Parliamentary Committees



Corrective Services (Promoting Safety) and Other Legislation Amendment Bill 2024

Report No. 7, 57th Parliament
Community Safety and Legal Affairs Committee
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Community Safety and Legal Affairs Committee

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Acknowledgements

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

Contents

Abbreviations and acronyms

Abbreviation or acronym	Definition
BAQ	Bar Association of Queensland
Bill	Corrective Services (Promoting Safety) and Other Legislation Amendment Bill 2024
Board	Parole Board Queensland
committee	Community Safety and Legal Affairs Committee
CPOROPOA	*Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*
CSA	*Corrective Services Act 2006*
DPSOA	*Dangerous Prisoners (Sexual Offenders) Act 2003*
FLPs	fundamental legal principles
HRA	*Human Rights Act 2019*
JRA	*Judicial Review Act 1991*
LAQ	Legal Aid Queensland
LSA	*Legislative Standards Act 1992*
McQueen	*McQueen v Parole Board Queensland* [2022] QSC 27
NQWLS	North Queensland Women's Legal Service
OIC	Office of the Information Commissioner
PIL	Pride in Law
PLS	Prisoners' Legal Service
PPRA	*Police Powers and Responsibilities Act 2000*
QCS	Queensland Corrective Services
QHRC	Queensland Human Rights Commission
QHRC report	Queensland Human Rights Commission report, *Stripped of our dignity: A human rights review of policies, procedures, and practices in relation to strip searches of women in Queensland prisons*, September 2023
QHVSG	Queensland Homicide Victims Support Group
QIFVLS	Queensland Indigenous Family Violence Legal Service
QNMU	Queensland Nurses and Midwives' Union
QPS	Queensland Police Service
QPSR2	Queensland Parole System Review 2
QSAN	Queensland Sexual Assault Network
Youth Justice Act	*Youth Justice Act 1992*

Chair's foreword

This report presents a summary of the Community Safety and Legal Affairs Committee's examination of the Corrective Services (Promoting Safety) 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*.

This Bill is about supporting victims of crime and enhancing safety in Queensland's correctional system. The Bill would promote safety for victims and their families, safety for corrective services officers, and safety for offenders.

Stakeholder consultation revealed shortfalls in how victims of crime are represented, supported, and protected within this system. The committee has heard how the safety of victims can be jeopardised if sensitive victim information is provided to offenders as part of the parole process. We have heard how victims have been re-traumatised by the cumbersome process of registering for the victims register. We have heard how prisoner communications systems are abused by offenders to terrorise their victims. Disturbingly, the committee has heard how this cowardly method of intimidation is sometimes employed by prisoners to continue to perpetrate domestic violence from behind bars. The Bill's reforms address these important issues.

I applaud the measures contained within the Bill proving greater protections for victims. I am also supportive of other measures in the Bill, including the changes to search provisions that better accommodate the diverse needs of prisoners, without reducing safety for prisoners or corrective service officers.

I believe this Bill accomplishes its policy objectives – of enhancing safety in the correctional system and providing greater protections for victims of crime – while ensuring the rights of prisoners are not unjustly infringed upon.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill. I also thank our Parliamentary Service staff and Queensland Corrective Services.

I commend this report to the House.

Peter Russo MP

Chair

Recommendations

Executive Summary

On 13 February 2024, the Hon Nikki Boyd MP, Minister for Fire and Disaster Recovery and Minister for Corrective Services, introduced the Corrective Services (Promoting Safety) and Other Legislation Amendment Bill 2024 (Bill) into the Queensland Parliament. The Bill was referred to the Community Safety and Legal Affairs Committee (committee) for detailed consideration.

The Bill seeks to strengthen support for victims of crime in a number of ways, including by:

- improving the operation of the Victims Register
- protecting the use of victim and intelligence information in parole decisions
- requiring representation for victims on the Parole Board Queensland (the Board)
- strengthening powers to respond to the abuse of prisoner communications channels
- increasing oversight of child sex offenders.

Stakeholders were invited to make written submissions on the Bill, and the committee received 14 submissions. A public hearing was held on 18 March 2024 in Brisbane to speak with submitters and stakeholders. A public briefing was held with representatives from Queensland Corrective Services on 22 March 2024.

The key issues raised during the committee's examination of the Bill included:

- withholding sensitive decision-making information in parole decisions
- use of regulation and changes to same-sex safeguards in relation to invasive searches
- privacy issues relating to the use of body-worn cameras
- police powers for reportable child sex offenders
- victim representation on the Parole Board Queensland
- restrictions on prisoner communications.

The committee is satisfied that the Bill gives sufficient regard to the rights and liberties of individuals and the institution of Parliament, and that any limitations of human rights, as set out in the *Human Rights Act 2019*, are reasonable and justifiable.

The committee recommends the Bill be passed.

The committee has made 3 further recommendations to ensure the Bill is implemented in a manner that achieves its objectives.

1 Introduction

1.1 Referral

On 13 February 2024, the Hon Nikki Boyd MP, Minister for Fire and Disaster Recovery and Minister for Corrective Services, introduced the Corrective Services (Promoting Safety) and Other Legislation Amendment Bill 2024 (Bill) into the Queensland Parliament. The Bill was referred to the Community Safety and Legal Affairs Committee (committee) for detailed consideration.

1.2 Background

The explanatory notes describe the legislative and operational environments relevant to the proposed amendments:

> The number one priority for the correctional system in Queensland is the safety of frontline corrective services officers, victims of crime, offenders and the broader community. Safety encompasses physical, psychological, behavioural and environmental considerations. It is more than compliance, it is about proactively improving systems, practices and skills across the correctional environment over time.
>
> The *Corrective Services Act 2006* provides for the humane containment, supervision and rehabilitation of almost 30,000 prisoners and offenders across Queensland. In line with this purpose, the Bill amends the *Corrective Services Act 2006* and other legislation to promote the safety of victims of crime, frontline corrective services officers, offenders, and the broader community.[1]

In December 2023, a consultation draft of the amendments included in the Bill was distributed to 49 community stakeholder groups, with 25 formal responses received, and 2 stakeholders providing informal feedback.[2]

1.3 Policy objectives of the Bill

Minister for Corrective Services, Introduction speech, 13 February 2024, p 34

The bill will provide greater support for victims of crime and make it easier for them to register as an eligible person on the victims register to ensure they receive necessary information to plan for their safety.

The bill will also strengthen powers to respond to abuse of prisoner communication channels to crack down on prisoners seeking to inflict harm from behind bars by contacting victims, especially domestic violence victims, via the prisoner telephone system. Other amendments in the Bill will help protect the community and the safety of corrective services by increasing oversight of child sex offenders and introducing an offence to possess a gel blaster on corrective services land.

The explanatory notes set out the Bill's policy objectives, which are to:

- enhance the legislative framework for the QCS victims register (victims register) to promote the safety and wellbeing of victims engaging with the service
- require representation for victims on the Parole Board Queensland (Board) to increase victims' input into parole decisions
- strengthen powers to respond to abuse of prisoner communication channels to protect the community from prisoners who seek to inflict harm from behind bars
- enable the use of certain police powers for reportable child sex offenders being supervised under the *Dangerous Prisoners (Sexual Offenders) Act 2003* (DPSOA) to strengthen community safety

1 Explanatory notes, p 1.

2 QCS, correspondence, 18 March 2024, pp 7-8.

- increase the penalty for possession of a gel blaster on corrective services land in response to evolving behaviour putting safety at risk
- protect the use of victim and intelligence information to support effective decision making
- clarify the authority for corrective services officers to use body-worn cameras while in the community to promote the safety of frontline corrective services officers
- provide greater flexibility for prescribing protections and requirements around how invasive prisoner searches are conducted to accommodate diverse prisoner needs
- update legislative requirements to support the independence, diversity and efficient administration of the Board
- enable QCS to lawfully detain prisoners from Norfolk Island in line with the Queensland Government's commitments under the Intergovernmental Partnership Agreement on State Service Delivery to Norfolk Island, and
- address a number of other minor and technical issues to support the continued safe operations of corrective services.[3]

1.4 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* (LSA) and the *Human Rights Act 2019* (HRA).

1.4.1 *Legislative Standards Act 1992*

Fundamental legislative principles require that legislation has sufficient regard to the rights and liberties of individuals and the institution of Parliament.[4]

The committee's assessment of the Bill's consistency with the LSA considered potential issues relating to following fundamental legislative principles (FLPs) raised by the Bill:

- regarding rights and liberties of individuals:
  - general rights and liberties of individuals – restricted items on corrective services land
  - power to enter premises and protection against self-incrimination – increased police powers
  - administrative power and natural justice - prisoner communications
  - natural justice – reasons for decision
  - retrospectivity – reasons for decision
- regarding the institution of Parliament:
  - delegation of legislative power – non-written submissions.

Committee comment

The committee is satisfied that the Bill has sufficient regard to rights and liberties of individuals and the institution of Parliament. Any relevant considerations of FLPs are discussed in section 2 of this report.

[3] Explanatory notes, pp 1-2.

[4] LSA, s 4(2).

1.4.2 *Human Rights Act 2019*

A law is compatible with human rights if it does not limit a human right, or limits a human right only to the extent that is reasonable and demonstrably justifiable.[5]

The committee's assessment of the Bill's compatibility with the HRA considered the potential issues and limitations relating to human rights raised by the Bill including the following:

- lawful detention of Norfolk Island prisoners:
    - protection of families and children, HRA section 26(1) and (2)
    - the right not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with, HRA section 25(a)
- gel blaster offence:
    - the right to be presumed innocent until proven guilty, HRA section 32(1).
- registration of people in the victims register
    - a person has the right not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with, HRA section 25
- protecting victim and intelligence information in decision making:
    - the right to a fair hearing, HRA section 31
    - the right to freedom of expression, HRA section 21(2).
- prescribing search requirements to accommodate diverse prisoner needs:
    - the right to privacy, HRA section 25(a)
    - the right to humane treatment while deprived of liberty, HRA section 30(1).
- responding to abuse of prisoner communications:
    - the right to freedom of expression, HRA section 21(2)
    - the right to freedom of association, HRA section 22(2)
    - the right to the protection of families and children, HRA section 26(1) and (2)
    - the right to humane treatment while deprived of liberty, HRA section 30(1)
    - the right not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with, HRA section 25(a)
    - cultural rights - Aboriginal peoples and Torres Strait Islander peoples, HRA section 28
- using body-worn cameras outside of corrective services facilities:
    - the right to privacy, HRA section 25(a)
- enabling the use of police powers in relation to reportable child sex offenders on post-sentence supervision (clauses 50 and 51):
    - the right to freedom of movement, HRA section 19
    - freedom of association, HRA section 22(2)
    - freedom not to be arbitrarily deprived of property, HRA section 24(2)

[5] HRA, s 8.

  - the right to privacy, HRA section 25(a)
  - the right to the protection of children, HRA section 26(1) and (2)
  - the right to liberty and security of person, HRA section 29(1)
- ensuring the validity of past parole transfer decisions (clause 55)
  - the right to a fair hearing, HRA section 31.

Committee comment

The committee is satisfied that any potential limitations on human rights proposed by the Bill are demonstrably justified. Any relevant considerations of human rights issues are discussed in section 2 of this report.

A statement of compatibility was tabled with the introduction of the Bill as required by section 38 of the HRA. The statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

1.5 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 Corrective Services (Promoting Safety) 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 QCS victims register

2.1.1 Background

The QCS victims register is a register for 'eligible persons' to be kept informed and up-to-date on information about an offender. This information may assist the person plan for their safety if the offender is released, notify them when the offender is applying for parole to empower them to make a submission, and notifies them of events that may affect their safety.[6]

To be an eligible person, the person must be:

- the actual victim of a violent or sexual offence where the adult offender was sentenced to a period of imprisonment or is a supervised dangerous prisoner sexual offender[7]
- an immediate family member of the victim of a violent or sexual offence if the victim is deceased[8]
- a parent or guardian of the victim (if the victim is under 18 or has a legal incapacity)
- a person who has been subject to domestic violence and the offender has been sentenced to a period of imprisonment for any offence.[9]

An eligible person registered on the victims register is provided with information about the offender including:

- length of imprisonment and any changes to the length
- applications for parole
- eligibility or actual date for discharge or release
- death or escape from custody
- location and transfer between corrective services facilities
- request to change their name
- any other circumstances relating to the offender that may endanger the eligible person's life or safety. [10]

2.1.2 Proposed amendments

Clauses 9 and 24 to 29 of the Bill would amend the *Corrective Services Act 2006* (CSA) to 'enhance the victims register and promote the safety and wellbeing of eligible persons'.[11]

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6 Explanatory notes, p 2.

7 A violent offence is an offence where a victim suffers actual or threatened violence. A sexual offence is any of the offences listed in Schedule 1 of the *Corrective Services Act 2006*.

8 An immediate family member is the person's spouse, child/stepchild, parent/stepparent, sibling/stepsibling, grandparent, legal guardian.

9 Queensland Government, Victim information register, https://www.qld.gov.au/law/your-rights/victim-rights-and-complaints/victims-registers/adult.

10 Queensland Government, Victim information register, https://www.qld.gov.au/law/your-rights/victim-rights-and-complaints/victims-registers/adult.

11 QCS, correspondence, 18 March 2024, p 1.

2.1.2.1 Streamline registration process

The Bill proposes to streamline the registration process for the victims register. While retaining existing registration processes, it adds additional pathways with the aim to 'reduce the re-traumatisation that can occur when information is required to be re-disclosed by a victim'.[12] Amendments would:

- enable other entities, such as a victims' support service, to refer an individual to the victims register for registration
- allow approval of the registration of an individual without an application if appropriate, such as where QCS already has all the required information
- provide discretion to reinstate an eligible person's registration without an application.[13]

2.1.2.2 Extend eligibility criteria

The Bill proposes to extend the eligibility criteria for registration in the victims register by:

- allowing victims of homicide offences to re-register if the offender is returned to custody or is under supervision for other offences
- clarifying that victims or others impacted by a homicide can register, if appropriate
- allowing for First Nations family or kinship arrangements
- removing any doubt about eligibility to register against prisoners subject to post-sentence orders under the DPSOA.[14]

2.1.2.3 Increase flexibility on engagement

The Bill proposes to increase flexibility in relation to engagement with the victims register and parole process by:

- allowing the Board to accept a non-written submission from an eligible person about a prisoner's parole
- requiring the Board to consider any submission made by an eligible person, in line with current practice
- ensuring that an eligible person is empowered to nominate someone to receive parole information from the victims register on their behalf
- ensuring the chief executive has the discretion to refuse to accept a nominee if they are not considered reasonably suitable in the circumstances.[15]

2.1.2.4 Clarify provision of prisoner information

The Bill proposes amendments to clarify what prisoner information can be provided to eligible persons on the victims register by:

- providing for the ability to refuse to release particular information if giving the information is likely to endanger the safety or security of a corrective services facility, the safe custody or welfare of a prisoner, or the safety or welfare of someone else
- updating the information an eligible person is entitled to receive to include a prisoner's change of name and remove the date of death if the prisoner did not die in custody

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12 QCS, correspondence, 18 March 2024, p 2.

13 QCS, correspondence, 18 March 2024, p 2.

14 QCS, correspondence, 18 March 2024, p 2.

15 QCS, correspondence, 18 March 2024, p 2; Bill, cl 9.

- clarifying that an eligible person may be advised of other parole matters (such as suspension or cancellation), a prisoner's change of sex record, and the prisoner's deportation or removal status
- clarifying that an eligible person may receive information about a homicide offender on a community-based sentence, including the offender's general location and that supervision has ceased.[16]

2.1.3 Stakeholder feedback

2.1.3.1 Streamline registration process

Queensland Sexual Assault Network (QSAN) supported amendments that would streamline the registration process, including allowing for the ability of the chief executive to register eligible persons.[17] QSAN welcomed amendments allowing for an entity such as a victims' support service to represent a victim-survivor through the registration process. The organisation noted that an easier process may decrease re-traumatisation:

Queensland Sexual Assault Network, submission 1, p 2.

The current process of registration is cumbersome, especially when victim-survivor has already been through an investigation and entire criminal justice court process, including sentencing. In many instances 'the criminal justice system' is aware of their interest in the matter and that they are a victim of crime and, for many cases it should be a 'tick a box' exercise to be registered on the victim's register.

Queensland Homicide Victims Support Group (QHVSG) was supportive of the overall intent of the proposed amendments to the victims register.[18]

QHVSG supported an opt-out system, noting that this would simplify a 'cumbersome process':

> At the moment it is a cumbersome process. Sadly, there have been for many years people impacted by crime. You can apply for the Victims Register to get updates around various things. When I first started in 2017 it was only that one person could be involved with that. That was problematic because some people do not talk within the families and did not find any information out. We then advocated to become a backup agency to get the provided information so we could then contact families. We still had to say, 'Make sure you've done your VR form.' After you have been through a trial, what is another piece of paper?
>
> Let's make it easy. It should be opt out. As an organisation, we can help with that and say, 'You are going to receive this information. Are you happy with that?' We can check in again in six weeks or in six months: 'If you do not want to have the information, no worries. Let's take you off that system.' If you say, 'Yes, I do absolutely,' then, 'Let's keep you on the system.' The risk of not doing that is that the paperwork may not get done and then people will not get told. They will see it in the paper or hear about it second hand, and that is not good. Yes, opt out. [19]

North Queensland Women's Legal Service (NQWLS) also supported an opt-out system, noting that the chief executive could still retain discretion about whether the victim is placed on the register.[20]

In relation to propositions for an opt-out referral process, QCS provided:

> QCS is committed to providing a valuable information service to eligible persons and to enhancing the systems that provide the delivery of information to victims, with an eligible person's consent.

16 QCS, correspondence, 18 March 2024, p 2.

17 QSAN, submission 1, p 2.

18 QHVSG, submission 11, p 2.

19 QHVSG, public hearing transcript, 22 March 2024, p 13.

20 NQWLS, submission 13, p 2.

> While acknowledging that no one victim experience is the same, the Bill does take a step towards an opt-out process for registration on the Victims Register. The Bill will enable a victim to be referred to QCS by an entity directly for registration, removing the need for an application. So long as QCS establishes that the person is eligible and consents to be registered, registration will be able to occur without an application.
>
> While not a complete opt-out process, this amendment aims to take some of the mental load from the victim and reduce further trauma experienced by victims who must repeatedly tell their story to multiple agencies.[21]

2.1.3.2 Registration against a homicide offender

Prisoners' Legal Service (PLS) raised concerns in relation to amendments allowing for the discretion of the chief executive under section 323 (Registration against homicide offender) of the CSA, submitting that:

> This provision is very broad, giving significant discretion to the chief executive to register a person that may have no direct relation to the prisoner or the offence. We suggest that this amendment should be removed, unless it can be clearly explained why it is necessary, including the type of information the chief executive would be expected to take into account in determining the impact of the offence on a person.[22]

In response to these concerns QCS advised that:

QCS, correspondence, 8 March 2024, p 3.

To register, the person must demonstrate that registration is warranted because of the effect of the homicide offence on the person, providing an appropriate threshold. Examples where this may be appropriate include where there is no immediate family, but there is an extended family member or close friend who seeks to register, or where a first responder to the crime seeks to register.

2.1.3.3 Consistency between sections 188 and 325

QSAN suggested section 325 of the CSA be amended to clarify certain matters relating to submission making by an eligible person (such as that an eligible person be made aware of an upcoming parole application before a decision is made), some of which are addressed in section 188 of the CSA.

QCS stated that it did not consider it necessary to duplicate the provisions of section 188 within section 325, and advised:

> To assist in clarifying the connection between provisions in the CSA, the Bill inserts a note into section 320 of the CSA to explain that the notices and information that eligible persons may receive includes a parole notice under section 188, and information under section 324A and 325.
>
> An eligible person is notified of the results of a prisoner's parole application, including release conditions of relevance to the eligible person in accordance with the provisions in section 325(2)(g) of the CSA. This is an existing provision replicated by the Bill. The Bill further clarifies the ability to share this information by prescribing that the eligible person may be told 'other matters relevant to parole of the prisoner' under section 325(2)(h).[23]

[21] QCS, correspondence, 26 March 2024, attachment 2, p 5.

[22] PLS, submission 4, p 7; Bill, cl 25.

[23] QCS, correspondence, 8 March 2024, p 3.

2.1.3.4 Extension of time period

QSAN recommended that the CSA be amended to extend the time available for an eligible person to make a submission.[24]

With respect to this suggestion, QCS acknowledged that the 21 days provided under section 188(3)(c) 'may at times place pressure on victims to compile a submission in a short timeframe', but QCS contended that the timeframe is 'a necessary balance between affording victims sufficient time to compile a submission, with the need for the Board to comply with statutory timeframes for deciding parole matters'.[25] QCS also noted that it is possible for the Board to extend the period of time if it is reasonable in the circumstances.[26]

2.1.3.5 Further extensions of eligibility criteria

QHVSG and QSAN both proposed further extensions to the eligibility criteria for the victims register. QHVSG advocated for extending the eligibility criteria beyond that of the amendments to include 'extended family, neighbours, witnesses, or other relevant persons'.[27] QSAN suggested section 323A of the CSA could be amended to allow for communication directly with the child when they turn 18 years of age.[28] However, QCS advised that this amendment is not necessary as the provisions 'allow for this communication to occur, noting that once the eligible person becomes an adult, a parent is no longer eligible to register on the person's behalf or in addition to the person'.[29]

Queensland Indigenous Family Violence Legal Service (QIFVLS) was supportive of enhancements to the victims register, and particularly applauded amendments to provide for First Nations kinship arrangements.[30]

2.1.3.6 Non-written submissions for prisoners

PLS submitted that a similar amendment to that in clause 9 of the Bill, which would allow victims to provide submissions in a form other than writing, should be made to section 189 of the CSA, which regulates prisoners appearing before the Board.[31]

QCS responded that this was outside the scope of the Bill but acknowledged that 'there may be barriers for some prisoners in making a written parole application'.[32] QCS added:

> This is an important administrative process that triggers numerous other administrative and legislative requirements. This includes notifying an eligible person that a prisoner had made a parole application and inviting a written submission to be made …
>
> Prisoners receive the appropriate support in custody for making applications for parole, including specialised support for prisoners with a barrier to making an application such as an inability to read or write.[33]

2.1.3.7 Provision of prisoner information

QHVSG recommended that victims should be provided with information relating to return to prison orders because lack of information about the reason for the return 'creates uncertainty, fear and is

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24 QSAN, submission 1, pp 2-3.

25 QCS, correspondence, 8 March 2024, p 2.

26 QCS, correspondence, 8 March 2024, p 2.

27 QHVSG, submission 11, p 4.

28 QSAN, submission 1, p 2.

29 QCS, correspondence, 8 March 2024, p 3.

30 QIFVLS, submission 12, p 3.

31 PLS, submission 4, p 6; Bill, cl 9.

32 QCS, correspondence, 8 March 2024, p 13.

33 QCS, correspondence, 8 March 2024, p 13.

re-traumatising families'.[34] QHVSG also suggested that, if not already included in legislation, eligible persons should receive information as to 'whether their conditions of release requests were supported by the parole board (e.g., curfew, geographic exclusion areas, GPS tracking)'.[35]

In respect of these matters, QCS responded:

> The Bill provides a clear discretion for QCS to disclose other matters related to the parole of a prisoner to an eligible person, not just the results. This is intended to include information that parole has been suspended or cancelled, that the application is still under consideration, or that certain conditions have been included in the parole order that are relevant to the eligible person. The intention of these provisions is to assist eligible persons by reducing the uncertainty that can currently be experienced through that parole process.[36]

QHVSG also recommended improving communication between state and federal agencies in relation to prisoners set to be deported, noting that 'the right to be informed ceases if the offender is to be deported' because 'when a prisoner is given parole, and falls under the *Australian Border Force Act 2015*, victims of crime are not able receive any information in relation to whereabouts, or when they will be deported'.[37]

QCS provided the following response in relation to immigration and deportation information:

> The Bill inserts a new provision at section 325(2)(j) which clarifies the ability for the chief executive to advise an eligible person of the deportation or removal status of the prisoner under the *Migration Act 1958* (Cth). This can include the location of the offender, their deportation status i.e. that they are due to be deported, the date of deportation and if the prisoner has exhausted appeal rights. This is subject to the information being available to the chief executive and the disclosure being appropriate in the circumstances.[38]

In response to QHVSG's concerns relating to interstate prisoner transfers, such as that an eligible person may have family members in the area where the prisoner is seeking to be transferred,[39] QCS stated:

> The *Prisoners (Interstate Transfer) Act 1982* (PITA) is based on national model legislation which enables the interstate transfer of prisoners across Australian jurisdictions.
>
> Section 10A(f) of the PITA allows broad discretion for a Minister when deciding whether to accept a transfer from another state or territory.
>
> For each application under the PITA, where relevant, information on victim proximity is sought from the Victims Register to inform how that may impact the transfer request. Where a victim may reside interstate, they are encouraged to register with the Victims Register in that jurisdiction.
>
> There is nothing preventing an eligible person providing detail about their family members living in a particular area (and concerns in relation to this) when contacted about a prisoner's interstate parole transfer.
>
> This ability to share information will be further strengthened through amendments to section 325 of the CSA included in the Bill.[40]

34 QHVSG, submission 11, p 3.

35 QHVSG, submission 11, p 3.

36 QCS, correspondence, 26 March 2024, attachment 2, p 5.

37 QHVSG, submission 11, p 4.

38 QCS, correspondence, 26 March 2024, attachment 2, p 6.

39 QHVSG, submission 11, p 2.

40 QCS, correspondence, 26 March 2024, attachment 2, p 7.

2.1.4 Fundamental legislative principles

2.1.4.1 Delegation of legislative power – non-written submissions

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.[41]

At present, an eligible person may make a written submission to the Board about anything that is relevant to the decision about making a prisoner's parole order that was not before the court at the time of sentencing.[42] The Bill would enable the Board to approve additional forms that submissions may take.[43] The forms of submission may include a video or voice recording.[44] This could be construed as a delegation of legislative power because the Bill could have set out the other forms a submission could take or could have provided for a regulation to prescribe the other forms.

The proposed amendment is intended to provide flexibility for how an eligible person can engage with the parole process.[45] The explanatory notes state that it will be particularly relevant in circumstances where 'an eligible person is illiterate, English is their second language, or they face other barriers to making a submission in writing'.[46] The explanatory notes contend that the Board is 'suitably placed to determine an appropriate format of a submission as the authority who considers it as a part of their decision making process'.[47]

Committee comment

The committee acknowledges the input from stakeholders regarding the QCS victims register. We consider the Bill would enhance the registration system, such as by enabling an entity supporting an eligible person to refer the person to the victims register for registration and enabling eligible persons to make non-written submissions.

Like eligible persons, prisoners may be illiterate, have English as a second language or face other barriers to presenting their position in writing. We note the submission by PLS that a similar amendment to that being made by the Bill to section 188 (Submission from eligible person) of the CSA could also be made to allow prisoners to make a parole application in a non-written form.

Recommendation 2

The committee recommends the Queensland Government consider allowing for non-written parole applications from prisoners.

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

42 CSA, s 188.

43 Bill, cl 9 (CSA, amends s 188).

44 Explanatory notes, p 33.

45 Explanatory notes, p 11.

46 Explanatory notes, p 19.

47 Explanatory notes, p 19.

2.2 Victim representation on the Parole Board Queensland

2.2.1 Background

The Parole Board Queensland (Board) was established in 2017 in response to recommendations from the Queensland Parole System Review by Mr Walter Sofronoff QC.[48] The Board is established under Chapter 5 (Parole) of the CSA and is an independent statutory authority. The purpose of the Board includes:

- determining parole applications
- amending, suspending or cancelling parole orders
- approving parolees for travel interstate or overseas.[49]

Board membership includes:

- the president and deputy president(s)
- professional board members
- police representative(s)
- public service (QCS) representative(s)
- community board members.[50]

The president, deputy presidents, professional board members and community board members are appointed for fixed terms by the Governor-in-Council on the recommendation of the Minister. The Board notes that:

> The President is equivalent in experience and standing to a Supreme Court Justice and the Deputy Presidents equivalent to District Court Judges. The President and Deputy Presidents hold office for five years and may be reappointed but cannot hold office for more than 10 years.[51]

The professional board members hold office for three-year terms and can be reappointed. They are required to hold a relevant university or professional qualification. The community board members also hold office for three-year terms and can be reappointed. They do not require a formal qualification and are part-time roles. The Board notes that community board members 'represent the diversity of the Queensland community in their knowledge, expertise and experience'.[52]

The police representatives and the public service representatives are nominated for transfer to the Board by the Commissioner of Police and Commissioner of QCS. They usually serve for 1 to 2 years. Public service representatives must have expertise or experience in probation and parole matters. The Board notes that these officers 'provide a vital operational link to the Board and support its primary consideration of community safety'.[53]

Current membership requirements were implemented in response to:

48 *Queensland Parole System Review: Final Report*, November 2016.

49 Board, 'Establishment & functions', https://pbq.qld.gov.au/about-us/establishment-functions/.

50 CSA, s 221.

51 Board, 'Members', https://pbq.qld.gov.au/about-us/board-member-profile/.

52 Board, 'Members', https://pbq.qld.gov.au/about-us/board-member-profile/.

53 Board, 'Members', https://pbq.qld.gov.au/about-us/board-member-profile/.

> … recommendations in the 2016 Queensland Parole System Review. The Queensland Parole System Review highlighted the importance of community representation on the Board in ensuring the wider Queensland community has a voice in the parole decision process.[54]

According to the explanatory notes, amendments providing for victim representation on the Board are intended to enact the Government's commitment to ensuring there is a victims' representative within the community membership of the Board.[55]

2.2.2 Proposed amendments

The Bill proposes to amend section 221 of the CSA to require that at least one community board member is a victims' representative.[56] The explanatory notes define a victims' representative as 'someone with expertise or experience relevant to the impact of crime on victims and victims interacting with the criminal justice system'.[57] QCS provides that the amendments aim to 'better inform parole decisions with information about the breadth of challenges, setbacks and trauma that can be associated with a victim's journey from the offence to sentencing and beyond'.[58]

2.2.3 Stakeholder feedback

2.2.3.1 Potential conflict of interest

PLS expressed concern in relation to amendments providing for victim representation on the Board because of the potential for conflicts of interest to arise in relation to high-profile victim representatives, and that this may undermine confidence in parole decisions:

Prisoners' Legal Service, submission 4, p 7.

PLS is concerned about the potential for conflicts of interest (real or perceived) that may arise in relation to high-profile victim representatives. By its nature, victim advocacy is a highly personal role. The Board deals with individual prisoners, whose matters are often the subject of ongoing controversy in the media as a result of victim advocacy. The appointment of victim representatives as community board members would potentially create conflicts of interest and undermine public confidence in parole decisions.

In response, QCS advised that conflicts of interest are already successfully managed by the Board, and that they consider the amendment will not increase the likelihood of conflicts that need to be managed. They noted that the Board includes 'legal members that may have represented prisoners applying, police representatives that may have been involved in investigations, and community members that may have personal knowledge of a prisoner'. QCS further noted that the Board's Code of Conduct requires members to disclose potential conflicts of interest, and that 'the Board is comprised of sufficient members to enable matters to be rescheduled to manage any suggestion of a conflict of interest'.[59]

2.2.3.2 Alternative to victim representation on Board

As an alternative to victim representation on the Board, PLS recommended the government consider appointing a representative nominated by the Victim's Commissioner. This appointment could operate in a similar manner to the public service and police representatives on the Board.[60]

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54 Explanatory notes, p 2.

55 Explanatory notes, p 2.

56 Explanatory notes, p 12.

57 Explanatory notes, p 12; Bill, cl 11 (CSA, new s 221).

58 Explanatory notes, pp 2-3.

59 QCS, correspondence, 8 March 2024, p 4.

60 PLS, submission 4, p 7.

In response, QCS stated:

QCS, correspondence, 8 March 2024, p 4.

The Queensland Parole System Review highlighted the importance of community representation on the Board in ensuring the wider Queensland community has a voice in the parole decision process every time the Board sits. Including the victims' representative within this cohort represents the importance of the voices of victims within this community voice. This is vital as the ultimate decision for the Board regarding parole is whether the prisoner presents an unacceptable risk to the community.

Committee comment

The committee notes the suggestions from PLS in relation to victim representation on the Board. We recognise that potential conflicts of interest must be effectively managed. We are satisfied that the inclusion of a victim representative as a community board member is appropriate, and that QCS provides effective measures to manage potential conflicts of interest.

2.3 Abuse of prisoner communications

2.3.1 Background

QCS noted that abuse of prison communications systems poses an ongoing issue and risk to public safety:

> Despite the checks and balances already in place, prisoners continue to use prison communications systems, such as the prisoner telephone system, to perpetrate crimes and re-victimise people in the community, particularly in relation to domestic and family violence.[61]

According to the explanatory notes, a number of reports have drawn attention to this issue:[62]

Queensland Audit Office, *Keeping people safe from domestic and family violence, Report 4,* 2022-23.

The report noted that prisoner telephone systems provide a means for perpetrators to contact their victims. The report recommended enhancing monitoring procedures to ensure prisoners do not breach domestic violence orders (recommendation no. 21).

Domestic and Family Violence Death Review and Advisory Board, *Annual Report,* 2019-20.

Recommended that a review of the mechanisms through which prisoners may contravene a domestic violence order while in custody be undertaken with a view to identifying and addressing existing gaps (recommendation no. 7).

Women's Safety and Justice Taskforce, *Hear her voice: Report one, Addressing coercive control and domestic and family violence in Queensland*, 2021.

The report acknowledged that communication avenues, such as the prisoner telephone system, were pathways for perpetrators to continue their pattern of violence and abuse. Submissions highlighted stalking, monitoring and surveillance of victims through telephone and digital means, promotes a perception of the perpetrator's constant presence during the relationship after separation or when incarcerated.

Another reason cited for giving the chief executive power to restrict a prisoner's personal calls was 'ensuring the continued safety and security of corrective services facilities, such as where prisoner

[61] QCS, correspondence, 18 March 2024, p 3.

[62] Explanatory notes, p 3.

communications are used to facilitate the introduction of contraband that puts facilities, frontline corrective services officers and other prisoners at risk'.[63]

2.3.2 Proposed amendments

The Bill would amend the CSA to strengthen powers to respond to the abuse of prisoner communication channels. The Bill provides that contacts can be revoked for a prisoner's personal calls if the chief executive reasonably believes:

- an individual proposed to be approved is a victim or alleged victim of an offence committed or alleged to have been committed by the prisoner
- the contact details proposed are not correct or are not suitable for a personal call to be made by a prisoner
- the call is likely to be used to engage in prohibited prisoner communication.[64]

Prohibited prisoner communication would include a personal call that constitutes or facilitates:

- an offence
- a breach of a domestic violence order or notice or other court order against a prisoner
- domestic violence
- a threat to a person's safety or welfare
- an incitement to commit violence against a person or to destroy property
- gambling by a prisoner
- a threat to the security or good order of a corrective services facility.[65]

The Bill also includes provisions that propose to:

- allow the chief executive to revoke approval for a call if an individual withdraws consent to be contacted and suspend approval while under investigation
- allow for limitations on prisoners' personal calls to be increased or decreased depending on level of risk
- provide for different terms and conditions depending on a prisoner's security classification or other factors
- provide that more restrictions may be applied if a prisoner is likely to use personal calls to engage in prohibited communication
- allow the chief executive to limit the amount a prisoner may spend on personal calls
- clarify the chief executive's power to end a prisoner's phone call.

The explanatory notes state that safeguards have been included in the Bill, including that:

- a prisoner must not be prevented from making at least 7 personal calls in a 7 day period
- that the terms and conditions, other than those for an individual prisoner, must be included within the administrative procedures made under section 265 of the CSA, and that:
    - these procedures must be published

63 Statement of compatibility, p 16.

64 Explanatory notes, p 3; QCS, correspondence, 18 March 2024, p 3; Bill, cl 41.

65 Explanatory notes, p 3.

  - the chief executive must be satisfied the procedures are compatible with human rights.
- amendments in the Bill relating to personal phone calls will not impact a prisoner's ability to communicate with their lawyer or other authorised prisoner communications
- other entities may be approved for all or a class of prisoners to contact via a personal call.[66]

2.3.3 Stakeholder feedback

2.3.3.1 Authorised prisoner communications

In its submission, Queensland Human Rights Commission (QHRC) recommended that the QHRC be included in the list of oversight bodies in proposed new section 52E of the CSA. That section in the Bill provides that a prisoner may communicate with:

- an officer of a law enforcement agency
- the parole board
- the ombudsman
- the inspector of detention services.

These communications cannot be recorded or monitored by the chief executive.[67]

In response to QHRC's recommendation, QCS advised that the amendments reflect existing legislation and practice, noting that:

> To avoid the necessity for continually prescribing additional organisations, or making amendments when organisational names change, new section 50(2)(c) provides clear flexibility for entities to be generally approved for prisoners to contact, such as the QHRC.[68]

QCS further advised that the QHRC is already approved on the prisoner 'common auto dial list', and that calls from prisoners to the QHRC are not recorded.[69]

2.3.3.2 Abuse of women through prisoner communication channels

NQWLS supported the strengthening of protections against the abuse of prisoner communications, submitting that the amendments would help protect women:

NQWLS, submission 13, p 3.

We applaud the resolve to strengthen powers to address domestic violence being perpetrated through prisoner communication channels. We hear regular stories from our clients who are contacted by offenders, often through calls with family members, and who are subject to implied or overt threats. Sometimes the issue is simply unwanted contact and the chance for a victim to move forward without encouragement from a perpetrator to stay in a harmful relationship. Unwanted contact can also be highly problematic to a woman in child protection matters where any contact between the parties is being scrutinised.

66 Explanatory notes, p 13.

67 Bill, s 52E.

68 QCS, correspondence, 8 March 2024, p 9.

69 QCS, correspondence, 8 March 2024, p 9.

2.3.4 Fundamental legislative principles

2.3.4.1 Administrative power and natural justice - prisoner communications

Legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.[70] Legislation should also be consistent with the principles of natural justice.[71] These principles include a right to be heard, being afforded procedural fairness, and having an un-biased decision maker.[72]

The Bill proposes to give additional powers to the chief executive regarding prisoner's personal calls. Decisions made by the chief executive could impact on rights and liberties of prisoners, and potentially also other individuals, such as prisoners' families, whose communications with the prisoner would be affected.

Neither prisoners nor the individual affected would have an opportunity to have input into the chief executive's decision to suspend the approval of an individual for a personal call.[73] However, the explanatory notes consider this is justified 'as the swiftness of the limitation or suspension will only be done in limited circumstances where the chief executive believes that the prisoner is using the prisoner communications to inflict harm or without consent to contact a person'.[74] The explanatory notes further state that potential limitations are offset by the prisoner being able to request a review of the decision, make an internal complaint with an official visitor and apply for a judicial review.[75] Also, the suspension ceases to have effect 6 months after it was imposed if the chief executive has not revoked the approval or withdrawn the suspension.[76]

Committee comment

The committee notes that the amendments in the Bill relating to prisoner communications seek to protect the community – particularly those who have been subject to domestic violence by a prisoner.

We consider that potential infringements against the rights and liberties of individuals are balanced by the impact the amendments will have on community safety. We also note the additional rights protections provided by mechanisms for review and appeal.

2.4 Enabling the use of police powers in relation to reportable child sex offenders on post-sentence supervision

2.4.1 Background

The *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* (CPOROPOA) establishes a national child protection registration scheme in Queensland, under which reportable child sex offenders must report certain personal details to the Queensland Police Service (QPS). The DPSOA also subjects offenders to reporting obligations and supervision by corrective services officers.

Currently, an offender subject to the CPOROPOA who is also subject to supervision under the DPSOA is only required to make an initial report under the CPOROPOA before their reporting obligations are suspended. This suspension is made on the basis that the offender is supervised under the DPSOA by corrective services officers, and continued reporting to police would be duplicative.

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

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

72 OQPC, Notebook, pp 24-32.

73 See Bill, cl 41 (CSA, new s 52(3)); explanatory notes, pp 19-20.

74 Explanatory notes, p 20.

75 Explanatory notes, p 20. See *Judicial Review Act 1991* (JRA), s 20.

76 Bill, cl 41 (CSA, new s 52(4)).

This has resulted in some police powers that would ordinarily apply to monitoring these offenders not continuing to apply, including:

- police powers to demand production of, and search, devices under the CPOROPOA
- police powers to enter premises to verify reported details under the *Police Powers and Responsibilities Act 2000* (PPRA).[77]

2.4.2 Proposed amendments

The Bill proposes to expand some police powers to DPSOA offenders who are also reportable offenders under the CPOROPOA.[78] Amendments would:

- expand the ability for the QPS to enter premises where an offender resides to verify reported personal details
- allow the QPS to require production of, and inspect, digital devices in certain circumstances
- clarify that police may photograph a thing that is required to be reported by the offender under their DPSOA order.[79]

These amendments are intended to improve QCS's case management, ensure consistency, and promote community safety. The explanatory notes advise that:

> These amendments are not intended to enliven an offender's reporting requirements under the CPOROPOA, nor affect the purpose of section 4 of the CPOROPOA, being to eliminate any duplication of reporting. The amendments will ensure police powers remain in place, regardless of whether the offender is reporting personal details to police or QCS.[80]

2.4.3 Stakeholder feedback and department response

2.4.3.1 Powers too broad

In their submission, Legal Aid Queensland (LAQ) raised concerns that the amendments contained in clauses 51 and 57 in relation to reportable sex offenders were too broad, noting that these powers 'have the potential for overuse or be abused with respect to a group of prisoners whose movements are already heavily monitored and restricted'.[81]

QCS responded that:

QCS, correspondence, 8 March 2024, p 13.

The amendments have been drafted to ensure consistency with existing police powers for other reportable child sex offenders. There is also a high threshold for granting an order under the DPSOA based on the offender posing a serious danger to the community based on their history of sexual offending.

Personal details are defined in the CPOROPOA and include matters that highly influence an offender's risks, such as their contact with children and use of a carriage or internet carriage service. The power for police to verify reported personal details will therefore supplement QCS supervision as QCS has limited tools to verify the information provided by a supervised offender.

77 Explanatory notes, pp 3-4; PPRA, s 21A; CPOROPOA, s 67FC.

78 QCS, correspondence, 18 March 2024, p 4.

79 Explanatory notes, p 14; QCS, correspondence, 18 March 2024, p 4.

80 Explanatory notes, p 14.

81 LAQ, submission 3, p 4.

2.4.3.2 Power to enter residence

LAQ noted that the Bill would amend section 21A of the PPRA in a manner that would:

> … provide an unfettered power to enter a residence of a person subject to a supervision order pursuant to the DPSOA, for the purposes of checking the personal details they provided as required by a DPSOA supervision order.[82]

They argued that 'there is no requirement that the exercise of the power is reasonably necessary to monitor compliance with the order'.

In response, QCS advised that:

> … the PPRA already enables a police officer to enter a premises where a reportable offender resides, but that the power is limited to verify reported 'personal details.' The amendments have been drafted to ensure consistency with how the power would be used by police if the offender were a reportable offender that was not also under DPSOA supervision.[83]

2.4.3.3 Power to access devices

In relation to clause 51 amending the CPOROPOA to permit police access to digital devices, LAQ noted that:

> As currently drafted the power to access a digital device could be exercised if a person was suspected of consuming alcohol or cannabis in breach of an order or direction, or for not taking their medication as directed by their doctor, as there is no requirement that accessing a device is reasonably necessary to investigate the suspected breach.[84]

LAQ argued that, without a tangential or real connection between the need to access the device and the investigation of the alleged indictable offence, these provisions provide:

> … a blanket authority for police to access a device where it is not reasonably necessary to investigate the indictable offence under the DPSOA, and therefore unreasonably infringes upon the prisoner's right to privacy in circumstances where it is gratuitous.[85]

In response, QCS stated that:

> The Bill merely enlivens the ability for police to perform a device search, as they would if the individual was subject to the CPOROPOA to provide consistency in the management of CPOROPOA reportable offenders and reportable offenders subject to a DPSOA order. There are appropriate safeguards in place for both cohorts of offenders. Introduction of additional thresholds or requirements would create additional inconsistency between the schemes.
>
> Further, a DPSOA's order conditions are designed to manage their individual risks of re-offending. Any breach of those conditions may present significant risks that require consideration and management.[86]

2.4.4 Fundamental legislative principles

2.4.4.1 Power to enter premises and protection against self-incrimination – increased police powers

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation:

- confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer[87]

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82 LAQ, submission 3, p 3.

83 QCS, correspondence, 8 March 2024, p 13.

84 LAQ, submission 3, p 4.

85 LAQ, submission 3, p 4.

86 QCS, correspondence, 8 March 2024, p 12.

87 LSA, s 4(3)(e).

- provides appropriate protection against self-incrimination.[88]

The Bill proposes amendments that would expand the circumstances in which a police officer may:

- enter premises where a reportable offender[89] generally resides[90]
- photograph a thing if a reportable offender is required to report information about the thing[91]
- access a reportable offender's digital device.[92]

CPOROPOA provides it is an offence for a reportable offender to fail to comply with a requirement to give a police officer access to a digital device and the access information,[93] and it is not a reasonable excuse to fail to comply with the requirement that complying might tend to incriminate the reportable offender or expose the offender to a penalty.[94]

The explanatory notes acknowledge that the proposed amendments may be inconsistent with fundamental legislative principles because they would enable police to enter premises without a warrant and could result in self-incrimination because a police officer may discover a further offence when accessing a reportable offender's digital devices.[95] The explanatory notes contend that the amendments are justified because of the danger posed to the community by reportable offenders:

> Offenders supervised under the DPSOA are those that present a serious danger to the community, by presenting an unacceptable risk of committing a serious sexual offence if released without an order being made. Where such an offender is also a reportable offender under the CPOROPOA, this is because of a history of sexual offences committed against a child.[96]

Further, that consistency between the schemes under the CPOROPOA and the DPSOA to verify matters promotes community safety.

Committee comment

The committee notes the intention of the amendments providing for police powers in relation to post-sentence supervision for reportable sex offenders is to increase community safety and ensure consistency between schemes under the CPOROPOA and DPSOA.

The committee is satisfied that the amendments strike an appropriate balance between community safety and the rights of individuals.

2.5 Protecting victim and intelligence information in decision making

2.5.1 Background

In the explanatory notes, QCS noted that victim and intelligence information can form a crucial part of parole decisions:

> Under the CSA, decision makers consider a range of confidential information when making decisions about the management of prisoners and offenders. This includes decisions made by the Board about an offender's suitability for release into the community on parole. Information that can inform these

88 LSA, s 4(3)(f).

89 'Reportable offender' is defined in the CPOROPOA, s 5.

90 Bill, cl 57 (PPRA, amends s 21A).

91 Bill, cl 50 (CPOROPOA, amends s 31).

92 Bill, cl 51 (CPOROPOA, amends s 67FC); explanatory notes, p 55.

93 'Access information', for a digital device, means information necessary for a person to access or read device information from the device. For example, userid, username, passcode, password.

94 CPOROPOA, s 67FC.

95 Explanatory notes, p 20. See also LSA, ss 4(3)(e), (f).

96 Explanatory notes, p 20.

> decisions can include information from a victim of crime or intelligence about criminal activity. Use of such information in decision making is critical to ensuring the safety and security of the correctional system and the broader community.[97]

However, *McQueen v Parole Board Queensland* [2022] QSC 27 (McQueen) raised issues in relation to the disclosure of confidential information in parole decisions under section 208 of the CSA:

> In McQueen, Brown J set aside two decisions made by the Board in part because an information notice provided to the applicant did not comply with the requirement to provide reasons for the decision under section 208 (Reconsidering decision to suspend or cancel parole order) of the CSA. Brown J held that the information notice did not comply in part because the Board had not disclosed confidential information regarding adverse intelligence reports about the applicant's risk to community safety.[98]

2.5.1 Proposed amendments

The Bill would insert new section 340AA into the CSA to provide decision makers, including the Board, with the discretion to withhold the details of information which informed a decision. Information can be withheld if the decision maker is satisfied that releasing the information could reasonably be expected to:

- cause harm
- prejudice public safety or national security
- prejudice the detection, investigation or prosecution of an offence
- disclose the identity of a confidential source
- the release of the information is prohibited under another law.

Information can also be withheld if the release of that information is prohibited under another law.[99]

The amendment 'sets a high threshold' for offences to which this provision is applicable, covering investigations relating to:

- a terrorism offence
- an offence with a maximum penalty of 14 or more years imprisonment
- another offence prescribed by regulation.[100]

The explanatory notes provide justification for the proposed amendments:

> It is essential that decisions made under the CSA involving assessments about safety and risks associated with prisoners and offenders are informed by sensitive information, where appropriate. Not only is this approach consistent with legislative and policy requirements, but a failure to take this information into account would undermine the effectiveness of these decisions, increasing risks to the safety of the correctional environment and the broader community. [101]

QCS noted that balancing safety and a prisoner's right to a fair process should be a key consideration:

> While care should be taken to afford a prisoner a fair process, including the provision of adequate reasons for decisions that impact them, this does not override the need to prevent the disclosure of certain information that could result in further harm.[102]

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97 Explanatory notes, p 4.

98 Explanatory notes, p 4.

99 QCS, correspondence, 18 March 2024, p 5.

100 Bill cl 32, s 340AA.

101 Explanatory notes, p 5.

102 Explanatory notes, p 5.

2.5.2 Stakeholder feedback and department response

2.5.2.1 Provision too broad

Several stakeholders expressed concern that the proposed amendments relating to the disclosure of sensitive information were too broad. LAQ submitted that:

LAQ, submission 3, p 3.

LAQ is concerned that an information notice provided to a prisoner making an application for a parole order that refers only to 'confidential information' as a reason or a substantial reason amongst others for parole cancellation, does not give the prisoner any information to which they can meaningfully provide a response. LAQ is concerned that the provision is drafted too broadly and is at risk of being overused and abused, and applied more extensively than is necessary, in circumstances where there is no transparency.[103]

PLS strongly objected to the proposed amendments, suggesting they go beyond the scope of issues raised by McQueen.[104] They noted that a practical consequence of the amendments would be that prisoners remain in custody for longer because they might be unable to address potential community safety concerns due to not being provided with adequate information. The Bar Association of Queensland (BAQ) similarly noted that provisions were too broad in their present form.[105]

In response to these concerns, QCS advised that:

> Under the CSA, decision makers consider a range of confidential information when making decisions about the management of offenders. This information can include information from a victim of crime or intelligence about a criminal activity. Access to and use of this information is critical to ensuring sound decisions are made. While the McQueen case highlighted issues in the Board setting, the safeguards required to protect this information exists across all decisions made under CSA, the Bill applies this discretion accordingly.
>
> While increased discretion is provided to decision makers it also includes a range of safeguards to this discretion. This includes a narrow scope of reasons the decision maker must be reasonably satisfied exists and that a gist of the information must be provided to the offender where the discretion is used. Operationalisation of this policy will include consideration of how each decision maker will record this rationale where information is not provided to an offender to ensure appropriate record-keeping procedures.[106]

QCS also drew attention to the Bill's statement of compatibility:

> The Statement of Compatibility accompanying the Bill highlights human rights engaged (including promoted) by the Bill and it is considered that the provisions strike an appropriate balance between promoting the safety of sources of information, such as victims, and maintaining procedural fairness for offenders. It also ensures QCS can fulfil its purpose of community safety and crime prevention under section 3 of the CSA.[107]

2.5.2.2 Procedural fairness

BAQ submitted that section 340AA requires amendment:

[103] LAQ, submission 3, p 3.

[104] PLS, submission 4, p 3.

[105] BAQ, submission 5, p 2.

[106] QCS, correspondence, 8 March 2024, p 4.

[107] QCS, correspondence, 8 March 2024, p 5.

BAQ, submission 5, p 2

340AA, in its present form, goes beyond what is reasonably necessary to achieve the objects of the provision. In doing so, it inappropriately undermines procedural fairness and prisoners' rights to reasons under the CS Act and the *Judicial Review Act 1991*...

BAQ argued that section 340AA is inconsistent with procedural fairness because it:

> …creates an "absolute rule" that a decision-maker need not disclose information within the categories specified in that section; whereas procedural fairness would ordinarily require a decisionmaker to balance the public interest in non-disclosure of that information against public interest factors in favour of disclosure.[108]

In response to concerns over procedural fairness, QCS advised that:

> The provision provides a clearer framework for the withholding of information, balancing the prisoner's right to procedural fairness.
>
> The prisoner will still be provided with the gist of the information to ensure compliance with human rights, and as much transparency as possible to afford the prisoner natural justice. The gist will include as much of the information as possible, without jeopardising safety or security. The prisoner's ability to have the decision judicially reviewed on other grounds will be maintained.[109]

2.5.2.3 Consistency with the Judicial Review Act 1991

BAQ further submitted that section 340AA is inconsistent with the *Judicial Review Act 1991* (JRA). Sections 31 and 32 of the JRA provide people with a right to reasons for decisions made.[110] BAQ suggested that the proposed section 340AA will circumvent the safeguards of the JRA:

> The proposed s 340AA is drawn in terms that would permit statements of reasons given under the JR Act for decisions made under the CS Act to not include information in any of the categories specified by s 340AA(1). This would operate to circumvent an important safeguard in the JR Act that requires an assessment of the public interest by the Attorney-General. It would create an 'absolute rule' that information within the meaning of s 340AA(1) need not be included in a statement of reasons regardless of any assessment by the Attorney-General of the public interest.[111]

BAQ proposed that section 340AA be redrawn to clarify that it does not apply to statements of reason under the JRA.

QCS responded that:

> Section 340AA as currently drafted does not remove the application of judicial review from the decision to withhold information when giving reasons. It is not necessary to state within the provision that the JR Act applies to the provision.[112]

2.5.2.4 Preference for a public interest test

BAQ submitted that section 340AA is incompatible with human rights under the HRA due to creating an 'absolute rule' that information may be excluded from requirements to provide reasons, as opposed to a test based on the public interest. They suggest that including a public interest test in the provision would resolve these issues. [113]

In response, QCS stated that:

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108 BAQ, submission 5, p 3.

109 QCS, correspondence, 8 March 2024, p 5.

110 JRA, ss 31, 32.

111 BAQ, submission 5, p 3.

112 QCS, correspondence, 26 March 2024, p 3.

113 BAQ, submission 5, p 3.

> Ensuring the protection of the safety of individuals and the community from any threats of harm or actual harm which may result from certain information being disclosed to a prisoner promotes the right to privacy and the right to security of person. The Bill ensures there is a high threshold for non-disclosure that links closely to these purposes, thereby ensuring only information that on balance should be withheld is not disclosed.
>
> To ensure compliance with human rights, and as much transparency as possible to afford the prisoner natural justice, the prisoner will still be provided with the gist of the information. The gist will include as much of the information as possible, without jeopardising safety or security. The prisoner's ability to have the decision judicially reviewed on other grounds will be maintained. [114]

In response to a Question on Notice asked in the public hearing, BAQ provided suggested amendments to section 340AA, as well as further information in relation to their preference for a public interest test.[115]

In response to BAQ's suggested amendments and comments, QCS advised:

> The provision as currently drafted in the Bill is necessary as there is a higher threshold for non-disclosure of information on the basis of public interest. Therefore, public interest immunity may not protect the full scope of sensitive and confidential information captured by the provision from disclosure.
>
> For example, public interest may lead to the disclosure of information notwithstanding there is a reasonable expectation that its disclosure would endanger a victim's life or physical safety or seriously threaten a victim's welfare. This might occur under the public interest immunity test if the decision-maker was satisfied of the prospect of a victim's life, physical safety and/or welfare being endangered if the information was released, but nonetheless formed the view that, on balance, the public interest favoured the release of the information.
>
> The provision is intended to operate separately to the public interest test already established by law, not to replace it.
>
> The provision is intended to ensure public confidence in the correctional system by protecting victim and intelligence information from being released through a clearer legislative provision. The provisions are also important in promoting the safety and wellbeing of victims and encouraging victims to disclose the information, while knowing that it will be protected.[116]

QCS further commented that the HRA continues to apply to decisions to withhold information:

> The amendment as drafted does not provide any blanket or automatic exemption from the disclosure of sensitive information in decision-making. As drafted, the provision creates a discretion for a decision-maker to withhold information that reaches the threshold set out in the section. The decision-maker is not obliged to withhold the information but has the discretion not to disclose the information when giving reasons.
>
> Importantly, the *Human Rights Act 2019* continues to apply to any decision to withhold information, ensuring that decisions are made in a way that is compatible with human rights. This inherently involves a balancing exercise between the reason to withhold the information and the limitations this presents on the offender's human rights. Only where withholding the information is reasonably and demonstrably justifiable will the decision to withhold be compatible with human rights.[117]

[114] QCS, correspondence, 8 March 2024, p 5.

[115] BAQ, response to question on notice, 20 March 2024, pp 8-9.

[116] QCS, correspondence, 26 March 2024, p 1.

[117] QCS, correspondence, 26 March 2024, p 2.

2.5.2.5 Decision maker to keep record of reasons

BAQ suggested that section 340AA should be amended to require the decision maker to keep a confidential record of their reasons which they are not required to disclose to the prisoner but are required to disclose to a Court in judicial review proceedings of their decision.[118]

QCS responded that it will 'consider any necessary improvements to existing record keeping practices for decision making through implementation of the amendment'.[119] QCS subsequently noted that:

> Decision-makers considering the non-disclosure of information under section 340AA (regardless of the ultimate decision about disclosure) will be acutely aware of the possibility of the decision being scrutinised at a later time. Reasons for decisions (including the consideration of human rights issues) under section 340AA will be documented and available for examination by the Supreme Court, should judicial review proceedings be commenced. In addition to the documented reasons, documents containing the information covered by section 340AA (and not disclosed to the prisoner or offender) will be available for scrutiny by the Supreme Court.[120]

2.5.2.6 Inability for prisoner to respond

Submitters expressed concern that the amendments would limit a prisoner's ability to respond to reasons for a decision. PLS submitted that:

> PLS considers that the proposed amendments undermine accountability and transparency in executive decision-making and fail to promote community safety. Accountability, transparency and related rights are especially important in the context of parole decision-making because these principles allow a prisoner to understand their responsibilities in relation to release and rehabilitation.[121]

LAQ expressed similar concerns that:

> … an information notice provided to a prisoner making an application for a parole order that refers only to 'confidential information' as a reason or a substantial reason amongst others for parole cancellation, does not give the prisoner any information to which they can meaningfully provide a response.[122]

In response to these concerns, QCS stated:

> To ensure compliance with human rights, and as much transparency as possible to afford the prisoner natural justice, the prisoner will still be provided with the gist of the information. The gist will include as much of the information possible, without jeopardising safety or security. Judicial review also remains open to the prisoner.[123]

2.5.2.7 Consideration of Queensland Parole System Review 2

PLS submitted that they believe the amendments are premature, and that the government should have considered the findings of the Queensland Parole System Review 2 (QPSR2) report:

> We consider that the changes in the Bill are premature, in light of the work or recommendations that might flow from the QPSR2 report. Indeed, the proposed s340AA of the *Corrective Services Act 2006* (Qld) (the Act), relating to the disclosure of sensitive information, will compound existing deficiencies that were the subject of our submissions to the QPSR2 review.[124]

QCS responded that the QPSR2 report is under consideration.

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118 BAQ, submission 5, p 4.

119 QCS, correspondence, 8 March 2024, p 5.

120 QCS, correspondence, 26 March 2024, p 2.

121 PLS, submission 4, p 3.

122 LAQ, submission 3, p 3.

123 QCS, correspondence, 8 March 2024, p 6.

124 PLS, submission 4, p 2.

2.5.3 Fundamental legislative principles

2.5.3.1 Natural justice – reasons for decision

The amendments provided for in new section 340AA of the CSA may be inconsistent with natural justice principles because the individual concerned (the prisoner) will not be entitled to receive all the information that may have been used to make a decision that concerns them. This could impact their rights to review the decision, as statements of reasons or information notices are often used by individuals as the basis for review claims.

Whilst the explanatory notes acknowledge that this provision raises issues of natural justice, the notes justify any potential impacts on individual rights on public safety grounds.[125] The explanatory notes also consider that there are safeguards built into the provision – including that the decision maker must be satisfied to a high threshold that withholding the information is necessary and that the amendment 'does not remove the requirement for a decision maker to provide a 'gist' of the information relied on'.[126]

2.5.3.2 Retrospectivity – reasons for decision

Legislation should not adversely affect rights and liberties, or impose obligations, retrospectively.[127] Strong argument is required to justify an adverse effect on rights and liberties, or imposition of obligations, retrospectively.[128]

The Bill proposes to insert a validation provision into the CSA relating to new section 340AA which means that any decision made under the CSA before commencement of the Bill, and anything done in relation to that decision, is taken to have been made as if new section 340AA applied to that decision.[129] This would protect past decisions made in reliance on information of the kind protected by new section 340AA.[130] This may have an adverse impact on rights and liberties of individuals, as it may preclude an individual from being able to apply for review of a decision on the grounds that the information was not disclosed.[131]

The explanatory notes acknowledge the potential adverse impacts on individuals, but state that any impacts are considered justified:

> This is because the reversal of decisions to withhold sensitive information from offenders, would unjustifiably erode public confidence in QCS and the Board, and may adversely impact on the operations of a law enforcement agency, the safety of an individual (including a victim), or disclose a confidential information source.
>
> Further the amendment does not validate decisions that have been overturned by a court, or impact on the ability of a person to seek judicial review of the decision on other grounds.[132]

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125 Explanatory notes, p 5.

126 Explanatory notes, p 21.

127 LSA, s 4(3)(g).

128 See: Office of the Queensland Parliamentary Counsel, '*Fundamental legislative principles: the OQPC Notebook*', p 55.

129 Bill, cl 34.

130 For example, information that could reasonably be expected to enable the identify of a source to be obtained, endanger a person's life or safety or prejudice public safety or national security.

131 Explanatory notes (p 22) note that if a decision has been found by a court to be invalid or has been set aside by a court order, the finding or order stands. See proposed s 490ZI(4).

132 Explanatory notes, p 22.

Committee comment

The committee acknowledges the input of submitters in relation to proposed new section 340AA, and in particular, the recommendations provided by BAQ.

The committee notes that the provision may result in individuals receiving less information about the decisions that affect them. However, the committee also notes the overall purpose of the provision is to inform effective decisions about the safety and security of the correctional system and prevent harm to individuals or the community.

Although the impact on the individual in these circumstances may be considered significant (in that it is removing a potential avenue for review of a decision) it appears that the intention was for the CSA to allow decision makers to consider sensitive information (such as information from victims of crime or intelligence about criminal activity) when making decisions that will impact not only the individual concerned, but the broader community.

With regards to the retrospective elements of proposed amendments, the committee notes that, whilst the practice of making retrospectively validating legislation is not generally endorsed, there are occasions where curative, retrospective legislation, without significant effect on individual rights and liberties, is justified to clarify a situation or correct unintended legislative consequences.

Recommendation 3

The majority of the committee recommends the Queensland Government consider the merit of amending new section 340AA to:

- provide for a public interest test in relation to decisions in order to determine whether the impact of disclosure outweighs the right to natural justice
- require that decision makers keep a record of reasons, even if they are not required to disclose these reasons to a prisoner
- clarify that the section does not apply to statements of reason under the *Judicial Review Act 1991*.

2.6 Using body-worn cameras outside of corrective services facilities

2.6.1 Background

QCS has noted that body-worn cameras are 'commonly deployed by law enforcement, correctional and security agencies across Australia', and 'provide vital, contextual evidence when investigating incidents and serve as a deterrent to anti-social behaviour and assaults'. QCS uses body-worn cameras to ensure the safety and security of staff, offenders and other people interacting with the correctional system.[133] Citing the Queensland Law Reform Commission's 2020 review of Queensland's laws relating to civil surveillance and the protection of privacy in the context of current and emerging technologies, QCS stated that there is need for 'clear lawful authority for the use of surveillance devices that appropriately safeguards individual privacy'.[134]

2.6.2 Proposed amendments

The Bill seeks to clarify the authority of corrective service officers to wear body-worn cameras while escorting prisoners or performing other functions to promote safety and accountability in community-

[133] Explanatory notes, p 5.

[134] Explanatory notes, p 5.

facing corrective services.[135] The Bill would provide that use of a body-worn camera is permitted when an officer:

- has a prisoner under their control (such as during an escort)
- is responding to an incident
- is using or considering using use of force
- believes there is an imminent and significant risk to the life self or safety of an individual
- believes that an offence or breach of discipline is being or has been committed.[136]

The Bill would provide that body-worn cameras cannot be:

- used in a sensitive location, such as a private residence, changeroom, shower or toilet, is only permitted if the officer believes there is an imminent and significant risk to the life, health or safety of an individual
- deliberately hidden from view or disguised
- used to monitor and record a prisoner communication, such as a discussion with the prisoner's lawyer, which could not be lawfully recorded if it took place in a corrective services facility.[137]

2.6.3 Stakeholder feedback and department response

2.6.3.1 Additional safeguards

The Office of the Information Commissioner (OIC) welcomed the provisions intended to clarify the authority for the use of body-worn cameras. However, they noted that additional safeguards for the use of body-worn cameras apply to officers when operating under the *Youth Justice Act 1992* (Youth Justice Act).[138] The OIC suggested that considerations similar to those in the Youth Justice Act be applied to the amendments in clause 43 of the Bill.

In response, QCS advised that the provisions in the Youth Justice Act apply to the use of body-worn cameras in youth detention centres. Section 19 of the *Corrective Services (Emerging Technologies and Security) and Other Legislation Amendment Act 2023* inserted section 173A into the CSA. This provision, which is yet to commence, will provide for similar protections to those contained in the Youth Justice Act on commencement. QCS further noted that the amendments:

> … address the use of body-worn cameras outside of a facility and includes appropriate safeguards for use in that context. The Bill prescribes a high threshold for the circumstances where a body-worn camera can be used outside a corrective services facility, rather than leaving this guidance to policy and procedure.[139]

2.6.3.2 Privacy

The OIC noted that the use of body-worn cameras pose several privacy risks to individuals, including prisoners, corrective services officers, as well as members of the public that may be captured when footage is recorded outside a correctional services facility. They also noted that personal information may be captured through the use of the cameras.[140] OIC recommended conducting a Privacy Impact Assessment prior to implementation, and noted that:

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135 Explanatory notes, p 5.

136 Explanatory notes, p 15.

137 Explanatory notes, p 15.

138 OIC, submission 2, p 3.

139 QCS, correspondence, 8 March 2024, p 10.

140 OIC, submission 2, p 3.

OIC, submission 2, p 4.

While the collection of personal information using these technologies may be considered necessary to ensure the safety and security of corrective services staff, prisoners and other individuals, it should be appropriately balanced so as not to intrude unreasonably into the personal affairs of those individuals. A PIA will assist to identify privacy risks and appropriate mitigation strategies

The OIC advised that the Privacy Impact Assessment should 'updated at key phases throughout the lifecycle of the implementation and use of surveillance technologies, including the passing of the legislation and prior to adoption of any new surveillance technologies'.

In response, QCS stated that they will consider updating any existing or conducting a new Privacy Impact Statement during implementation, building on existing work in the context of body-worn camera use by QCS.[141]

2.6.3.3 Need for greater safeguards

The Queensland Nurses and Midwives' Union (QNMU) submitted that they do not believe the safeguards in relation to body-worn cameras contained in the Bill capture the wider implications for health care providers. They expressed a number of concerns and recommendations, including:

- considering the implications that the use of body-worn cameras will have on health care providers, as well as patients and their carers
- turning off audio when prisoners are receiving healthcare
- ensuring the use of body-worn cameras do not deter prisoners from seeking healthcare
- that corrective services officers must notify individuals before activating a body-worn camera
- strengthening the definition of 'sensitive location' and its application to the healthcare environment
- considering the protection and privacy of surrounding patients, health practitioners and members of the public who may be captured by body-worn cameras
- ensuring that disclosure of body-worn camera videos, images and information must only take place where it is necessary to assist with an investigation into an alleged offence;
- developing best practice guidelines, procedures, and policies for health practitioners to understand when body-worn cameras are authorised in the clinical care context and ensure consistency with how the legislation is applied and how care is provided across healthcare settings
- considering an escalation framework for patient safety and staff that provides guidance regarding the use of alternative measures and using body-worn cameras only when necessary.

In response to these concerns, QCS stated that 'there are significant safeguards built into the Bill and surrounding legislation and procedure'.[142]

QCS noted that the Bill provides for administrative procedures under section 265 of the CSA to include requirements relating to the use, storage and destruction of recordings, and that:

> Unnecessarily limiting use of recordings would undermine one of the purposes of using the body-worn cameras, which is to drive accountability for QCS officers in the performance of their functions. It is

[141] QCS, correspondence, 8 March 2024, p 10.

[142] QCS, correspondence, 8 March 2024, p 10.

> therefore important that a detailed procedure is developed to consider these purposes and appropriately limit disclosure.[143]

In relation to recording in a 'sensitive location', QCS provided that:

> Sensitive location is defined in new section 1738(9). The definition covers a room or other place, other than a patient waiting area, where a person is being personally assessed or treated by a health practitioner or authorised mental health service. The definition has been drafted to account for a wide range of places where a person could be receiving healthcare treatment or being assessed, noting the need for additional privacy in that context. The definition excludes a patient waiting area as this area can be unpredictable, and the use of a body-worn camera may be of benefit, in line with the other restrictions imposed by the new provision.[144]

In relation to QNMU's suggestion that best practice guidelines, procedures, and policies be developed, QCS advised that:

> Commencement of the provision has been delayed to allow for the necessary implementation work, including procedural updates to be progressed, including in consultation with relevant stakeholders, such as Queensland Health in relation to health settings.[145]

Committee comment

The committee acknowledges the input of submitters in relation to the use of body-worn cameras. We recognise that the use of body-worn cameras, particularly in healthcare settings, may pose privacy risks. We also recognise that body-worn cameras serve important functions by promoting the safety and security of staff, offenders and other people, providing footage that may be used as evidence, and providing additional means of accountability.

Recommendation 4

The committee recommends the Queensland Government conduct a Privacy Impact Assessment before implementing provisions relating to the use of body-worn cameras.

2.7 Prescribing search requirements to accommodate diverse prisoner needs

2.7.1 Background

Demand for contraband in correctional centres is high, and presents a significant risk to the safety of prisoners, staff and visitors. QCS is empowered to conduct a variety of searches for a range of reasons, including to detect and deter the introduction of contraband.[146]

Requirements for how searches are conducted are contained within the CSA. The purpose of these requirements is to protect the safety and dignity of both the prisoners being searched and those conducting the search. It is a current requirement that corrective services officers and health practitioners are the same sex as the prisoner when conducting an invasive search.[147]

The September 2023 Queensland Human Rights Commission report, *Stripped of our dignity: A human rights review of policies, procedures, and practices in relation to strip searches of women in Queensland prisons* (QHRC report) noted that more flexibility is needed for how searches are conducted for

143 QCS, correspondence, 8 March 2024, p 10.

144 QCS, correspondence, 8 March 2024, p 11.

145 QCS, correspondence, 8 March 2024, p 12.

146 QCS, correspondence, 18 March 2024, p 5.

147 Explanatory notes, pp 5-6; CSA, ss 34-39.

women, including in relation to being pregnant, breastfeeding, having a disability or wearing religious clothing.[148]

According to the explanatory notes:

> Recommendation 17.1 of the QHRC report noted the tension between the same sex search requirements in the CSA and the desire to provide additional flexibility for trans and gender diverse or intersex prisoners to request an alternative approach to being searched. In this context, amendments to the *Births, Deaths and Marriages Registration Act 2023* (BDMRA), once commenced, will allow an individual to legally identify as a sex marker outside of the binary descriptors.[149]

The amendments relating to invasive searches proposed in the Bill respond to the QHRC's recommendations.[150]

2.7.2 Proposed amendments

The Bill includes amendments to provide greater flexibility for prescribing protections and requirements in relation to how invasive prisoner searches are conducted.[151] This includes personal searches, searches requiring the removal of clothing and body searches. QCS notes that the amendments 'aim to better accommodate the diverse needs of prisoners while maintaining safety for prisoners and frontline corrective services officers'.[152]

The amendments relating to search protections will not commence until a regulation made under new section 39A (Further requirements and procedures for searches) commences.[153]

2.7.3 Stakeholder feedback and department response

2.7.3.1 Removal of a protection

QHRC supported the policy intention of the changes in relation to the conduct of searches, noting that:

> The QHRC recognises and endorses the need for urgent updates to ensure greater flexibility in conducting searches involving trans and gender diverse prisoners, particularly in light of the passage of the *Births, Deaths and Marriages Registration Act 2023*. The negative impacts on trans and gender diverse prisoners of an ongoing failure to accommodate their particular needs is discussed at some length in the *Stripped of our dignity* report.[154]

However, QHRC submitted that they do not support the approach as proposed by the Bill, arguing that the safeguard requiring searchers to be conducted by the same gender is of fundamental importance in promoting the human rights and dignity of prisoners, and female prisoners in particular. They recommended retaining same-sex safeguards under the CSA and including an additional provision addressing searches of trans and gender diverse prisoners.[155]

In response, QCS stated that there would be no gap in the protection provided by legislative requirements for the conducting of invasive searches, and that commencement of the CSA will not

148 Explanatory notes, pp 5-6.

149 Explanatory notes, p 6.

150 Explanatory notes, p 6.

151 Bill, cls 36-39.

152 QCS, correspondence, 18 March 2024, p 6.

153 QCS, correspondence, 18 March 2024, p 6; Bill, cl 41.

154 QHRC, submission 6, p 5.

155 QHRC, submission 6, p 3.

take place until a replacement regulation is in place, and that QCS will consult with relevant stakeholders in the development of these regulations.[156]

2.7.3.2 Use of regulation

QHRC raised issues with the use of regulation instead of primary legislation as provided for by section 39A of the Bill:

> While there may be an intention to consult with stakeholders while developing the regulation in the first instance, removing the principle of conducting searches based on sex/gender from the primary legislation diminishes the opportunity for community input and parliamentary scrutiny of these issues. In the QHRC's experience, amendments to regulations are rarely the subject of consultation by departments.[157]

QCS responded that:

QCS, correspondence, 8 March 2024, p 8.

> The approach taken in the Bill strikes the right balance between ensuring flexibility and appropriate safeguards. As Queensland matures into a new system of gender identification, it is envisaged that legislation and practice will need to continue to evolve over time. The current approach to legislating rigid requirements in primary legislation does not allow for an adequate level of flexibility for future practice.

QCS further argued that requirements in relation to searches are best provided by regulation, and noted that the approach provides a higher level of public scrutiny than approaches in some other Australian jurisdictions, where matters are left entirely to regulation or procedure.[158]

QCS agreed to consult with QHRC on the development of the regulation amendments.

2.7.3.3 Strip searches as a last resort

QIFVLS suggested that the amendments and future regulation in relation to invasive searches should respond more closely to recommendation 4 of the QHRC report:

> We have observed references in the Explanatory Notes to further regulation amendments to be progressed, particularly under the proposed new section 39A. On this point, we advocate for the recommendations in the QHRC report to be a guiding source, particularly Recommendations 4 (Only conduct targeted strip searches as a last resort to respond to an identified risk following an individual risk assessment).[159]

2.7.3.4 Ambiguity regarding body search provisions

Pride in Law (PIL) submitted that the removal of same sex provisions creates uncertainty where a prisoner has chosen a sex descriptor other than 'male' or 'female'. Without clear guidelines, there is a risk of arbitrary decision making, potentially leading to discrimination against vulnerable and LGBTQIA+ prisoners.[160]

In response, QCS noted that 'operational practice directives' acknowledge the vulnerability of LGBTQIA+ prisoners and that further enhancements to practice directives will be made in response to the amendments, and committed to improving systems, practices and skills across the correctional environment over time.[161] QCS further noted that 'operational practice directions regarding searches already provide for individualised, case-by-case management of trans and gender diverse prisoners'.

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156 QCS, correspondence, 8 March 2024, p 7.

157 QHRC, submission 6, p 6.

158 QCS, correspondence, 8 March 2024, p 8.

159 QIFVLS, submission 12, p 4.

160 PLS, submission 4, p 2.

161 QCS, correspondence, 8 March 2024, p 7.

2.7.3.5 Search by requested gender

QHRC recommended amending the Bill to include a provision that allows trans or gender diverse prisoners to request searches be carried out by a gender that they request. A prisoner may request different genders to carry out searches on the top and bottom halves of their bodies.[162] In the public hearing, PIL also expressed support for provisions to allow prisoners to express their preference for the gender of the person searching them.[163]

In response to these suggestions, QCS cited safety concerns:

> The number one priority for QCS is safety. Requirements that defer completely to the preference of the prisoner, cannot in every instance ensure the safety those people involved in the search. There the provisions must provide flexibility to ensure QCS has discretion to ensure the search is conducted safely, while taking into account the prisoner's preference and request for accommodations such as those suggested.[164]

Committee comment

In relation to the use of regulation provided for in the Bill under new section 39A, the committee notes that the use of regulation to prescribe further requirements and procedures relating prisoner searches may raise issues of fundamental legislative principles because it allows for the delegation of legislative power to the executive, rather than the Parliament.

However, as noted in the explanatory notes, the purpose of this provision is to provide additional flexibility to better accommodate the diverse needs of prisoners and is an outcome of the QHRC report. The QHRC report also highlights the tension between the current search requirements in the CSA and the desire to provide additional flexibility for trans and gender diverse or intersex prisoners.

Further, whilst future requirements and procedures are proposed to be set out in regulation, the Bill does set out some factors that may be prescribed (including the effective carrying out of the search, respecting a prisoner's dignity, or taking into account the use count the special or diverse needs of a prisoner). Whilst these do not limit what may be prescribed in the future, they do set out the kinds of matters that may be prescribed.

Regulations are also subject to the tabling and disallowance provisions of the *Statutory Instruments Act 1992* which reduces the committee's concerns from an oversight and scrutiny perspective.

In the circumstances, given the need for flexibility in conducting prisoner searches and noting that future regulations will be tabled and subject to disallowance, the committee is satisfied that the delegation of legislative power is appropriate.

2.8 Supporting the Parole Board Queensland

2.8.1 Background

In relation to amendments supporting the administration of the Board, QCS provided the following background information:

> In 2021, the Queensland Government engaged KPMG International Limited (KPMG) to provide current state insights and advice on future efficiencies and modernisation considerations for the Board. The review highlighted certain actions that needed to be undertaken to ensure a sustainable operating model moving forward.
>
> Included in the Statement of Government's reforms to design a sustainable Parole Board Queensland operating model, published in response to the KPMG review, was a commitment to formally clarify the

[162] QHRC, submission 6, p 7.

[163] PIL, public hearing transcript, 18 March 2024, p 2.

[164] QCS correspondence, 8 March 2024, p 9.

> Board's official status, and ensure appropriate governance, structural and functional arrangements for its operations.[165]

In relation to First Nations representation on the Parole Board, QCS provided the following:

> Recommendation 39 of the QPSR relates to legislating a requirement for at least one professional board member to be a First Nations person. This recommendation aims to improve the cultural awareness of parole decision making by ensuring the prisoner population, where First Nations people are overrepresented, is adequately represented in the make-up of the Board. This recommendation was supported by the Government.[166]

2.8.2 Proposed amendments

2.8.2.1 Administration of the Board

The Bill proposes to update the legislative requirements for the Board to support the 'independent and efficient administration of parole in Queensland'.[167] Key amendments would:

- clarify that the Board is not a statutory body,
- clarify the functions of the President of the Board in relation to management of the Board's operations, practices and appointed members
- clarify the functions of the chief executive and the Parole Board Secretariat in supporting the administration of the Board,
- provide additional legislative guidance around the relevant qualifications for professional board members and public service representatives,
- ensure more flexible arrangements for the appointment of part time or temporary board members
- streamline the criminal history check process for prospective board members.

2.8.2.2 Diversity of the Board

To promote First Nations representation within the Board's professional membership, the Bill would amend section 221 of the CSA to require that a least one professional board member appointed is a First Nations person.

The Bill would also provide additional legislative guidance around the relevant qualifications for professional board members and public service representatives. It clarifies that a relevant qualification for a professional board member includes a qualification in law, criminology, medicine, psychology, behavioural science and social work. Section 221(1)(e) is amended to provide that the composition of the Board is to include a public service representative who has expertise or experience in the supervision or rehabilitation of offenders.[168]

2.9 Gel blaster offence

2.9.1 Background and proposed amendments

The Bill would create a new offence under the CSA for any person who enters or attempts to enter corrective services land while in possession of a restricted item, including a gel blaster, punishable by up to two years' imprisonment.[169] QCS notes that this amendment follows on from earlier

[165] Explanatory notes, p 6.

[166] Explanatory notes, p 6.

[167] Bill, cls 10-18; QCS, correspondence, 18 March 2024, p 6.

[168] Explanatory notes, pp 16-17.

[169] Explanatory notes, p 14.

amendments to the *Weapons Act 1990* in relation to gel blasters, and recognises that further deterrence is required in the context of corrective services.[170]

2.9.2 Fundamental legislative principles

2.9.2.1 *Rights and liberties of individuals – restricted items on corrective services land*

According to fundamental legislative principles, to have sufficient regard for the rights and liberties of individuals, the consequences of legislation should be relevant and proportionate. In line with this, a penalty should be proportionate to the offence, and penalties within legislation should be consistent with each other.[171]

The Bill proposes to create a new offence in the CSA that prohibits a person possessing a restricted item while on corrective services land. The maximum penalty for failing to comply with the requirement is 2 years imprisonment.[172] The penalty is considerably higher than that under the *Weapons Act 1990* for possessing or acquiring a restricted item - 10 penalty units ($1,548[173]).[174] The explanatory notes assert that 'further deterrence is required in the context of corrective services'.[175] The explanatory notes also justify the offence and its penalty on the basis of the threat it could pose to corrective services officers and offenders.[176]

Safeguards are provided in the offence, including that there must be appropriate signage at the corrective services land. Also, there are exemptions, such as if the possession is approved by the chief executive.[177] The explanatory notes consider the offence provides a suitable balance of deterrence and punishment.[178] With respect to the quantum of the penalty, the explanatory notes state that '[t]he increase in penalty for the offence is … considered proportionate to the level of risk, including in the most extreme cases'.[179]

Committee comment

The committee notes that the aim of the proposed amendment in relation to gel blasters is to deter behaviour that puts corrective services officers and others at risk. The committee considers that the maximum penalty of imprisonment for 2 years for the new offence is reasonable.

170 Explanatory notes, p 4.

171 Office of the Queensland Parliamentary Counsel, '*Fundamental legislative principles: the OQPC Notebook*', p 120. See also LSA, s 4(2)(a).

172 Bill, cl 7 (CSA, new s 124B).

173 The value of a penalty unit is $154.80: Penalties and Sentences Regulation 2015, s 3; *Penalties and Sentences Act 1992*, ss 5, 5A.

174 See *Weapons Act 1990*, s 67; explanatory notes, p 4.

175 Explanatory notes, p 4.

176 Explanatory notes, p 4.

177 Bill, cl 7 (CSA, new s 124B); explanatory notes, p 21.

178 Explanatory notes, p 21.

179 Explanatory notes, p 21.

Appendix A – Submitters

Sub #	Submitter
1	Queensland Sexual Assault Network
2	Office of the Information Commissioner
3	Legal Aid Queensland
4	Prisoners' Legal Service
5	Bar Association of Queensland
6	Queensland Human Rights Commission
7	Queensland Family and Child Commission
8	Cairns Regional Council
9	Pride in Law
10	Queensland Nurses and Midwives' Union
11	Queensland Homicide Victims' Support Group
12	Queensland Indigenous Family Violence Legal Service
13	North Queensland Women's Legal Service
14	Independent Ministerial Advisory Council

Appendix B – Officials at public departmental briefing

Queensland Corrective Services

- Ms Sarah Hyde, Assistant Commissioner, Specialist Operations
- Mr Paul Alsbury, Assistant Commissioner, Policy and Legal Command
- Mr Darryll Fleming, Commander, State Corrections Operations Centre
- Ms Helen Ferguson, Acting Director, Legislation Group

Appendix C – Witnesses at public hearing

Pride in Law

- Mr Duncan MacDougall, President of the Queensland Chapter
- Mx Louis Laing, Vice President of the Queensland Chapter

Bar Association of Queensland

- Mr Angus Scott KC, Barrister
- Mr Joseph Murphy, Lawyer, Legal Department

Homicide Victims' Support Group

- Mr Brett Thompson, Chief Executive Officer

Queensland Sexual Assault Network (via videoconference)

- Ms Angela Lynch, Executive Officer

Statements of Reservation

Statement of Reservation - Corrective Services (Promoting Safety) and Other Legislation Amendment Bill 2024

The LNP Members wish to highlight our concerns with committee recommendation 3. In its proposed current form, the Bill inserts Section 340AA into the Corrective Services Bill. This provides decision makers (Parole Board) the discretion to withhold details of information that formed the basis of a decision if the decision maker is satisfied that the release of information could:

1. cause harm
2. prejudice public safety or national security
3. prejudice the detection, investigation or prosecution of an offence
4. disclose the identity of a confidential source
5. the release of the information is prohibited under another law

Committee recommendation 3 asks the Minister to consider the merit of amending the new section 340AA to: (a) ask for a public interest test to determine whether the impact of disclosure outweighs the right to natural justice, (b) require the decision makers to keep record of reasons, even if these reasons aren't disclosed to the prisoner.

The LNP members of the committee agree with the departmental notion of broad discretion that narrows the scope of reasons to provide information to the offender. This will in-turn limit the divulgence of information to be disclosed that could instigate further harm or prejudice a prosecution or investigation. Therefore, recommendation 3 would be counterintuitive to the intent of what the Department is trying to achieve.

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Corrective Services (Promoting Safety) and Other Legislation Amendment Bill 2024

Statement of Reservation

11 April 2024

I have a number of reservations in relation to the passage of this Bill, particularly on the removal of same-sex search safeguards from the primary legislation and the introduction of proposed new Section 340AA.

1. Removal of same-sex search safeguards from the Corrective Services Act 2006

The Bill removes existing safeguards in the primary legislation for searches to be conducted by the same sex as the prisoner.

The requirement for the searching officer to be the same sex as the prisoner is one of several safeguards in the Corrective Services Act 2006, introduced to protect women prisoners, given the 'intrusive and potentially embarrassing nature of such searches.

The bill's stated intention in removing this safeguard is that it wishes to introduce 'flexibility' to the requirements in subordinate legislation, yet to be drafted.

As the QHRC pointed out in its submission, the benefit of 'increasing flexibility' will likely be outweighed by a reduced level of legislative protection, and reduced opportunity for input into the drafting of regulations.

As the QHRC states: "amendments to regulations are rarely the subject of consultation by departments".

"Retaining this protection at the legislative level means that any subsequent changes in future years would need to be thoroughly justified by the Minister before being presented to a parliamentary committee, including through the requirement to demonstrate human rights compatibility in a detailed Statement of Compatibility.

Although a Human Rights Certificate must be completed for subordinate legislation, the human rights analysis and parliamentary scrutiny is perfunctory."

2. Section 340AA – Withholding of Information

Proposed s 340AA will permit decision-makers to omit certain information that would otherwise be required to be included.

It does so in a manner that is inconsistent with the rules of procedural fairness.

It is also incompatible with human rights under the HR Act, which states that a party to a civil proceeding has the right to a 'fair' hearing.

The principle of procedural fairness (also known as natural justice) is one of the fundamental legislative principles specified by s 4(3)(b) of the Legislative Standards Act 1992.

The Judicial Review Act grants people adversely impacted by a decision, the right to know the reasons for that decision.

Currently, information may be excluded from statements of reasons given under the JR Act, only in where the Attorney-General has certified that disclosure of the information is contrary to the public interest (s 36).

Section 340AA bypasses this important safeguard, by removing any need for any 'public interest' assessment by the Attorney-General.

The proposed section also removes any requirement for a decision-maker to keep any record of their reasons.

This is completely inappropriate.

Such a record must be kept, even if it is confidential and not required to be disclosed in a judicial review of the decision.

The absence of such a requirement in the bill greatly undermines the capacity of a court to examine the decision in judicial review proceedings.

Finally, I would like to express my support for comments made by the Office of Information Commissioner, who recommended in her submission that the bill's expanded use of body worn cameras within the community, should be subjected to a Privacy Impact Assessment (PIA).

The OIC has produced guidelines for agencies outlining the privacy impacts and information access obligations agencies must consider when implementing or extending a camera surveillance system (including BWCs).

The OIC's submission highlights the ongoing need to "improve maturity of systems, processes and practices for video surveillance, to ensure compliance with the RTI and IP Acts and good practice".

In relation to this Bill, the OIC states that:

"While the collection of personal information using these technologies may be considered necessary to ensure the safety and security of corrective services staff, prisoners and other individuals, it should be appropriately balanced so as not to intrude unreasonably into the personal affairs of those individuals. A PIA will assist to identify privacy risks and appropriate mitigation strategies".

"The PIA should be updated at key phases throughout the lifecycle of the implementation and use of surveillance technologies, including the passing of the legislation and prior to adoption of any new surveillance technologies".

Stephen Andrew MP