

# COMMUNITY SUPPORT AND SERVICES COMMITTEE

Report No. 46, 57<sup>th</sup> Parliament, July 2024

## Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Bill 2024

### QUEENSLAND GOVERNMENT RESPONSE

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#### INTRODUCTION

On 21 May 2024, the Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Bill 2024 (Bill) was introduced into the Legislative Assembly.

The Bill was referred to the Community Support and Services Committee (Committee) for consideration. On 2 August 2024, the Committee tabled its report (No. 46, 57<sup>th</sup> Parliament) on the Bill.

The Queensland Government response to the recommendations made by the Committee is provided below.

#### RESPONSE TO RECOMMENDATIONS

##### Recommendation 1

The Committee recommends that the Bill be passed.

##### ***Queensland Government response:***

The Queensland Government thanks the Committee for its consideration of the Bill and notes the Committee's recommendation that the Bill be passed.

##### Recommendation 2

The Committee recommends the Department of Justice and Attorney-General develop guidelines to assist law enforcement in administering the new offence provisions in relation to specific offences for children who are above the age of consent.

##### ***Queensland Government response:***

The Queensland Government supports this recommendation in principle.

The Queensland Government recognises the need for all criminal offences to be administered effectively and consistently. As noted by the Committee in its report, whether to pursue charges for criminal acts is at the discretion of law enforcement. Guidelines already exist to assist in the exercise of prosecutorial discretion by the Queensland Police Service (QPS) and the Office of the Director of Public Prosecutions (ODPP). These are the Operational Procedures Manual (OPM) issued by the Commissioner of the Queensland Police Service (QPS) pursuant to the *Police Service Administration Act 1990* and the Director of Public Prosecutions Guidelines (DPP Guidelines) issued by the Director under the *Director of Public Prosecutions Act 1984*.

As set out in the OPM, QPS policy on when to commence proceedings against offenders is drawn directly from the DPP Guidelines and based on a two-tiered test: firstly, is there sufficient evidence? And secondly, does the public interest require a prosecution? As set out in both guidelines, assessing the public interest criteria involves consideration of a range of factors including, for example, the degree of culpability of the alleged offender in connection with the offence, whether or not the prosecution would be perceived as counterproductive to the interests of justice, whether or not the alleged offence is of minimal public concern, and the attitude of the victim of the alleged offence to a prosecution.

As part of the ongoing delivery of the Government's response to recommendation 47 of the Women's Safety and Justice Taskforce report, *Hear her voice – Report Two – Women and girls' experiences across the criminal justice system* (Second Taskforce Report), the ODPP has commenced a review of the DPP Guidelines to include additional guidance on prosecuting sexual violence matters and domestic and family violence matters and the treatment of victim-survivors.

### **Recommendation 3**

The Committee encourages the Attorney-General to undertake a review of the persons listed in proposed section 210A(3) at clause 8 of the Bill, and consider developing guidance material on the same.

The Committee encourages the Attorney-General to undertake a review of the operation of the defences available under proposed sections 210A or 229B once the provisions have commenced and consider developing guidance material.

#### ***Queensland Government response:***

The Queensland Government supports this recommendation in principle.

Following stakeholder feedback provided to the Committee, the Government intends to move an amendment during consideration in detail of the Bill to both clarify and narrow the list of persons at section 210A(3) that are automatically taken to have a child under their care, supervision, or authority. Specifically, it is intended to move an amendment to:

- provide that 'health practitioner' at section 210A(3)(e) means a person registered under the Health Practitioner Regulation National Law (Queensland) to practise a health profession, other than as a student; and
- refine section 210A(3)(g) so that it only captures persons employed or providing services at an entity providing accommodation to a child who is in the custody or guardianship of the chief executive under the *Child Protection Act 1999*.

The Queensland Government recognises the need for comprehensive review and evaluation of the reforms in the Bill to ensure amendments are operating as intended.

The Bill provides for a statutory review of amendments from both Taskforce reports, to occur as soon as practicable five years after the last amendment commences. The scope of the review will capture both the new offence at section 210A and the amendment of section 229B.

The Bill provides that the review must consider the outcomes of the amendments, the effects of the amendments on victim-survivors and perpetrators of sexual violence and domestic and family violence, the outcomes for, and the effects of the amendments on, Aboriginal and Torres Strait Islander peoples, and whether the amendments are operating as intended.

In addition, it is noted that the new offence in proposed new section 210A and the amendment to section 229B fall within Chapter 22 of the Criminal Code. In its response to recommendation 42 of the Second Taskforce Report, the Queensland Government stated that it would review Chapters 22 and 32 of the Criminal Code and progress amendments where necessary, to ensure that the sexual abuse and exploitation of children is addressed in a way that is consistent with community standards. The timing and scope of this review is subject to further consideration by Government.

With respect to developing guidance material in relation to the persons listed in proposed section 210A(3) and the defences available under proposed sections 210A or 229B, the Explanatory Notes to the Bill will assist in the interpretation of these provisions, including by practitioners, lawyers and courts.

More broadly, as part of implementation activities, consideration will be given to the appropriate communication and guidance material required to support understanding and awareness of the offence.

#### **Recommendation 4**

The Committee recommends the Department of Justice and Attorney-General develop guidance for law enforcement and judicial officers to work collaboratively, with trauma-informed practices for Aboriginal and Torres Strait Islander peoples involved in the justice system, and consider cross-departmental support in developing those materials.

#### ***Queensland Government response:***

The Queensland Government supports this recommendation in principle.

Recommendation 4 follows a comment by the Committee that there is an over-representation of Aboriginal and Torres Strait Islander peoples in the justice system, both as victim-survivors and accused persons, and that the need for culturally informed practice is paramount.

As part of the ongoing implementation of the Government's response to recommendations in both Taskforce reports, the Queensland Government is working across agencies to improve experiences of the criminal justice system by Aboriginal and Torres Strait Islander peoples as well as victim-survivors more generally.

The Department of Justice and Attorney-General has led the development of *Better Justice Together: Queensland's Aboriginal and Torres Strait Islander Justice Strategy 2024-2031* (the Strategy). The Strategy is a seven-year commitment by the Queensland Government to do things differently in order to reduce the disproportionate representation of Aboriginal and Torres Strait Islander peoples in the criminal justice system.

The whole-of-government and community Strategy has been co-designed with Aboriginal and Torres Strait Islander communities, leaders and organisations and identifies four key focus areas for action: Working Together; Early intervention and prevention with local decision-making; A better and fairer justice system; and Addressing offending and reoffending. It provides a vision to achieve 'better justice together' through a culturally safe approach.

Focus area four, Address offending and reduce re-offending, seeks to reduce re-offending, improve community safety and have positive impacts for victims and victim-survivors. In doing so, the Strategy aims to deliver operational outcomes that will provide culturally safe, trauma-informed, services to Aboriginal and Torres Strait Islander victims, offenders and victim-survivors in the criminal justice system.

In February 2024, the Queensland Government released the *Queensland Domestic and Family Violence and Sexual Violence Safety Framework – Delivering Safer Courts 2024-2034* (the Framework), which aims to ensure courts are physically, psychologically and culturally safe for those who have been impacted by domestic and family violence or sexual violence, including Aboriginal and Torres Strait Islander peoples. Reforms to be delivered under the Framework include:

- the continued enhancement of Specialist Domestic and Violence courts;
- ongoing trauma-informed training for court staff about domestic and family violence and coercive control; and
- working with the judiciary to update judicial education and Benchbooks.

Operational policies and procedures for court registry staff are also being reviewed, with the first stage being development of a trauma-informed policy. The new policy and updated procedures will support registry staff to understand the connection between their work and key priorities in the Framework for delivering trauma-informed service to support all court users.

The Queensland Government has also developed a Domestic and Family Violence Training and Change Management Framework that includes cultural capability learning objectives for training programs aimed at staff working with people who have experienced domestic and family violence (DFV) or persons using violence who are young people, people from culturally and linguistically diverse communities, and Aboriginal and Torres Strait Islander communities. This evidence-based, trauma informed framework is a guide for the development and delivery of consistent DFV training across government and non-government workforces.

To support the delivery of training aligned to the Training and Change Management Framework, the Queensland Government has committed a \$34.6m funding package that includes foundational DFV training modules, a state-wide Training Support and Coordination Service and evaluation. This funding will help organisations to consider the training needs for staff in specialised roles and assist in providing support for the development of training. Where organisations identify that their staff require targeted trauma informed DFV training to improve practices for responding to the needs of Aboriginal and Torres Strait Islander people, the organisation will be able to seek assistance from the Training Support and Coordination Service.

The ODPP has commenced developing a plan to strengthen the cultural capability of its staff.

Through its implementation of various recommendations by the *Commissioner of Inquiry into Queensland Police Service responses to domestic and family violence*, the QPS:

- has developed the *QPS Reframing the Relationship Plan 2024-2027* to support the QPS in its commitment to implement the components of the Reframing the Relationship requirements under section 21(2) of the *Public Sector Act 2022*. The Plan supports the continued commitment of the QPS to building cultural capability and promoting change to enable the delivery of culturally safe services to Aboriginal and Torres Strait Islander peoples and communities;
- established the First Nations Division in December 2023 to build organisational cultural capability, trust, and transparency, and to strengthen relationships between the QPS and First Nations communities across Queensland. The Division will also provide leadership on First Nations policy matters for the QPS, including the National Agreement on Closing the Gap;
- has developed a significant Cultural Capability training course that is mandatory for all QPS members. This training was codesigned with First Nations Queenslanders with lived experience and strong cultural ties. The online training package provides education

regarding the concept of cultural capability, relevant legislation, policies and QPS cultural support options, the diversity of First Nations peoples, Aboriginal Culture and Lore, Torres Strait Islander Culture and Lore, the history of government control of First Nations peoples, and the impact of history on First Nations peoples (intergenerational trauma);

- has commenced consultation with police districts and First Nations peoples and communities to identify appropriate culturally safe alternative spaces for witnesses; and
- has employed Police Liaison Officers to establish and maintain a positive rapport between culturally specific communities and the QPS. The role of a Police Liaison Officer is to promote trust and understanding by assisting the community and police to reduce and prevent crime, divert people from the criminal justice system, advise and educate police officers on culture and cultural issues, and improve community knowledge of law and order issues and policing services.