



30 September 2016

Queensland Police Service  
Level 24 State Law Building  
50 Anne Street  
Brisbane QLD 4002

**Attention: Senior Sergeant David Flynn**

Via email transmission: [Flynn.DavidJ@police.qld.gov.au](mailto:Flynn.DavidJ@police.qld.gov.au)

**ATSILS' (Qld) Ltd. Feedback to QPS on Community Safety: Proposed Amendments to Police Powers & Other Legislation Discussion Paper**

The Aboriginal and Torres Strait Islander Legal Services (QLD) Ltd ("ATSILS") welcomes and appreciates the opportunity to provide feedback on the Community Safety Proposed Amendments to Police Powers & Other Legislation Discussion Paper ("the Discussion Paper").

ATSILS provides legal services to Aboriginal and Torres Strait Islander peoples throughout Queensland. Our primary role is to provide criminal, civil and family law representation. We are also funded by the Commonwealth to perform a State-wide role, in the key areas of Community Legal Education and Early Intervention and Prevention initiatives (which includes related law reform activities and monitoring Indigenous Australian deaths in custody). As an organisation which, for over four decades, has practised at the coalface of the justice arena, we believe we are well placed to provide meaningful feedback. Not from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences.

ATSILS is greatly in favour of Queensland Police Service (“QPS”) mission, to improve community safety, reduce community harm, and modernise police capacity and process efficiency. Aboriginal and Torres Strait Islander Queensland communities have persistently seen high crime rates and social problems<sup>1</sup>, which has resulted in, but not limited to, socio-economic disadvantage and psychological distress. QPS Discussion Paper is a community safety strategy, proposing amendments to Queensland legislation, with the aim to restore order and wellbeing in communities. While ATSILS acknowledges the admirable aims behind these proposed amendments, we do however, have some concerns in relation to certain proposed amendments, which we have outlined below.

### **ATSILS' Comments on the Discussion Paper**

ATSILS' central concern revolves around the proposal to extend powers to search people without warrant where they have been detained pursuant to Section 50 of the *Police Powers and Responsibilities Act 2000* ('PPRA').

From a public policy perspective, it would seem appropriate to search a person, where a breach of the peace has occurred or might occur and the person having been detained, to take and retain anything that might be used to endanger the safety of a person or used for an escape, as this could assist in de-escalating situations. However, this proposed amendment 7.3, is not without its problems to Aboriginal and Torres Strait Islander Queenslanders.

Due to the unfamiliar common law governing when a breach of the peace is imminent, happening, has occurred, or threatening to occur, enlivening powers under section 50 of PPRA – it is a difficult and subjective exercise undertaken by police officers (of varying levels of experience) on the street to assess whether conduct they observe meets this standard.

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<sup>1</sup> Crime and Misconduct Commission, Community safety planning in Queensland's Indigenous communities: A follow-up to the Restoring order report (June 2014) 25.

In our experience, it has become common practice for police to use move on powers to direct a group of people away from the trouble in situations such as this. Studies have shown that move-on directions are disproportionately used more with ‘indigenous young people’<sup>2</sup> and that ‘Indigenous people were thus 20.2 times more likely to be given a recorded move-on direction than were non-Indigenous people’<sup>3</sup>.

The disproportionate use of this power has been explained as arising from the police practice in dealing with breaches of the peace. ATSILS is concerned that expanding powers to search without warrant on this same basis might lead to an increased disproportionate targeting of and interactions with vulnerable people including Indigenous people.

If there is a need to search people in these instances, we suggest that the existing powers for search without warrant (sections 29 and 30) adequately address the concerns presented. Specifically, section 30(a)(i) empowers police to search a person if they reasonably suspect they may have a weapon or knife; and the remaining prescribed circumstances provide for searches for dangerous drugs, stolen or tainted property and other items.

ATSILS is concerned that empowering police to search without warrant when a breach of the peace has occurred or might occur and a person is detained for this, might encourage police officers to take this action in an effort to circumvent the existing requirements for searching a person without a warrant. In our respectful submission, the requirement that there be a reasonable suspicion about the presence of the relevant item is an important limit on search powers that the rationale expressed does not justify interference with.

## ii) Other issues

ATSILS notes that a series of further proposals are mooted in the Discussion Paper. ATSILS is generally supportive of the measures proposed but would be desirous of reviewing any Bill (once drafted) to confirm that the mechanics of these proposed measures do not present any further concerns. These measures include:

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<sup>2</sup> P Spooner, ‘Moving in the wrong direction: An analysis of police move-on powers in Queensland’ (2001) 20 *Youth Studies Australia* 1, 27-31.

<sup>3</sup> Crime and Misconduct Commission, *Police move-on powers: A CMC review of their use* (2010).

- Evidentiary provisions for police evasion offences
- Facilitation/inducement of prostitution offences
- Covert operations assumed identities
- Photographing persons for banning notices

ATSILS thanks the Queensland Police Service for this opportunity to provide feedback and wishes it every success with improving community safety, reducing community harm, modernising police capacity and assisting with process efficiency.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Shane Duffy'. The signature is written in a cursive, flowing style with a large initial 'S' and 'D'.

Shane Duffy  
Chief Executive Officer