

Corrective Services and Other Legislation Amendment Bill 2020

Statement of Compatibility

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, Mark Ryan, Minister for Police and Minister for Corrective Services make this statement of compatibility with respect to the Corrective Services and Other Legislation Amendment Bill 2020.

In my opinion, the Corrective Services and Other Legislation Amendment Bill 2020 (the Bill) is compatible with the human rights protected by the *Human Rights Act 2019* (Human Rights Act). I base my opinion on the reasons outlined in this statement.

Overview of the Bill

This Bill is focused on ensuring Queensland Corrective Services (QCS) operations are supported by modern, efficient and effective legislation. It responds to the immediate risks identified in the Crime and Corruption Commission's *Taskforce Flaxton: An examination of corruption risks and corruption in Queensland's prisons* (Taskforce Flaxton), supports the Government's implementation of recommendations from the Queensland Parole System Review (QPSR), and improves QCS's and the Parole Board Queensland's (PBQ) operational efficiencies.

Amendments to the *Weapons Act 1990* (Weapons Act) contained in the Bill are made to support the implementation of a QPS policy regarding the regulation of replica firearms. The policy will see replica firearms become 'restricted items' within the *Weapons Categories Regulation 1997*, making it unlawful to possess a replica firearm (including the majority of gel blasters) without a reasonable excuse. The amendments to the Weapons Act will clarify that a person has a reasonable excuse to possess or acquire a replica of a firearm for taking part in activities of a recreational club, or if the replica firearm is possessed as part of a collection held under a collector's licence.

The Weapons Act will also be amended to establish a permanent firearms amnesty. Provision will be made in the Act to provide protection from prosecution for the possession of an unregistered firearm, or other prescribed items if a person is at, or proceeding directly to, an approved firearms dealer or police station.

The Bill makes minor technical amendments to the *Racing Integrity Act 2016* and *Racing Integrity Regulation 2016*.

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

In my opinion, the human rights that are relevant to the Bill are:

- Recognition and equality before the law (section 15) (relevant to clause 11 in respect of eligibility for transfer to a low custody facility, and clauses 22 and 53 in respect of scanning searches).
- Protection from torture and cruel, inhuman or degrading treatment (section 17) (relevant to clauses 8, 13, 26 and 27 in respect of the requirements for a prisoner to carry a physical copy of an order, and clause 48 in respect of alcohol and drug testing).
- Freedom of movement (section 19) (relevant to clause 20 in respect of searches of staff members, clauses 28 and 40 in respect of monitoring devices, clause 41 in respect of powers during a declaration of emergency, and clause 48 in respect of alcohol and drug testing).
- Freedom of thought, conscience, religion and belief (section 20) (relevant to clauses 20 and 53 in respect of scanning searches, and clause 48 in respect of alcohol and drug testing).
- Freedom of expression (section 21) (relevant to clauses 23 and 52 in respect of submissions from eligible persons).
- Peaceful assembly and freedom of association (section 22) (relevant to clause 41 in respect of powers during a declaration of emergency, clause 48 in respect of alcohol and drug testing, and clause 49 in respect of the receipt of payments into a prisoner's trust fund).
- Property rights (section 24) (relevant to clause 19 in respect of the destruction of forfeited things, clause 41 in respect of powers during a declaration of emergency, clause 49 in respect of the receipt of payments into a prisoner's trust fund, and clause 53 in respect of the authority for a corrective services officer to touch and move property during a general search).
- Privacy and reputation (section 25) (relevant to clause 20 in respect of staff searches, clause 21 in respect of the offence prohibiting a staff member from having an intimate relationship with an offender, clauses 28 and 40 in respect of monitoring devices, clause 41 in respect of powers during a declaration of emergency, clauses 44 to 47 in respect of the appointment and powers of inspectors to investigate alleged misconduct or corrupt conduct, clause 48 in respect of alcohol and drug testing, clause 49 in respect of the receipt of payments into a prisoner's trust fund, clauses 20 and 53 in respect of scanning searches, and clause 53 in respect of the authority for a corrective services officer to touch and move property during a general search).
- Protection of families and children (section 26) (relevant to clause 12 in respect of leave of absence, clause 21 in respect of the offence prohibiting a staff member from having an intimate relationship with an offender, clause 41 in respect of powers during a declaration of emergency, clause 48 in respect of alcohol and drug testing, and clause 49 in respect of the receipt of payments into a prisoner's trust fund).
- Cultural rights – generally (section 27) (relevant to clause 11 in respect of eligibility for transfer to a low custody facility, and clause 12 in respect of leave of absence).
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28) (relevant to clause 11 in respect of eligibility for transfer to a low custody facility, and clause 12 in respect of leave of absence).

- Right to liberty and security of person (section 29) (relevant to clauses 15 and 16 in respect of the power of the chief executive to grant early or late release, clause 20 in respect of staff searches, clauses 23 and 52 in respect of submissions from eligible persons, clauses 29, 31 and 34 in respect of powers to issue and execute a warrant in certain circumstances, clause 30 in respect of reconsidered decisions of the PBQ, clause 31 in respect of the authority of the PBQ to consider the priority of immediate suspension requests, clause 33 in respect of the expiry of a parole order, clauses 44 to 47 in respect of the appointment and powers of inspectors to investigate alleged misconduct or corrupt conduct, clause 48 in respect of alcohol and drug testing, and clause 55 in respect of the circumstances of aggravation for prisoner assaults on working corrective services officers).
- Humane treatment when deprived of liberty (section 30) (relevant to clauses 4 to 7 in respect of the application of maximum security orders, clause 12 in respect of leave of absence, clause 21 in respect of the offence prohibiting a staff member from having an intimate relationship with an offender, clause 41 in respect of powers during a declaration of emergency, and clause 49 in respect of the receipt of payments into a prisoner's trust fund).
- Fair hearing (section 31) (relevant to clauses 24 and 52 in respect of the PBQ's consideration of 'No Body, No Parole' applications, clause 30 in respect of reconsidered decisions of the PBQ, clauses 37, 52 and 53 in respect of the quorum required for different parole matters, and clauses 44 to 47 in respect of the appointment and powers of inspectors to investigate alleged misconduct or corrupt conduct).
- Rights in criminal proceedings (section 32) (relevant to clause 55 in respect of the circumstances of aggravation for prisoner assaults on working corrective services officers).
- Right not to be tried or punished more than once (section 34) (relevant to clause 11 in respect of eligibility for transfer to a low custody facility).
- Retrospective criminal laws (section 35) (relevant to clause 55 in respect of circumstances of aggravation for prisoner assaults on working corrective services officers).
- Right to health services (section 37) (relevant to clauses 4 to 7 in respect of the application of maximum security orders, and clauses 39 and 43 in respect of health programs and services to prisoners).

Possession and acquisition of replica firearms

The human right relevant to the amendment of section 67 (Possessing and acquiring restricted items) of the Weapons Act under the Bill, is the right to property under section 24 of the Human Rights Act. This protects the right of all persons to own property (alone or with others) and provides that people have a right not be arbitrarily deprived of their property. The right is aimed at ensuring individuals or associations are able to maintain possession and control of property without interference or disruption.

Having regard only to the amendment to section 67 the Weapons Act contained in this Bill, I am of the view that it does not limit human rights.

Section 67 of the Weapons Act limits possession of restricted items to those with a 'reasonable excuse'. While not limiting what circumstances might constitute a 'reasonable excuse', the amendment contained in the Bill acts to clarify that certain classes of people have a 'reasonable excuse'. Specifically, these are persons who are members of clubs

carrying out recreational activities involving replica firearms, and the holders of collector's licences. In this way, the Weapons Act amendment which is contained in the Bill does not limit the right to property, but instead, in my view, ensures the protection of property rights for those classes of people.

I note that the related QPS replica firearms policy, which will be progressed through Regulation amendments separately, will make the possession of replica firearms unlawful unless a person has a reasonable excuse. In this way, these Regulation amendments may be seen to impact on the property rights of current and prospective replica firearm owners. The compatibility of the proposed Regulation amendments will be considered in the Human Rights Certificate for the amendment Regulation.

Weapons Amnesty

The human right relevant to the amendment of section 168B (Amnesty declaration) of the Weapons Act under the Bill, is the right is the right to property under section 24 of the Human Rights Act. This protects the right of all persons to own property (alone or with others) and provides that people have a right not be arbitrarily deprived of their property. The right is aimed at ensuring individuals or associations are able to maintain possession and control of property without interference or disruption.

Having regard only to the amendment to section 168B and 168C of the Weapons Act, and the inclusion of section 159A of the Weapons Regulation contained in this Bill, I am of the view that they do not limit human rights.

Section 168B of the Weapons Act currently allows the Police Commissioner to declare a firearms amnesty with the approval of the Minister. An amnesty allows a person, who is in unlawfully in possession of the category of firearm applicable to the amnesty, to surrender the firearm or obtain the necessary authority to possess the firearm, without fear of prosecution.

The amendments contained in the Bill will remove the power for the Police Commissioner to declare an amnesty and instead establish a permanent legislated protection from prosecution for the possession of a firearm or prescribed item if a person is proceeding to relinquish it to an approved firearms dealer or a police station after notifying them that they are going to do so. The amnesty from prosecution will apply to all firearms and other prescribed items.

The amnesty acts to enhance public safety by encouraging the removal of unregistered firearms from the community and places no obligation on any persons to take advantage of these provisions.

Having regard to the amendments to create a permanent firearms amnesty contained in the Bill I am of the view that they do not limit human rights.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Search of staff member

The amendment to the search of staff member provision included in the Bill, potentially limits the following rights:

- Freedom of movement (section 19)
- Privacy and reputation (section 25)
- Right to liberty and security of person (section 29)

(a) the nature of the right

The amendments in the Bill facilitate the general search, or scanning search, of a corrective services officer at any time in a corrective services facility. The *Corrective Services Act 2006* (CS Act) currently limits this authority to upon entry to a corrective services facility. It does not impose any additional type of search on staff. The amendment also extends the ability for the chief executive to direct a staff member to leave the facility if they do not submit to a scanning search, currently this is limited to general searches.

Section 19 of the Human Rights Act ensures the individual has the right to move freely within Queensland and to enter and leave it, and has the freedom to choose where to live. The right to freedom of movement is broad in nature, however for the purposes of the search of staff member amendment in the Bill, the potential limitation of the right occurs where a person is required to remain at a location to permit or undergo a search required under the provisions.

Section 25 of the Human Rights Act protects the individual from all interferences and attacks upon their privacy, family, home, correspondence (written and verbal) and reputation. The right is broad in its application, however for the purpose of the search of staff member amendment in the Bill, the potential limitation of the right occurs with regard to the individual's bodily privacy through the requirement to permit a search of the person or their property. Further, any impact on a person's reputation by being compelled to undergo a search. Only lawful and non-arbitrary intrusions may occur upon privacy, family and the home.

Section 29 of the Human Right Act protects an individual's right to liberty and security of person, including protection from arbitrary arrest or detention, and that where liberty is deprived it is in accordance with procedures established under law. The right to liberty and security of person is potentially limited by the amendment due to the breadth of potential circumstances in which searches may be conducted. This may favour an interpretation of the provision as being arbitrary.

(b) the nature of the purpose of the limitation to be imposed by the provisions if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the potential limitations on movement, privacy, reputation, and liberty is to achieve a major policy objective of the CS Act, by ensuring prisoners are managed in a safe and secure environment according to the risk they pose. This is achieved through minimising

the introduction or movement of contraband within corrective services facilities, including by staff members. Further, it increases the ability to perform targeted searches based on intelligence, and brings Queensland in line with other jurisdictions who have broader staff search powers, as noted in Taskforce Flaxton.

(c) the relationship between the limitation to be imposed by the provisions if enacted, and the purpose, including whether the limitation helps to achieve the purpose

There is a high demand for contraband in corrective services facilities and its introduction poses significant risks to the safety and security of a facility. Any introduction of contraband, such as illicit drugs or other banned items, puts staff and prisoners at risk and undermines rehabilitative efforts. Taskforce Flaxton noted that staff searches mitigate the risk of staff having direct involvement in the introduction of contraband into correctional centres and deter staff from engaging in this behaviour. The provision gives effect to recommendation 20 of Taskforce Flaxton that the CS Act be amended to grant broader powers to search staff working in prisons.

The amendment will achieve the purpose to prevent contraband entry and circulation and, in turn, ensure that corrective services facilities are safe and secure environments for staff, visitors, and prisoners by ensuring that staff involvement in this unlawful activity is able to be appropriately detected.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the provisions

While tight security controls are maintained and a variety of methods are in place to prevent, detect, and respond to the introduction of contraband in corrective services facilities, more work is required.

The current limit on the authority to search staff, at any time, in a corrective services facility, and request a staff member who does not submit to a scanning search to leave the facility, creates an opportunity for the movement of contraband within the facility with little risk of apprehension.

The general and scanning searches applied to staff proposed in the Bill are the least restrictive and invasive search practices reasonably available to achieve the desired purpose. As provided for in the proposed scanning search amendment, scanning searches involve no or minimal contact with the person, to the extent necessary to obtain a relevant sample, including through corrective services dog or electronic apparatus the person is required to pass through or have passed over their person. A general search requires the person to reveal the contents of their outer garment or general clothes, such as pockets, or a thing in the person's possession, such as the contents of a bag. A general search does not require staff to have contact with the person and, as provided for in the general search amendment, only permits the touching or moving of possessions to the extent necessary to conduct the search, such as items at the bottom of a person's bag.

Additionally, the Bill does not propose a penalty for refusal to remain at a place or detain a person for the purposes of conducting a search, minimising the impact on a person's freedom of movement and liberty. A person may refuse to submit to a search, engaging the chief executive's power to direct a person to leave a corrective services facility.

(e) the balance between the importance of the purpose of the provisions, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance the need to achieve a safe custodial environment through minimising the introduction and circulation of contraband into corrective services facilities is considered to outweigh the potential impact on a staff member's rights to movement, privacy, reputation, and liberty in the identified circumstances.

(f) any other relevant factors

The proposed staff search amendments are limited to an extension of when a staff member can be searched to include any time within a corrective services facility. The amendments do not extend the nature of the search conducted.

Appointment and powers of inspectors to investigate alleged misconduct or corrupt conduct

The amendments to the appointment and powers of inspectors to investigate alleged staff misconduct or corrupt conduct included in the Bill, potentially limits the following rights:

- Privacy and reputation (section 25)
- Right to liberty and security of person (section 29)

(a) the nature of the right

Section 25 of the Human Rights Act protects the individual from all interferences and attacks upon their privacy, family, home, correspondence (written and verbal) and reputation. The right is broad in its application, however for the appointment of inspectors to investigate alleged staff misconduct or corrupt conduct amendments in the Bill, the potential limitation of the right occurs with regard to the individual's privacy through the powers and functions of the inspectors to investigate alleged staff misconduct and corrupt conduct, including through compelling staff to provide information and answer questions.

Section 29 of the Human Right Act protects an individual's right to liberty and security of person, including protection from arbitrary arrest or detention, and that where liberty is deprived it is in accordance with procedures established under law. The right to liberty and security of person is potentially limited by the inspector amendments to the extent that a staff member may be compelled to attend or remain at a place to provide information or answer questions, which may temporarily infringe on a staff member's right to liberty.

(b) the nature of the purpose of the limitation to be imposed by the provisions if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The proposed amendments will support implementation of recommendation 30(a) of Taskforce Flaxton, which recommended that the remit of the Ethical Standards Unit be broadened to provide the following functions: prevention and early intervention, professional standards, integrity policy framework, complaints management, investigation, discipline system, witness support, critical incidents, covert operations, and risk management.

The purpose of the amendment is to facilitate the investigation of alleged staff misconduct or corrupt conduct within QCS, and support the ability of the Professional Standards and Governance Command (PSGC) (formerly the Ethical Standards Unit) to respond to

complaints promptly, proactively identify agency-wide risks, and implement mitigation or prevention strategies.

This amendment aims to ensure that corrective services facilities are safe and secure environments for staff, visitors, and prisoners, to prevent the entry of contraband, weapons and any other item that could facilitate an escape, and to minimise staff misconduct. In doing this, it supports one of the major policy objectives of the CS Act, to ensure prisoners are managed in a safe and secure environment according to the risk they pose.

(c) the relationship between the limitation to be imposed by the provisions if enacted, and the purpose, including whether the limitation helps to achieve the purpose

There is currently no clear legislative provision in the CS Act allowing PSGC inspectors to be appointed to investigate alleged staff misconduct or corrupt conduct and use powers necessary to perform their role, such as to access corrective services facilities, staff and information relevant to an investigation of alleged staff misconduct or corrupt conduct. Clear authority for the PSGC inspectors will support the ability of the PSGC to respond to complaints promptly, proactively identify agency-wide risks, and implement mitigation or prevention strategies.

The amendment provides clear legislative powers within the CS Act for the operations of inspectors within the internal PSGC. This includes the ability for inspectors to undertake functions to investigate alleged staff misconduct and corrupt conduct. It provides clear authority for PSGC inspectors to have unhindered access to corrective services facilities and information relevant to an investigation of alleged staff misconduct or corrupt conduct which helps to achieve the purpose of a safe and secure corrective services environment.

A high performing ethical standards unit is a critical capability for a criminal justice agency, with Taskforce Flaxton identifying that it is necessary to prevent, detect and deal with corrupt conduct risks in prisons.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the provisions

The amendment affords powers to internal QCS inspectors consistent with existing inspectors of the Office of the Chief Inspector and other law enforcement agencies in their ability to investigate corrupt conduct, such as the Queensland Police Service (QPS). The powers afforded are the least restrictive powers available to achieve the identified purpose

The powers of inspectors are limited to improving QCS's internal anti-corruption measures and oversight, with the PSGC continuing to refer allegations to the QPS and Crime and Corruption Commission in line with existing processes.

It is also considered that the nature of the questions a staff member would likely be asked are anticipated to relate to day to day work activities and are unlikely to be personal, limiting the impact on a person's right to privacy. Any infringement on the right to liberty is limited to the extent a person is compelled to participate in answering questions.

The amendment is also considered consistent with section 31 of the Human Rights Act, to the extent that efficient and thorough investigations into alleged staff misconduct or corrupt conduct will ensure staff have their right to a fair hearing.

(e) the balance between the importance of the purpose of the provisions, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance the need to achieve a safe custodial environment through the efficient and effective investigation of alleged misconduct or corrupt conduct outweighs the impact on a staff member's right to privacy or short-term liberty in the identified circumstances.

(f) any other relevant factors

Nil.

Authority for a corrective services officer to touch and move property during a general search

The amendment to the general search definition included in the Bill, potentially limits the following rights:

- Property rights (section 24)
- Privacy and reputation (section 25)

(a) the nature of the right

Section 24(2) of the Human Rights Act ensures a person has the right not to be arbitrarily deprived of the person's property. However, the right does not provide a right to compensation for property. The amendment to the general search definition may limit the right to the extent that it permits a corrective services officer to touch or move a person's property during the course of a general search.

Section 25 of the Human Rights Act protects the individual from all interferences and attacks upon their privacy. For the purpose of the general search definition amendment, an individual's right to privacy may be limited through the requirement to permit a search of the person's property.

(b) the nature of the purpose of the limitation to be imposed by the provisions if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

One of the major policy objectives of the CS Act is to ensure prisoners are managed in a safe and secure environment according to the risk they pose. This includes minimising the introduction and circulation of contraband.

The purpose of the amendment is to provide corrective services officers with the ability to properly carry out general searches, which may require moving an item to look under or inside a bag, wallet, or other item for contraband.

(c) the relationship between the limitation to be imposed by the provisions if enacted, and the purpose, including whether the limitation helps to achieve the purpose

The proposed amendment will contribute to ensuring that corrective services facilities are safe and secure environments for staff, visitors, and prisoners.

The current definition does not allow a corrective services officer to touch the person or their belongings. Allowing the person to move their own belonging increases the risk they may attempt to conceal a prohibited item during a search. The limitation will allow a corrective

services officer to conduct a thorough search of a person's property with unobstructed visibility, while limiting the ability of a person to interfere with the search.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the provisions

The proposed amendment is the least restrictive and reasonably available way to ensure general searches are carried out in the most thorough way possible. The proposed amendment does not impose any additional type of search and incurs minimal impact on the dignity of the person being searched, but rather enables the ability to properly carry out the prescribed searches.

Any deprivation of a person's property would be either for the short period of time required to conduct the search or would be a lawful and non-arbitrary deprivation where contraband is found and seized. Existing legislative processes and protections in relation to the management of seized items are not impacted by this amendment.

(e) the balance between the importance of the purpose of the provisions, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance the need to achieve a safe custodial environment through proper searches, which minimises the introduction and circulation of contraband into corrective services facilities, outweighs the limited identified impact on the person's right to privacy and property in the identified circumstances.

(f) any other relevant factors

Nil.

Scanning search

The insertion of a new scanning search definition included in the Bill, potentially limits the following rights:

- Recognition and equality before the law (section 15)
- Freedom of thought, conscience, religion and belief (section 20)
- Privacy and reputation (section 25)

(a) the nature of the right

Section 15 of the Human Rights Act provides the individual with recognition and equality before the law. Include recognition as a person, the right to enjoy the person's human rights, equal protection before the law, and equal protection from discrimination. Section 20 of the Human Rights Act also protects a person's right to freedom of thought conscience, religion and belief, including from being coerced or restrained in a way that limits the person's freedom. While the rights both have broad application, for the purposes of the new scanning search definition, the limitation potentially occurs in circumstances where a scanning search, such as by proximity with a corrective services dog, is against a person's religious belief and therefore would be discriminatory to require them to undergo the search. In these circumstances QCS could address the limitation by using alternative search mechanisms such as an electronic scanner, or general search by a staff member.

Section 25 of the Human Rights Act protects the individual from all interferences and attacks upon their privacy. For the purpose of the scanning search definition amendment, an

individual's right to privacy may be limited through the requirement to permit a search of the person or their property, such as a requirement to present clothing or a bag for swabbing.

(b) the nature of the purpose of the limitation to be imposed by the provisions if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation is to support safe and secure corrective services facilities by recognising that some incidental contact may be necessary to conduct a scanning search, such as rubbing the test pad onto clothing or belonging during the conduct of an IONSCAN. The amendment enables the use of a device to collect a sample from a person's clothing with minimal touching.

(c) the relationship between the limitation to be imposed by the provisions if enacted, and the purpose, including whether the limitation helps to achieve the purpose

One of the major policy objectives of the CS Act is to ensure prisoners are managed in a safe and secure environment according to the risk they pose. The amendment aims to ensure that corrective services facilities are safe and secure environments for staff, visitors and prisoners and to prevent the entry and circulation of contraband.

The amendment will appropriately allow corrective services officers to conduct scanning searches which are minimally invasive and intended to cause minimal embarrassment.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the provisions

The amendment is the least restrictive and reasonably available way identified to achieve the purpose. The amendment does not impose any additional type of search (such as removal of clothing) and incurs minimal impact on the dignity of the person being searched, but rather provides an alternative screening process for contraband substances.

Scanning searches are minimally invasive. They do not require physically searching a person's belonging or clothing, and only involve incidental touching of a person. Further the amendment provides additional protection in that the devices will be prescribed under regulation.

In particular, IONSCAN searches are a quick detection method, providing a result in approximately 30 seconds. They also do not require rest after 1-2 hours of operation like canine detection methods, or require the search of an individual to identify the nature of the substance resulting in the positive indication.

(e) the balance between the importance of the purpose of the provisions, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance the need to achieve a safe custodial environment through proper searches minimises the introduction and circulation of contraband into corrective services facilities and outweighs the limited and short-term impact on the person's right to privacy and recognition and equality before the law in the identified circumstances.

(f) any other relevant factors

Additional safeguards are included to provide that the way the person is searched causes minimal embarrassment to the person and minimises any physical contact with the person.

The types of devices able to be used for a scanning search are to be listed in a regulation and will include devices such as an IONSCAN trace detection machine.

New offence prohibiting a staff member from having an intimate relationship with an offender

The introduction of a new offence to prohibit a staff member from having an intimate relationship with an offender, included in the Bill, potentially limits the following rights:

- Privacy and reputation (section 25)
- Protection of families and children (section 26).

(a) the nature of the right

Section 25 of the Human Rights Act protects the individual from all interferences and attacks upon their privacy. For the purpose of the new intimate relations offence, an individual's right to privacy may be limited through the requirement for a staff member to disclose the nature of their personal relationship to QCS to either allow QCS to determine the relationship fits within a legislative exemption, or to investigate the commission of an offence.

Section 26 of the Human Rights Act provides for the protection of families and children, recognising that families are the fundamental group unit of society and are entitled to be protected by society and the state. The amendment potentially limits the right to the protection of families to the extent that it places a penalty on staff forming particular intimate relationships, which may include family relationships, to the extent those relationships impact on the safety and good order of a corrective services facility or the proper administration of an offender's sentence.

(b) the nature of the purpose of the limitation to be imposed by the provisions if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Throughout the Taskforce Flaxton examination and public hearings, the risk of staff maintaining intimate or sexual relationships with prisoners was identified as a significant corruption risk. While the vast majority of QCS staff discharge their duties with integrity and diligence, such behaviour compromises the correctional system and places the safety of other staff, offenders and the community at risk. Inappropriate relationships provide a basis to support the smuggling of contraband, to aid prisoner escapes, to support organised crime activities, or to subject staff to blackmail or exploitation.

The purpose of the proposed offence is to reduce the risk of corruption in corrective services facilities identified by Taskforce Flaxton, supporting a commitment to transparency and confidence in public administration in accordance with community expectations, and maintaining a safe custodial environment.

(c) the relationship between the limitation to be imposed by the provisions if enacted, and the purpose, including whether the limitation helps to achieve the purpose

Taskforce Flaxton noted that inappropriate relationships are cultivated by prisoners, outside associates of prisoners, and prison staff through manipulation, intimidation, threats, coercion, and cooperation. Motivations for forming and maintaining intimate relationships were noted to typically be economic, sexual, or emotional in nature.

The proposed offence aims to ensure that any relationship a staff member forms with an offender that does not fall within a relevant exemption will constitute an offence. The capture of community based orders reflects the intersection between community and custodial corrections and the potential movement of offenders between both environments. The relevant amendments protect behaviour where the relationship existed prior to the person becoming an offender, or where the staff member did not or could not reasonably have known the person was an offender.

Any allegation of such behaviour is currently dealt with as misconduct in relation to public office under the Criminal Code, or in accordance with the *Public Services Act 2008*, *Public Sector Ethics Act 1994* and the Queensland Public Service Code of Conduct. However, it is not clear that maintaining an inappropriate or sexual relationship with an offender is sufficient to amount to a public officer gaining a 'benefit' under the current Criminal Code offence. This offence necessarily fills that gap.

It is considered that there is a rational relationship between the limitation and its identified purpose.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the provisions

Intimate relationships provide a basis to support the introduction and circulation of contraband within corrective services facilities, to aid prisoner escapes, to support organised crime activities, or to subject staff to blackmail or exploitation. As such any intimate relationship formed by a staff member with an offender poses or has the potential to pose a significant risk to a corrective services facility. While such behaviour is already precluded under the code of conduct the findings from Taskforce Flaxton support the necessity for a stronger deterrent not otherwise possible without creating an offence.

The amendment proposes two exceptions to the offence provision, where a staff member does not know or could not reasonably have known the person was an offender, or if the intimate relationship existed before the person became an offender.

(e) the balance between the importance of the purpose of the provisions, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The limitation reflects the seriousness of the conduct where a staff member enters into a relationship with an offender, and provides a deterrent beyond existing breaches of the code of conduct. The limitation is also balanced with appropriate exceptions to ensure staff are not inadvertently or unknowingly captured

On balance the need to reduce corruption and achieve a safe custodial environment outweighs the impact on the person's right to the protection of families in the identified circumstances.

(f) any other relevant factors

Intimate relationships between staff and offenders have previously been dealt with under section 92A of the *Criminal Code Act 1899*, the *Public Services Act 2008*, the *Public Sector Ethics Act 1994* and the Queensland Public Service Code of Conduct. These deterrents focus on the misuse of authority, not the relationship itself. The proposed amendment will explicitly prohibit the staff member from the relationship, unless covered by the exemptions. This may result in relationships that previously did not meet the threshold of obtaining a benefit or misuse of authority/public office being captured by the offence.

Receipt of prisoner trust fund deposits is restricted to approved donors

The amendment to allow the chief executive to restrict the receipt of prisoner trust fund deposits to approved donors included in the Bill, potentially limits the following rights:

- Freedom of association (section 22)
- Property rights (section 24)
- Privacy and reputation (section 25)
- Protection of families (section 26)
- Humane treatment when deprived of liberty (section 30)

(a) the nature of the right

Section 22(2) of the Human Rights Act ensures a person has the right to freely associate with others. The amendment may limit the right to the extent that it may restrict a prisoner's association with a person as they can be restricted from receiving funds from the person. This would be limited to situations where QCS has concerns related to the specific association and funds transfer, and as a result is not considered to be arbitrary.

Section 24(2) of the Human Rights Act ensures a person has the right not to be arbitrarily deprived of the person's property. However, the right does not provide a right to compensation for property. The amendment may limit the right to the extent that it permits the chief executive to refuse to accept or return the deposit of funds into a prisoner's trust account if the funds are not from an approved donor.

Section 25 of the Human Rights Act protects the individual from all interferences and attacks upon their privacy, this extends to private relationships. The amendment may limit the right to the extent that it may restrict a prisoner's private relationship as they can be restricted from receiving funds from the person. This would be limited to situations where QCS has concerns related to the specific relationship and funds transfer, and as a result is not considered to be arbitrary.

Section 26 of the Human Rights Act provides for the protection of families and children, recognising that families are the fundamental group unit of society and are entitled to be protected by society and the state. The amendment may limit the right to the extent that it may restrict a prisoner's relationship with a family member as they can be restricted from receiving funds from that family member. This would be limited to situations where QCS has concerns related to the specific relationship and funds transfer, and as a result is not considered to be arbitrary.

Section 30 of the Human Rights Act ensures that a person is treated humanely when deprived of liberty, with respect for the inherent dignity of the human person. The amendment may limit the right to the extent that the refusal or return of funds may limit the funds available to a prisoner during their custodial period.

(b) the nature of the purpose of the limitation to be imposed by the provisions if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The proposed amendment provides a donor is an approved donor for a prisoner unless the chief executive decides not to receive an amount for the prisoner from the donor. The purpose

of this is to limit the anonymous and/or illegitimate deposit of funds into prisoner trust accounts, including drug payments, standover tactics, and protection funds. Further, the safe and proper administration of custodial sentences is consistent with the expectations of a free and democratic society.

It also provides that a person who has been released from a corrective services facility must not, without the approval of the chief executive, within a period of 12 months of release from a corrective services facility, give money to a prisoner or deposit money in any account kept in the name of a prisoner. This aims to prevent the circulation of funds from criminal activity or the continued extortion of prisoners following their release, however acknowledges that there may be circumstances where the transfer of these funds is legitimate, so may be actioned following approval of the chief executive.

(c) the relationship between the limitation to be imposed by the provisions if enacted, and the purpose, including whether the limitation helps to achieve the purpose

One of the major policy objectives of the CS Act is to ensure prisoners are managed in a safe and secure environment. Being able to adequately identify and control funds entering and leaving prisoner trust fund accounts is integral to the security of the corrective services facility and safety of prisoners. Potential gaps in this system may allow prisoner standovers and gang activity, and finances contraband entering and circulating in corrective services facilities.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the provisions

Money can be transferred to a prisoner's trust account via either cash payment, payable at the correctional centre's reception, or by money order (arranged at a post office) made payable to the prisoner and posted to the correctional centre for staff to process. QCS is currently limited in the ability to identify the sender of all money transfers. Presently the CS Act only provides the chief executive with the ability to freeze those funds, but a prisoner will automatically gain access upon discharge when the funds are release.

There is no less restrictive way available to provide a power for the chief executive to approve who may deposit funds into a prisoner's trust account, clarifying the potential legislative gap where a prisoner can simply receive suspended funds upon release.

(e) the balance between the importance of the purpose of the provisions, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The amendment provides the chief executive with the ability to decline to receive funds from a person who is otherwise an approved donor, or approve the ability for a former prisoner to transfer funds into a prisoner's trust account, where it is considered appropriate to do so.

This power is currently limited to the ability to freeze the funds until the prisoner is discharged, with the exception of when the identity of the sender is known, and the funds can be returned. In reality, this only delays the prisoner's access to funds until they are released. Section 311A(3)(b) also allows a prisoner involved in illicit activity to receive the funds upon their discharge.

On balance, the need to achieve a safe custodial environment and minimise criminal activity by regulating trust account deposits outweighs the impact on the person's rights to property and humane treatment when deprived of liberty in the identified circumstances.

(f) any other relevant factors

In considering section 311 of the CS Act, the *Supreme Court of Queensland in Williams v May* [2009] QSC 276 has held that the chief executive has no obligation to accept for the prisoner any money from any source at all. Martin J observed that '*it is entirely appropriate that the chief executive, and those with delegated authority, be allowed to determine whether or not particular amounts will be credited to a prisoner's account*'.

Amendment to clarify when a decision of the PBQ has effect

The amendment to when a PBQ reconsidered decision has effect included in the Bill, potentially limits the following rights:

- Right to liberty and security of person (section 29)

(a) the nature of the right

Section 29 of the Human Right Act protects an individual's right to liberty and security of person, including protection from arbitrary arrest or detention, and that where liberty is deprived it is in accordance with procedures established under law. The right to liberty and security of person is potentially limited by the amendments to when a PBQ reconsidered decision has effect, to the extent that a prisoner may be detained for a further length of time following the PBQ decision that is not given immediate effect.

(b) the nature of the purpose of the limitation to be imposed by the provisions if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Allowing the PBQ to determine the timing for which a reconsidered decision takes effect ensures the PBQ are able to give proper consideration to release arrangements for the prisoner, such as travel and living arrangements. The amendment intends to prevent prisoners from becoming homeless as a result of an immediate release with no transport, particularly Aboriginal or Torres Strait Islander prisoners who have approved accommodation in a remote community.

The amendment provides that if the PBQ reconsiders a decision to suspend or cancel a parole order they are able to determine the timing for which the decision takes effect. This ensures the PBQ are able to give proper consideration to release arrangements for the prisoner.

(c) the relationship between the limitation to be imposed by the provisions if enacted, and the purpose, including whether the limitation helps to achieve the purpose

Providing the PBQ with the power to specify the date its decision is effective will provide flexibility to ensure appropriate transitional arrangements can be put in place to support the prisoner's release into the community, where the PBQ considers it is appropriate to do so.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the provisions

There is no identified less restrictive or reasonably available way of achieving the identified purpose. It was held in the matter of *Vaughan v Parole Board Queensland* [2019] QSC 10, that there was no power under section 208 to maintain the suspension for a period of time

before lifting it. Therefore, currently if the PBQ changes a decision the prisoner must be released as soon as the decision is changed which does not allow for adequate consideration of transitional arrangements for some prisoners.

(e) the balance between the importance of the purpose of the provisions, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The PBQ requires flexibility to ensure proper consideration of factors relevant to a prisoner's release on parole. This includes, the ability, where considered appropriate, to determine when a decision comes into effect. The discretionary power benefits the prisoner by allowing the PBQ to delay release in circumstances such as where release and travel arrangements need to be made for prisoners traveling to remote communities, who would otherwise be released with no transport. On balance, the need to provide discretionary power to the PBQ in determining the effective date of their decisions outweighs the potential negative impacts on a prisoner's right to liberty.

(f) any other relevant factors

Nil.

Submission from eligible person

The amendment to the submissions from eligible persons provisions included in the Bill, potentially limits the following right:

- Right to liberty and security of person (section 29)

(a) the nature of the right

Section 29 of the Human Right Act protects an individual's right to liberty and security of person, including protection from arbitrary arrest or detention, and that where liberty is deprived it is in accordance with procedures established under law. The right to liberty and security of person, relating to the prisoner, is potentially limited by the amendments. The limitation is only to the extent that, where there is an extension granted, a prisoner's application for parole may not be heard as early as it otherwise could have been. This is counterbalanced by the prisoner being able to apply for parole earlier than their parole eligibility date.

(b) the nature of the purpose of the limitation to be imposed by the provisions if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the amendment is to give effect to recommendation 85 in the QPSR Final Report. That is, a person registered on the Victims Register should be able to apply to the PBQ for an extension of the 21 day period allowed under section 188 of the CS Act to provide a submission. The QPSR was critical of the limited time between notification to the victim, by the chief executive, about a parole order application and the 21 day time limit for the eligible person to then make a written submission to the PBQ.

There is a community expectation, consistent with the legislative intention expressed in the explanatory notes, that the views of the victims of criminal offences, or other eligible persons, are considered in decision making. The PBQ's ability to be holistically informed in its decision-making processes is pivotal to ensuring that decisions are made with regard to the merits of each prisoner's case. This includes information that was not before the sentencing

court such as threats to victims or information relevant to parole conditions will assist the board in making determinations.

Current legislation limits the opportunity for an eligible person to make a submission outside of the 21 day period and in some instances can silence the most aggrieved individuals despite the importance of a victim's submission for the PBQ's consideration of parole

Section 193(3) of the CS Act requires the PBQ to decide a prisoner's application within 120 days or 150 days if a decision has been deferred. The amendment does not seek to increase the 120 day or 150 day timeframes or extend a prisoner's full time discharge date.

The purpose of the amendment is also consistent with the victim's right to freedom of expression under section 21 of the Human Rights Act as it allows their voice and opinion to be heard.

(c) the relationship between the limitation to be imposed by the provisions if enacted, and the purpose, including whether the limitation helps to achieve the purpose

Providing the PBQ with the discretionary power to extend the time an eligible person has to make their submission ensures that victims are acknowledged and heard. The discretionary nature of the power also allows the PBQ to determine whether it is appropriate to delay the receipt of a submission (and in turn potentially delay the decision), and by how long.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the provisions

The CS Act does not allow the PBQ to extend the timeframe to receive a submission from an eligible person by more than 21 days. Alternatives such as extending the timeframe for submissions may adversely affect other parole applications, rather than just matters where a victim has requested additional time. There is no identified less restrictive and reasonably available way of achieving the identified purpose.

(e) the balance between the importance of the purpose of the provisions, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Prisoners have the existing ability under section 180(2)(c) to apply for parole 180 days (six months) prior to their parole eligibility date, which allows for a prisoner's parole application to be considered and decided prior to their eligibility date. This provides a safeguard to ensure that, where a prisoner applies for parole at the earliest possible instance, they are not disadvantaged.

Further, there is an identified importance in enacting the QPSR Final Report recommendation, addressing identified concerns with the limited time between the chief executive's notification to the victim about a parole order application and the time limit to make a written submission.

On balance, the need to consider the views of victims or other eligible persons during decision making, including any threats or concerns around parole conditions post sentencing, outweighs the potential delay to a prisoner's parole consideration, in particular where a prisoner may apply for early consideration.

(f) any other relevant factors

Nil.

Restriction on eligibility for transfer to low custody facility

The amendment to restrict prisoner eligibility for transfer to a low custody facility included in the Bill, potentially limits the following rights:

- Recognition and equality before the law (section 15)
- Humane treatment when deprived of liberty (section 30)
- Cultural rights – generally (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)
- Right not to be tried or punished more than once (section 34)

(a) the nature of the right

Section 15 of the Human Rights Act provides the individual with recognition and equality before the law. This includes recognition as a person, the right to enjoy the person's human rights, equal protection before the law, and equal protection from discrimination.

Section 27 of the Human Rights Act protects a person's cultural rights generally, ensuring persons with a particular cultural, religious, racial, or linguistic background are not denied the right to enjoy their culture, practice their religion, and use their language.

Section 28 of the Human Rights Act protects the distinct cultural rights held by Aboriginal and Torres Strait Islander peoples. This includes cultural heritage, practices, and observances, traditional language and expression, kinship ties, and distinctive relationship with the land.

Section 30 of the Human Rights Act ensures that a person is treated humanely when deprived of liberty, with respect for the inherent dignity of the human person.

The amendment restricting the eligibility of certain prisoners for transfer to a low custody facility may limit the above rights through the potentially arbitrary nature of the restriction. The amendment restricts prisoners convicted of a sexual offence, murder, or serving a life sentence from being eligible for a low custody facility.

Section 34 of the Human Rights Act protects a person from being tried or punished more than once for an offence in relation to which the person has already been finally convicted or acquitted in accordance with the law. The amendment potentially limits this right where a prisoner has previously served a custodial sentence for an offence but is restricted from low custody in a further custodial episode as a result of that offence history.

(b) the nature of the purpose of the limitation to be imposed by the provisions if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

A prisoner is not entitled to be placed in a low custody facility. Rather, low custody facilities may be used by QCS as a management tool to reward positive behaviour and support reintegration in the community. Decisions as to a prisoner's suitability for placement in a low custody facility are based on a number of factors, including but not limited to the nature of the prisoner's offence, the prisoner's risk of escape, the risk of the prisoner committing a

further offence, the impact the further offence is likely to have on the community and the risk the prisoner poses to other prisoners, staff, the security of the facility and themselves.

The amendment is intended to provide a balance between ensuring a prisoner is provided with rehabilitative and reintegration opportunities and ensuring the ongoing safety and security of the community. It also aims to ensure the public's confidence in the low custody program.

The amendment provides a legislative basis for the Government's response to Queensland Parole System Review recommendation 58.

(c) the relationship between the limitation to be imposed by the provisions if enacted, and the purpose, including whether the limitation helps to achieve the purpose

The amendment provides restriction on the placement of certain categories of prisoners in low custody corrective services facilities. This includes prisoners convicted of a sexual offence, convicted of murder or who are serving a life sentence.

The amendment will ensure community safety and security, and public confidence, by limiting these categories of offenders from accessing low custody environments.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the provisions

The amendment provides a legislative basis for the Government's response to Queensland Parole System Review recommendation 58.

There is no identified less restrictive or reasonably available way of achieving the identified purpose. It is considered that the placement of the identified categories of prisoner in low custody is likely to undermine the public's confidence in the low custody program, having regard to the nature of low custody facilities.

(e) the balance between the importance of the purpose of the provisions, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

A prisoner is not entitled to be placed in a low custody facility. Rather, low custody facilities may be used by QCS as a management tool to reward positive behaviour and support reintegration in the community.

The amendment does not impose any further restriction on liberty or movement distinct from the prisoner's existing imprisonment.

On balance, the need to ensure community safety and security, and public confidence in the low custody program, outweighs the restriction of a prisoner's rights and liberties to the extent that the amendment requires this cohort of prisoners to serve their time in a secure custodial environment irrespective of their security classification.

(f) any other relevant factors

Nil.

Monitoring devices

The amendment to the provision for directing an offender to wear a monitoring device included in the Bill, potentially limits the person's right to privacy and reputation (section 25).

(a) the nature of the right

Section 25 of the Human Rights Act protects the individual from all interferences and attacks upon their privacy, family, home, correspondence (written and verbal) and reputation. The right is broad in its application, however for the purpose of the monitoring devices amendment in the Bill, the potential limitation of the right occurs to the extent a person would be required to permit a community corrections officer access to their residence to install device or equipment associated with the monitoring device.

(b) the nature of the purpose of the limitation to be imposed by the provisions if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The operation of a monitoring device is facilitated through the use of associated equipment installed at the offender's place of residence. The equipment is necessary to facilitate the charging and maintenance of the monitoring device. The purpose of the limitation is to reflect the practical operation of the existing provision which permits the chief executive to require an offender to wear a monitoring device, by referencing the associated required equipment.

(c) the relationship between the limitation to be imposed by the provisions if enacted, and the purpose, including whether the limitation helps to achieve the purpose

The limitation is directly linked to the achieved purpose, to the extent that there is a necessary but limited impact on an offender's privacy to install the associated equipment for the monitoring device. The equipment once installed and operating does not further infringe on the offender's privacy, as the installed equipment does not record video or audio from inside the offender's residence.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the provisions

There is no reasonably available and less restrictive way to achieve the purpose identified. The nature of the device is that it requires charging and associated equipment to appropriately operate. The installation of equipment is temporary in nature and does not require significant accommodations or changes at the residence.

(e) the balance between the importance of the purpose of the provisions, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, it is considered that the potential for the amendments to interfere with a person's right to privacy is outweighed by the need to facilitate the operation of the existing monitoring provision. In particular, it is noted that the potential interference, under this amendment, with a person's right is limited to the installation of associated equipment, not the monitoring process.

(f) any other relevant factors

Nil.

Powers during an emergency declaration

The amendments to clarify the chief executive's powers during a declaration of emergency included in the Bill, potentially limits the following rights:

- Freedom of movement (section 19)
- Freedom of association (section 22)
- Property rights (section 24)
- Right to privacy (section 25)
- Protection of families (section 26)
- Humane treatment when deprived of liberty (section 30)

(a) the nature of the right

Section 19 of the Human Rights Act ensures an individual has the right to move freely within Queensland and to enter and leave it, and has the freedom to choose where to live. The right to freedom of movement is broad in nature, however for the purposes of the emergency declaration powers amendments in the Bill, the potential limitation of the right occurs where a prisoner is compelled to evacuate a corrective services facility and remain at a temporary corrective services facility until the prisoner can be transferred back to a corrective services facility.

Section 22(2) of the Human Rights Act ensures a person had the right to freely associate with others. The amendment may limit the right to the extent that it may restrict a prisoner's association with a person to the extent the prisoner may be unable to receive visits or make phone calls in a temporary corrective services facility. This restriction is consistent with the potential restrictions that may be imposed to protect prisoners, staff, and visitors during any declaration of emergency. Including, where an incident necessitates visitors be removed from a facility or phone services are impacted.

Section 24(2) of the Human Rights Act ensures a person has the right not to be arbitrarily deprived of the person's property. However, the right does not provide a right to compensation for property. The amendment may limit the right to the extent that where an evacuation is required to a temporary corrective services facility, it may not be practical or possible for prisoners to remove all property that may be in their possession, due to the nature of an emergency evacuation.

Section 25 of the Human Rights Act protects the individual from all interferences and attacks upon their privacy. This extends to private relationships. The amendment may limit the right to the extent that it may restrict a prisoner's private relationship as a prisoner is unlikely to be able to receive visits or make phone calls in a temporary corrective services facility. This restriction is consistent with the potential restrictions that may be imposed to protect prisoners, staff, and visitors during any declaration of emergency, including where an incident necessitates visitors be removed from a facility or phone services are impacted.

Section 26 of the Human Rights Act provides for the protection of families and children, recognising that families are the fundamental group unit of society and are entitled to be protected by society and the state. The amendment may limit the right to the extent that it may restrict a prisoner's relationship with a family member to the extent the prisoner may be unable to receive visits or make phone calls in a temporary corrective services facility. This restriction is consistent with the potential restrictions that may be imposed to protect

prisoners, staff, and visitors during any declaration of emergency, including where an incident necessitates visitors be removed from a facility or phone services are impacted.

Section 30 of the Human Rights Act ensures that a person is treated humanely when deprived of liberty, with respect for the inherent dignity of the human person. The amendment may limit the right to the extent that as an emergency evacuation location there will be necessary limits on privileges that would otherwise be available inside a permanent corrective services facility. A temporary corrective services facility fulfils the role of a temporary emergency evacuation location for a permanent facility and is only intended to house prisoners for short periods of time.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the amendment is to clarify the chief executive's authority to relocate prisoners to a safe location during an emergency declaration when it is not immediately safe for the prisoners to be moved directly to another corrective services facility or remain in the corrective services facility they are in.

The amendment ensures that prisoners and staff remain safe during emergency situations, such as natural disasters, and clarifies a potential gap in the legislation which stipulates that prisoners must be accommodated in corrective services facilities.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

A major policy objective of the CS Act is to ensure prisoners are managed in a safe and secure environment according to the risk they pose. Being able to move prisoners to a safe location in the event of an emergency declaration is essential to preventing loss of life and ensuring the safety of prisoners and corrective services officers.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill.

There is no reasonably available and less restrictive way to achieve the purpose identified. In situations where there is an emergency declaration, such as a natural disaster, a rapid response may be required by QCS to prevent loss of life and ensure the safety of prisoners and corrective services officers. Transporting large numbers of prisoners to the closest permanent corrective services facility is not always feasible, particularly in the event of fire, flooding or road closures. QCS necessarily requires flexible management options in an emergency.

The declaration of emergency contains safeguards including the requirement for ministerial approval and that a declaration must not be more than three days, unless another declaration is made.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance the purpose of the proposed amendment outweighs the potential limited and necessary engagement of a prisoner's rights, noting the limit would be of short length and necessary in an emergency situation, similar to the limitation of a regular citizen's rights

during an emergency. Further, the amendment supports a prisoner's right to humane treatment when deprived of liberty, and right to life.

(f) any other relevant factors

Nil.

Alcohol and drug testing

The amendment to provide the chief executive with the power to request a corrective services officer or corrective services recruit submit to an alcohol or drug test included in the Bill, potentially limits the following rights:

- Protection from torture and cruel, inhuman or degrading treatment (section 17)
- Freedom of movement (section 19)
- Freedom of thought, conscience, religion and belief (section 20)
- Peaceful assembly and freedom of association (section 22)
- Right to privacy (section 25)
- Protection of families (section 26)
- Right to liberty and security of person (section 29)

(a) the nature of the right

Section 17(c) of the Human Rights Act ensures an individual has the right not to be subjected to medical or scientific experiments or treatment without the person's full, free, and informed consent. The proposed amendment potentially limits the right not to be subjected to medical treatment without full, free, and informed consent in circumstances where the method of testing may be considered medically invasive such as a blood test, which would require a break in the true skin.

Section 19 of the Human Rights Act ensures an individual has the right to move freely within Queensland and to enter and leave it, and has the freedom to choose where to live. The right to freedom of movement is broad in nature, however for the purposes of the alcohol and drug testing amendments in the Bill, the potential limitation of the right occurs where a person is required to remain at a location to permit or undergo a test required under the provisions.

Section 20 of the Human Rights Act protects a person's right to freedom of thought conscience, religion and belief, including from being coerced or restrained in a way that limits the person's freedom. While the right has broad application, for the purposes of the alcohol and drug testing amendment, the limitation potentially occurs in circumstances where a person's religion or belief conflict with the requirement to provide a test sample or abstain from alcohol or particular drug use. For example, some religions believe blood leaving the body must be disposed of and a blood test and storage of the specimen may conflict with that belief.

Section 22(2) of the Human Rights Act ensures a person has the right to freely associate with others. The amendment may limit the right to the extent that it may restrict a corrective services officer or corrective services recruit's association with people to the extent that the staff member may be unable to consume alcohol as part of normal social activities..

Section 25 of the Human Rights Act protects the individual from all interferences and attacks upon their privacy. The amendment may limit the right to the extent that requiring a person to participate in an observed test, such as a urine test, and provide a specimen infringes on the

corrective services officer or corrective services recruit's privacy. Further, where a positive test occurs due to prescribed medication the staff member may be required to provide proof of the prescription to avoid disciplinary action, infringing on the staff member's privacy.

Section 26 of the Human Rights Act provides for the protection of families and children, recognising that families are the fundamental group unit of society and are entitled to be protected by society and the state. The amendment may limit the right to the extent that a corrective services officer or corrective services recruit may be unable to consume alcohol as part of normal social activities with family.

Section 29 of the Human Right Act protects an individual's right to liberty and security of person, including protection from arbitrary arrest or detention, and that where liberty is deprived it is in accordance with procedures established under law. The right to liberty and security of person is potentially limited by the amendments to where a corrective services officer or corrective services recruit is required to remain at a location to permit or undergo a test required under the provisions.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The proposed amendment will support the implementation of recommendation 18 from the Taskforce Flaxton report, which was that the CS Act should be amended to permit an appropriate QCS delegate to direct a person at or entering a prison to submit to an alcohol or drug test.

In Taskforce Flaxton, the Crime and Corruption Commission stated that staff who abuse drugs or alcohol present a very real corruption risk for QCS. This risk may include staff engaging in illicit substance use being more susceptible to blackmail. The report subsequently outlines that drug and alcohol testing can mitigate corruption risk by identifying staff with substance abuse problems, assisting in the detection of contraband, and identifying staff who are under the influence of drugs and alcohol and are more likely to engage in problematic decision-making and behaviour, such as unreasonable use of force.

The purpose of the amendment is to ensure QCS has the power to identify alcohol or drug abuse among staff in line with the recommendation made by the Crime and Corruption Commission.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

There is currently no power in the CS Act to direct a person at or entering a prison, other than a prisoner, to undergo alcohol or drug testing. Therefore, testing of staff does not occur and QCS has no ability to proactively identify officers who may be intoxicated by alcohol or using illicit substances. The amendment will provide QCS with the power to require a corrective services officer or corrective services recruit to submit to a random or targeted alcohol or drug test.

Where a corrective services officer or corrective services recruit is required to provide a sample for testing, including breath, blood, urine, or saliva, there is a necessary element of intrusiveness. The amendment will achieve the purpose of supporting QCS to identify corruption risks, including those officers who are potentially at risk of blackmail or compromised decision making.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill.

There is no reasonably available and less restrictive way to achieve the purpose identified. Scanning or general searches are not capable of detecting the use, including whether a corrective services officer or corrective services recruit is currently under the influence. The ability to mitigate the identified corruption risks requires the power to require officers to submit to an alcohol or drug test.

The amendment does provide for the method of testing to be prescribed by regulation, providing the ability for the methods of testing to be updated more easily as new testing technology, including less intrusive tests, become available.

(e) the balance between the importance of the purpose of the amendment, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance the purpose of the proposed amendment outweighs the potential limited and necessary engagement of a corrective services officer or corrective services recruit's rights, noting the absence of suitable alternative testing methods and the significant risk corruption poses to the correctional environment and the wellbeing of staff and prisoners.

(f) any other relevant factors

Nil.

Conclusion

In my opinion, the Corrective Services and Other Legislation Amendment Bill 2020 is compatible with human rights under the *Human Rights Act 2019* because it limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the Act.

The Honourable Mark Ryan
MINISTER FOR POLICE AND MINISTER FOR CORRECTIVE SERVICES

© The State of Queensland 2019