Parliamentary Committees



Police Powers and Responsibilities and Other Legislation Amendment Bill 2024

Report No. 43, 57th Parliament
Community Support and Services Committee
May 2024

Community Support and Services Committee

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Acknowledgements

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All web address references are current at the time of publishing.

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Chair's foreword

This report presents a summary of the Community Support and Services Committee's examination of the Police Powers and Responsibilities and Other Legislation Amendment Bill 2024.

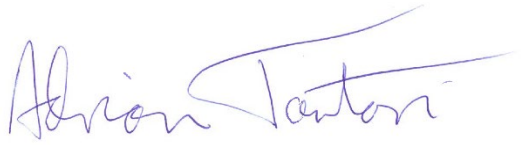
The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

The report summarises the committee's examination of the Bill, including the views expressed in submissions and by witnesses at the committee's public briefing and hearing.

The report recommendations provide further guidance to agencies ensuring gender diverse people undergoing personal searches or other procedures in law enforcement and/or clinical settings are appropriately supported before, during and after the procedure.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill and provided evidence at the public hearing. I also thank our Parliamentary Service staff, and representatives from the Queensland Police Service, Queensland Corrective Services and Queensland Health, for their assistance during the Inquiry.

I commend this report to the House.



Mr Adrian Tantari MP

Chair

Recommendations

Executive Summary

The Bill's stated purpose is to amend Queensland statutes to enshrine safeguards in primary legislation relevant to people who are being searched being able to express a preference regarding the gender of the officer conducting the search; replace existing same-sex safeguards with a new framework to provide protections in the exercise of powers, enabling the consideration of a person's gender; and to remove the ability for any police officer to view the monitor of a video camera in the area where a person is searched. The new safeguards retain the safe gender starting point; that is, the officer and the subject person should be of the same gender. The Bill also provides for similar gender preferences in clinical settings for the safety of patients, visitors and staff.

The framework acknowledges that there may be times when a person may have a preference for the officer to undertake the search to be of a different gender, and also that, at times, fulfilling a person's preference may not be practicable.

The Bill contains amendments to restrict certain prisoners from reapplying for parole after being refused; and enabling suitably qualified professionals to provide assessments of prisoners who may be at risk of self-harm or suicide, for the purpose of issuing safety orders.

The Bill makes the necessary administrative and consequential amendments for these reforms to occur.

Stakeholders to the Inquiry provided well considered and substantive suggestions to the Bill with a number of submissions providing additional feedback to aspects of the Bill as well as to the wider implementation process.

The committee identified and considered issues of fundamental legislative principle (FLP) in the Bill and is satisfied that sufficient regard has been given to the rights and liberties of individuals and the institution of parliament.

Having considered the issues raised by submitters and the explanations provided in the statement of compatibility, the committee is also satisfied that the Bill is compatible with human rights in accordance with the *Human Rights Act 2019*.

The committee makes four recommendations: firstly that the Bill be passed by the Legislative Assembly; that the Queensland Police Service provides appropriate guidance in regard to the implementation of the reforms proposed by the Bill; that the Minister for Police and Community Safety provide further clarification of the circumstances in which it is not 'reasonably practicable' to accommodate a preference for the gender of the searching officer; and that Queensland Corrective Services undertake a proactive recruitment campaign to address the current shortage of qualified psychologists in their service.

1 Introduction

1.1 Policy objectives of the Bill

The Police Powers and Responsibilities and Other Legislation Amendment Bill 2024 (the Bill) proposes to introduce a range of changes that are designed to promote and protect the rights of gender diverse people undergoing personal searches or other procedures in law enforcement and/or clinical settings in Queensland. Key objectives of the Bill are to:

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

The Bill proposes to amend the following legislation to achieve the operational improvements consistently:

- *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* (CPOROPOA)
- *Crime and Corruption Act 2001* (CC Act)
- *Mental Health Act 2016*
- *Police Powers and Responsibilities Act 2000* (PPRA)
- *Public Health Act 2005*
- *Summary Offences Act 2005*
- *Terrorism (Preventative Detention) Act 2005.*

The Bill also proposes to amend the *Corrective Services Act 2006* (CSA) in relation to prisoners reapplying for parole after being refused; and expand the range of professionals who can make prisoner safety order decisions in response to prisoners at risk of self-harm or suicide.

1.2 Background

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. Upon commencement, the BDMR Act introduces 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.[1]

The former Legal Affairs and Safety Committee (LASC) considered the Births, Deaths and Marriages Registration Bill 2022, prior to being considered by the Legislative Assembly. In response to Recommendation 3 of the LASC's *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.[2]

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1 Explanatory notes, p 1.

2 Government response to the Legal Affairs and Community Safety Committee, *Report No. 41, 57th Parliament Inquiry into the Births, Deaths and Marriages Registration Bill 2022*, tabled 24 May 2023, https://documents.parliament.qld.gov.au/tp/2023/5723T690-3D9F.pdf.

The explanatory notes advise that a review of the PPRA and 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. In 2020, the QPS updated its operational procedures in consultation with the Queensland Human Rights Commission (QHRC), Queensland Government LGBTIQ+ Roundtable and the LGBTI Legal Service Inc (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 proposes to extend on these principles and will ensure these safeguards are enshrined in primary legislation.[3]

1.2.1 Consultation with stakeholders

The explanatory notes advise that a consultation draft of the Bill and a consultation paper in relation to amendments to the police legislation and CC Act were provided to targeted external stakeholders, and that all feedback received was considered in the development of the Bill.[4]

The committee notes that stakeholders were not consulted on amendments in the Bill to legislation administered by Queensland Health, specifically changes to the *Mental Health Act 2016* and the *Public Health Act 2005*. On the lack of consultation undertaken by Queensland Health, the explanatory notes state: 'The opportunity to include these amendments in the Bill did not allow sufficient time to conduct separate consultation.'[5]

The LGTBI Legal Service submitted that the consultation process was too short to provide meaningful input to the proposed reforms, especially with regard to the impact of the proposed amendments to police searches on intersex people.[6]

On the consultation process, Kate Sanderson, Manager, Legislative Policy Unit, Queensland Health, advised the committee:

> Mental health services were provided with the opportunity to provide input on the impact of the current strict same-gender search requirements. Since introduction, the LGBTIQ+ Roundtable has been consulted on the proposed amendments and encouraged to provide feedback to the committee. Early feedback from the round table was supportive. However, they expressed a desire to see more detail about how the amendments would be operationalised. That will occur during the implementation period to allow Queensland Health to finalise those operational matters, including with stakeholders. That will include having input on guidance materials and policies and things like that that support the legislation.[7]

Committee comment

The committee is satisfied with the extent of the consultation undertaken by the relevant government agencies, noting that Queensland Health has committed to further consultation during the implementation period with key stakeholders before finalising operational guidelines and policies.

1.3 Legislative compliance

The committee's deliberations included assessing whether or not the Bill complies with the Parliament's requirements for legislation as contained in the *Parliament of Queensland Act 2001*, *Legislative Standards Act 1992* and the *Human Rights Act 2019*.

3 Explanatory notes, p 2.

4 Explanatory notes, p 18.

5 Explanatory notes, p 19. See also submissions 6 and 9.

6 Submission 9, pp 2, 9.

7 Public briefing, Brisbane, 15 April 2024, pp 8-9.

1.3.1 *Legislative Standards Act 1992*

The committee's assessment of the Bill's compliance with the *Legislative Standards Act 1992* identified issues which potentially have insufficient regard to the rights and liberties of individuals, and to the institution of Parliament. These issues are discussed in chapter 2 of this report.

Part 4 of the *Legislative Standards Act 1992* requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly and sets out the information an explanatory note should contain. Explanatory notes were tabled with the introduction of the Bill.

Committee comment

The committee is generally satisfied the explanatory notes contain the information required by Part 4 of the *Legislative Standards Act 1992* and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins. The committee considers more information in the supplementary material in relation to the implications of proposed amendments to the *Corrective Services Act 2006* would facilitate better understanding of the objectives of the Bill.

1.3.2 *Human Rights Act 2019*

The committee's assessment of the Bill's compatibility with the *Human Rights Act 2019* (HRA) is included in chapter 2 of this report. The committee finds the Bill is compatible with human rights.

A statement of compatibility was tabled with the introduction of the Bill as required by section 38 of the HRA.

Committee comment

The committee considers the statement of compatibility contained a generally sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

1.4 Should the Bill be passed?

The committee is required to determine whether or not to recommend that the Bill be passed.

Recommendation 1

The committee recommends the Police Powers and Responsibilities and Other Legislation Amendment Bill 2024 be passed.

2 Examination of the Bill

This section discusses key issues raised during the committee's examination of the Bill. It does not discuss all consequential, minor or technical amendments.

2.1 Conducting a search of a person

In the course of their duties, police officers and watchhouse officers under the PPRA, and authorised commission officers under the CC Act (each a searching officer) can conduct a search of a person. A police officer, watchhouse officer and protective services officer under the PPRA (each also a searching officer) can also touch the clothing of a person entering particular buildings to inspect their belongings. These are existing powers.[8]

The explanatory notes advise that while the procedures to be amended by the Bill impact 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.

It is acknowledged that 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 – however, the amendments proposed in the Bill have the objective of ensuring the dignity of the subject person is paramount.[9]

2.1.1.1 Stakeholder views and Queensland Police Service response

Several submitters expressed concern about whether the proposed amendment would ensure the dignity of persons subjected to a search – especially an unclothed search – and suggested, where feasible, that less intrusive alternatives be explored, including the potential use of full body scanners.[10]

The Australian Christian Lobby called for comprehensive guidelines that emphasise the preservation of human dignity in clear procedures for strip searches across diverse situations and settings, including law enforcement activities and correctional facilities.[11]

The LGBTI Legal Service submitted that 'strip searching is an outdated and unnecessary practice and should not be performed where alternatives exist', and further noted: 'Technology exists (such as full body scanners) that is both more effective and less invasive and should be adopted wherever possible.'[12]

The QPS acknowledged that an unclothed search can be distressing and uncomfortable: 'The decision to conduct these types of searches is based on risk to the person, to officers and to other people'.[13]

The QPS advised in relation to the use of alternative technologies:

> The QPS is constantly looking at new technologies that provide safer and more effective ways to keep people and watchhouses safe. The QPS already uses hand held scanners within watchhouses where appropriate. However, hand held scanners only detect material but not other things a person may be concealing on or within their body. The introduction of full body scanners into watchhouses is currently being reviewed to determine their effectiveness within a watchhouse environment.[14]

8 Statement of compatibility (SOC), p 4.

9 Explanatory notes, p 15.

10 Submissions 6, 11

11 Submission 1, p 5.

12 Submission 11, p 3.

13 QPS, correspondence, 26 April 2024, attachment, p 16.

14 QPS, correspondence, 26 April 2024, attachment, p 16.

2.2 Gender safeguards in the exercise of powers

The Bill proposes that provisions regulating searches or procedures would be governed by a 'same gender starting point' approach, supported by a 'dialogue model safeguard'.[15] This would mean that gender diverse Queenslanders would be able to express a preference as to how the search would be conducted and the gender of the officer conducting the search or procedure.[16] These reforms follow changes made in 2023 to the BDMR Act which provide for legal recognition of non-binary genders in Queensland.

The Bill proposes to:

- replace 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 (cl 42)
- remove 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 (cl 44)
- provide 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 (cl 42).

2.2.1.1 Stakeholder views

Support for the amendments to legislation in the Bill in relation to same gender safeguards in submissions was mixed, ranging from conditional to full support.

Legal Aid Queensland (LAQ) and the Queensland Law Society (QLS) were broadly supportive of the modernisation of gendered language and the same gender starting point to promote respect and recognition for people of diverse genders.[17] According to LAQ, the same gender starting point recognises social, cultural, and religious expectations about personal dignity, boundaries, and reasonable accommodations.[18] The Queensland Mental Health Commission was fully supportive of the objective of the Bill in recognising the rights of trans and gender diverse Queenslanders.[19]

DVConnect and LGBTI Legal Service were supportive of the change from 'same-sex' to 'same-gender' in the Bill,[20] but the LGBTI Legal Service emphasised:

> Removing gendered language in laws does not, in itself, guarantee that legislation is inclusive, particularly where it relates to experiences of violence and coercion that are disproportionately gendered. De-gendered legislation risks further obscuring the ways gendered experiences impact marginalised communities in complex and specific ways that can remain invisible through application and implementation of legislative frameworks.[21]

The Nerang Neighbourhood Centre was critical of the lack of a legal definition of *gender* in the Bill, with no reference to the recently amended definition of *gender identity* in the *Anti-Discrimination Act 1991* by the BDMR Act. Their submission stated: 'The lack of a specific definition of gender brooks ambiguity and uncertainty in the exercise of crucial law enforcement and protective powers for the people of Queensland'.[22]

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15 SOC, p 4.

16 Public briefing transcript, p 2.

17 Submission 3, p1; submission 13, p 1.

18 Submission 3, p 1.

19 Submission 6, p 1.

20 Submissions 6, 11.

21 Submission 11, p 3.

22 Submission 2, p 1.

DVConnect did not support the legislative change from 'required' to 'preferred' with the ability of the relevant person enacting the relevant legislation to decide if gender preference can be accommodated or not.[23] DVConnect's submission called for greater accountability for decisions made based on the use of the exceptions set out by the Bill, for example a review of the decision by a higher ranked officer, or annual reporting of decisions and their justification.[24]

LGBTI Legal Service submitted:

> To minimise the significant risk of trauma, effective safeguards must go beyond the gender of the searching officer to consider how search powers are exercised. Same gender search protocols are a starting point, not an end point.[25]

2.2.2 A person subject to search be given explanation and opportunity to express a preference

The Bill would enable, 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.

2.2.2.1 Stakeholder views and Queensland Police Service response

The QLS was broadly supportive of the amendments that provide a person the opportunity to express a preference about the gender of the person(s) to conduct the search.[26]

The importance of clarifying and accommodating a person's preference during a police search was expressed by the LGBTI Legal Service at the public hearing.[27]

To submitters' views on the provision of an explanation and the opportunity to express a preference, the QPS stated:

> Consideration will be given to updating operational policy to ensure searching officers understand how to apply the new dialogue model, including the need to provide the person to be searched with an explanation of the search process and to advise the person of their right to express a preference, including how they may choose to express their preference.[28]

Committee comment

The committee notes the advice of the Queensland Police Service that the safeguards in the Bill would apply based to a person's gender and not their sex. The committee supports the suggestions of Pride in Law and LGBTI Legal Service that there be specific and ongoing training for QPS officers in respect to this relatively new framework and how it would apply in an operational setting.

Recommendation 2

The committee recommends the Queensland Police Service conducts appropriate training of officers and support staff that focuses on diversity and intersection of LGBTIQA+ individuals encountering the criminal justice system as part of the implementation of the reforms proposed in the Bill.

23 Submission 6, p 5.

24 Submission 6, pp 5-6.

25 Submission 11, p 3.

26 Submission 13, p 2.

27 Bowen Harding, Project Officer, LGBTI Legal Service Inc, public hearings transcript, Brisbane, 29 April 2024.

28 QPS, correspondence, 26 April 2024, attachment, p 20.

2.2.3 Exceptions to consideration of a person's gender by police

The changes proposed in the Bill also include exceptions to the safeguards, for example if police believe the gender preference has been made in bad faith or where it is not practicably feasible to accommodate the person's request. The explanatory notes state that it is 'considered necessary that officers retain discretion about who exercises the power':

- 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.[29]

The explanatory notes advise that, in relation to the proposed amendments in the Bill to existing safeguards in the PPRA and the CC Act, it is not intended that the retention of such discretion in any way weaken the existing safeguards for women.[30]

2.2.3.1 Intention of the phrase 'improper purpose' in the Bill

The Bill would provide that, for a number of operational searches, 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.[31] The explanatory notes state that the phrase 'improper purpose' is intended to operate broadly and provides examples. The phrase 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.[32]

2.2.3.2 Implications of the phrase 'if reasonably practicable' in the Bill

An officer retains a limited discretion about *who* may exercise the power to search as a result of the exemption provisions that enable, for example, the 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.[33]

According to the QPS, the 'reasonably practicable' qualifier is necessary for the following reasons:

- there are a wide range of genders and there may not always be an officer of the same gender as the person
- a person may have a different gender identity to someone else who uses the same word to describe it.[34]

29 Explanatory notes, p 3.

30 Explanatory notes, p 3.

31 Bill, cls 6, 36, 37, 40, 42, 46.

32 Explanatory notes, p 3.

33 Explanatory notes, p 3.

34 QPS, correspondence, 26 April 2024, attachment, p 11.

This approach differs from the existing law relating to personal searches in the context of the PPRA and the CCA in so far as it no longer requires that the person conducting the search be 'of the same sex' as the person being searched.

When a person is asked if they have a preference about who will exercise a relevant power, such as a personal search 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 subject person or an officer to provide information about their gender at any stage of the process.[35]

In circumstances where no one of the person's gender is reasonably available to exercise the person's gender preference, the amendments also provide that the power can be exercised by two officers (or helpers) of different genders depending on the area of the body (cl 22). The explanatory notes advise that 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.[36]

2.2.3.3 Stakeholder views and Queensland Police Service response

The QHRC submitted that the 'reasonably practicable' exceptions throughout the Bill, in relation to the same gender starting point for conducting searches and other procedures, reduces the extent of human rights protections when compared with existing same-sex safeguards. Additionally, the QHRC submitted that to ensure that the provisions are correctly interpreted, there should be greater clarity about the meaning of 'improper purpose' as an exception to when a person's preference should be carried out.[37]

The QLS called for the term 'improper purpose' to be clearly defined, noting that 'the term is not an uncommon one in legislation but that it attracts different interpretations depending on the legislative body it operates within'. The QLS suggested the term is defined with reference to the objectives of the proposed amendments.[38]

Similarly, the Queensland Police Union of Employees (QPU) noted the term 'improper purpose' is not defined in any of the Acts to be amended, and recommended a definition consistent with the explanatory notes should be added to the Dictionary schedules, with examples of what may constitute an improper purpose.[39]

LGBTI Legal Service submitted that clarification was needed outlining the steps that should be taken before determining a person's preferences could not be reasonably and practicably accommodated. LGBTI Legal Service further submitted that the relevant provisions be amended to specifically require 'reasonable and good faith attempts to have been made' to accommodate the preference.[40]

In response, the QPS advised:

> It is considered that the term 'reasonably practicable' would require a searching officer to make reasonable attempts to accommodate a preference.
>
> The QPS will provide appropriate training to its officers to ensure they understand how to interpret and apply the new search provisions. Further consideration will be given to the need to include additional examples in operational policy during implementation.[41]

35 Explanatory notes, p 3.

36 Explanatory notes, p 3.

37 Submission 5, pp 2, 6, 8.

38 Submission 13, p 2.

39 Submission 4, pp 1-2.

40 Submission 11, p 11.

41 QPS, correspondence, 26 April 2024, attachment, p 13.

Stakeholders expressed concern that despite the reassurances provided in the explanatory notes, the proposed removal of current mandatory requirements for gender safeguards could allow a male officer to search a woman because there is no female officer available to conduct the search.[42]

> The QPU is particularly concerned this provision will allow persons of different genders to conduct a search, despite a gender preference being stipulated, simply because no person of the stipulated gender is on duty or reasonably available.[43]

The QHRC described the proposed amendments as 'unnecessary' considering clause 42, which proposes to insert new section 624A, also contains further exceptions from the need to search based on gender:

- where it involves an immediate search (an urgent situation arises)
- there are reasonable grounds to believe the preference is made for an improper purpose
- it is not reasonably practicable to accommodate a stated preference.[44]

The LGBTI Legal Service also queried the need for the proposed provisions given that, with a female officer likely to be available, there are no operational requirements to support the reduction in the protection for women during police searches.[45]

Australian Christian Lobby (ACL) described the language in cl 22 as 'vague' and likely to allow for the determination of who should conduct the search left to the discretion of the police.[46]

The ACL also noted that the Bill:

> lacks safeguards for female police officers who object to strip-searching males. The proposed legislation allows a male criminal to 'identify' as female and request a female officer to conduct a strip search as they bend over for inspection.[47]

The LGBTI Legal Service recommended amendment to the relevant clauses, as follows (bold and italicised by the submitter):

> A preference must be accommodated unless—
>
> (a) there are reasonable grounds to believe the preference is expressed for an improper purpose; or
>
> *(b)* ***reasonable and good faith attempts have been made to accommodate the preference, and*** it is not reasonably practicable to accommodate the preference***; and***
>
> *(c)* ***for the avoidance of doubt, it will not be considered impracticable for a person identifying as a woman to be searched by someone who identifies as a woman.***[48]

To concerns about the practical application of the proposed reforms, especially in rural and remote areas of Queensland, Acting Commissioner Brian Connors APM stated:

> If a person indicates a preference for an officer of a particular gender—we may only have several officers of that particular gender in the state of Queensland—and it is just not possible to get someone there, the

42 Submissions 1, 4, 11.

43 Submission 4, p 2.

44 Submission 5, p 6.

45 Submission 11, p 12.

46 Submission 1, p 3.

47 Submission 1, p 3.

48 Submission 11, p 11.

> dialogue model will be available to them. They can discuss that openly with the person and say, 'We could potentially have a woman police officer conduct this search. Is that okay with you?'[49]

In response to concerns that the Bill may lessen the current safeguards available for women, the QPS noted that it was 'unlikely that it would not be reasonably practicable to find a woman officer to, or to direct another person who is a woman to help, exercise the power', and further stated:

> All reasonable steps should be taken to ensure that, where a contrary preference has not been expressed, a woman searches a woman.[50]

The QPS also noted that, in relation to the CC Act, where an immediate exercise of the powers is not necessary, a search could be delayed until an appropriate officer is available to meet the same gender starting point or accommodate the preference of the subject person.[51]

Committee comment

The committee supports the objective of the Bill to strengthen community safety and the safety of the police officer in performing their duties. The committee notes the concerns of stakeholders and the suggestions made by submitters to amend the proposed legislation to clarify the necessary steps that need to be taken before an officer uses their discretion to determine who will undertake the search of a person. The committee considers the addition of examples into the relevant legislation, rather than the creation of definitions, could clarify the application of gender preference for the community without overly narrowing the application of the provision.

The committee acknowledges the commitment of the Queensland Police Service to provide appropriate training to its officers to ensure they understand how to interpret and apply the new search provisions, and that further consideration would be given to the need to include additional examples in operational policy during implementation.

Recommendation 3

The committee recommends that the Minister for Police and Community Safety provide further clarification of the circumstances in which it is not 'reasonably practicable' to accommodate a gender preference.

2.2.4 Photographing certain offenders and changes to forensic procedures

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.

Clause 6 of the Bill would insert a new section 31A into the CPOROPOA, whereby a police officer requires a reportable offender to expose their breasts to enable that part of the body to be photographed. 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.

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49 Public briefing, p 4.

50 QPS, correspondence, 26 April 2024, attachment, p 15.

51 QPS, correspondence, 26 April 2024, attachment, pp 14-15.

Clause 48 of the Bill proposes to amend the definition of 'intimate forensic procedure', so the photography of the breasts of a person of any gender is not an intimate forensic procedure.

2.2.4.1 Stakeholder views and Queensland Police Service response

Several submitters did not support the amendments to the definition of intimate forensic procedure which would potentially allow the photography of a person's breasts without their consent; and expressed concern over the potential removal of the requirement for a forensic nurse examiner to be of the same sex as the person who is to undergo the procedure.[52] The LAQ noted that breasts are 'an inherently sexualised part of the body, and many people may feel extremely humiliated, embarrassed, and violated by having their breasts exposed and photographed in this manner'.[53]

LGBTI Legal Service submitted the removal of the requirement to obtain a forensic procedure order to photograph a person's breasts would create a risk that the procedure will occur more frequently without due regard to the potential for harm. [54] The LGBTI Legal Service recommended that 'breasts' be a defined term in the legislation, whether in the Dictionary or as a sub-clause to the relevant provisions, as:

> Breasts should include the chests of women who have undergone a mastectomy as well as breasts and chests of transgender, nonbinary, and gender diverse people.[55]

LAQ submitted that 'at a minimum, if the photography of breasts is to be permitted then gender safeguards that allow for the person being photographed to be photographed by a person of their preferred gender should be implemented'.[56] Both Pride in Law and LGBTI Legal Service called for practical guidance to be provided to officers in respect of photographing trans and gender diverse persons.[57]

In response to concerns about taking photographs without consent, the QPS stated there are limited circumstances where police would require photographs of a person's breasts.[58] The QPS also reiterated that the Bill replaces the same sex requirement with the 'dialogue model' safeguard consistent with the amendments to searches, inspections of the person's belongings and photography of reportable offenders.[59]

In response to LGBTI Legal Service, the QPS stated it does not anticipate that removal of the requirement to obtain a forensic procedure order will result in a significant increase of these photographs being taken, 'nor discourage officers from fulsome consideration of the subject person's human rights'.[60]

2.2.5 Safeguards in respect to video monitors in operational settings

Clause 25 of the Bill would expand 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. Additionally, clause 44 of the Bill

52 Submissions 3, 6, 11.

53 Submission 3, p 2.

54 Submission 11, p 13.

55 Submission 11, p 13.

56 Submission 3, p 2.

57 Submission 7, p 2; and Sub 11, p 13.

58 QPS, correspondence, 26 April 2024, attachment, p 24.

59 QPS, correspondence, 26 April 2024, attachment, p 28.

60 QPS, correspondence, 26 April 2024, attachment, p 25.

would omit part of section 630 of the PPRA so 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.

2.2.5.1 Stakeholder views and Queensland Police Service response

The QPU expressed concern that prohibiting an officer from viewing the monitor of a camera during a search would increase the risk of claims of misconduct against police.[61]

The QPU called for consideration 'about how this practice can best safeguard the dignity of those in custody and safeguard our members from false claims of misconduct'.[62]

In response to the QPU submission on this matter, the QPS stated:

> The safeguard refers only to video cameras monitoring a place where a person is searched. For example, a CCTV camera affixed to a wall. It does not refer to a body-worn camera or other video camera operated by a police officer.[63]

Jamie Impson, QPS, advised:

> The amendment in the bill in relation to the use of video cameras monitoring an area where a search is conducted is only to prevent CCTV from being used in that situation. It is still open for the officer to use a body worn camera or any other recording device. Indeed, service policy does also enable video recordings to be taken of unclothed searches in particular situations where there is a potential risk to anyone involved in the search.[64]

Committee comment

The committee is satisfied that the safeguards in respect of video monitors as set out in the Bill balance the privacy of the person being searched with the risk for police officers of accusations of misconduct, noting the important role that body worn cameras play in ensuring the safeguards are met in the operational environment.

2.2.6 Minimising risk to police officers

The QPU called for 'clear recognition' in the legislation that an officer is not obliged to disclose their own gender to the person being searched:

> … nor can such officer be required to undertake a search if the officer themselves feels undertaking the search would make the officer uncomfortable or embarrassed. This should not be limited to gender grounds, but should also allow an officer to decline to conduct a search due to cultural, religious or even officer safety concerns.[65]

The QPS advised that an officer is not required to disclose information about their gender identity, and the Bill's proposed reforms do not require an officer to conduct a search. The search remains at the discretion of the officer.[66] Further, the QPS advised the safeguard provides that the police officer may direct another person to conduct the search if reasonably necessary to address a concern related to gender in a way that minimises embarrassment and offence.[67]

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61 Submission 4, p 2.

62 Submission 4, p 2.

63 QPS, correspondence, 26 April 2024, attachment, p 32.

64 Public briefing transcript, p 5.

65 Submission 4, p 3.

66 QPS, correspondence, 26 April 2024, attachment, p 34.

67 QPS, correspondence, 26 April 2024, attachment, p 37.

2.2.7 Gender safeguards in watchhouses

Clause 45 of 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. The explanatory notes state that this clarifies the previous understanding of the section.[68]

Clause 46 would insert a new section 644A to the PPRA to provide new gender safeguards for inspecting an entrant's belongings at watchhouses.

2.2.7.1 Stakeholder views

The QHRC attested that, even on first admission to a watchhouse, strip searches should only occur where it is the least restrictive option available, and where other searches such as body scanning searches are not available.[69]

2.2.8 Human Rights issues engaged by search provisions

As noted in the statement of compatibility, the amendments in the Bill engage a range of rights protected by the HRA, including:

- recognition and equality before the law (section 15)
- freedom of thought, conscience, religion, and belief (section 20)
- privacy and reputation (section 25)
- cultural rights generally (section 27)
- liberty and security of person (section 29)
- right to humane treatment when deprived of liberty (section 30).[70]

The human rights most impacted by the Bill are considered below.

2.2.8.1 *Human Rights - Right to recognition and equality before the law*

Section 15 of the HRA protects the *right of recognition and equality before the law*. This right includes the right to enjoy human rights without discrimination, with equal protection and effective protection against discrimination.[71] Subsection 15(5) of the HRA explicitly recognises that where measures are taken 'for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination', such measures 'do not constitute discrimination'.

Because this Bill interacts directly with the equality rights of gender diverse and trans Queenslanders, it is necessary to consider the international human rights principles that assist in the articulation of the right to equal treatment before the law in this context. The statement of compatibility lists the relevant international human rights principles.[72] The explanatory notes advise that the QPS has already updated its operational procedures in consultation with the QHRC, the Queensland Government LGBTI Roundtable and the LGBTI Legal Service as part of a human rights review, and the Bill reflects the international human rights principles.[73]

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68 Explanatory notes, p 9.

69 Submission 5, p 3.

70 SOC, p 2.

71 *Human Rights Act 2019* (HRA), s 15(1)-(5).

72 SOC, p 2.

73 Explanatory notes, p 2.

2.2.8.2 Human rights – Right to humane treatment when deprived of liberty

Section 30 of the HRA provides that all persons deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person.[74] This extends to ensuring that an accused person who is detained or a person detained without charge must be treated in a way that is appropriate for a person who has not been convicted.[75]

In general, the changes proposed in the Bill aim to create a human rights compliant model for searching gender diverse, trans or intersex people that removes gender binary language (such as 'woman' or 'same sex') and enables people being searched to express a gender preference as to who will conduct a personal search.[76]

Committee comment

The committee finds the amendments proposed in Parts 4 and 7 of the Bill relating to personal searches or searches of a person's belongings provide an appropriate balance between the rights of persons to be searched and the rights of the public and searching officers exercising powers under the *Police Powers and Responsibilities Act 2000* and the *Crime and Corruption Act 2001*.

Alternative legislative options were considered and evaluated in the statement of compatibility but fail to either achieve appropriate alignment with key human rights concepts relating to gender identity, or fail to provide practical options for searching officers to fulfil their public safety duties and/or preserve their own rights to privacy. For this reason, to the extent to which the proposed amendments limit human rights, the committee is satisfied they fall within the scope of permissible limitations set out in section 13 of the HRA.

2.3 Safeguards for personal searches in clinical settings

Parts 5 and 8 of the Bill propose to amend the *Mental Health Act 2016* and *Public Health Act 2005* to make operational improvements to requirements for personal searches in clinical settings.

2.3.1 Amendments to *Mental Health Act 2016*

The *Mental Health Act 2016* (Mental Health Act) provides for the security of authorised mental health services and public sector health service facilities, including searches of patients and visitors. Under provisions in Chapter 11, part 7 of the Act, 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.[77]

The Bill at clauses 27 and 28 amend 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.

The explanatory notes state the proposed amendments replace 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'. Where it is not reasonably practicable to accommodate a

[74] HRA, s 30(1).

[75] Queensland Human Rights Commission, 'Fact Sheet on s30, https://www.qhrc.qld.gov.au/your-rights/human-rights-law/right-to-humane-treatment-when-deprived-of-liberty

[76] Explanatory notes, p 2.

[77] Explanatory notes, p 4.

person's preferences, or to have a person of the same gender carry out the search, the search may still be carried out.[78]

Committee comment

The committee notes that the proposed amendments to the *Mental Health Act 2016* differ from operational search requirements for police and other settings. 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. The committee is satisfied that the amendments to the Mental Health Act will maintain the dignity of the person and ensure the safety of patients, visitors, staff and others at the authorised mental health service.

2.3.2 Amendments to *Public Health Act 2005*

Chapter 4A of the *Public Health Act 2005* (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, the doctor or health practitioner can search the person.

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.

The Bill at clauses 50 and 51 propose to amend 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.

Similar to the amendments to the Mental Health Act, the explanatory notes acknowledge that there may be circumstances where it not practicable to meet the 'same gender' requirement, and the person has not expressed a preferred gender or it is not practicable to accommodate that preference.[79]

2.3.3 Human rights issues engaged by searches in clinical settings

2.3.3.1 Human Rights – Right to access health services without discrimination

Section 37 of the HRA provides that every person has the *right to access health services without discrimination* and that a person 'must not be refused emergency medical treatment that is immediately necessary to save the person's life or to prevent serious impairment to the person'.

The amendments proposed in the Bill seek to remove the reference to 'same gender' contained in these provisions and replace this with provisions that would require the person being searched to be given an opportunity to express their preference about the gender of someone carrying out the search and either be searched by someone who aligns with their expressed preference, or otherwise by someone of the same gender as the person.

78 Explanatory notes, p 10.

79 Explanatory notes, p 11.

These proposed amendments are designed to promote equality rights and the right to privacy for gender diverse and trans Queenslanders by ensuring that – at least as a starting point – a person can express a gender preference when being subject to personal searches in clinical settings. However, because the changes also contemplate circumstances in which such preferences cannot be accommodated - resulting in potentially intimate personal searches being conducted by a person whose gender is contrary to the gender preferred by the person being searched and/or making assumptions about the person's gender identity – they also have the potential to limit human rights, including the privacy rights of those being searched.[80]

Committee comment

The committee is satisfied that the proposed amendments to the *Public Health Act 2005* will maintain the dignity of the person and ensure the safety of patients, visitors, staff and others at public sector health service facilities.

2.3.4 Stakeholder views and Queensland Police Service response

The Queensland Mental Health Commission expressed strong support for the proposed changes to the Mental Health Act and the Public Health Act.[81] Pride in Law was also supportive of the amendments to both Acts along with implementation of appropriate procedural guidelines and training of authorised persons.[82]

The QPS responded: 'Queensland Health will provide operational guidance to health service staff during implementation on relevant considerations for applying the provisions in practice'.[83]

2.4 Requirements for hand held scanners

Part 3A of the PPRA provides for police officers, in certain circumstances, to use hand held scanners for the purpose of finding weapons. These searches can be conducted without warrant in safe night precincts and public transport stations. The use of hand held scanners, commonly known as 'wanding', involves passing the scanner in close proximity to a person or the person's belongings.[84]

Section 39H of the PPRA relates to safeguards when exercising powers. Clause 34 of the Bill would repeal the safeguard found at section 39H(3), which provides that 'If reasonably practicable, the police officer must be of the same sex as the person'.

The explanatory notes advise that this provision is being removed because the use of hand held scanners does not involve touching the person being searched.[85]

The statement of compatibility considers that enabling police officers to use these scanners on any person, regardless of gender, helps detect knives and other objects. Removing the 'same sex' safeguard in the current Act further promotes community safety, with minimal impact upon human rights.[86]

2.4.1 Stakeholder views and Queensland Police Service response

Three submitters addressed the amendments relating to hand held scanners, and all were critical of the proposed change.

80 SOC, p 9.

81 Submission 7, p 1.

82 Submission 9, p 2.

83 QPS, correspondence, 26 April 2024, attachment, p 12.

84 PPRA, Part 3, s 39A.

85 Explanatory notes, p 29.

86 SOC, p 20.

The QHRC acknowledged these scanners may be less invasive than other searches as they do not touch another person, but considered the changes could cause issues when a scanner detects an object. This scenario might prompt officers to undertake more invasive searches such as a pat down or strip search. The QHRC recognised this situation would become an escalated search that is subject to the proposed gender safeguards that allow the individual to express their preference for the searching officer's gender. It suggested, however, that 'this may be swiftly overridden' because an officer may consider they are justified to undertake an immediate search and would therefore be excepted from this requirement.[87]

The QPS responded that where the scanner indicates metal is likely to be present, an individual may be required to produce the item. If they comply, the hand held scan may continue. The response also stated that the indication that metal is likely present does not, in and of itself, 'constitute a reasonable suspicion that a person may have a concealed firearm or weapon'.[88]

DVConnect generally disapproved of police use of hand held scanners without a warrant. With regard to the specific provisions within the Bill, it said that identifying these searches as non-intimate procedures 'further exposes over-policed populations to indifferent policing approaches that do not regard how intimidating and harmful such procedures can be'.[89] DVConnect noted the power imbalance that occurs when police conduct a search, and that a hand held scanner may be perceived as a threat, regardless of whether it touches a body. In its view, 'This must be considered an intimate procedure with same-gender requirements'.[90]

Pride in Law recommended the use of hand held scanners be included in schedule 6 of the PPRA under the definition of 'intimate forensic procedure'.[91]

Similarly, the LGBTI Legal Service recommended 'Same gender safeguards ought to be retained and strengthened when used in intimate areas'. Instead of removing section 39H(3), the organisation recommended introducing the same gender safeguards being introduced in other areas of the Bill. 'The fact that a police officer is not physically touching a person', the submitter wrote, 'does not mean that the risk of trauma is nullified'.[92]

The QPS responded that any less restrictive methods for searches were considered and were addressed in the statement of compatibility. The QPS stated that applying the same-gender safeguards proposed elsewhere in the Bill to hand held scanners is not necessary because 'the procedure does not involve touching the person or requiring them to remove any of their clothing'. The response likened the procedure to security procedures citizens undergo at an airport, or at large events. The QPS advised it considered the option of changing the word 'sex' to 'gender' in section 39H(3). It noted that, in the case of gender diverse people, there may not be a police officer who identifies as the same gender as them, and in such cases 'the requirement for a police officer to be the same gender as the person to be searched cannot reasonably apply'.[93]

2.5 Restricting prisoners from reapplying for parole under certain conditions

Clause 8 of the Bill proposes to amend the *Corrective Services Act 2006* (CSA). The changes would impact how regularly certain prisoners may apply for parole.

87 See s 624(2) of the PPRA.

88 QPS, correspondence, 26 April 2024, attachment, p 30.

89 This view was endorsed by LGBTI Legal Service Inc, submission 11, p 13.

90 Submission 6, p 5.

91 Submission 9, p 4.

92 Submission 11, pp 12-13.

93 QPS, correspondence, 26 April 2024, attachment, pp 31-2.

The current framework provides that the Parole Board (the Board) can determine a period that must elapse before a prisoner can reapply for parole after a refusal decision. The explanatory notes state that, under the current provisions, prisoners can 'frequently' apply for parole following a parole application being refused, even if the risk they pose to the community has not diminished, they have not demonstrated remorse for their actions, or they have not meaningfully engaged in rehabilitative activities. According to the explanatory notes, these frequent parole reapplications, in circumstances in which prisoners have limited parole prospects, can 'cause repeated and unnecessary stress on victims and Eligible Persons (EP) registered against them'.[94]

If passed, the Bill's new framework will provide the Board discretion to determine a longer period before a prisoner is eligible to reapply for parole. With consideration of the individual circumstances, the Board will be given 'discretion to set an appropriate limit on prisoners reapplying for parole'.[95]

Currently, the CSA provides that the Board must decide a period of time within which a further application by the prisoner must not be made (without the Board's consent). Section 193(5)(b) requires the Board to decide a period of time within which the prisoner may make a further application for a parole order. The prescribed timeframes are as follows:

Section 193(5A):

> The period of time decided under subsection (5)(b) must not be more than—
>
> (a) for a prisoner serving a life sentence—3 years; or
>
> (b) otherwise—6 months.

As well as extending the maximum time, the Board can decide to allow a time period to pass before a prisoner is able to reapply for parole. The Bill proposes 3 categories of prisoner: those serving a term of life imprisonment, those serving 10 years or more, and a third category of all other prisoners.

Under clause 8, the proposed new s 193(6) would state:

> The period of time decided under subsection (6)(b) must not be more than—
>
> (a) if the prisoner is serving a term of imprisonment for life—5 years; or
>
> (b) if the prisoner is serving a term of imprisonment of 10 years or more other than a term of imprisonment for life—3 years; or
>
> (c) if paragraphs (a) and (b) do not apply—1 year.

In deciding the period that must elapse before a prisoner can reapply for parole, the proposed new section 193(7) would provide that the Board *must* consider:

- the nature, seriousness, and circumstances of the prisoner's crimes
- the reasons the application was refused

Further, the Board *may* consider:

- the likely effect that making further applications for a parole order may have on a victim or EP
- the extent to which delaying the prisoner from making a further application may be in the public interest.

The QPS advised the proposed changes are anticipated to increase efficiency for the Board to prevent it from needing to consider subsequent applications from prisoners who are unlikely to be granted parole. Consequently, the QPS expects the Board will be able to decide on other parole applications

94 Explanatory notes, p 8.

95 Explanatory notes, p 8.

more quickly, including when a court sets an immediate parole eligibility. The changes would not preclude prisoners from applying for exceptional circumstances parole, nor would it prevent the Board being able to allow a new application at any time.[96] Queensland Corrective Services (QCS) clarified that 'exceptional circumstances' applications generally relate to the imminent end of a prisoner's life.[97]

2.5.1 Matters of fundamental legislative principle and human rights

2.5.1.1 Issues of fundamental legislative principle – administrative power

The explanatory notes acknowledge that allowing the Board to impose restrictions on parole reapplications may be considered inconsistent with the rights and liberties of individuals as it makes rights and liberties contingent on administrative power. This is because the proposed amendment would provide additional discretion to the Board to extend restricted periods through the application of legislated criteria.

The statement of compatibility acknowledged the amendments relating to prisoner parole applications impact several rights. The *right to liberty*[98] protects an individual from the unlawful or arbitrary deprivation of their liberty. The *right to humane treatment when deprived of liberty*[99] provides that a person is entitled to be treated humanely when they have been accused of breaking the law and are being detained.[100]

To determine if fundamental legislative principles have been satisfied, several considerations emerge. Legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.[101] Legislation should also be consistent with the principles of natural justice.[102] This includes the right to be heard, being afforded procedural fairness and having an un-biased decision maker.[103]

The Bill also proposes that these new maximum time periods would apply to applications for parole orders made under the current CSA but not decided before commencement of the Bill.[104]

These amendments raise issues of administrative power and natural justice because they provide the Parole Board with additional discretionary power to extend the period between applications for parole, which impacts the rights and liberties of the individual prisoner applying for parole.

The explanatory notes acknowledge that these amendments raise issues of fundamental legislative principle, but justify the amendments on the basis that: the administrative power is clearly defined; it is subject to clear maximum limits proportionate to the sentence length; there are criteria set out in the Bill to guide decisions of the Parole Board; and decisions will be subject to judicial review.[105]

2.5.1.2 Human rights – right to liberty, right to humane treatment when deprived of liberty

The government's view is that refusing parole and restricting a prisoner from reapplying for a period is not generally considered a limitation on their rights. This is because there is always a possibility an

96 QPS, correspondence, 5 April 2024, attachment, p 17.

97 QPS, correspondence, 5 April 2024, p 17.

98 See s 4(3)(a) of the *Legislative Standards Act 1992* (LSA).

99 See s 30(1) of the HRA.

100 SOC, p 28.

101 LSA, s 4(3)(a).

102 LSA, s 4(3)(b).

103 Office of the Queensland Parliamentary Counsel (OQPC), '*Fundamental legislative principles: the OQPC Notebook*' (Notebook), pp 24-32.

104 Bill, cl 10 (inserts CSA, s 490ZJ).

105 Explanatory notes, p 16.

individual will remain in custody for the duration of their sentence, and parole release is not a right. It is meant to assist a prisoner's rehabilitation, but is not always appropriate, such as when a prisoner continues to pose an unacceptable risk to community safety.[106] However, the statement of compatibility notes that determining whether the prisoner's human rights are limited would depend on several factors:

- if the detention were arbitrary; and/or
- if the period imposed were to extend so far as to create a sense of hopelessness that the prisoner would never be released.[107]

The statement of compatibility states:

> the amendment is not considered to limit human rights. Even if the amendments did amount to limitations on human rights, these are considered to be justified … and the amendment is compatible with human rights.[108]

It is apparent from the Bill's supplementary material that the aim of these provisions is twofold – to protect victims from further trauma caused by being notified of a prisoner's application for parole relatively soon after being notified of a parole refusal, and to ensure the efficient operation of the parole system (by allowing the Parole Board to focus on parole applications where there are greater prospects of parole suitability).[109]

Committee comment

The committee is satisfied that the potential impact on prisoners who may be affected by these amendments is suitably justified by the need to protect victims and Eligible Persons from the re-traumatisation they may experience following repeated parole applications.

With regard to the potential impact on the human rights of prisoners, the committee finds that the Bill, if passed, would not unjustifiably limit the rights of this cohort of prisoners protected under the *Human Rights Act 2019*. It is the view of the committee that the proposed changes achieve a balance between the purpose of the limitation and preserving the human right.

2.5.2 Stakeholder views and Queensland Police Service response

LAQ, the Prisoners' Legal Service (PLS), the Aboriginal and Torres Strait Islander Legal Service (QLD) Ltd (ATSILS), the Bar Association of Queensland, and the QLS broadly opposed the amendments to parole applications proposed in the Bill. The QHRC expressed neither support nor opposition to these changes but made several recommendations.

ATSILS strongly opposed providing greater discretion to the Board to extend how long a prisoner must wait before reapplying. The organisation submitted:

> Aboriginal and Torres Strait Islander individuals, who are overrepresented in the numbers of those incarcerated, already face numerous barriers and challenges in accessing parole. The proposed amendments to the parole regime will only compound this disadvantage and, ultimately, have the potential to put society at a greater risk to safety as many incarcerated individuals will not be able to reapply for parole before their fulltime date, which will result in prisoners – some of which have been incarcerated for a long time – being released into the community without any prior structured community-based supervision.[110]

106 SOC, p 28.

107 SOC, p 28.

108 SOC, p 31.

109 SOC, p 29; explanatory notes, p 17.

110 Submission 10, p 1.

LAQ concurred, noting the overrepresentation of Aboriginal and Torres Strait Islander peoples in Queensland prisons. It also noted the disproportionate adverse impacts experienced by prisoners with disabilities. LAQ stated that the Bill 'may have the practical effect of imposing further serious disadvantages on First Nations peoples, and people with psycho-social disabilities'.[111] Similarly, PLS noted prison populations 'experience significant and intersectional disadvantage'.[112] PLS also noted that, because of the disadvantage experienced by many prisoners, they are unable to navigate the parole process—particularly First Nations peoples, people who live with disability, and people with limited education and literacy. To alleviate these challenges, PLS recommended mandating oral hearings as part of all parole systems.[113]

The QPS[114] 'committed to playing its part in reducing the over-representation of Aboriginal and Torres Strait Islander peoples in custody and supporting prisoners with disability'. It advised that 'where practicable' its officers provide services in response to the communication needs of people from non-English speaking backgrounds, First Nations peoples, and prisoners who are not literate. The QPS said it 'ensures that communication with prisoners occurs in a manner which is fair and does not place the prisoner at a disadvantage'. It confirmed it is currently considering recommendations by the Queensland Government to consider allowing non-written parole applications.[115]

The QPS did not respond to the likelihood of the Bill increasing adverse outcomes for these groups, but it did note that it 'works closely with Queensland Health and the National Disability Insurance Agency to support prisoners'.[116]

PLS also suggested the 'amendments will compound the consequences of flawed parole refusal decisions', since prisoners will need to wait longer to remedy any errors in an application. A prisoner, it argued, may currently be eligible to reapply after 6 months, but under the proposed changes, this could be up to 3 years.[117] In its response, the QPS said the Board will have discretion to consider parole applications within a restricted period when there are reasonable circumstances. It also noted the prisoners would be eligible to apply for judicial review. Further, it stated the periods in the Bill were designed to address 'the most extreme cases', and it is envisaged the Board will 'more commonly apply a shorter period than the maximum'.[118]

PLS and ATSILS suggested the proposed changes will limit prisoners' access to parole, and with it, access to reintegration activities and supervision. PLS noted parole provides an opportunity to gradually reintegrate a released prisoner into the community while ensuring they are supervised. Extended timeframes before a prisoner can reapply for parole, it wrote, 'will inevitably result in greater numbers of prisoners being discharged from prison at the expiration of their sentence', and limiting access to parole further 'limits the time available under their sentence to provide any community supervision'.[119] ATSILS stated these changes would compound disadvantage, as prisoners will be released from prison at the end of their incarceration without having received 'any prior structured community-based supervision'.[120]

111 Submission 3, p 4.

112 Submission 8, p 4.

113 Submission 8, pp 5, 8.

114 Responses to the Bill, including those relating to Queensland Corrective Services, were provided in QPS correspondence.

115 QPS, correspondence, 26 April 2024, attachment, pp 48-9.

116 QPS, correspondence, 26 April 2024, attachment, p 48.

117 Submission 8, p 5.

118 QPS, correspondence, 26 April 2024, attachment, pp 47,49.

119 Submission 8, p 5.

120 Submission 10, p 1.

The QHRC recommended the Bill be amended so that written reasons for refusals must be provided.[121] PLS stated the current correspondence often does not constitute an adequate statement of reasons, and since QCS is no longer required to provide advice for how a prisoner may improve their parole prospects, 'prisoners are unable to address any outstanding matters to obtain release on their next parole application'.[122]

The QPS advised that there is an existing requirement under section 193(5)(a) that the Board must provide the prisoner with written reasons refusing parole, and this provision will remain. Further, the QPS stated when the Board forms a preliminary view that an application should be refused, it 'will provide clear, simple, and fulsome reasons in writing to the prisoner outlining why it is considering to not grant the parole application' in a 'Consider Not Grant' notice. If the Board subsequently decides not to grant the parole, a 'Final Not Grant' correspondence is sent to the prisoner which advises of the final decision, as well as any additional information taken into account beyond what was already outlined in the 'Consider Not Grant' correspondence.[123]

PLS noted that increasing the maximum time between parole applications does not appear to be evidence based. PLS said the maximum period was previously increased in 2021, and that 'It is difficult to justify an even greater extension when the effects of the first cannot be known'.[124] The QPS reiterated that the changes are intended as a maximum, and therefore the Board will more often apply a shorter period. No comment was made whether the proposed changes were evidence based.

PLS suggested the proposed amendments are 'premature and piecemeal' and should be delayed until the findings and recommendations of the Queensland Parole System Review 2 (QPSR2) can be considered.[125]ATSILS echoed this sentiment, stating,

> the Queensland Government must delay amendments to the parole regime until the recommendations which come out of the second Parole System Review (QPSR2) are properly considered, noting that the findings of this review were handed over to the Queensland Government in September 2023 and a report should be imminent.[126]

In response, the QPS stated the amendments in the Bill are not proposed in response to the QPSR2, nor do they respond to its recommendations. It advised 'The QPSR2 report is under consideration'.[127]

Committee comment

The committee notes that the proposed changes do not respond directly to recommendations from the QPSR2; nonetheless, it seems likely the findings of the review will provide a relevant outline of the contemporary context and current systemic issues impacting Queensland prisons. The committee also notes the merit of concerns raised by submitters who believe waiting for the publication of the QPSR2 would have allowed Queensland Corrective Services to better consider and incorporate its findings, and this would better guide the development of evidence-based legislative reform.

2.5.2.1 Human rights considerations

The QHRC was concerned that the Bill has the potential to limit an individual's human rights. It referred to section 29 of the HRA, which defines a person's right to liberty and security, and their right not to be arbitrarily detained.

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121 Submission 5, p 11.

122 Submission 5, p 11; Submission 8, p 7.

123 QPS, correspondence, 26 April 2024, attachment, p 52.

124 Submission 8, pp 7-8.

125 Submission 8, p 3.

126 Submission 10, p 3.

127 QPS, correspondence, 26 April 2024, attachment, p 53.

The QHRC submitted:

> While detention pursuant to sentence is lawful, a decision to refuse parole can still limit the right to liberty if the refusal is 'arbitrary', such as where a decision is inappropriate, unjust, lacks predictability or due process. Similarly, a decision that prevents a person from applying for parole for a particular time period must not be arbitrary or disproportionately limit human rights.[128]

The QHRC recommended the Queensland Corrective Services implement the following amendments to clause 8 of the Bill:

- include provision so that the Board would be required to provide written justifications for any time period imposed
- expand the prescribed matters the Board is allowed to consider when making a determination on the duration of the restricted period to 'consider all relevant matters, including matters relevant to human rights'
- ensure the criteria used by the Board to allow a prisoner to make an application within a restricted period be clearly defined and communicated to prisoners.[129]

Similarly, LAQ suggested the factors considered by the Board should include an explicit reference to the HRA.[130]

Responding to human rights concerns, QPS said the proposed amendments to section 193 of the CSA are 'considered to be compatible with human rights'. The response noted that refusing parole and providing a timeframe that must elapse before the prisoner can reapply already exists in the parole process. Further, the QPS noted that section 58 of the HRA requires public entities must make decisions that are compatible with human rights, and that there is no need to replicate this obligation in the Bill.[131]

2.5.2.2 Stakeholder views and Queensland Police Service Response

Stakeholders also expressed concern about rehabilitative programs in the context of the Bill. LAQ's submission said that a prisoner's progress towards the completion of recommended rehabilitation programs or interventions is considered in parole decisions. It stated these programs are required to be completed by prisoners, but that there are significant delays in their availability.[132] ATSILS suggested the reforms might lead to a greater risk to community safety as prisoners will end up serving their full sentence and be released without having undergone any rehabilitation programs.[133]

The QPS stated that the determination to set a timeframe that must elapse prior to a subsequent application is made following a decision that a person is unsuitable to be released into the community.[134]

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128 Submission 5, p 10.

129 Submission 5, p 11.

130 Submission 3, p 4.

131 QPS, correspondence, 26 April 2024, attachment, p 42.

132 Submission 3, p 4.

133 Submission 10, p 5; also noted by Helen Blaber, Director, PLS, public hearing transcript, Brisbane, 29 April 2024.

134 QPS, correspondence, 26 April 2024, attachment, p 50.

Committee comment

The committee acknowledges stakeholder views that the parole system provides particular challenges to certain groups, including First Nations peoples, people with disability, and those who cannot read. The committee believes, on balance, the proposed amendments that would allow the Board to determine a longer period before a prisoner can reapply for parole are reasonable. When allowing longer periods to elapse, however, it becomes increasingly important that the parole process itself be as fair and transparent as possible. The committee encourages Queensland Corrective Services to consider some of the recommendations from stakeholders, including ensuring greater transparency relating to refusal decisions, allowing for non-written parole applications and processes, and improving outcomes for First Nations peoples and people with disability.

Further, the committee encourages the Parole Board to remain mindful of the benefits of parole in relation to not reoffending, and the increased risk to the community of releasing prisoners who have not had a fulsome parole period at the end of their sentence.

2.6 Expanding eligibility to make prisoner safety order decisions

The Bill proposes to broaden the range of professionals who can be appointed by QCS to conduct a clinical risk assessment for the purpose of placing individuals on a prisoner safety order. The clinical assessment is used to inform the chief executive or a delegate who will decide whether to place them on a safety order based on the level of risk and the individual's needs.[135]

The explanatory notes advise that current provisions only allow for doctors and psychologists to make these assessments, and the Bill would expand the list of 'suitable qualifications' required to make these determinations. Proposed new section 8A (see cls 11-17) would allow for assessments from social workers, occupational therapists, nurses, and speech pathologists. The government stated that this amendment allows flexibility in appointing professionals, and it responds to a national shortage in the psychology workforce.[136]

2.6.1 Human rights and fundamental legislative principles

2.6.1.1 Matters of fundamental legislative principle - delegation of administrative power

Legislation should allow the delegation of administrative power only in appropriate cases and to appropriate persons.[137] Generally, powers should be delegated only to appropriately qualified officers or employees of the administering department.[138]

Currently, the CSA provides that the chief executive may make a safety order for a prisoner if a doctor or psychologist advises the chief executive that they reasonably believe there is a risk of a prisoner harming themselves or someone else. The chief executive may also provide such an order if they believe there is a risk of the prisoner harming, or being harmed by, someone else; or, the safety order is necessary for the security or good order of the corrective services facility. [139] A safety order places additional restrictions on an individual than those in custody generally to ensure their safety and wellbeing.[140]

135 QPS, public briefing transcript, Brisbane, 15 April 2024, p 3.

136 Explanatory notes, p 14.

137 LSA, s 4(3)(c).

138 OQPC, Notebook, p 33.

139 CSA, s 53.

140 SOC, p 31.

The Bill proposes to amend the CSA to enable an 'authorised practitioner' to provide this advice.[141] The chief executive may appoint an accredited health service provider,[142] doctor, nurse, occupational therapist or psychologist as an authorised practitioner. However, the chief executive may only do so if the person is a corrective services officer or a public service officer and has the necessary competencies and training (as stated in the 'authorised practitioner policy'[143]) to perform the functions of an authorised practitioner.[144]

This raises issues of fundamental legislative principle because, although the chief executive retains the ultimate ability to make the safety order, authorised practitioners would have the necessary functions and powers under the CSA to make assessments about prisoners at risk of harming themselves or others which ultimately informs the chief executive's decision to make the safety order. While this is current practice under the CSA for doctors and psychologists, the Bill extends these functions and powers to a broader range of health professionals.

The explanatory notes justify the proposed amendments on the basis of flexibility and the need for timely prisoner safety order decisions (which ultimately goes to the safety of prisoners and others around them).[145] The explanatory notes advise that in practice assessments of prisoners are made by QCS employed psychologists, and the current psychology workforce shortage is impacting the ability of these assessments to be made in a timely manner.[146]

While the explanatory notes acknowledge that these amendments may raise issues regarding the appropriate delegation of administrative power, the explanatory notes consider the proposed approach ensures only those 'appropriately trained and qualified to make safety order assessments can be provided with this function'.[147] For example, the Bill provides for an 'authorised practitioner policy', which, according to the explanatory notes, will set out the relevant accreditation, qualification and training requirements for practitioners, working to exclude any practitioner who does not have the requisite experience.[148]

There are also other safeguards within the CSA relating to safety orders, such as the requirements for reviews, time limits on safety orders and discretionary powers for the chief executive to amend or cancel a safety order at any stage.[149]

2.6.1.2 Potentially insufficient regard to institution of Parliament: Delegation of legislative power

Whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill allows the delegation of legislative power only in appropriate cases and to appropriate persons, and sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.[150]

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141 Bill, cls 11, 17 (CSA, amends s 53, new s 305B).

142 An accredited health service provider means someone who provides a health service, including for example a speech pathologist or social worker, and holds the necessary professional registration, licensing or authorisation, as stated in the authorised practitioner policy, to provide the health service. See Bill, cl 17 (CSA, new s 305B(4)).

143 See Bill, cl 17 (CSA, new s 305C).

144 Bill, cl 17 (CSA, new s 305B).

145 Explanatory notes, pp 8, 17. See also SOC, p 31.

146 Explanatory notes, p 14.

147 Explanatory notes, p 17.

148 Explanatory notes, p 17. See also Bill, cl 17 (CSA, new s 305C).

149 See CSA, ch 2, pt 2, div 5.

150 LSA, s 4(4)(a), (b).

The ability of the chief executive to make an 'authorised practitioner policy'[151] (as discussed above) raises this issue of fundamental legislative principle because the policy will contain the competencies and training requirements for authorised practitioners (who make assessments about prisoner safety orders) rather than these requirements being set out in the CSA or subordinate legislation. This means that the content of the policy will not come to the attention of the Parliament, and there will be no opportunity for parliamentary scrutiny.

The explanatory notes state that the use of a policy as opposed to setting out the requirements in the CSA or regulation is justified because the 'nature of the 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'.[152] The explanatory notes also highlight that the policy must be published on the department's website.[153]

Committee comment

The committee is satisfied that, while it is preferable that subordinate legislation is used to allow for appropriate parliamentary oversight and scrutiny, in these circumstances the content is operational in nature and the Bill provides the parameters of what the authorised practitioner policy may contain. Further, the policy will be published on the department's website, meaning that it will be accessible to the public and to relevant health practitioners.

2.6.1.3 Human rights

The Bill potentially engages the *right to liberty and security of person* (protected by s 29 of the HRA), the *right to humane treatment when deprived of liberty* (s 30 of the HRA) and the *right to access to health services without discrimination* (s 37 of the HRA).

While broadening the list of professionals who can conduct clinical assessments may potentially have positive effects on the humane treatment of prisoners, there are also risks. It is possible that, by removing the current requirement that safety orders be made on advice of doctors or psychologists, the amendments risk diluting the quality of the medical assessments undertaken. As such, they potentially subject prisoners to inappropriate treatments, or treatments that unnecessarily or disproportionately restrict their privileges in detention. This can, in certain circumstances, extend to subjecting prisoners to separate confinement that may affect their psychological integrity.

To address the risks, the statement of compatibility explains:

> 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 capability, training and accreditation requirements to perform the functions of an authorised practitioner set out in an accompanying policy which will exclude those not suitable for this role.[154]

The statement of compatibility contends that the Bill does not impose additional limitations beyond those in the current Act, but that, even if the Bill were considered to limit human rights, the purpose of safety orders is to manage the risk prisoners pose to themselves. As such, the Bill promotes the *right to access health services* (see s 37(1) of the HRA). The statement of compatibility argues that the safeguards in the Bill, and the expected benefits the Bill brings, ensure that 'the limitations on human rights are considered justified'.[155]

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151 Bill, cl 17 (CSA, new s 305C).

152 Explanatory notes, p 17.

153 Explanatory notes, p 25. See also Bill, cl 17 (CSA, new s 305C).

154 SOC, p 31.

155 SOC, p 33.

2.6.2 Safety orders and negative mental health outcomes

The CSA provides that prisoners on safety orders may be held separately from other prisoners, including, for example, in a health centre at the corrective services facility.[156]

Provisions for safety orders can be in place for up to a month (s 53(2)). If deemed necessary, consecutive safety orders may be applied (s 54).

The statement of compatibility acknowledges the possibility of prisoner safety orders resulting in separate confinement.[157] Several submitters referred to the body of research suggesting being separated from other prisoners in separate or 'solitary' confinement is not best practice, and that it can have severe deleterious effects for prisoners.

The statement of compatibility also recognises that separate confinement may affect the 'psychological integrity' of prisoners but stated 'this is not the purpose or impact of the amendment'.[158]

2.6.3 Stakeholder views and Queensland Police Service response

Submissions that addressed expanding the list of professionals considered 'authorised practitioners' who may conduct a risk-assessment to assess prisoners with regard to safety orders were broadly critical.[159]

LAQ did not support the change and suggested a speech pathologist, for example, would not necessarily be suitably qualified or capable of making such determinations. LAQ also noted less qualified practitioners may be abundantly cautious and more likely to endorse the use of a safety order.[160] Similarly, ATSILS raised concern that social workers, nurses, occupational therapists, and speech pathologists are not suitably qualified to make these assessments, 'and given the effect of a safety order is that the individual be held in solitary confinement, it is imperative that such a determination remain with doctors and psychologists only'.[161] PLS submitted that 'prolonged solitary confinement should only be made by a suitably qualified professional who has the skills and experience to determine that a person is at serious risk of self-harm and/or suicide.[162]

The QPS stated that the Bill would ensure 'only suitably qualified allied health professionals' could make a recommendation, and that research indicates these professions are appropriately skilled. Further, the response stated that specific training would be provided to these staff members. The department noted the final decision is made by the chief executive (or delegate), not the health professional.[163]

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156 CSA, s 53(6).

157 SOC, p 33.

158 SOC, p 33. The term 'solitary confinement' is not used in the CSA, nor is it used in any of the other Australian corrections Acts. All corrections Acts allow for a prisoner to be 'segregated' or held 'separately' from other prisoners, and they confer broad discretion upon corrective services to determine when a prisoner should be separated from others, the conditions under which this may occur, and the duration of their placement; Tamara Walsh & Helen Blaber, 'Solitary confinement and Prisoners' human rights', *Monash University Law Review,* Vol 49, No 1, 2023, pp 232-266.

159 See submissions 3, 5, 8, 10, 13.

160 Submission 3, p 4.

161 Submission 10, pp 1-2.

162 Submission 8, p 11.

163 QPS, correspondence, 26 April 2024, attachment, pp 56-7.

PLS suggested the amendment is 'wholly unnecessary' because the CSA already provides that temporary safety orders can be authorised under section 58. As such, the Act already provides a measure QCS can employ to manage immediate risk of self-harm or suicide.[164]

The QPS noted:

> The CSA only allows a doctor or psychologist to assess a prisoner identified as at risk of self-harm or suicide to inform a decision on their management. This includes the review of a temporary safety order under section 58(4).[165]

Section 58 of the CSA allows that the chief executive may make a temporary safety order for no more than 5 days if a doctor or psychologist is not available. After the order has been authorised, section 58 further mandates that:

> *(3) The chief executive must refer the temporary safety order to a doctor or psychologist before the period ends.*
>
> *(4) The doctor or psychologist must review the temporary safety order as soon as practicable before the period ends.*

The QPS stated the Bill neither amends nor changes legislative requirements or procedures for managing prisoners at risk of self-harm, and that 'QCS aims to manage prisoners in the least restrictive manner possible'. The QPS also stated that 'The Bill does not impose any limitations on human rights beyond those already within the safety order decision framework'.[166]

Despite strongly opposing this amendment, ATSILS recommended that, if the government insisted on making the amendments, it make provision that any consecutive safety orders require an assessment from a doctor or psychologist, not somebody whose profession is on the authorised practitioner list.[167]

The QPS stated QCS employs psychologists, but not doctors, and that these psychologists are currently the only professionals conducting these assessments. Due to a national shortage of psychologists, the expansion of professionals is intended to include allied health professionals with specific mental health training: 'This is similar to the highly skilled clinicians performing risk assessments under the *Mental Health Act 2016*'.[168]

Committee comment

The committee is cognisant of the current difficulties to recruit qualified psychologists as advised by Queensland Corrective Services.

Recommendation 4

The committee encourages Queensland Corrective Services to address the current difficulties to recruit qualified psychologists with a proactive recruitment campaign.

164 QPS, correspondence, 26 April 2024, attachment, pp 65-6.

165 QPS, correspondence, 26 April 2024, attachment, pp 65-6.

166 QPS, correspondence, 26 April 2024, attachment, pp 61-2.

167 Submission 10, p 8.

168 QPS, correspondence, 26 April 2024, attachment, pp 67-8.

2.7 Amendments to remove unnecessary gendered language and other amendments

The Bill proposes to remove unnecessary gendered language by using gender neutral language across several statutes, with amendment to:

- *Summary Offences Act 2005*, to remove gendered language in respect of body piercing of minors
- *Terrorism (Preventative Detention) Act 2005*, to omit the reference to 'same-sex partner' from the definition of *family member* in the context of preventative detention orders
- *Corrective Services Act 2006*, technical amendments to clarify development of corrective services infrastructure on prescribed lots of land.

Stakeholders did not provide commentary on these proposed amendments.

Appendix A – Submitters

Sub #	Submitter
1	Australian Christian Lobby
2	Nerang Neighbourhood Centre
3	Legal Aid Queensland
4	Queensland Police Union of Employees
5	Queensland Human Rights Commission
6	DVConnect
7	Queensland Mental Health Commission
8	Prisoners' Legal Service
9	Pride in Law
10	Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd (ATSILS)
11	LGBTI Legal Service Inc
12	Bar Association of Queensland
13	Queensland Law Society

Appendix B – Officials at public departmental briefing

15 April 2024

Queensland Police Service

- Brian Connors APM, Assistant Commissioner, Crime and Intelligence Command
- Jamie Impson, Manager, Strategic Policy and Legislation Branch, Policy and Performance Division

Queensland Corrective Services

- Ursula Roeder, Deputy Commissioner, Community Corrections and Specialist Operations
- Helen Ferguson, Acting Director, Legislation Group, Policy and Legal Command

Queensland Health

- Karson Mahler, Director, Legislative Policy Unit, Strategy, Policy and Reform Division
- Kate Sanderson, Manager, Legislative Policy Unit, Strategy, Policy and Reform Division

Appendix C – Witnesses at public hearing

29 April 2024

Queensland Police Union of Employees

- Ian Leavers, General President and Chief Executive Officer
- Luke Moore, Policy and Projects Officer

Queensland Human Rights Commission

- Heather Corkhill, Principal Policy Officer
- Rebekah Leong, Principal Lawyer

LGBTI Legal Service Inc

- Jo Sampford, Director and Principal Solicitor
- Bowen Harding, Project Officer
- Kathryn Cramp, President

Australian Christian Lobby

- Rob Norman, Queensland Director

Prisoners' Legal Service

- Helen Blaber, Director/Principal Solicitor

Statement of Reservation

09 May 2024

Statement of Reservation - Report No. 43:
Police Powers and Responsibilities and Other Legislation Amendment Bill 2024

Proposed gender safeguards in the exercise of search powers

I completely support the intent of the proposed changes to create gender safeguards in the exercise of search powers, in line with the forthcoming commencement of the Births, Deaths and Marriages Registration Act 2023, but the concerns raised by many stakeholders warrant further detailed consideration and a response from the Minister. I particularly welcome the Committee's Recommendations 2 and 3, and urge the Minister to consider the potential amendments proposed by various stakeholders.

It is noteworthy that so many stakeholders, and especially those who often have disparate views and conflicting positions (e.g. QLS, QPU and the LGBTI Legal Service), raised concerns about the terms 'reasonably practicable' and 'improper purpose'. The efficacy and practical consequences of the proposed safeguards and the new 'dialogue model' largely depend on their operational implementation, which must be carefully monitored to identify any unintended or negative consequences.

Restrictions on prisoners reapplying for parole

I remain concerned about the proposed additional restrictions on prisoners applying for parole in certain circumstances, which would operate by offering the Parole Board more discretion to extend the period between parole applications.

First, I agree with the various submissions concerned that it is ill-advised to progress changes such as these in isolation from the various other problems with Queensland's parole system, and before the publication of the findings and recommendations of the second Queensland Parole System Review (QPSR2). By bringing these changes in a piecemeal fashion, the Government's approach appears to be a knee jerk response to the well publicised concerns of victims of crime, when a more considered, whole-of-system approach would better serve victims and prisoners alike, and improve community safety.

Helen Blaber of the Prisoners Legal Service provided the Committee an example of how the proposed changes will exacerbate existing problems with the parole system:

> When people are expected to navigate a system when they actually cannot, the consequence is that parole decisions are made on the basis of inaccurate or incomplete information. To give you an example, I was up in Townsville recently talking to a First Nations man who had received a preliminary parole refusal. It was thought that he did not have any insight into his offending. I was sitting there talking to him and it was quite evident that he had insight and remorse—the

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> other concern was that he did not have remorse. It was quite evident talking to him that he did, but the Parole Board had not spoken to him. He could not respond to that. He was not capable of understanding or responding to the correspondence he had received. If somebody does not respond to a letter like that, they are going to be refused parole. These amendments are not going to fix that but they will make it worse by compounding the consequences of how long you might have to wait before you might get another shot. That is an example specifically of how it impacts First Nations and people with disability.

There is a clear need for extra resources for either the Parole Board, for example to facilitate oral hearings of parole applications, or to support prisoners with their written aspects of their parole applications, or preferably both. Instead, the proposed changes effectively provide a mechanism to reduce the Parole Board's workload at the expense of prisoners' rights.

Further, the Committee rightly identifies the competing impacts on the rights of prisoners and victims and Eligible Persons with an interest in, or who are potentially retraumatised by, a parole application. However, it appears limited consideration has been given to alternative approaches to better serve the interests of victims and eligible persons that don't limit prisoners' rights in the way the proposed changes would.

For example, one alternative approach would be to remove time limits on a victim's eligibility to access support through Victim Assist Queensland, such that they can receive financial support to address any recurrent stress or retraumatisation at the time of a parole application. Even before these proposed changes, too many victims are denied assistance at the time of parole applications in respect of longer prison sentences because of time limits on eligibility. The Government should first make the necessary changes to remove time limits and ensure this assistance remains available for the whole prison sentence.

Finally, Ms Blaber gave a helpful explanation of how the proposed changes to parole could in fact undermine the rehabilitative benefits of parole and risk reducing community safety. The following evidence from the public hearing warrants further consideration:

> We have to think about what is the primary purpose of parole. The primary purpose of parole is to reduce risk. It is considered to reduce risk because it provides gradual reintegration into the community, rather than abrupt discharge at the end of your sentence. When you are released on parole, you have a whole set of conditions which will regulate what you can and cannot do. They will often regulate where you can and cannot live and you will have to report. You will often have to engage in rehabilitation programs, and you will have support and supervision from community corrections. That is why parole exists.
>
> Obviously, by making prisoners wait longer before they can reapply, the length of that sentence they are serving is continuously getting shorter, so the period that is going to be left that is available for them to serve any time on parole keeps getting shorter. We see quite often people being refused parole and the consequence is they will get out in two months anyway and have no supervision and will go and live wherever they want. It is not always in the interests of community safety to refuse someone release on parole. In fact, parole enhances community safety.

Michael Berkman MP