner'.

16. Amendment of s 59 (Record)

Clause 16 amends section 59 to replace references to 'doctor and psychologist' with 'authorised practitioner'. The intention of this amendment is to provide that an authorised practitioner has the same functions as a doctor or psychologist would have had prior to the amendment.

Clause 16 also amends existing section 59(3)(c) to omit reference to 'nurse' and replace with 'health practitioner'.

17. Insertion of new ch 6, pt 8A

Part 8A Authorised practitioners

Clause 17 inserts a new part 8A into chapter 6 to provide for the appointment of authorised practitioners. Authorised practitioners perform functions under the CSA in relation to assessing prisoners at risk of harming themselves or others to inform the making of decisions about safety orders.

New section 305A (Definitions for part) provides the definition of 'health service for this part.

'Health service' is defined as a service for maintaining improving, restoring or managing people's health and wellbeing.

New section 305B (Appointment of authorised practitioner) provides for the appointment of authorised practitioners.

Subsection (1) provides that the chief executive may only appoint an accredited health service provider, doctor, nurse, occupational therapist or psychologist to be an authorised practitioner under the CSA. Doctor, nurse and psychologist are defined in schedule 4 (Dictionary).

Subsection (2) further provides that the chief executive may only appoint a person listed in subsection (1) as an authorised practitioner if the chief executive is also satisfied that the person is: a corrective services officer or public services officer; and the person has the necessary competencies and training related to mental health stated in the authorised practitioner policy made under section 305C to perform the functions of an authorised practitioner.

Subsection (3) provides that the functions and powers of an authorised practitioner are those given under this Act, which relate to assessing prisoners at risk of harming themselves or others and providing advice to the chief executive about the need for a safety order.

Subsection (4) provides the definitions of 'accredited health service provider', 'authorised practitioner policy' and 'occupational therapist' for this section.

'Accredited health service provider' is defined as an individual who provides a health service, including for example a social worker or speech pathologist, and holds a professional registration, licensing or authorisation to provide the health service, as stated in the authorised practitioner policy. The example of a professional registration, licensing or authorisation is provided as an accreditation given by the Australian Association of Social Workers.

'Authorised practitioner policy' is defined as a policy made by the chief executive under section 305C.

'Occupational therapist' is defined as a person registered under the Health Practitioner Regulation National Law to practice, other than as a student, in the occupational therapy profession.

New section 305C Authorised practitioner policy provides that the chief executive may make a policy about matters relating to an authorised practitioner.

Subsection (1) specifies that the policy should include the competencies and training necessary for a person to perform the functions of an authorised practitioner, and the professional registration, licensing or authorisation necessary to provide a health service.

Authorised practitioners are appointed to conduct assessments of a prisoner's mental health in the context of the prison environment to inform decisions about the making of safety orders under the CSA for prisoners at risk of harming themselves or others. It is intended for the competencies included in the policy to ensure that only those with the clinical capacity to conduct safety order assessments can be appointed to the role. The detail of the policy should specify the qualifications that cover the appropriate skills and training to be able to competently assess a prisoner's risk, for example an enrolled nurse compared to a registered nurse.

Subsection (2) provides that the chief executive must publish the policy on the department's website to ensure appropriate oversight.

18. Insertion of new ss 490ZL and 490ZM

Clause 18 inserts transitional provisions in relation to the authorised practitioner amendments.

New section 490ZL inserts transitional provisions for amendments in relation to authorised practitioners to be appointed to assess prisoners at risk of self-harm and to advise the chief executive on the making of safety orders. The provision ensures that assessments or recommendations made prior to commencement by a doctor or psychologist are taken to be made by an authorised practitioner from commencement.

New section 490ZM (Transitional regulation-making power) inserts a power to prescribe additional transitional arrangements in regulation. This is limited to the operation of the former provisions of chapter 2 (Prisoners), Part 2 (Management of prisoners), Division 5 (Safety Orders) or for which this Act does not provide or sufficiently provide. This regulation is intended to provide arrangements for safety orders and assessments made prior to commencement to be able to be used for decisions and assessments by authorised practitioners from commencement.

It also provides that a transitional regulation may have retrospective operation to not earlier than commencement of the regulation, must be made within 1 year after the commencement of the amendments in the Act, and must declare it is a transitional regulation.

19. Amendment of sch 4 (Dictionary)

Clause 19 inserts definitions of ‘authorised practitioner’ and ‘health service’.

Part 4 Amendment of Crime and Corruption Act 2001

20. Act amended

Clause 20 provides that part 4 amends the *Crime and Corruption Act 2001.*

21. Amendment of s 100 (General provisions about searches of persons)

Clause 21 omits existing section 100(2) that provided, under general provisions, that unless an immediate search is necessary the person conducting a search must be either an authorised commission officer of the same sex, someone acting at the direction of an authorised commission officer who is of the same sex or a doctor acting at the direction of an authorised commission officer.

22. Insertion of new s 100A

Clause 22 inserts after section 100 a replacement for the removed safeguard under clause 21 that provides the following gender safeguards.

100A Gender safeguard for searches of persons

Clause 22 inserts subsections (1) to (2) that provide this section applies to searches by authorised commission officers and does not apply if an immediate search is necessary.

Subsection (3) provides if reasonably practicable the person conducting the search must be of the same gender as the person being searched.

Subsection (4) provides the person being searched must be given an explanation of the process and a reasonable opportunity to express a preference about the gender of the person who searches them.

Subsection (5) provides a preference may be expressed in a way that would require different persons to search the upper body, lower body or head of the person.

Subsection (6) states a preference must be accommodated unless there are reasonable grounds to believe the preference is expressed for an improper purpose or it is not reasonably practicable to do so.

Subsection (7) provides the search or part of the search may be conducted by a different authorised commission officer, or a person under direction of an authorised commission officer, to accommodate an expressed preference, to ensure the person searching and being searched are of the same gender or to address a concern related to gender in a way that minimises embarrassment and offence.

Subsection (8) provides the officer may not be of the same gender as the person being searched if, in the circumstances, that is the most appropriate way to address a concern related to gender.

23. Amendment of s 105 (Removal of clothing for search)

Clause 23 removes the differentiation in current section 105 between males and females regarding search procedures surrounding the removal of clothing from different parts of the body. This amendment is in line with the approach taken under section 629 of the PPRA.

24. Amendment of s 106 (Protecting the dignity of persons during search)

Clause 24 amends the example in section 106 by omitting the reference to the opposite sex. This amendment broadens the example of what amounts to reasonable privacy for a person being searched by including that reasonable privacy includes conducting a search in a way that ensures, as far as reasonably practicable, that the person being searched cannot be seen by anyone who does not need to be present.

25. Amendment of s 108 (If video cameras monitor place where person is searched)

Clause 25 amends section 108 to remove the exception which provided that unless the person viewing the monitor is an authorised commission officer of the same sex as the person being searched, the camera must be either turned off or the search be conducted out of view of the camera. This amendment expands the provision to now require a video camera to be turned off where any person, regardless of gender, is being searched in an area where there are video monitors in place.

Part 5 Amendment of Mental Health Act 2016

26. Act amended

Clause 26 states that this part amends the *Mental Health Act 2016.*

27. Act amendment of s 399 (Requirements for personal search)

Clause 27 amends s 399.

Section 399(1)(c) provides that a person who is authorised under division 3, 4 or 5 of the Mental Health Act to carry out a personal search may touch the clothing worn by the person being searched, to the extent necessary to detect things in the person's possession. Under subsection (2), the authorised person may exercise this power only if the searcher is the same gender as the person.

Clause 27 replaces the strict 'same-gender' search requirement in subsection (2) with a person-based approach that is focussed on considering individual gender-related and clinical mental health needs as far as possible. The amendment provides that the above power may be exercised only if, to the extent reasonably practicable, the person has been given an opportunity to express, and has expressed their preference about the gender of someone carrying out the search (the *gender preferred* by the person) and the gender of the searcher is the gender preferred by, or otherwise the same gender as, the person.

28. Amendment of s 400 (Requirements for search requiring removal of clothing)

Clause 28 amends section 400.

Section 400 outlines certain requirements that a person authorised to carry out a search requiring the removal of clothing must observe, including that such a search must be carried out by at least two persons of the same gender as the person being searched.

Clause 28 amends section 400 by replacing the current strict 'same-gender' search requirement with a requirement that to the extent practicable, the gender of each person carrying out the search must be the gender preferred by, or otherwise the same gender as, the person being searched.

Gender preferred, by the person being searched, is defined with reference to section 399(2)(a)(i).

Part 6 Amendment of Planning Regulation 2017

29. Regulation amended

Clause 29 provides that this part amends the *Planning Regulation 2017*.

30. Insertion of new s 20B

Section 20B Category of assessment for development for particular infrastructure under Corrective Services Act 2006

Clause 30 inserts a new section 20B into Part 4 (Development assessment) Division 1 (Categories of development) to provide that development mentioned in new schedule 6 section 36 can only be subject to code assessment under schedules 9 and 10 of the Planning Regulation, not impact assessment.

31. Amendment of sch 6 (Development local categorising instrument is prohibited from stating is assessable development)

Clause 31 amends Schedule 6, Part 5 (Other development) to insert a new section 36 (Development for particular infrastructure under Corrective Services Act 2006). New schedule 6 section 36 provides that development for infrastructure as mentioned under new section 267A of the CSA on the lots of land prescribed in this section is development that a local categorising instrument cannot state as assessable development.

32. Amendment of sch 7 (Accepted development)

Clause 32 amends schedule 7 to provide that development for infrastructure as mentioned under new section 267A of the CSA on the lots of land prescribed in schedule 6, section 36.

Part 7 Amendment of Police Powers and Responsibilities Act 2000

33. Act amended

Clause 33 provides that part 4 amends the *Police Powers and Responsibilities Act 2000.*

34. Amendment of s 39H (Safeguards for exercise of powers)

Clause 34 omits the existing section 39H(3) to remove the provision that the use of hand held scanners must be conducted by a police officer of the same sex as the person if reasonably practicable. This provision is being removed as unlike searches hand held scanners do not involve touching a person being scanned.

Clause 34 renumbers section 39(H)(4) to (7) as section 39(H)(3) to (6).

35. Amendment of s 502 (When forensic examiner may be asked to perform forensic procedure)

Clause 35 omits the existing section 502(2) and (3) to remove the requirement that provided a forensic nurse examiner assisting in a forensic procedure must be of the same sex as the person undergoing the procedure unless it is not reasonably practicable. This provision is being removed as under section 517(3) a forensic nurse examiner is not required to be of the same gender as the person who is to undergo the procedure.

Clause 35 renumbers section 502(4) as section 502(2).

36. Amendment of s 517 (Help with, and use of force for, performing forensic procedure)

Clause 36 omits the existing section 517(3) and inserts amended section 517(3) that provides that a person helping perform a forensic procedure must be a doctor, dentist or forensic nurse examiner or if reasonably practicable a person of the same gender.

Subsection (3A) provides that if the person helping to conduct the forensic procedure is not a medical practitioner the procedure must be explained and the person undergoing the procedure given reasonable opportunity to express a preference about the gender of the helper.

Subsection (3B) sets out the circumstances where a preference expressed under subsection (3A) need not be accommodated where there are reasonable grounds to believe the preference is made for an improper purpose, if there is a significant risk of evidence being lost or destroyed or it is not reasonably practicable to do so.

Subsection (3C) provides that if not reasonably practicable to accommodate the preference, or if none is expressed, a helper may be chosen to address a concern related to gender in a way that minimises embarrassment and offence.

Subsection (3D) provides that a failure to comply with a preference request does not affect the validity of the forensic procedure nor the admissibility of evidence derived from the procedure.

Clause 36 subsection (2) renumbers section 517(3A to (4) as section 517(4) to (8).

37. Insertion of new s 519A

Clause 37 inserts a new section 519A after section 519.

519A Gender safeguard for photographing breasts

Clause 37 inserts subsection (1) to provide that this section applies to a non-intimate forensic procedure that consists of photographing a person's breasts; and is performed by a qualified person who is not a doctor or forensic nurse examiner.

Subsection (2) provides, subject to this section, the person taking the photograph must, if reasonably practicable, be of the same gender as the person being photographed.

Subsection (3) provides the person to be photographed must be given an explanation of the process and reasonable opportunity to express a preference about the gender of the person taking the photograph.

Subsection (4) requires that a preference must be accommodated unless there are reasonable grounds to believe the preference is expressed for an improper purpose or it is not reasonably practicable to accommodate a preference.

Subsection (5) provides that a photograph may be taken by a person authorised by the qualified person to take the photograph if reasonably necessary to ensure that the person taking the photograph and the person being photographed are of the same

gender; to accommodate a preference expressed by the person; or to address a concern related to gender in a way that minimises embarrassment and offence.

38. Amendment of s 552 (Power to inspect entrant's belongings)

Clause 38 omits the existing section 552(3) to remove the provision that when an officer, or adult assisting the officer, is required to touch a garment the entrant is wearing for the purposes of inspecting the entrant's belongings, the searching person must be of the same sex as the entrant.

39. Amendment of s 553 (Safeguards for inspection of entrant's belongings)

Clause 39 omits the existing section 553 heading that refers to 'Safeguards' and replaces it with 'General safeguards'.

Clause 39 omits the existing section 553 (1)(c) to remove the safeguard that provides the touching of a garment the entrant is wearing must be conducted by a police officer or another assisting officer of the same sex as the entrant.

40. Insertion of new s 553A

Clause 40 inserts after section 553 a replacement for the removed safeguard under clause 39 that amends if a police officer, protective officer or assisting officer is to touch the garment an entrant is wearing for the purpose of inspecting their belongings the following gender safeguards are enacted.

553A Gender safeguard for inspection of entrant's belongings

Clause 40 inserts subsection 553A(2) that provides the person touching the garment and the entrant must be of the same gender if reasonably practicable.

Subsection (3) provides the entrant is explained the process and given a reasonable opportunity to express a preference about the gender of the person who is to touch the garment.

Subsection (4) provides a preference may be expressed in a way that would require different persons to touch a garment on the upper body, lower body or head of the person.

Subsection (5) sets the circumstances that a preference need not be accommodated if there are reasonable grounds to believe the preference is expressed for an improper purpose or it is not reasonably practicable to do so.

Subsection (6) provides that without limiting the power under section 552(2)(e) for an adult to assist the officer that an officer may ask an adult to assist if reasonably necessary. This can be to accommodate an expressed preference, to ensure the person touching the garment and the entrant are the same gender or to address a concern related to gender in a way that minimises embarrassment and offence.

Subsection (7) provides the officer may not be of the same gender as the entrant if, in the circumstances, that is the most appropriate way to address a concern related to gender.

Subsection (8) provides failure to comply with the section does to affect the validity of the inspection.

41. Amendment of s 624 (General provision about searches or persons)

Clause 41 omits the existing section 624(2) that provided under general provisions that unless an immediate search is necessary the person conducting a search must be either a police officer of the same sex, someone acting at the direction of a police officer who is of the same sex or a doctor acting at the direction of a police officer.

42. Insertion of new s 624A

Clause 42 inserts after section 624 a replacement for the removed safeguard under clause 41 that provides the following gender safeguards.

624A Gender safeguard for searches of persons

Clause 42 inserts subsections (1) to (2) that provide this section applies to searches by police officers and does not apply if an immediate search is necessary.

Subsection (3) provides if reasonably practicable the person conducting the search must be of the same gender as the person being searched.

Subsection (4) provides the person being searched is explained the process and given a reasonable opportunity to express a preference about the gender of the person who searches them.

Subsection (5) provides a preference may be expressed in a way that would require different persons to search the upper body, lower body or head of the person.

Subsection (6) states a preference must be accommodated unless there are reasonable grounds to believe the preference is expressed for an improper purpose or it is not reasonably practicable to do so.

Subsection (7) provides the search or part of the search be conducted by a different police officer, or a person under direction of a police officer, to accommodate an expressed preference, to ensure the person searching and being searched are the same gender or to address a concern related to gender in a way that minimises embarrassment and offence.

Subsection (8) provides the officer may not be of the same gender as the person being searched if, in the circumstances, that is the most appropriate way to address a concern related to gender.

43. Amendment of s 630 (Protecting the dignity of persons during a search)

Clause 43 omits a segment in the existing example under section 630 to remove the exception that the person being searched cannot be seen by anyone of the opposite sex.

This amendment expands the searching privacy provisions to remove anyone who does not need to be present regardless of gender.

44. Amendment of s 632 (If video cameras monitor place where person is searched)

Clause 44 omits a segment in the existing section 630 to remove the exception which provided that unless the person viewing the monitor is a police officer of the same sex as the person being searched, the camera must be either turned off or the search be conducted out of view of the camera. This amendment expands the provision to now apply to all persons being searched in an area video monitored regardless of gender.

45. Amendment of s 644 (Watch-house officer may ask entrant to remove outer garment etc.)

Clause 45 inserts section (da) that provides the watch-house officer or person assisting are allowed to touch the garments the entrant is wearing for the purpose of inspecting the entrant's belongings.

Clause 45 renumbers section 644(2)(da) to (f) as sections 644(2)(e) to (g).

Clause 45 omits the existing section 644(3) that provided a watch-house officer can only touch a garment the entrant is wearing if the watch-house officer and the entrant are the same sex.

Clause 45 renumbers section 644(4) as section 644(3).

46. Insertion of new s 644A

Clause 46 inserts after section 644 section 644A that provides the new gender safeguards for inspecting an entrant's belongings at watch-houses.

644A Gender safeguard for inspection of entrant's belongings

Clause 46 inserts subsections (1) to (2) that provide this section applies where section 644(2)(e) is enacted and if reasonably practicable the person touching the garment of an entrant and the entrant must be of the same gender.

Subsection (3) provides the entrant is explained the process and given a reasonable opportunity to express a preference about the gender of the person who is to touch the garment.

Subsection (4) provides a preference may be expressed in a way that would require different persons to touch a garment on the upper body, lower body or head of the person.

Subsection (5) sets the circumstances that a preference need not be accommodated if there are reasonable grounds to believe the preference is expressed for an improper purpose or it is not reasonably practicable to do so.

Subsection (6) provides that without limiting the power under section 644(2)(e) for an adult to assist the officer, that an officer may ask an adult to assist if reasonably

necessary to accommodate an expressed preference, to ensure the person touching the garment and the entrant are the same gender or to address a concern related to gender in a way that minimises embarrassment and offence.

Subsection (7) provides the officer may touch the garment despite not being of the same gender as the entrant if, in the circumstances, that is the most appropriate way to address a concern related to gender.

Subsection (8) provides failure to comply with the section does to affect the validity of the inspection.

47. Insertion of new chapter 26

Clause 47 inserts a new chapter 26 after chapter 25.

Chapter 26 Validation provisions for Police Powers and Responsibilities and Other Legislation Amendment Act 2024

Clause 47 inserts subsections (1) in chapter 26 which provides that an inspection of a person's belongings under former section 644 involving the touching of a garment the person is wearing is, and is taken to have always been, as valid as it would have been if, at the time it was carried out, new section 644 was in force.

Clause 47 inserts subsection (2) that provides in this section former section 644 means section 644 as in force before the commencement; and new section 644 means section 644 as in force from the commencement.

48. Amendment of sch 6 (Dictionary)

Subclause (1) limits the definition of a *DNA sample* to exclude a sample of a person's hair from the breasts of a person of any gender.

Subclause (1) also extends the definition of *intimate forensic procedure* to include a procedure performed on a person that involves taking a sample of the person's hair from the breasts of a person of any gender.

Subclause (2) limits the definition of *identifying particulars* to exclude a measurement of the breasts of a person of any gender.

Subclause (3) amends the definition of *intimate forensic procedure* to extend the definition in paragraph (a) to the breasts of a person of any gender.

Subclause (4) amends the definition of *intimate forensic procedure* to remove the photographing of the relevant part of the body from paragraph (a).

Subclause (5) renumbers paragraphs (a)(iv) and (v) of the definition of *intimate forensic procedure* as (a)(iii) and (iv).

Subclause (6) amends the definition of *intimate forensic procedure* to insert a new paragraph (ab) for photographing a person's external genital or anal area or buttocks.

The effect of subclauses (4) and (6) is that the photography of the breasts of a person of any gender is not an *intimate forensic procedure*.

Subclause (7) renumbers paragraphs (ab) and (b) of the definition of *intimate forensic procedure* as (b) and (c).

Part 8 Amendment of Public Health Act 2005

49. Act amended

Clause 49 states that this part amends the *Public Health Act 2005.*

50. Amendment of s 157Z (Requirements for personal search)

Clause 50 amends section 157Z.

Section 157Z provides that a person who is authorised under section 157Y of the Public Health Act to carry out a personal search may touch the clothing worn by the person being searched, to the extent necessary to detect things in the person's possession. Under subsection (2), the authorised person may exercise this power only if the searcher is the same gender as the person.

Clause 50 amends this strict 'same-gender' requirement and provides that the search power may be carried out only if, to the extent reasonably practicable, the person has been given an opportunity to express, and has expressed their preference about the gender of someone carrying out the search (the *gender preferred* by the person) and the gender of the searcher is the gender preferred by, or otherwise the same gender as, the person.

51. Amendment of s 157ZA (Requirements for search requiring removal of clothing)

Clause 51 amends section 157ZA. This section outlines certain requirements that a person authorised to carry out a search requiring the removal of clothing must observe, including that such a search must be carried out by at least two persons of the same gender as the person being searched.

Clause 51 replaces the strict 'same-gender' search requirement with a requirement that to the extent practicable, the gender of each person carrying out the search must be the gender preferred by, or otherwise the same gender as, the person being searched.

Gender preferred, by the person being searched, is defined with reference to section 157Z(2)(a)(i).

Part 9 Amendment of Summary Offences Act 2005

52. Act amended

Clause 52 provides that part 5 amends the *Summary Offences Act 2005.*

53. Amendment of pt 2, div 4 (Offences relating to children or minors)

Clause 53 omits a section of the existing part 2, division 4 to remove 'children or' from the heading because it was duplicative.

54. Amendment of s 18 (Particular body piercing of minor prohibited)

Clause 54 omits the existing section 18(1)(a) to (c) that used gender specific terms for the genitals and nipples of a minor and replaces with gender neutral language.

Part 10 Amendment of Terrorism (Preventative Detention) Act 2005

55. Act amended

Clause 55 provides that part 10 amends the *Terrorism (Preventative Detention) Act 2005.*

56. Amendment of s 56 (Contacting family members etc.)

Clause 56 omits 'or same sex partner' from the section 56(3)(a) definition of *family member* because it is unnecessary.

Part 11 Other amendments

57. Legislation amended

Clause 57 provides that schedule 1 amends the legislation it mentions.

Amendments in schedule 1 to the *Corrective Services Act 2006* update cross references and are consequential to amendments in the Bill.

Amendments in schedule 1 to the *Victims of Crime Assistance Act 2009* update terminology references to the CSA, namely omitting reference to 'correctional' and replacing with 'corrective'.

Amendments in schedule 1 to the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004, Crime and Corruption Act 2001, Police Powers and responsibilities Act 2000, Summary Offences Act 2005 and Terrorism (Preventative Detention) Act 2005* replace unnecessary gendered language with gender neutral terms.