

10 March 2023

Our ref: [MC:BC]

Confidential

Committee Secretary
Legal Affairs and Safety Committee
Parliament House
George Street
Brisbane QLD 4000

By email: [REDACTED]

Dear Committee Secretary

Police Powers and Responsibilities and Other Legislation Amendment Bill (2023)

Thank you for the opportunity to provide feedback on the Police Powers and Responsibilities and Other Legislation Amendment Bill (2023) (**PPRA Bill**).

This response has been informed by input from members of the Queensland Law Society's (**the Society**) Criminal Law and Children's Law Committees, of whom have substantial experience in this area.

Our response to some of the matters arising from the PPRA Bill is outlined below.

Introductory Comments

The Society broadly supports the Queensland Government's proposed amendments to the PPRA insofar as it seeks to implement, in part, recommendations made by the Australian Medical Association Queensland (**AMAQ**) in their 2022 Position Paper.

The Society holds the view that the PPRA Bill should be evaluated in the context of a series of consultations and reviews relating to Queensland's youth justice legislation, both current and proposed, including:

- the Youth Justice Act 1992 (**the Act**);
- the Society's submissions in response to the Queensland Government's recently announced Strengthening Community Safety Bill 2023; and
- the QFCC recently announced watch house review.

We recommend that the amendments proposed in the PPRA Bill be considered holistically in the context of the various other youth justice legislative and policy reviews to ensure the potential overlaps or gaps are identified so that the overarching policy objectives can be achieved.

Amendment of Police Powers and Responsibilities Act 2000

Police Powers and Responsibilities and Other Legislation Amendment Bill (2023)

In light of the above and in keeping with the fundamental principle of ensuring the best interests of the child are paramount, the Society takes this opportunity to note the disparity in proposed sections 378C (2) and 378C (3).

When read in the context of the well-established jurisprudence and statutory bias issues surrounding children and the law, proposed section 378C (3), as currently drafted, is not immune to being applied by police in a discretionary manner which has the unintended consequence of circumventing diversionary options in favour of prosecutorial action. That said, the Society presumes that the discretion afforded to police by the word 'may', confers to police, a discretionary power designed to *enable* police to *not* take any action against the child, or alternatively, less onerous or therapeutic measures such as those available under the Act.

Proposed sections 378C, 379, 379AA and 379AB of the PPRA Bill, as currently drafted, are in conflict with the non-doctrinal criminal justice decision making principles that apply to children. That is, that children in the criminal justice system should not be treated more harshly than adults. In this regard, it would be anomalous for there to be provisions that provide two mandatory diversion opportunities for an adult but not for a child, so as to result in the child offence being dealt with more harshly than the adult.

The Society submits that section 379C (3) should be clarified by way of statutory words that make clear that the discretion, that is to not issue a diversionary drug warning to a child on first and second contact, only be exercised if the police elect to proceed with a lesser recourse such as those described in the Act.

Furthermore, the Society seeks confirmation in relation to the operation of proposed sections 378C, 379, 379AA and 379AB insofar as the drug diversion warning and initial and subsequent offer occur before the initiation of any prosecution. It is acknowledged that any other reading of the provision is nonsensical, however, the Society writes to confirm that this is the intention of the legislature and to submit that that intention ought to be expressly stated by unambiguous words.

In summary, the Society and its members urge the committee to revisit Clause 22 of the PPRA Bill and give further consideration to its drafting to ensure that the effect of the provisions contained therein divert children, suspected of minor drug offences, away from the criminal justice system and into diversionary support systems as intended.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on [REDACTED].

Yours faithfully

[REDACTED]
Chloé Kopilović
President