Parliamentary Committees



Corrective Services and Other Legislation Amendment Bill 2020

Report No. 65, 56th Parliament
Legal Affairs and Community Safety Committee
May 2020

Legal Affairs and Community Safety Committee

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Acknowledgements

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Abbreviations

AD Act	*Anti-Discrimination Act 1991*
ATSILS	Aboriginal & Torres Strait Islander Legal Service (Qld) Ltd
A&MF	Alannah & Madeline Foundation
BAQ / Association	Bar Association of Queensland
Bill	Corrective Services and Other Legislation Amendment Bill 2020
CCC	Crime and Corruption Commission Queensland
CHO	Chief Health Officer
committee	Legal Affairs and Community Safety Committee
Criminal Code	*Criminal Code Act 1899*, schedule 1
CS Act	*Corrective Services Act 2006*
CSIU	Corrective Services Investigation Unit
CSO	community service order
ESU	Ethical Standards Unit
FDAQ	Firearm Dealers Association – Qld Inc
FOU	Firearm Owners United
GPS	global positioning system
HR Act	*Human Rights Act 2019*
IOMS	Integrated Offender Management System
LSA	*Legislative Standards Act 1992*
MCPEM	Ministerial Council for Police and Emergency Management
NSW	New South Wales
PBQ / board	Parole Board Queensland
PLS	Prisoners' Legal Service Inc
POQA	*Parliament of Queensland Act 2001*
PPE	personal protective equipment
PSGC	Professional Standards and Governance Command

QCS	Queensland Corrective Services
QHRC / Commission	Queensland Human Rights Commission
QLHF	Queensland Living History Federation
QLS	Queensland Law Society
QPS	Queensland Police Service
QPS commissioner	Queensland Police Service Commissioner
QPSR	Queensland Parole System Review
QPSR report	Walter Sofronoff, *Queensland Parole System Review Final Report*, November 2016
QSAC	Queensland Sentencing Advisory Council
Shooters Union	Shooters Union Queensland Pty Ltd
Sisters Inside	Sisters Inside Inc
Taskforce Flaxton report	Crime and Corruption Commission, *Taskforce Flaxton: an examination of corruption risks and corruption in Queensland prisons*, December 2018
Weapons Act	*Weapons Act 1990*
Weapons Categories Regulation	Weapons Categories Regulation 1997
Weapons Regulation	Weapons Regulation 2016
Women in prison 2019 report	Queensland Human Rights Commission, *Women in prison 2019: a human rights consultation report*

Chair's foreword

This report presents a summary of the Legal Affairs and Community Safety Committee's examination of the Corrective Services and Other Legislation Amendment Bill 2020.

The committee's task was to consider the policy to be achieved by the legislation, 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—and the compatibility of the Bill with human rights.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill, and those stakeholders who gave evidence at the public hearing. I also thank Parliamentary Service staff, Queensland Corrective Services and the Queensland Police Service.

I commend this report to the House.

Peter Russo MP

Chair

Recommendation

The committee recommends the Corrective Services and Other Legislation Amendment Bill 2020 be passed.

1 Introduction

1.1 Role of the committee

The Legal Affairs and Community Safety Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 15 February 2018 under the *Parliament of Queensland Act 2001* (POQA) and the Standing Rules and Orders of the Legislative Assembly.[1]

The committee's primary areas of responsibility are:

- Justice and Attorney-General
- Police and Corrective Services
- Fire and Emergency Services
- Aboriginal and Torres Strait Islander Partnerships.

The POQA provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles
- the compatibility of the Bill with human rights.[2]

The Corrective Services and Other Legislation Amendment Bill 2020 (Bill) was introduced into the Legislative Assembly and referred to the committee on 17 March 2020. The committee is to report to the Legislative Assembly by 29 May 2020.

1.2 Inquiry process

On 23 March 2020, the committee invited stakeholders and subscribers to make written submissions on the Bill. Fourteen submissions were received. See Appendix A for a list of the submitters. Queensland Corrective Services (QCS) provided written advice dated 5 May 2020 in response to issues raised in submissions.

The committee received a public briefing about the Bill from QCS and the Queensland Police Service (QPS) on 30 March 2020. See Appendix B for a list of officers who attended the public briefing.

The committee held a public hearing on 11 May 2020. See Appendix C for a list of witnesses.

The submissions, the correspondence from QCS and the transcripts of the briefing and the hearing are available on the committee's webpage.[3]

1.3 Policy objectives of the Bill

The objectives of the Bill are to:

- respond to the immediate risks identified in the Crime and Corruption Commission Queensland's (CCC's) report titled *Taskforce Flaxton: An examination of corruption risks and corruption in Queensland's prisons*
- implement recommendation from the Queensland Parole System Review (QPSR)
- improve operational efficiencies for QCS and the Parole Board Queensland (PBQ)

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1 *Parliament of Queensland Act 2001*, s 88 and Standing Order 194.

2 *Parliament of Queensland Act 2001*, s 93. See also, *Human Right Act 2019*, s 39.

3 See www.parliament.qld.gov.au/LACSC.

- establish a permanent firearms amnesty in support of a 2019 resolution of the Ministerial Council for Police and Emergency Management (MCPEM)
- support the implementation of the QPS policy on replica firearms
- clarify that information sharing arrangements may be entered into with a relevant agency for the purposes of all Racing Integrity Commission functions.[4]

1.4 Government consultation on the Bill

With respect to government consultation on the Bill, the explanatory notes state:

> *Amendments to the* Corrective Services Act 2006
>
> *A consultation draft of the Bill was provided to the Crime and Corruption Commission and the Parole Board Queensland.*
>
> *The following key stakeholders were consulted on the amendments to the CS Act* [Corrective Services Act 2006]*, included in the Bill: Aboriginal and Torres Strait Islander Legal Services (QLD), Aboriginal and Torres Strait Islander Women's Legal Services NQ Inc, Bar Association of Queensland, District Court of Queensland, Magistrates Court of Queensland, Supreme Court of Queensland, Legal Aid Queensland, Office of the Director of Public Prosecutions, Prisoners Legal Service, Queensland Court of Appeal, Queensland Indigenous Family Violence Legal Service, Queensland Law Society, Women's Legal Service Queensland, Bravehearts, Protect All Children Today Queensland, Queensland Council for Civil Liberties, Queensland Homicide Victims Support Group, Sisters Inside and Together Union.*
>
> *Stakeholder feedback has been taken into account in finalising the Bill.*
>
> *Amendments to the* Weapons Act 1990
>
> *Firearm and gel blaster industry stakeholders were consulted on the content of the replica firearm policy at the Minister for Police and Minister for Corrective Services Firearms Advisory Forum. Representatives of the Firearms Dealers association and Shooters Union were consulted about establishing a permanent firearms amnesty.*
>
> *Community feedback was also collected through an online response portal managed by Smart Service Queensland. The survey commenced on 10 February 2020 for a period of four weeks.*
>
> *Stakeholder feedback has been taken into account in finalising the Bill.*
>
> *Amendment to the* Racing Integrity Act 2016
>
> *No external consultation was undertaken as there was no change in policy and the amendment only involves relocating an existing provision* [5]

The Queensland Law Society (QLS) appreciated that QCS sought the QLS' preliminary feedback on the proposals to amend the *Corrective Services Act 2006* (CS Act). The QLS noted, however, that it had 'not provided any comments on a draft bill'.[6]

The Firearm Dealers Association – Queensland Inc (FDAQ) asserted that there would be benefits if it were consulted on proposed firearms legislation:

> *The proposed changes do not, in several circumstances, achieve the goals stated in the Explanatory Notes and could be problematic. FDAQ Inc asks again, to be shown the amendments*

4 Explanatory notes, p 1.

5 Explanatory notes, p 9.

6 Submission 13, p 1.

before presentation to the Parliament. We could save a lot of time and effort by demonstrating the real and unintended implications of any legislation relating to firearms.[7]

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

Recommendation

The committee recommends the Corrective Services and Other Legislation Amendment Bill 2020 be passed.

[7] Submission 11, p 7.

2 Examination of the Bill

This part of the report discusses issues raised during the committee's examination of the Bill.

Clauses 11, 20, 21, 40, 48 and 55 of the Bill are also discussed in Part 3 (Compliance with the *Legislative Standards Act 1992*) of this report. Clause 11 is further discussed in Part 4 (Compatibility with human rights).

2.1 Amendments to implement recommendations of the Taskforce Flaxton report

In March 2018, the CCC commenced Taskforce Flaxton to 'identify corruption and risks of corruption in Queensland prisons, features of the legislative, policy and operational environment that enable corrupt conduct to occur, and reforms to better prevent, detect and deal with corrupt conduct'.[8] The CCC reported on its findings in *Taskforce Flaxton: an examination of corruption risks and corruption in Queensland prisons* (Taskforce Flaxton report).

In its Taskforce Flaxton report, the CCC concluded that 'the existing framework operating in Queensland is not effectively preventing, detecting or dealing with corruption risk or corruption in prisons'.[9] The CCC made 33 recommendations to reduce corruption risk in Queensland prisons.[10]

The Queensland Government supported or supported-in-principle all of the CCC's recommendations.[11]

The Bill proposes to address the 'immediate risks'[12] identified in the Taskforce Flaxton report by making amendments to the *Corrective Services Act 2006* (CS Act), including:

- *Authorising the chief executive to require corrective services staff to submit to alcohol and drug testing (recommendation 18).*
- *Granting broader powers to search staff working in corrective services facilities (recommendation 20).*
- *Improving property and exhibit management policies and practices to decrease corruption risk (recommendation 22).*
- *Broadening the remit of the Ethical Standards Unit to provide prevention and early intervention, professional standards, integrity policy framework, complaints management, investigation, discipline system, witness support, critical incidents, covert operations and risk management (recommendation 30(a)).*
- *QCS and the QPS collaboratively reviewing the service delivery model used to investigate criminal offences in prisons and ensuring that only appropriate incidents are referred to the QPS for investigation (recommendation 32(b)).*

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8 Crime and Corruption Commission Queensland, *Taskforce Flaxton: an examination of corruption risks and corruption in Queensland prisons*, 2018, p vii.

9 Crime and Corruption Commission Queensland, *Taskforce Flaxton: an examination of corruption risks and corruption in Queensland prisons*, 2018, p x.

10 Crime and Corruption Commission Queensland, *Taskforce Flaxton: an examination of corruption risks and corruption in Queensland prisons*, 2018, pp xi-xvi.

11 Queensland Government, *Response to Taskforce Flaxton recommendations*, https://www.publications.qld.gov.au/dataset/qcs-reviews-and-reports/resource/67cf3210-7c86-4916-92bc-310e6a7f0ae9.

12 Explanatory notes, p 1.

- *Addressing the risk of inappropriate relationships between staff and prisoners or offenders to prevent corrupt conduct and build robust integrity and professional standards in QCS (recommendation 11).*[13]

2.1.1 Alcohol and drug testing

Prison staff with drug or alcohol problems 'present a very real corruption risk'.[14] The CCC reported that drug and alcohol testing can mitigate corruption risk by:

- *identifying staff with substance abuse problems*
- *assisting in the detection of contraband, given the general legislative power to search staff entering facilities has notable deficiencies*
- *identifying staff who are under the influence of drugs or alcohol and are more likely to engage in problematic decision-making and behaviour, such as excessive or unreasonable use of force.*[15]

Despite this, there is no power under the CS Act to order a corrective services officer to undergo a drug test.[16] This is in contrast to the private prisons operating in Queensland, and public prisons in other jurisdictions including New South Wales (NSW), Western Australia and the Northern Territory.[17]

The CCC recommended that the CS Act 'be amended to permit an appropriate QCS delegate to direct a person (other than a prisoner) at or entering a prison to submit to a prescribed alcohol/drug test'.[18] The Bill proposes to insert new Part 9A (Alcohol and drug testing) into Chapter 6 of the CS Act to effect that recommendation. The new provisions would apply to a corrective services person (that is, a corrective services officer or a corrective services officer recruit).[19]

Amongst other things, Part 9A would:

- impose alcohol limits on corrective services persons[20]
- require a corrective services person to submit to alcohol and substance tests at certain times[21]

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13 Explanatory notes, pp 1-2.

14 Crime and Corruption Commission Queensland, *Taskforce Flaxton: an examination of corruption risks and corruption in Queensland prisons*, 2018, p 36.

15 Crime and Corruption Commission Queensland, *Taskforce Flaxton: an examination of corruption risks and corruption in Queensland prisons*, 2018, pp 36-37. Footnote in original omitted.

16 Crime and Corruption Commission Queensland, *Taskforce Flaxton: an examination of corruption risks and corruption in Queensland prisons*, 2018, p 36.

17 Crime and Corruption Commission Queensland, *Taskforce Flaxton: an examination of corruption risks and corruption in Queensland prisons*, 2018, p 36.

18 Recommendation 18; Crime and Corruption Commission Queensland, *Taskforce Flaxton: an examination of corruption risks and corruption in Queensland prisons*, 2018, p 37.

19 Clause 48; *Corrective Services Act 2006*, proposed new s 306B. A corrective services officer recruit is a person who is participating in a training program: cl 48; *Corrective Services Act 2008*, proposed new s 306A.

20 Clause 48; *Corrective Services Act 2006*, proposed new ss 306C, 306D. Proposed new s 306D sets the alcohol limits for corrective services persons. Proposed new s 306C provides for when a person is over the limit.

21 Clause 48; *Corrective Services Act 2006*, proposed new ss 306E, 306F, 306G, 306J, 306K, 306L. See also cl 42 which would amend s 271 of the CS Act to prohibit the chief executive from delegating the power to require a corrective services person to submit to a random alcohol or drug test; explanatory notes, p 18. Proposed new s 306A provides:

- 'alcohol test' means a test for determining whether a corrective services person is over the limit applying to the person when the test is conducted.

- prohibit a corrective services person from having evidence of a dangerous drug present in a sample[22]
- prohibit a corrective services person from having present in a sample:
  - evidence of a targeted substance that the person may not lawfully take, or
  - evidence of having taken a targeted substance in a way contrary to a direction of a doctor or a recommendation of the manufacturer of the substance[23]
- prohibit a corrective services person who is lawfully taking a targeted substance from performing duties in or involving an operational capacity or critical role if the substance impairs the person's capacity to perform the duties without danger to the person or someone else[24]
- identify the options available to the chief executive if a corrective service person's alcohol or substance test result is positive[25]
- provide for situations in which a corrective services person fails to give a sample as required for substance testing or alcohol testing[26]
- introduce an offence for interfering with a sample given for an alcohol or substance test[27]
- provide that alcohol and drug test results are generally inadmissible in a civil or criminal proceeding before a court.[28]

2.1.1.1 Stakeholder views and Queensland Corrective Services response

The CCC supported the introduction of proposed new part 9A, submitting that it 'adequately addresses recommendation 18 of the Taskforce Flaxton report by permitting random alcohol and drug testing of Corrective Services Officers and recruits'.[29]

Sisters Inside Inc (Sisters Inside) also expressed support for the amendments relating to drug testing.[30]

The Queensland Human Rights Commission (QHRC/Commission) acknowledged the benefits of drug and alcohol testing for addressing the risk of corruption but it was concerned about the possible

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- 'substance test' means a test for determining the presence and concentration of a dangerous drug or targeted substance in a sample taken from a corrective services person.

22 Clause 48; *Corrective Services Act 2006*, proposed new s 306I(1).

23 Clause 48; *Corrective Services Act 2006*, proposed new s 306I(3). Proposed new s 306A defines 'targeted substance' to mean:

(a) a substance, other than a dangerous drug, that is a controlled drug, a restricted drug or a poison under the *Health Act 1937* that may impair a person's physical or mental capacity, or

(b) another substance, other than a dangerous drug, that may impair a person's physical or mental capacity.

24 Clause 48; *Corrective Services Act 2006*, proposed new s 306I(2).

25 Clause 48; *Corrective Services Act 2006*, proposed new s 306N. The chief executive may, for example, require the corrective services person to undergo counselling or rehabilitation approved by the chief executive. See also, cl 48; *Corrective Services Act 2006*, proposed new s 306O.

26 Clause 48; *Corrective Services Act 2006*, proposed new ss 306H, 306M.

27 Clause 48; *Corrective Services Act 2006*, proposed new s 306P. The maximum penalty is 100 penalty units ($13,345). The value of a penalty unit is $133.45: *Penalties and Sentences Act 1992*, s 5A; Penalties and Sentences Regulation, s 3

28 Clause 48; *Corrective Services Act 2006*, proposed new s 306Q.

29 Submission 3, p 1.

30 Submission 12, p 1.

impacts on the human rights of staff.[31] It submitted, however, that it was difficult for it to fully consider the compatibility with human rights because some aspects of the testing regime are to be included in regulation.[32]

> *21. The Commission acknowledges that placing procedures in regulations allows testing regimes to take advantage of less-invasive new technologies as they are developed. During the recent public briefing to the Committee, government representatives also suggested that placing this process in regulation would allow further consultation with staff, unions and other stakeholders, which the Commission welcomes. Nonetheless, the Explanatory Note refers to broad consultation already undertaken on the Bill including with the union and the CCC. If the views of unions and staff to such issues resulted in the legislation being framed in a particular way, this should be reflected in the justification. If unions and staff were opposed to these measures, how their concerns were considered may also be relevant.*
>
> *22. Presumably any further feedback received during the consultation process for the regulations will also be too late to influence the primary legislation amended through this Bill. For example, through the passage of this Bill, the Chief Executive will have the power to undertake invasive testing involving blood and other samples.*
>
> *23. The commitment during the public briefing that QCS would generally not use invasive tests such as blood tests unless absolutely necessary is consistent with its obligations as a Public Entity under the Human Rights Act.*
>
> *24. Nonetheless, the inclusion of invasive testing powers may be a disproportionate response to the issue. …*[33]

The QHRC recommended that the Bill be amended to 'remove the ability for invasive testing or explicitly require that it is only used as a last resort when no other testing methods are possible and only by a suitably qualified person'.[34] The QHRC added:

> *… If there is a justification for the legislation permitting invasive tests, further information should be provided including consideration of how other human rights jurisdictions have approached these issues.*[35]

The QHRC noted that the provisions may impact on the human rights of staff with disabilities:

> *26. The refusal to give a sample being considered a positive sample may also engage the right to equality in relation to staff with disabilities, who may be unable to provide a sample in the manner set out in the regulations (for example provide a urine sample on demand).*[36]

As extra protection in the legislation, the QHRC recommended the inclusion of a review process for staff who dispute a positive test:

> *A further safeguard would be to include a clear review process for staff who dispute a positive test, particularly those who may have a medical need to take a targeted substance and may dispute that the drug 'impairs their capacity to perform their duties without danger to the person or someone else'. Various options are available to the Chief Executive to respond to a positive test, and many may include review procedures (e.g. those under the Public Service Act). Nonetheless, consistent with the right to fair hearing, a clear review mechanism should be*

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31 Submission 9, p 5.

32 Submission 9, p 5.

33 Submission 9, pp 5-6.

34 Submission 9, p 6.

35 Submission 9, p 6.

36 Submission 9, p 6.

> *present for staff to challenge any response to a positive test. While during the public briefing to the Committee, government officials referred to the first step in a positive test process being a discussion with the employee, which would include for example a consideration of a medical requirement to take a targeted substance, this safeguard does not appear to have been included in the Bill.*[37]

The QHRC identified other possible safeguards including 'restricting the release of samples and information about a positive test to third parties and providing details on how samples will be stored, retained and destroyed'.[38]

In relation to stakeholder concerns about the proposed inclusion of Part 9A in the CS Act, QCS stated:

> *The amendment is based on existing provisions for the testing of Queensland Police Service officers under part 5A of the* Police Service Administration Act 1990 *and similar legislation including the* Transport Operations (Passenger Transport) Act 1994*.*
>
> *The amendment provides that an alcohol sample can include a blood test, and that a substance test can include a sample of urine, or another bodily substance including, for example, hair, blood or saliva to account for emerging technologies.*
>
> *QCS is committed to the highest standards of integrity and accountability and will work closely with key stakeholders to develop the operational detail of this amendment, including development of a supporting regulation. This is to include who is authorised to conduct the test, how the test is to be taken and appropriate delegations except for the random drug testing direction which is unable to be delegated.*[39]

2.1.2 Staff searches

According to the CCC, 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.'[40] The CCC recommended that the CS Act 'be amended to grant broader powers to search staff working in prisons'.[41]

Section 173 of the CS Act permits the chief executive to require a staff member at a corrective services facility to submit to a general search or a scanning search before entering the facility. The statement of compatibility explains the shortfalls of the existing searching regime:

> *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.*[42]

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37 Submission 9, pp 6-7. Footnote in original omitted.

38 Submission 9, p 7.

39 Queensland Corrective Services, correspondence dated 5 May 2020, attachment, pp 12-13.

40 Crime and Corruption Commission Queensland, *Taskforce Flaxton: an examination of corruption risks and corruption in Queensland prisons*, 2018, p 37.

41 Recommendation 20; Crime and Corruption Commission Queensland, *Taskforce Flaxton: an examination of corruption risks and corruption in Queensland prisons*, 2018, p 38. In other jurisdictions, including New South Wales, Victoria and South Australia, the powers to search staff are broader: Crime and Corruption Commission Queensland, *Taskforce Flaxton: an examination of corruption risks and corruption in Queensland prisons*, 2018, pp 37-38.

42 Statement of compatibility, p 6.

The Bill proposes to amend s 173 to enable a scanning search to be conducted at any time the staff member is at the facility.[43]

'Scanning search' of a person is defined in the Bill:

1 *A* scanning search *of a person is a search of the person by electronic or other means that does not require the person to remove the person's clothing but may require another person or an apparatus to touch or come into contact with the person.*

Examples—

- *using an electronic apparatus through which a person is required to pass*
- *using a corrective services dog that is trained to detect the scent of a prohibited thing to search a person*

2 *For paragraph 1, an apparatus for touching or coming into contact with a person who is submitting to a scanning search is an apparatus prescribed by regulation for this definition.*[44]

The Bill would also amend s 173 to provide that if the staff member does not submit to a general search or a scanning search when required to do so, the chief executive may direct the person to leave the corrective services facility.[45] Currently this power is limited to general searches.

Clause 53 would amend the definition of 'general search', of a person, in schedule 4 of the CS Act to mean a search:

(a) to reveal the contents of the person's outer garments or general clothes, or of a thing in the person's possession, including touching or moving the thing without touching the person, or

(b) in which the person may be required to:

i. open his or her hands or mouth for visual inspection, or

ii. shake his or her hair vigorously.

The Bill would also add new s 175A. It provides that a corrective services officer conducting a scanning search of a person must:

- ensure, as far as reasonably practicable, the way the person is searched causes minimal embarrassment to the person
- take reasonable care to minimise any physical contact with the person.[46]

With respect to human rights, the statement of compatibility noted with respect to the proposed search provisions:

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

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43 Clause 20.

44 Clause 53, amending *Corrective Services Act 2006*, schedule 4. Amongst other things, the regulation will list the IONSCAN trace detection machine: statement of compatibility, p 11.

45 Clause 20.

46 Clause 22.

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.[47]

2.1.2.1 Stakeholder views and Queensland Corrective Services response

Sisters Inside supported the amendments to allow more searching of QCS staff. The organisation submitted that its staff had 'heard consistent reports of drugs being smuggled into prison by QCS staff'.[48]

The QLS supported the amendment to allow the search of staff members at any time at the facility. It considered that the proposed extension of the power of the chief executive to direct a staff member to leave a corrective services facility if they refuse to submit to a scanning search is appropriate.[49]

The CCC also supported the proposed amendment to s 173 of the CS Act but recommended that the powers to conduct searches be further clarified.

… The section could include a requirement that a person be subject to a search under powers similar to section 29 of the Police Powers and Responsibilities Act 2000*. Another approach would be to outline a non-exhaustive list of the types of powers that may be carried out on staff members as done in New South Wales. This approach would give improved clarity over the extent of powers intended to be given to correctional officers.*[50]

The CCC referred to s 253J(1) of the *Crimes (Administration of Sentences) Act 1999* (NSW) which provides that a correctional officer may direct a person to do any or all of the following:

a) Submit to electronic scanning

b) Empty their pockets

c) Remove any hat, gloves, coat, jacket or shoes

d) Empty their bag or open anything that has been left in their vehicle

e) Make available their locker or office for inspection

f) Direct them to produce anything that has been detected or seen during electronic scanning

g) Assist a child or intellectually impaired person to co-operate with the search (if applicable).[51]

QCS noted the CCC's comments and advised:

The search provisions relating to staff, visitors and prisoners are spread across the CS Act.

It is acknowledged that when read in isolation the staff search powers may appear more limited than those in the Police Powers and Responsibilities Act 2000 *or the* Crimes (Administration of Sentences) Act 1999 *(NSW).*

However, when read with existing CS Act provisions, in particular section 174 (power to search corrective services facility), and section 175 (power to search vehicle), the provisions are considered to capture the types of conduct authorised by section 253J(1) of the New South Wales Crimes (Administration of Sentences) Act 1999*.*

47 Statement of compatibility, p 6.

48 Submission 12, p 1.

49 Submission 13, pp 1-2.

50 Submission 3, p 2. Footnote in original omitted.

51 Submission 3, p 2.

QCS will consider the need for a more comprehensive review and/or consolidation of CS Act search provisions in the future.[52]

With respect to the proposed amendments to the definition of 'general search' in schedule 4, the QLS advised that it supported the amendments to allow the power to touch or move a person's possessions without touching the person to search for contraband but suggested that it may be appropriate to include a power to open and examine (without damaging) in reasonable circumstances.[53]

Regarding the proposed new definition of 'scanning search', the QLS submitted:

The proposal to take a scanning search of a person as a non-invasive search option is also supported however to ensure minimal touching of the person, it may be appropriate to amend the proposed definition of scanning search *(in Clause 53 (2) to:*

> A scanning search of a person is a search of the person by electronic or other means that does not require the person to remove the person's clothing but may require ~~another person or~~ an apparatus to touch or come into contact with the person.

This would seem to be more in line with the examples provided in the Bill, namely:

> Examples—
>
> - using an electronic apparatus through which a person is required to pass
> - using a corrective services dog that is trained to detect the scent of a prohibited thing to search a person.[54]

With respect to the QLS' submission regarding the definitions of 'general search' and 'scanning search', QCS advised:

This amendment supports appropriate and effective searching of staff and prisoners at corrective services facilities.

In particular, changes to the definition of a scanning search are to enable the use of an ion scanning device to collect a sample from a person's clothing with minimal touching to search for contraband. This will streamline existing processes used by QCS to search people entering prisons. It also covers situations where a person may be incidentally touched by another person when they are subject to a scanning search.[55]

2.1.3 Destruction or disposal of forfeited things

Corrective services officers may seize things that pose a risk to the security and good order of the prison, or to the safety of persons in the facility.[56] The CS Act requires seized items be receipted and returned to the owner or forfeited to the State.[57] During the five year period between 2013 and 2018, QCS recorded 9,074 prohibited article incidents.[58]

The Taskforce Flaxton report identified reasons to have good property control practices:

Effective property control is necessary to support investigations and maintain the evidentiary value of seized items. Sound practices also reduce the risk that seized items can be diverted from

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52 Queensland Corrective Services, correspondence dated 5 May 2020, attachment, pp 5-6.

53 Submission 13, p 2.

54 Submission 13, p 2.

55 Queensland Corrective Services, correspondence dated 5 May 2020, attachment, p 14.

56 *Corrective Services Act 2006*, s 138.

57 Crime and Corruption Commission Queensland, *Taskforce Flaxton: an examination of corruption risks and corruption in Queensland prisons*, 2018, p 38. See also, *Corrective Services Act 2006*, ss 139-141.

58 Crime and Corruption Commission Queensland, *Taskforce Flaxton: an examination of corruption risks and corruption in Queensland prisons*, 2018, p 38.

> *seizure and are intentionally recirculated back into the prison environment. The CCC identified instances where the chain of custody was not clearly established (for example, seized items were not recorded or cross-referenced on incident reports).*[59]

The CCC recommended that QCS 'review property and exhibit management policies and practices to decrease corruption risk, improve evidentiary value and align with modern standards'.[60]

The Bill proposes to amend s 140 of the CS Act to enable a forfeited thing to be destroyed, even if it is not inherently unsafe.[61]

The Bill also proposes to amend the CS Act to provide that certain time periods do not apply in relation to a forfeited thing if the chief executive refers the matter to the QPS commissioner under s 114 of the CS Act.[62] As discussed below in 2.1.5, s 114 of the CS Act deals with breach of discipline constituting an offence.

2.1.3.1 Stakeholder views and Queensland Corrective Services response

The CCC submitted that it welcomed the amendment proposed to be made by cl 19 and believed that it adequately addresses recommendation 22 of the Taskforce Flaxton report.[63]

The QLS submitted that it was unclear what the proposed amendment would achieve, apart from some relief from the administrative burden of storing exhibits, and that it might result in a risk to the integrity of evidence in criminal proceedings. To overcome this potential problem, the QLS suggested amending cl 19 to replace 'destroying it' with 'if the property has not come into the custody or possession of a public officer in connection with any charge or prosecution – destroying it'.[64]

In response to the QLS' submission, QCS explained the rationale for the provision:

> *Taskforce Flaxton found that because the CS Act does not have a clear disposal authority, seized prohibited items remain in an exhibit safe under the prison's control until CSIU* [Corrective Services Investigation Unit] *investigators attend the prison and remove the items, including tobacco and mobile phones. While these items are legal and accessed in society, they are prohibited items in correctional centres and often seized.*
>
> *This amendment is not intended to cover exhibits which would be provided to QPS for their investigations. The amendment is to provide QCS with the clear authority to dispose of items that are not returnable and would otherwise have to be stored long term by QCS.*[65]

2.1.4 Investigation of staff members

In its Taskforce Flaxton report, the CCC acknowledged that QCS has improved the performance of the function of the Ethical Standards Unit (ESU) since the machinery of government changes in 2017 and

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59 Crime and Corruption Commission Queensland, *Taskforce Flaxton: an examination of corruption risks and corruption in Queensland prisons*, 2018, pp 38-39.

60 Recommendation 22; Crime and Corruption Commission Queensland, *Taskforce Flaxton: an examination of corruption risks and corruption in Queensland prisons*, 2018, p 39.

61 Clause 19.

62 Clause 18.

63 Submission 3, p 1.

64 Submission 13, pp 2-3.

65 Queensland Corrective Services, correspondence dated 5 May 2020, attachment, p 5.

the establishment of the ESU (now the Professional Standards and Governance Command[66]) in QCS. Nevertheless, it was of the view that more work is needed.[67]

The CCC recommended that QCS:

> *… broaden the remit of the Ethical Standards Unit 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.*[68]

The Bill proposes to amend the CS Act to:

- increase the functions of an inspector to include investigating alleged misconduct or alleged corrupt conduct of a staff member[69]
- widen the circumstances in which an inspector can require information from a person performing a function under the CS Act to include alleged misconduct or alleged corrupt conduct of a staff member[70]
- allow an inspector to enter a corrective services facility or a community corrections office at any time[71]
- require an inspector appointed to investigate an incident or the alleged misconduct or alleged corrupt conduct of a staff member to give a written report to the chief executive, stating the results of the investigation and any recommendations.[72]

The statement of compatibility, which discusses the compatibility or incompatibility of the Bill with human rights, sets out the purpose of the proposed changes:

> *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*

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66 Statement of compatibility, p 7.

67 Crime and Corruption Commission Queensland, *Taskforce Flaxton: an examination of corruption risks and corruption in Queensland prisons*, 2018, p 44.

68 Recommendation 30(a); Crime and Corruption Commission Queensland, *Taskforce Flaxton: an examination of corruption risks and corruption in Queensland prisons*, 2018, pp 45-46.

69 Clause 44, amending *Corrective Services Act 2006*, s 294. Clause 44 also proposes to replace the reference to 'probation and parole office' in s 294 with 'community corrections office' to 'reflect changed terminology within Queensland Corrective Services': explanatory notes, p 18. 'Misconduct', for a staff member, means conduct that would constitute a disciplinary ground under the *Public Service Act 2008*, s 87 if the staff member were a public service employee under that Act: cl 53. The Bill defines 'community corrections office' as an office where an offender subject to a parole order or community based order may be required to report to a corrective services officer: Clause 53; *Corrective Services Act 2006*, schedule 4.

70 Clause 46, amending *Corrective Services Act 2006*, s 304.

71 Clause 45, amending *Corrective Services Act 2006*, s 303. At present, an inspector may not enter a corrective services facility when a declaration of emergency is in force for the facility: *Corrective Services Act 2006*, s 303(1)(a)(i). Clause 45 also proposes to replace the reference to 'probation and parole office' in s 303 with 'community corrections office' to 'reflect changed terminology within Queensland Corrective Services': explanatory notes, p 19.

72 Clause 47, amending *Corrective Services Act 2006*, s 305.

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.[73]

Regarding the powers to be given to inspectors, the statement of compatibility provides:

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.[74]

2.1.4.1 Stakeholder views and Queensland Corrective Services response

The CCC submitted that it welcomed the amendment proposed by cl 44 and believed that it adequately addressed recommendation 30(a) of its Taskforce Flaxton report.[75]

The Bar Association of Queensland (BAQ/Association) supported the proposed amendment in principle but was of the view that it would be more effective if the investigative agency was independent of QCS. The BAQ submitted:

Independence of investigation and consequent decision making is of utmost importance in custodial settings to facilitate transparency of process and demonstrate to the general public that alleged misconduct and corruption issues in custodial settings are appropriately managed.[76]

The BAQ recommended that a provision similar to s 295 of the CS Act be included in the Bill, requiring at least two inspectors be appointed to investigate alleged misconduct or corruption, and that one of the inspectors must be a person who is not employed by QCS. According to the BAQ: 'Such a provision would ensure the investigation is independent and is seen to be independent'.[77]

The BAQ reiterated its concerns at the public hearing:

… it seems anomalous that if what occurs is an incident—that is a death, serious injury, escape or riot or other event involving prisoners—that the chief executive determines requires investigation, that has to have an external inspector as one of the people appointed to conduct the investigation but if the allegation involves misconduct or corruption it can be dealt with internally. We simply make the point that those two situations side by side do not seem to sit terribly well together.[78]

In its response to the issues raised by the BAQ, QCS advised:

The proposed amendment will provide clear authority for PSGC inspectors to have unhindered access to corrective services facilities and information relevant to an investigation of alleged staff misconduct or corruption.

These amendments will support the ability of PSGC inspectors to respond to complaints promptly, proactively identify agency-wide risks, and implement mitigation or prevention strategies.

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73 Statement of compatibility, p 7.

74 Statement of compatibility, p 8.

75 Submission 3, p 1.

76 Submission 2, p 3.

77 Submission 2, p 3.

78 Public hearing transcript, Brisbane, 11 May 2020, p 5.

The powers of inspectors will be limited to improving QCS's internal anti-corruption measures and oversight, with PSCG continuing to refer allegations to the QPS and CCC in line with existing processes.[79]

2.1.5 Investigation of criminal offences in prisons

At present, the chief executive must refer a matter that could be a dealt with either as an offence or as a breach of discipline to the Queensland Police Service Commissioner (QPS commissioner).[80] In its Taskforce Flaxton report, the CCC described the process following a referral:

… The current approach involves the CSIU reviewing QCS Intelligence Reports (via direct access to IOMS [Integrated Offender Management System]*), and either retaining incidents for investigation, or referring incidents back to the prison for no further action or breach action.*[81]

The CCC identified a number of deficiencies relating to the operation of the QPS' Corrective Services Investigation Unit (CSIU) and the relationship between it and QCS, specifically the QCS Intelligence Group and the ESU, including:

- *The CSIU has a significant assessment load. In 2016/17, the CSIU reviewed 10 063 prisoner-related incidents, which is an increase on previous years …. The CSIU estimates that it currently receives between 60 and 70 incidents per day. Processing this volume of incidents diverts the unit from more serious matters and conducting proactive operations.*
- *A significant proportion of matters were not recommended for breach action or criminal charges. The CSIU indicated that could be because taking action may not be in the public interest (the criminal offence is minor), or the matter may not be productively investigated. It may also reflect a lack of understanding about what constitutes an offence or breach of discipline or that QCS is risk averse and refers incidents that are not criminal offences.*

…

- *The current approach is inefficient. Intelligence Reports provided by prisons can be of low quality and not contain relevant supporting information (e.g. CCTV footage). The time taken to assess complaints delays dealing with staff integrity issues ...*
- *The current approach can be manipulated by QCS staff in a way that decreases the likelihood that an incident will be reviewed by the CSIU, even though the incident is reported on IOMS.*[82]

Amongst the recommendations on this matter was recommendation 32(b) - That QCS and the QPS 'collaboratively review the service delivery model used to investigate criminal offences in prisons. The revised model should ensure that only appropriate incidents are referred to the QPS for investigation'.[83]

The Bill proposes to address this recommendation by providing the chief executive with discretion to decide whether to refer a matter to the QPS commissioner that could be dealt with either as an offence or as a breach of discipline. However, the chief executive must refer the matter if it could be prosecuted as a sexual offence mentioned in schedule 1 of the CS Act or an offence that has a

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79 Queensland Corrective Services, correspondence dated 5 May 2020, attachment, pp 10-11.

80 *Corrective Services Act 2006*, s 114.

81 Crime and Corruption Commission Queensland, *Taskforce Flaxton: an examination of corruption risks and corruption in Queensland prisons*, 2018, p 47. Footnotes in original omitted.

82 Crime and Corruption Commission Queensland, *Taskforce Flaxton: an examination of corruption risks and corruption in Queensland prisons*, 2018, pp 47-48. Footnotes in original omitted.

83 Recommendation 32(b); Crime and Corruption Commission Queensland, *Taskforce Flaxton: an examination of corruption risks and corruption in Queensland prisons*, 2018, p 48.

maximum penalty of 14 years or more.[84] If the chief executive decides to refer the matter to the QPS commissioner, or the chief executive must refer the matter to the QPS commissioner, the chief executive must tell the prisoner within 48 hours that the matter has been referred to the QPS commissioner.[85]

2.1.5.1 Stakeholder views and Queensland Corrective Services response

The CCC submitted that it welcomed the amendment giving the chief executive discretion whether to refer certain offences to the QPS commissioner and believed that it adequately addressed recommendation 32(b) of the Taskforce Flaxton report.[86]

The BAQ supported the creation of a discretion for the chief executive to refer or not to refer disciplinary breaches which may amount to a minor criminal offence. However, the BAQ was of the view that the Bill should be amended to 'provide for a short timeframe in which the prisoner is consulted before the referral is made'.[87]

In response to the BAQ's submission, QCS advised:

> *Under the proposed amendment the prisoner will continue to be informed the matter has been referred to QPS. If the matter is to be dealt with as a breach of discipline, the amendment supports a timely response, rather than waiting for CSIU to investigate and return the matter to QCS for breach action.*
>
> *Prisoners will continue to have the right to appeal these decisions.*
>
> *QCS will develop an administrative procedure under section 265 of the* Corrective Services Act 2006 *… in consultation with the Queensland Police Service … to operationalise this amendment.*[88]

2.1.6 Intimate relationships

The Bill proposes to introduce a new offence prohibiting a staff member from having an intimate relationship with an offender.[89] As noted in the statement of compatibility, an intimate relationship between a staff member and a prisoner provides a significant corruption risk:

> *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.*[90]

The statement of compatibility further stated:

> *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.*[91]

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84 Clause 17; explanatory notes, p 5.

85 Clause 17; explanatory notes, pp 12.

86 Submission 3, p 1.

87 Submission 2, p 3.

88 Queensland Corrective Services, correspondence dated 5 May 2020, attachment, p 4.

89 Clause 21; *Corrective Services Act 2006*, proposed new s 173A.

90 Statement of compatibility, p 12.

91 Statement of compatibility, p 12.

The CS Act, as it would be amended by the Bill, defines an offender as:

- a prisoner; or
- a person who is subject to a community based order.[92]

The statement of compatibility explains that the 'capture of community based orders reflects the intersection between community and custodial corrections and the potential movement of offenders between both environments'.[93]

The CS Act defines a staff member as a corrective services officer or an employee of the department or of an engaged service provider.[94]

An intimate relationship between two persons is defined in the Bill as being a relationship that includes either or both of the following:

- sexual conduct or other physical expressions of affection or sexual contact
- the exchange of written or other forms of communications of a sexual or intimate nature.[95]

The maximum penalty for the proposed new offence is 100 penalty units ($13,345[96]) or three years imprisonment.

However, the offence provision does not apply to a staff member if:

- the staff member does not know, or could not reasonably have known, the person was an offender, or
- the staff member and the person were in an intimate relationship before the person became an offender.[97]

According to the statement of compatibility, the new offence is necessary because currently allegations of such behaviour are:

> *… 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. …*[98]

2.1.6.1 Stakeholder views and Queensland Corrective Services response

The BAQ noted that the offence provision 'has a potentially wide scope of operation'.[99] It could be committed in circumstances which could render the offence very minor (such as where a departmental

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92 *Corrective Services Act 2006*, schedule 4; cl 53. 'Community based order' is defined in schedule 4 of the CS Act to mean:
(a) a community service order; or
(b) a fine option order; or
(c) an intensive correction order; or
(d) a probation order.

93 Statement of compatibility, p 12.

94 *Corrective Services Act 2006*, schedule 4.

95 Clause 21; *Corrective Services Act 2006*, proposed new s 173A(1).

96 The value of a penalty unit is $133.45: *Penalties and Sentences Act 1992*, s 5A; Penalties and Sentences Regulation, s 3.

97 Clause 21; *Corrective Services Act 2006*, proposed new s 173A(3).

98 Statement of compatibility, p 12.

99 Submission 2, p 2.

administrative officer dates a person on a community service order (CSO) but the administrative officer has nothing to do with the offender's CSO) or very serious (such as where a prison officer has sexual relations with a prisoner that the officer is responsible for).[100]

The BAQ advised:

> *Where the offence is very serious … an officer may be charged with rape (section 349 of the* Criminal Code*) or sexual assault (section 352 of the* Criminal Code*) on the basis that consent was not freely and voluntarily given as it was obtained by an exercise of authority pursuant to section 348 of the* Criminal Code*. If such an offence is charged, the prosecution may charge the new offence as an alternative count in the event that the jury cannot be satisfied beyond a reasonable doubt on the element of consent.*[101]

On that basis, the BAQ considered that the offence should be an indictable offence. With regard to less serious cases, the BAQ suggested an amendment to chapter 58A of the Criminal Code would be needed so that an election could be made for the prosecution to proceed summarily.[102]

In its submission, the Aboriginal & Torres Strait Islander Legal Service (Qld) Ltd (ATSILS) referred to s 348(2)(d) of the Criminal Code which provides, with respect to the offences of rape and sexual assault, that a person's consent to an act is not freely and voluntarily given if it is obtained by exercise of authority. ATSILS then stated:

> *If a lesser offence is to be introduced, in our view it is one of those rare situations where the onus of proof ought to be reversed. Given the coercive nature of custodial settings and the power imbalance between a corrective service officer and an inmate, it should not be for the Prosecution to prove the elements of the offence beyond reasonable doubt but for the onus to fall on the Defendant.*[103]

ATSILS held the view that the lesser charge should not be brought in circumstances when rape is the more appropriate charge.[104]

The QLS had reservations about the proposed new offence to prohibit sexual conduct between staff and offenders. The QLS submitted:

> *While acknowledging the purpose and policy intent, the proposed offence is particularly broad in scope, noting the definition of 'intimate relationship' encompasses 'physical expressions of affection' and/or 'the exchange of written or other forms of communication of a sexual or intimate nature'.*
>
> *Further the penalty of 100 penalty units or 3 years imprisonment is not insignificant and would apply to an employee of the department, an employee of an engaged service provider or a corrective services officer … In most other professional circumstances, this would be an employment or conduct issue. We therefore query the appropriateness of it being dealt with as a criminal law issue.*
>
> *If the proposed offence is progressed, we submit the legislation should expressly exclude the operation of the party provisions in sections 7 and 8 of the Code … to offenders. This appropriately recognises the power imbalance which may exist.*[105]

In response to stakeholders' concerns, QCS advised:

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100 Submission 2, p 2.

101 Submission 2, p 2.

102 Submission 2, p 2.

103 Submission 4, pp 2-3.

104 Submission 4, p 4.

105 Submission 13, p 2.

… The amendment recognises the seriousness of the risk associated with inappropriate relationships and provides a greater deterrent than code of conduct breaches.

The amendment is clear in that the prisoner does not commit an offence.

The new offence is not intended to prevent more serious crimes from being reported to QPS for further investigation.

All allegations of corrupt or inappropriate conduct are referred to the QCS Professional Standards and Governance Command (PSGC) for investigation. Any allegation of a criminal offence will be referred to the QPS and CCC for further investigation in line with existing processes.[106]

2.2 Amendments to implement recommendations of the Queensland Parole System Review

The explanatory notes summarise the amendments relating to recommendations in the *Queensland parole system review final report* (QPSR report):

The Bill implements QPSR recommendation 85, to allow a person registered on the Victims Register to apply to the PBQ for an extension of the 21-day period allowed to provide submissions. It also implements the Government's position on recommendation 58, restricting prisoners convicted of a sexual offence, murder or serving a life sentence from placement in a low custody facility. Further amendments support implementation of QPSR recommendations 33, 59 and 81.[107]

2.2.1 Extension to provide a submission

The Queensland Government supported recommendation 85 in the QPSR report, that a person registered on the Victims Register should be able to apply to the Parole Board for an extension of the 21-day period allowed under s 188 of the CS Act to provide submissions.[108] The Bill would implement this recommendation.[109]

The QPSR explained the rationale for the recommendation:

1181. I received a complaint regarding the lack of time between the notification to the victim and the date the offender was to be considered for parole by the Parole Board. This time limit restricts the victim's ability to prepare a considered submission.

1182. The importance of timely notification is not only extremely important to the wellbeing of a victim and the safety of the community but also to the efficiency of the Parole Board in considering applications. The victim should be able to request an extension of the 21 day period from the Parole Board if required. The Parole Board would be best placed to determine a reasonable length of any extension so not to unfairly disadvantage the prisoner and delay an offender's potential release from custody.[110]

The statement of compatibility notes that the Bill does not propose to amend the timeframes for the PBQ to decide a prisoner's application for parole or to extend a prisoner's full time discharge date.[111]

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106 Queensland Corrective Services, correspondence dated 5 May 2020, attachment, p 6.

107 Explanatory notes, p 3.

108 Queensland Government, *Response to Queensland parole system review recommendations,* p 16, https://parolereview.premiers.qld.gov.au/assets/government-response-to-qpsr-recommendations.pdf.

109 Clause 23. See also, cl 52 inserting new ch 7A, pt 14.

110 Walter Sofronoff QC, *Queensland parole system review final report*, 2016, p 232.

111 Statement of compatibility, p 17.

2.2.1.1 Stakeholder views and Queensland Corrective Services response

The BAQ opposed the proposed amendment to s 188 for the following reasons:

> *It is not clear to the Association why an eligible person would be unable to provide a submission within the 21 days provided for under the current legislation. The Association remains concerned that prisoners who are eligible to apply for parole have their parole application decided promptly and without undue delay. …*[112]

In its response to the BAQ's submission, QCS noted that the amendment 'implements Queensland Parole System Review recommendation 85, which was supported by the Queensland Government'.[113]

2.2.2 Compassionate leave

The Bill would make amendments to assist in the implementation of recommendations 33 and 59 of the QPSR 'to support the establishment and maintenance of relationships between prisoners and their children'.[114]

The Bill would do this by adding the following to the circumstances in which the chief executive may grant compassionate leave to a prisoner:

- for a prisoner who is a child's parent or kin but, before being imprisoned, was not the primary care giver of the child—to establish a relationship, or maintain the relationship, with the child.[115]

2.2.3 Notification of a prisoner's discharge or release

Section 324A of the CS Act provides that the chief executive must give an eligible person information about a prisoner's discharge or release date at least 14 days before the prisoner's date of discharge or release.

The Bill would amend s 324A to facilitate earlier notifications to those listed on the victims register by requiring that the information about a prisoner's date of discharge or release be given to the eligible person as soon as practicable after the chief executive becomes aware of the information.[116]

2.2.4 Transfer to low custody facility

Under current government policy, sexual offenders, life sentence prisoners, those convicted of murder or manslaughter, or those with a serious violent offence declaration are excluded from placement in low security facilities.[117]

The QPSR explained the basis for its recommendation (Recommendation 58) that the policy be reviewed:

> *917. Prisoners may be sentenced for very serious crimes but pose very little risk to prison security and some also pose very little risk of reoffending. I understand that murderers and those convicted of manslaughter often fall into both categories. I am advised such prisoners are usually well behaved and at a very low risk of reoffending. Sex offenders often fall into the first category.*

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112 Submission 2, p 4.

113 Queensland Corrective Services, correspondence dated 5 May 2020, attachment, p 9.

114 Hon Mark Ryan MP, Minister for Police and Minister for Corrective Services, Queensland Parliament, Record of Proceeding, 17 March 2020, p 623.

115 Clause 12; *Corrective Services Act 2006*, s 73. The Bill provides that 'kin', in relation to a child, see the *Child Protection Act 1999*, schedule 3: cl 12, *Corrective Services Act 2006*, proposed new s 73(4).

116 Clause 51. See also, Hon Mark Ryan MP, Minister for Police and Minister for Corrective Services, Queensland Parliament, Record of Proceedings, 17 March 2020, p 623.

117 Walter Sofronoff QC, *Queensland parole system review final report*, 2016, p 184.

918. No process of resettlement and reintegration can be truly effective unless those prisoners who need such support are able to participate in a form of graduated release. I am informed that current leave of absence programs for community service are administered from low security, which is a common sense approach that is indicative of a prisoner's movement through their sentence.

919. Because of the seriousness of the offences, the public concern about placement in low security is justifiable. However, if a prisoner has demonstrated suitable behaviour and progress through his or her sentence, at an appropriate time and despite the nature of the offence, they should be assessed for placement in low security. This is an important point, as nearly all prisoners will be discharged to the community at some point. It is important that prisoners are managed through a careful program of reintegration.

920. High security prisons, which are seriously overcrowded, must be reserved for the placement of prisoners who are dangerous or unsuitable due to the risk they may pose to the security of the correctional system and the community.[118]

In its response to the QPSR report the Queensland Government advised that it did not support Recommendation 58:

The Queensland Government has reviewed the policy and does not support changes to the current policy.

The policy was introduced following the escape of a convicted murderer. The possibility of an escape by prisoners convicted of sexual offences or subject to life imprisonment has such high potential to undermine public confidence in the low security program, that this particular recommendation cannot be supported.[119]

The explanatory notes state that the Bill '[clarifies] that prisoners convicted of a sexual offence, murder or serving a life sentence are ineligible for transfer from a secure facility to a low custody facility'.[120] This is primarily effected by proposed new s 68A of the CS Act which provides that a prisoner is not eligible to be transferred from a secure facility to a low custody facility if the prisoner:

- has been convicted of a sexual offence, or
- has been convicted of murder, or
- is serving a life sentence.[121]

The Bill would amend the definition of 'sexual offence' to mean:

- an offence mentioned in schedule 1 of the CS Act, or
- an offence against a law applying, or that applied, in other jurisdiction if the offence substantially corresponds to an offence mentioned in schedule 1 of the CS Act.[122]

'Low custody facility' is defined in the proposed new provision as:

- a prison, other than a secure facility, or

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118 Walter Sofronoff QC, *Queensland parole system review final report*, 2016, p 184. Footnotes in original omitted.

119 Queensland Government, *Response to Queensland parole system review recommendations,* p 11, https://parolereview.premiers.qld.gov.au/assets/government-response-to-qpsr-recommendations.pdf.

120 Explanatory notes, p 6. See also, clauses 9, 10, 11.

121 Clause 11; *Corrective Services Act 2006*, proposed new s 68A(1). Proposed new s 68A(1) is subject to s 268 (Declaration of emergency): cl 11; *Corrective Services Act 2006*, proposed new s 68A(2).

122 Clause 53.

- a community corrections centre, or
- a work camp.[123]

The Bill would amend the definition of secure facility to generally mean a prison with a perimeter fence, or other security measures, that are designed to prevent the escape of a prisoner.[124]

Low custody facilities include 'the Helana Jones Centre, Numinbah Correctional Centre, Palen Creek Correctional Centre, Capricornia Correctional Centre Farm, Townville Correctional Centre Farms, and the Lotus Glen Correctional Centre Farm'.[125]

As regards the purpose of the proposed provision, the statement of compatibility provides:

> *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.*[126]

2.2.4.1 Stakeholder views and Queensland Corrective Services response

Prisoners' Legal Service (PLS) submitted that it 'strongly opposes any policy or legislative reform that imposes a blanket restriction on particular categories of prisoners from accessing low security facilities'.[127] PLS considered that any such policy or legislation:

- *is contrary to evidence-based, best practice for successfully re-integrating prisoners back into the community;*
- *undermines the good order of correctional centres;*
- *has adverse implications on prisoner well-being; and*
- *engages a range of significant human rights concerns.*[128]

PLS held the view that the proposed amendment 'is not reasonable and cannot be justified'.[129] It recommended that the proposed amendment be omitted from the Bill.[130]

The QHRC was very concerned about proposed new s 68A and described it as a 'retrograde step'.[131] The QHRC considered that:

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123 Clause 11; *Corrective Services Act 2006*, proposed new s 68A(2).

124 Clause 53. 'Secure facility' for chapter 5, part 13A, see s 344B: cl 53.

125 Explanatory notes, p 11.

126 Statement of compatibility, p 19.

127 Submission 14, p 1.

128 Submission 14, p 2.

129 Submission 14, p 5.

130 Submission 14, p 5.

131 Public hearing transcript, Brisbane, 11 May 2020, p 1.

- the restriction is 'potentially arbitrary, as it does not require decision makers to apply criteria based on risk of escape or other security risk. It could result in the lowest risk detainees, for example women and prisoners who are infirm, being held in higher security areas'.[132]
- a blanket rule prohibiting certain offenders from being transferred to low custody facilities ignores the particular rehabilitation and reintegration opportunities of individual prisoners.[133]
- the provision is counter to recommendation 58 in the QPSR report, which is similar to recommendation 32 made by the QHRC in its *Women in Prison 2019* report. In making its recommendation, the QHRC 'was particularly concerned about the impact on women who had been sentenced to life imprisonment'.[134]
- it reduces the ability of QCS to respond to the risk of COVID-19 because some prisoners will be unable to be moved 'appropriately to deal with quarantining and other mitigation efforts'.[135]

The QHRC accordingly recommended that the proposed amendment introducing a blanket prohibition on people convicted of certain offences ever being accommodated in low custody facilities be omitted.[136]

Sisters Inside also did not support the introduction of proposed new s 68A. Sisters Inside submitted that decisions about security classification and custody placement should be determined on a case-by-case basis. Sisters Inside contended that the new provision does not increase safety. It noted that, if needed, there is already a power to deny a transfer to a low custody facility.[137]

In response to stakeholder concerns about the proposal to prohibit certain offenders from transferring from a secure facility to a low custody facility, QCS advised:

> *… Prisoner security classifications are one tool used to assess a prisoner's risk. They take into consideration the nature of the offence for which the prisoner has been charged or convicted, the risk of the prisoner escaping or attempting to escape from custody, the risk of the prisoner committing a further offence and the impact the commission of the further offence is likely to have on the community, and the risk the prisoner poses to himself or herself, and other prisoners, staff members and the security of the corrective services facility.*
>
> *Only prisoners with a low security classification are eligible to be considered for placement in a low custody facility. This requirement will not change. Rather, the amendment places an additional eligibility criteria that prisoners must meet before being considered for placement in a low custody facility.*
>
> *Accommodation in a low custody facility is not a right and QCS will continue to make decisions about prisoner placement on a case by case basis.*

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132 Submission 9, p 5.

133 Submission 9, p 4.

134 Submission 9, p 4. See also Queensland Human Rights Commission, *Women in prison 2019: a human rights consultation report*, https://www.qhrc.qld.gov.au/__data/assets/pdf_file/0003/17139/2019.03.05-Women-In-Prison-2019-final-report-small.pdf.

135 Submission 9, p 5.

136 Submission 9, p 8.

137 Submission 12, p 1.

In both high and low custody facilities prisoners have access to a range of interventions to help change their offending behaviour. This may include education, training or work opportunities aimed at helping to break the cycle of reoffending.[138]

Proposed new s 68A, that would be inserted by cl 11, is further discussed in 3.1.1.1 and 4.1.1 of this report.

2.3 Amendments requested by the Parole Board Queensland

The PBQ requested a number of legislative amendments 'to achieve operational efficiencies and to support the operation of the no-body no-parole laws'.[139] These amendments in the Bill include:

- omitting certain quorum requirements for particular matters relating to parole orders
- only requiring the PBQ to have regard to court transcripts relevant to the prisoner's cooperation in the location of the victim's remains under the no-body no-parole scheme
- allowing the PBQ to determine when a reconsidered decision to suspend or cancel a parole order takes effect
- providing the PBQ with more flexibility to determine requests by QCS for suspension of a parole order
- enabling the Governor in Council to appoint an acting prescribed PBQ member for up to 12 months.[140]

2.3.1 Quorum

Section 234 of the CS Act sets out specific additional PBQ quorum requirements for certain matters relating to parole orders. The Bill proposes to omit these specific additional requirements except if the PBQ is to consider a prescribed prisoner's application for a parole order.[141] The Bill would add a prisoner mentioned in s 193A (that is, 'a prisoner captured under 'No Body, No Parole''[142]) as a prescribed prisoner.[143]

2.3.2 Prisoner's cooperation in identifying the victim's location

If a prisoner is serving a period of imprisonment for a homicide offence, and the body or remains of the victim of the offence have not been located, s 193A(2) of the CS Act provides that the PBQ must refuse to grant the prisoner's application for a parole order unless the board is satisfied the prisoner has cooperated satisfactorily in the investigation of the offence to identify the victim's location.

Section 193A(7)(a) of the CS Act provides that in deciding whether the PBQ is satisfied about the prisoner's cooperation under s193A(2), the board must have regard to—

(i) the report given by the commissioner about the prisoner's cooperation, and

(ii) any information the board has about the prisoner's capacity to give the cooperation, and

(iii) the transcript of any proceeding against the prisoner for the offence, including any relevant remarks made by the sentencing court.

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138 Queensland Corrective Services, correspondence dated 5 May 2020, attachment, pp 2-3.

139 Queensland Corrective Services, public briefing transcript, 30 March 2020, Brisbane, p 2.

140 Explanatory notes, pp 6-7.

141 Clause 37; explanatory notes, pp 7, 16.

142 Explanatory notes, p 16.

143 Clause 37; explanatory notes, pp 7, 16.

The Bill proposes to omit s 193A(7)(iii) and provide instead that the PBQ must have regard to the transcript, if the prisoner requests it, and any relevant remarks made by the sentencing court.[144]

2.3.3 Reconsidering decision to suspend or cancel parole order

The Bill would allow the PBQ to determine when a reconsidered decision to suspend or cancel a parole order takes effect.[145] It would do this by enabling the PBQ to stipulate the date it takes effect in the written notice given to the prisoner.[146]

The statement of compatibility describes the expected benefits of this proposed amendment:

> *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.*[147]

2.3.4 Immediate suspension of parole orders

Under s 208A of the CS Act, the chief executive may ask the PBQ to suspend a prisoner's parole order and issue a warrant for the prisoner's arrest. Section 208B sets out the process for considering the request.

The Bill proposes to amend s 208B to provide that the PBQ would no longer have to consider a request from the chief executive as a matter of urgency, instead consider it as soon as practicable. The Bill would also enable the PBQ to decide the priority for considering such requests, having regard to the seriousness of the nature of the grounds on which the requests are made.

The Bill would further amend s 208B to enable the PBQ to cancel a prisoner's parole order following an immediate suspension request from the chief executive.[148]

The Bill proposes to amend s 208C of the CS Act to provide that the PBQ may also cancel a parole order following a decision under s 208B by a prescribed board member.[149]

Section 211 of the CS Act sets out the effect of cancellation of a prisoner's parole order. A proposed note to be inserted in s 211(1) refers the reader to ss 208B(6) and 208C(2) for certain circumstances leading to cancellation.[150]

2.3.5 Automatic cancellation of order by further imprisonment

According to the explanatory notes, the Bill proposes to amend s 209 of the CS Act to:

> *… make it clear that unless subject to section 209(3), if a prisoner commits an offence, in Queensland or elsewhere, during the period of the parole order, and is sentenced to another period of imprisonment for this offence, the parole order is taken to be automatically cancelled on the date the offence occurred, whether or not the prisoner is sentenced to another period of imprisonment before or after the parole order has expired.*

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144 Clause 24.

145 Explanatory notes, p 7.

146 Clause 30; explanatory notes, pp 7, 15; *Corrective Services Act 2006*, s 208.

147 Statement of compatibility, p 16.

148 Clause 31; explanatory notes, p 15.

149 Clause 32; explanatory notes, p 15. 'Prescribed board member' means the president or a deputy president or a professional board member: *Corrective Services Act 2006*, schedule 4.

150 Clause 35.

Subclause (2) clarifies that subclause (1) applies whether or not the prisoner is sentenced to the other period of imprisonment before or after the parole order has expired. It also clarifies that the new subclause (1) is subject to the operation of [section] *205.*[151]

2.3.6 Acting appointments

The Bill would increase the period that the Governor in Council may appoint a qualified person to act in the office of a prescribed board member from three months to 12 months.[152]

Committee comment

The committee notes that the QLS stressed the need for there to be adequate funding available for those impacted by parole decisions, particularly where there is the prospect of life detention.[153] The committee concurs with the QLS' comments regarding resourcing.

2.4 Other amendments to the *Corrective Services Act 2006*

The Bill proposes to make a number of other amendments to the CS Act.

2.4.1 Monitoring devices

Section 267 of the CS Act allows the chief executive to require an offender to wear a device for monitoring the offender's location. The Bill proposes to amend the provision to also allow the chief executive to direct an offender to permit the installation of any device or equipment at a stated place, including, for example, the place where the offender resides.[154] It would make it an offence for an offender to remove or tamper with an electronic monitoring device or associated equipment without a reasonable excuse.[155]

The Bill would also amend s 200A of the CS Act to allow a corrective services officer to direct a prisoner subject to a parole order to permit the installation of any device or equipment at any stated place, not just the place where the prisoner resides.[156] In relation to the addition of a note to s 200A, the explanatory notes state:

Subclause (2) inserts a note to make it clear that the new offence provided for in section 267 (clause 40) also applies to an offender directed to wear a stated device or permit the installation of the device under this section.[157]

QCS explained the reason for the amendment to ss 267 and 200A:

… where we require an offender to wear a GPS monitoring device—and that is the type of device that we use for electronic monitoring currently—that device draws on a battery. The battery needs to be charged. As part of the offender having to wear that device, they also need to be able to recharge it. As part of the conditions attached to or the directions that we give for wearing the device, they also need to ensure that a charger is installed at their residence to enable the charging of the device. The reason for that is that if we did not give a direction around charging or the installation of that device then the offender could, once the battery is depleted, argue that they do not need to charge it again or did not have the means of charging it.[158]

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151 Explanatory notes, p 16. See also clause 33.

152 Clause 36; *Corrective Services Act 2006*, s 228; explanatory notes, pp 7, 16.

153 See submission 13, p 3.

154 Clause 40.

155 Clause 40.

156 Clause 28.

157 Explanatory notes, p 14.

158 Public briefing transcript, 30 March 2020, Brisbane, p 6.

2.4.2 Maximum security orders

The explanatory notes advise that the Bill proposes to allow 'flexibility in the management of prisoners subject to maximum security orders'.[159] The Bill would do this by amending the CS Act to:

- give the chief executive discretion to direct that a prisoner subject to a maximum security order may be accommodated in an area of the corrective services facility other than the maximum security unit[160]
- suspend a prisoner's maximum security order if the prisoner is transferred to another place and lawfully given into another person's custody.[161]

2.4.3 Requirement to carry copy of document

The Bill would remove the requirements in ss 66, 84, 194 and 199 of the CS Act for a prisoner to keep a copy of a particular document (for example, a leave of absence order) and produce it for inspection if requested by a corrective services officer or police officer.[162] The explanatory notes state that these requirements are 'redundant due to advances in technology and information sharing between agencies'.[163]

2.4.4 Arresting a prisoner unlawfully at large

The Bill proposes to provide 'clarity on the authority of a corrective services officer to execute a warrant and arrest a prisoner unlawfully at large'.[164]

2.4.5 Payments to prisoners

Section 311A provides for dealing with amounts received for a prisoner.

The Bill would amend the provision to insert two new circumstances in which the chief executive must return the amount to the donor:

- the donor of the amount is not an approved donor for the prisoner[165]
- the donor of the amount was released from a corrective services facility within one year before the chief executive received the amount.[166]

However, the proposed amendments provide discretion to the chief executive to receive an amount for a prisoner even if the donor of the amount was released from a corrective services facility within one year before the chief executive received the amount.[167]

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159 Explanatory notes, p 2.

160 Clause 4; *Corrective Services Act 2006*, s 60. The Bill would also make a consequential amendment to s 62: cl 5.

161 Clause 6; *Corrective Services Act 2006*, proposed new s 63A. The Bill would make consequential amendments to s 65: cl 7.

162 Clause 8, amending *Corrective Services Act 2006*, s 66; cl 13, amending *Corrective Services Act 2006*, s 84; cl 26, amending *Corrective Services Act 2006*, s 194; cl 27, amending *Corrective Services Act 2006*, s 199.

163 Explanatory notes, pp 11, 12, 14.

164 Explanatory notes, p 6. See also, cls 29, 31, 34, 53.

165 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 for payment into the prisoner's account in the prisoners trust fund: cl 49; *Corrective Services Acct 2006*, proposed new s 311A(5).

166 Clause 49; *Corrective Services Acct 2006*, proposed new s 311A(3).

167 Clause 49.

The purpose of the proposed amendment relating to approved donors is to 'limit the anonymous and/or illegitimate deposit of funds into prisoner trust accounts, including drug payments, standover tactics, and protection funds.'[168]

2.4.5.1 Stakeholder views and Queensland Corrective Services response

Sisters Inside did not support the proposal relating to donors released from corrective services facilities within one year before the chief executive received the amounts. The organisation considered that there is no reasonable justification for it.

> *… It discriminates against people who have been in prison by assuming that they are untrustworthy. It will also have a discriminatory effect on people in prison who have a criminalised family and may not have anyone else to send them money. For women in prison, often the money sent to them is essential to enable them to pay for phone calls and stationery to contact their children.*[169]

At the public hearing, Sisters Inside drew attention to the potentially greater negative impact of the proposed provisions on Aboriginal and Torres Strait Islander prisoners:

> *Our concerns are particularly for Aboriginal and Torres Strait Islander prisoners. When we look inside our prisons we see the mass incarceration of our First Nation people. In South-East Queensland it is probably around 30 per cent. The further north you go, in our prisons in North Queensland it is up to 80 per cent and 90 per cent. Aboriginal and Torres Strait Islander people are related very closely. They come from specific communities into our prisons. When you state that it would be unlawful to deposit money by someone who has been released from prison in the last 12 months into the account of a family member who is a serving prisoner, it discriminates against them because that could be the only source of financial support they have. …*[170]

Sisters Inside submitted that the Bill 'does not sufficiently circumscribe QCS' power to deny trust fund donors at will'.[171] The organisation held the view that, to ensure clarity and consistency, there should be a definition and test for determining whether a donor is approved or not.[172]

ATSILS submitted that the process of approving or disapproving donors should be fair and transparent, and the decision to deny payments into a prisoner's trust fund account should be subject to a merits review:

> *There is significant impact on the health and wellbeing of prisoners being able to access funds to make telephone calls or to buy toiletries. We note that there must be an appropriate balance between the desire to protect the security of the corrective services facility and the safety of prisoners and the protection of prisoners from unfair decisions which impact their wellbeing. In our view the approval or disapproval of donors of money should be done in a transparent and fair fashion and the exercise of a power to deny payments into prisoner trust fund accounts should be subject to a merits review.*[173]

In relation to the concerns set out in Sisters Inside's and ATSILS' submissions, QCS advised:

> *Safety is QCS's number one priority. This amendment is intended to support prisoner safety by preventing standover tactics and illicit payments moving through prisoner trust accounts. The*

168 Statement of compatibility, p 14.

169 Submission 12, p 2.

170 Public hearing transcript, Brisbane, 11 May 2020, p 7.

171 Submission 12, p 2.

172 Submission 12, p 2.

173 Submission 4, p 5.

chief executive's discretion to accept or refuse deposits into a prisoner's trust account will be based on intelligence advice and other relevant information.

QCS anticipates that prisoners will be informed in writing of a decision to refuse money into their trust account and will be afforded a 'show cause' or equivalent right of review. QCS will continue to refer any suspicious payments into a prisoner's trust account to the QPS.[174]

2.4.6 Complaint to Human Rights Commissioner

The Bill proposes to omit s 319F of the CS Act which provides that an offender must make a complaint to an official visitor about an alleged contravention of the *Anti-Discrimination Act 1991* (AD Act) and wait one month before being permitted to make a complaint to the Human Rights Commissioner under the AD Act.[175]

2.4.6.1 Stakeholder views and Queensland Corrective Services response

The QHRC was strongly supportive of the proposed omission of s 319F as it reflects previous recommendations of the QHRC.[176]

… In our 2019 Women in Prisons *report the Commission noted an area where prisoners are denied the same human rights as other people in Queensland is their ability to make a complaint of discrimination under the* Anti-Discrimination Act 1991*. Prisoners must currently satisfy a series of pre-conditions before they are entitled to make a discrimination complaint against correctional centre staff or the State. This is a significant hurdle for prisoners, and inhibits and delays the independent oversight of such complaints.*[177]

The QHRC has also recommended the repeal of s 319E but considers that 'any simplification of the current system is welcome'.[178]

QCS noted the QHRC's comments and added: 'QCS is working to implement the highest standards of transparency and accountability. This amendment supports increased transparency in line with obligations under the *Human Rights Act 2019*'.[179]

2.4.7 Early release

Section 110 of the CS Act gives the chief executive discretion to order the discharge of a prisoner within seven days immediately before the person's discharge day.[180] The example given in the section is:

The person's discharge day falls on a Friday but transport to the person's community is only available on a Wednesday. The person may be discharged on the Wednesday before the discharge day.

The Bill proposes to insert a similar provision (proposed new s 110A) which would allow the chief to order that a prisoner be released from custody within seven days immediately before the day on which the prisoner is to be released on parole. It would provide that on release from custody and until the

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174 Queensland Corrective Services, correspondence dated 5 May 2020, attachment, p 11.

175 Clause 50.

176 Submission 9, p 2.

177 Submission 9, p 2.

178 Submission 9, p 3.

179 Queensland Corrective Services, correspondence dated 5 May 2020, attachment, p 13.

180 The prisoner must have served at least half of their period of imprisonment: *Corrective Services Act 2006*, s 110(1)(b). The provision also applies to a person who has been sentenced to a term of imprisonment and is in the commissioner's custody. 'Discharge', for either of the following persons, means unconditionally release the person from lawful custody — (a) a prisoner; (b) a person mentioned in section 110(1)(a)(ii): *Corrective Services Act 2006*, schedule 4.

parole order starts, the prisoner is subject to the conditions of the parole order as if the parole order had started on the day the prisoner was released from custody.[181]

2.4.8 Release day

Section 111 of the CS Act gives the chief executive discretion to permit a prisoner who has made an application to remain in a corrective services facility after the prisoner's discharge day.

The Bill would extend the provision to include allowing a prisoner to apply to remain in a corrective services facility after their release day. 'Release day' is defined in the proposed amendments as the day on which a prisoner is to be released on parole.[182]

2.4.9 Publication of administrative procedures

The Bill proposes to increase the circumstances in which the chief executive need not publish an administrative procedure. It would add that an administrative procedure need not be published if publication may compromise the safety or effective management of offenders.[183]

2.4.10 Declaration of emergency

The Bill proposes to amend s 268 of the CS Act to clarify that the chief executive, with the Minister's approval, may declare that an emergency exists if the chief executive reasonably believes a situation exists that threatens, or is likely to threaten, the security or good order of a prison, or the safety of a prisoner or another person in a prison.[184] The explanatory notes state that the proposed amendments 'recognise that an event such as a natural disaster may threaten a prison while not occurring specifically at a prison'.[185]

The Bill would also enable the chief executive to declare a place to be a corrective services facility (a 'temporary corrective services facility') for the period the declaration of the emergency is in force, and to transfer the prisoners into and out of another corrective services facility, including a temporary corrective services facility.[186] According to the explanatory notes, the amendment 'recognises the potential need during particular emergencies to evacuate a prison to an appropriate alternative location, for the safety of prisoners and staff'.[187]

2.4.10.1 Stakeholder views and Queensland Corrective Services response

The QHRC recommended that the Bill should amend s 268 to include an obligation to publish emergency declarations online or in the gazette when they are made, thus providing greater transparency for the community about the use of the power. The QHRC contrasted the proposed provision, which does not include any obligation to publish, with the recently passed powers of the Chief Health Officer (CHO) which oblige the CHO to publish directions on the department's website or in the gazette.

The QHRC noted that the existing power under s 268 'has been used recently by QCS to respond to the COVID-19 pandemic including instituting prison lockdowns and quarantine procedures'.[188] The QHRC

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181 Clause 15. 'Released' means released on parole: cl 53.

182 Clause 16.

183 Clause 38; *Corrective Services Act 2006*, s 265.

184 Clause 41; explanatory notes, p 17.

185 Explanatory notes, p 17.

186 Clause 41; explanatory notes, p 18.

187 Explanatory notes, p 18.

188 Submission 9, p 8.

submitted that it 'is grateful for QCS' engagement with the Commission and the broader community in communicating these changes'.[189]

QCS noted the QHRC's recommendation and advised:

> *QCS is committed to the highest standards of transparency and accountability.*
>
> *While there is no legislative requirement for a declaration of emergency made under section 268 of the CS Act to be communicated publicly on the QCS website, QCS will endeavour to provide this information to the public where it is appropriate, and as soon as reasonably practicable.*
>
> *During the COVID-19 public health emergency, QCS initially released chief executive declarations of emergency issued under section 268 via media statements. QCS has now published all declarations on its website.*[190]

2.4.11 Prisoners' health

The Bill proposes to amend s 266 of the CS Act to clarify that the chief executive must establish 'or facilitate' certain programs or services. It would also replace the reference to 'medical' programs or services in the provision with programs or services 'to support the health and wellbeing of prisoners'.[191]

The Bill also proposes to remove redundant provisions relating to the appointment of a doctor for each prison.[192]

According to the explanatory notes, the amendments recognise that:

> *… since 2008, and in accordance with current Administrative Arrangements Orders, Queensland Health has been responsible for the delivery of prisoner health services in all publicly operated corrective services facilities.*[193]

2.4.11.1 Stakeholder views and Queensland Corrective Services response

ATSILS supported the 'broader legislative language that provides that the Chief Executive must establish or facilitate programs or services … to support the health and wellbeing of prisoners'.[194] The organisation submitted that the proposed change 'recognises that while the responsibility remains with the Chief Executive, the delivery of prisoner health services is carried out by Queensland Health in all publicly operated corrective health facilities'.[195]

With respect to ATSILS' comments regarding prisoners' health, QCS stated:

> *QCS acknowledges that prisoners and offenders often have poorer health indicators than the general population, including disproportionately higher rates of problematic substance use, mental health issues and disability needs. Prisoner and offender access to quality healthcare has implications for the health of the wider community and is often linked to increased re-offending and anti-social behaviour. QCS is actively working with relevant stakeholders to improve information-sharing, identification and management of prisoners with complex needs.*[196]

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189 Submission 9, p 8.

190 Queensland Corrective Services, correspondence dated 5 May 2020, attachment, pp 9-10.

191 Clause 39; explanatory notes, p 17.

192 Clause 43.

193 Explanatory notes, pp 17, 18.

194 Submission 4, p 4.

195 Submission 4, p 4.

196 Queensland Corrective Services, correspondence dated 5 May 2020, attachment, p 10.

2.4.12 Law enforcement agency

The Bill proposes to amend s 193E to take account of the proposed new definition of 'law enforcement agency' in schedule 4 of the CS Act.[197]

2.5 Amendment of the Criminal Code

2.5.1 Assault of a corrective services officer

The Criminal Code provides that a prisoner who unlawfully assaults a working corrective services officer is guilty of a crime, and is liable to imprisonment for seven years.[198]

The Bill proposes to amend the Criminal Code to provide that a maximum penalty of 14 years imprisonment applies if a prisoner assaults a working corrective services officer in any the following circumstances:

- the prisoner bites or spits on the corrective services officer or throws at, or in any way applies to, the corrective services officer a bodily fluid or faeces
- the prisoner causes bodily harm to the corrective services officer
- the prisoner is, or pretends to be, armed with a dangerous or offensive weapon or instrument.

In all other circumstances of an unlawful assault of a working corrective services officer, the maximum penalty is seven years imprisonment.[199]

QCS advised that the amendment 'addresses an ambiguity in the Criminal Code which was the subject of a petition to parliament by the Together union in October last year'.[200]

2.5.1.1 Stakeholder views and Queensland Corrective Services response

The QHRC submitted that the proposed increase to the penalty for assaulting QCS staff may be premature given that the Queensland Sentencing Advisory Council (QSAC) is currently reviewing penalties for assaults on police and other frontline emergency service workers, corrective services officers and other public officers.[201] Sisters Inside similarly suggested that it would be prudent to wait until the QSAC's report is tabled.[202] The QHRC raised the possibility that the review may find that increased maximum penalties are not necessarily effective in reducing such assaults.[203] The QSAC is due to report back to the Attorney-General by 31 August 2020.[204]

Sisters Inside submitted that 'the prison environment and QCS protocols create circumstances that are likely to precipitate s 340 violating behaviours'.[205] Sisters Inside elaborated:

> *In the majority of instances, biting, spitting and throwing bodily fluid or faeces only occurs when a woman is experiencing an acute psychosocial or cognitive disability. This behaviour is most*

197 Clauses 25, 53.

198 Criminal Code, s 340(2).

199 Clause 55.

200 Public briefing transcript, 30 March 2020, Brisbane, p 2.

201 Submission 9, p 7. See also Queensland Sentencing Advisory Council, 'Penalties for assaults on public officers', https://www.sentencingcouncil.qld.gov.au/terms-of-reference/assault-public-officers.

202 Public hearing transcript, Brisbane, 11 May 2020, p 7.

203 Submission 9, p 7.

204 Queensland Sentencing Advisory Council, 'Penalties for assaults on public officers', https://www.sentencingcouncil.qld.gov.au/terms-of-reference/assault-public-officers.

205 Submission 12, p 2.

likely to happen when a woman is in, or being moved to, the detention or safety unit, because this is the protocol for managing women in crisis in prison.

Women who are at risk of self-harming, deemed a risk to others, or whom other prisoners have assaulted can be placed on safety orders in the 'safety unit' for up to a month (consecutive orders are common). In 2018, Human Rights Watch found that prisoners with psychosocial or cognitive disabilities are disproportionately represented in all solitary confinement regimes (maximum security units, detention or punishment units, and crisis, observation, or safe units) across the 14 Australian prisons they visited, including Queensland prisons.

While in the detention/safety unit a woman is isolated for 22 hours a day with no activities. This claustrophobic, unhealthy environment further strains interactions with staff and health professionals.

We have seen footage of women in the detention/safety unit being pinned to the ground by four or more staff, restrained and spit-hooded. These safety protocols are stressful and disempowering for women prisoners, particularly those with a history of sexual or physical violence. We submit that these protocols exacerbate mental health distress and are likely to contribute to a woman biting, spitting or throwing bodily fluids because of the extreme distress caused.[206]

Sisters Inside recommended that 'psychosocial and cognitive disabilities be explicitly taken into account when charging or sentencing a person under s 340'.[207] The organisation further recommended that personal protective equipment (PPE) be provided to QCS staff and if the PPE prevents the biting, spitting or bodily fluids from making contact with the staff member, the woman should not be charged under s 340.[208]

QCS stated that the proposed amendment to increase the maximum penalty for certain serious assaults of QCS officers is warranted:

Corrective services officers deserve recognition and respect for the important work they do every day to keep Queensland safe. There is no justifiable reason for the legislative framework to provide less protection to corrective services officers than for other public service officers. A prisoner who assaults an officer should be liable to receive the same penalty as an offender who assaults any other public service officer.

Legislative clarity is necessary to provide a strong deterrent to this type of behaviour (biting, spitting, throwing bodily fluid or faeces, being armed with a dangerous or offensive weapon) occurring in the custodial environment and give reassurance to corrective services officers of the importance of their health and safety.

This amendment does not remove any element of judicial discretion or the requirement of the court to consider the perpetrator's culpability.[209]

Committee comment

The committee acknowledges the important work performed by QCS officers and that a high penalty may provide a deterrent to prisoners to engage in certain types of behaviour. The committee notes, however, that the QSAC is currently undertaking an inquiry into the penalties for assaults on police and other frontline emergency service workers, corrective services officers and other public officers in response to terms of reference issued to the Council by the Attorney-General and Minister for Justice, the Honourable Yvette D'Ath MP. The QSAC is due to report to the Attorney-General by 31 August

206 Submission 12, pp 2-3. Footnote in original omitted.

207 Submission 12, p 3.

208 Submission 12, p 3.

209 Queensland Corrective Services, correspondence dated 5 May 2020, attachment, p 16.

2020. The committee is of the view that there would be merit in considering amendment to s 340 of the Criminal Code after the QSAC has reported.

2.6 Amendment of the *Weapons Act 1990* and the Weapons Regulation 2016

The Bill proposes to create a permanent firearms amnesty and to amend the meaning of 'reasonable excuse' for the possession of replica firearms.

2.6.1 Permanent firearms amnesty

In 2019, the MCPEM resolved to establish a national permanent firearms amnesty.[210] As noted by QCS, the aim of a permanent firearms amnesty is 'to reduce the number of unregistered firearms in the community by making it easier for people to hand them in'.[211]

The Bill would give effect to the MCPEM resolution by amending the *Weapons Act 1990* (Weapons Act) to provide that a person who unlawfully possesses a firearm or a prescribed thing cannot be prosecuted for an offence against the Weapons Act for possession of it if the person is taking it to an approved licensed dealer or a police station and the person has notified the dealer or police station in advance.[212]

If a firearm is handed in to a licensed dealer during the amnesty, the dealer must surrender the firearm to a police officer.[213]

2.6.1.1 Stakeholder views and Queensland Police Service response

Stakeholders expressed support for the proposed permanent firearms amnesty.[214] Firearm Owners United (FOU), for example, submitted that it 'is a sensible proposal and will undoubtedly help reduce the problem posed by illicit firearms in Queensland'.[215]

The Alannah & Madeline Foundation (A&MF) submitted that '[t]he removal of illegal or unregistered firearms from the community is critical to ensure that all members of the community are safe from intended or accidental harm from firearms'.[216] If the Bill is passed, the A&MF recommended that the QPS Weapons Licensing Branch write regularly to all firearm licence holders reminding them of the amnesty.[217]

The A&MF advised that in the last national firearms amnesty in 2017, 76% of the 16,375 firearms and 107 parts and accessories handed in in Queensland were surrendered to licensed firearms dealers.[218]

The Shooters Union Queensland Pty Ltd (Shooters Union) and the FDAQ supported the establishment of a permanent amnesty but recommended an amendment to the Bill to enable dealers to retain the surrendered weapons so that there is an incentive for dealers to participate in the program.[219] The FDAQ explained:

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210 Explanatory notes, p 1.

211 Public briefing transcript, 30 March 2020, Brisbane, p 3.

212 Clauses 63, 68. 'Prescribed thing' means a magazine for a weapon or a category R weapon that is not a firearm or another thing prescribed by regulation: cl 63.

213 Clause 63, proposed new s 168B(4). The maximum penalty for the offence is 10 penalty units ($1,334.50).

214 See for example, Firearm Owners United, submission 6, p 1; Alannah & Madeline Foundation, submission 8, p 2; Shooters Union Queensland, submission 10, p 7; Firearm Dealers Association – Qld, submission 11, p 5.

215 Submission 6, p 1.

216 Submission 8, p 2.

217 Submission 8, p 2.

218 Submission 8, p 2.

219 Submission 10, p 7; submission 11, p 5.

… the requirement in section 168B(4) to surrender the firearm or prescribed thing to a police officer offers no incentive for licensed dealers to accept amnesty firearms. The previous two amnesties in Queensland allowed licensed dealers to retain firearms anonymously surrendered. This provides a possible income stream for dealers who are otherwise not compensated for accepting illegal or unwanted firearms where the person surrendering fails to provide personal details. This is an extremely valuable service both to the community and to police.

Police would still have the ability of investigation if a firearm is handed in anonymously, through the licensed dealer network. The hugely documented success of the last two amnesties in Queensland is a testament to how crucial it is to allow people to anonymously hand in firearms that can be kept by dealers to recoup staff costs …

Why would dealers accept amnesty firearms anonymously if they have to surrender them to police officers and under s168C, those firearms then become the property of the State?. This would result in dealers just referring those customers who don't want to give their details, directly to the Police Station to save on handling costs, and as past experience indicates, less firearms would be handed in/registered.[220]

In its response to issues raised by submitters, the QPS explained how the proposed permanent amnesty scheme would operate:

Under the proposed scheme a dealer will only be required to hand a relinquished firearm to police if it is handed over anonymously. If, however, a dealer receives a firearm from a licensed firearm holder, they may apply to the QPS to have ownership of the firearm transferred to themselves.[221]

The QPS advised that the requirement for dealers to surrender firearms handed in anonymously 'is necessary in order to eliminate any risk of criminals taking advantage of the scheme for the purpose of laundering firearms'.[222] The QPS elaborated on why firearm laundering is a concern for the proposed permanent amnesty when it was not considered to be an issue in previous amnesties in Queensland:

Previous firearms amnesties have functioned on a short-term basis only. The last amnesty in 2017, for example, ran for approximately 12 weeks. Illicit activity, such as laundering of firearms, would be unlikely to arise over such a short time. However, a permanent scheme presents heightened risks of such behaviour developing if appropriate safeguards were not in place. The provision is necessary to guard against any such risks.[223]

2.6.2 Replica firearms

The Weapons Act defines a replica as a reasonable facsimile or copy of a weapon, even if it is not capable of discharging a projectile or substance, or a category A, B or C weapon that has been rendered permanently inoperable, or a hand grenade that is inert.[224] Any replica or facsimile of a machine gun or submachine gun that is not a toy is defined as a category R weapon.[225]

The QPS has proposed that the Weapons Categories Regulation 1997 (Weapons Categories Regulation) be amended so that replicas of firearms are categorised as 'restricted items'.[226] While this amendment

220 Submission 11, p 5.

221 Queensland Corrective Services, correspondence dated 5 May 2020, attachment, p 26.

222 Queensland Corrective Services, correspondence dated 5 May 2020, attachment, p 26.

223 Queensland Corrective Services, correspondence dated 5 May 2020, attachment, p 26.

224 *Weapons Act 1990*, s 6A(1).

225 Weapons Categories Regulation 1997, s 8(1)(a).

226 Explanatory notes, p 4; Hon Mark Ryan MP, Minister for Police and Minister for Corrective Services, Record of Proceedings, 17 March 2020, p 622; Queensland Corrective Services, public briefing transcript, Brisbane, 30 March 2020, p 3.

is not in the Bill,[227] the Minister spoke of it in his Introductory Speech, advising that the proposed amendments to the regulation 'will align with the consultation that was undertaken with stakeholders' and that 'there will be no ban on replicas and gel blasters under these changes'.[228]

Section 67 of the Weapons Act provides that it is an offence to possess or acquire a restricted item without a reasonable excuse.

In summary, proposed new s 67(4) provides that it is a reasonable excuse for a person to possess or acquire a restricted item that is a replica of a firearm if:

- both of the following apply:
    - the person is a member of an association that provides recreational activities involving replicas of firearms and the activities are conducted in places not able to be seen from a public place
    - the person's reason for possession or acquisition of the replica is to participate in the recreational activities, or
- both of the following apply:
    - the person is the holder of a collector's licence
    - the person's reason for possession or acquisition of the replica is for it to be part of the holder's collection.

Proposed new s 67(5) provides that is a reasonable excuse for a person to possess or acquire a weapon that is permanently inoperable and would be, if it were not permanently inoperable, a category A, B or C weapon if:

- the person is the holder of a collector's licence, and
- the person's reason for possession or acquisition of the weapon is for it to be part of the holder's collection of weapons.

Proposed new s 67(6) provides that the circumstances identified in s 67(3) to (5) do not limit what may be a reasonable excuse.[229]

According to the explanatory notes:

> *… Whether something is or is not a reasonable excuse will depend on all the circumstances at the time. It is essentially whether a reasonable person would consider it a reasonable excuse to possess the item. Ultimately, whether something is or is not a reasonable excuse is a matter to be determined by a court.*
>
> *The amendments contained in the Bill are aimed at clarifying certain circumstances that constitute a reasonable excuse, without limiting what other circumstances may also be a reasonable excuse.*[230]

2.6.2.1 Stakeholder views and Queensland Police Service response

The A&MF expressed support for the proposed reclassification of replica firearms as restricted items and in principle support for the proposed amendments relating to 'reasonable excuse' in s 67 of the

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227 Explanatory notes, p 4.

228 Hon Mark Ryan MP, Minister for Police and Minister for Corrective Services, Record of Proceedings, 17 March 2020, p 622.

229 Clause 62.

230 Explanatory notes, p 4.

Weapons Act[231] but a number of other stakeholders raised concerns about the proposed amendments relating to the changes.[232]

Proposed amendments to the Weapons Categories Regulation 1997

The Shooters Union held the view that the proposed amendments to the Weapons Categories Regulation should have been made available so that stakeholders could examine the amendments in the Bill in light of the proposed changes.[233]

The Queensland Living History Federation (QLHF) also expressed concern that the proposed amendment to the Weapons Categories Regulation was not available.[234] It submitted that 'all relevant materials should have been circulated to stakeholders so that they could meaningfully and fully participate in the process'.[235]

The Shooters Union opposed the inclusion of replicas in the definition of restricted items. It submitted that 'the inclusion of replicas within the category of restricted items could quite conceivably include what by any other standard are regarded as toys'.[236] The Shooters Union further submitted:

> *… There is no evidence that replicas are a threat to public safety (as opposed to causing Police some inconvenience) or are such a threat that cannot be adequately addressed by existing legislation. Threatening behaviour and using any object to cause fear are already criminal offences. The addition of replicas in the definition of restricted items is, therefore, unnecessary and should be deleted.*[237]

The FDAQ submitted that it understood that gel blasters would be included in the definition of restricted items but it did not consider the inclusion of certain replicas and deactivated firearms to be warranted.

> *We are concerned that the definition of "restricted items" will include replicas which are currently unrestricted and are, in many cases, regarded as toys. We understand that gel blasters are to be included as restricted items because of the increase in community incidents involving gel blasters, however the inclusion of replicas of category A, B, C, D, H replicas and A, B & C deactivated firearms as restricted items is not supported by any increase in community incidents, and certainly not in a volume that requires their inclusion as restricted items.*[238]

In response to this, the QPS advised:

> *The broader proposed QPS replica firearms policy, which incorporates making all replica firearms restricted items, responds to a dramatic increase in incidents involving the inappropriate use of replica firearms in the community. Such incidents place a substantial drain on policing resources and pose an increased risk of lethal force being used against a person in possession of such an item if police mistake it for an actual firearm.*[239]

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231 Submission 8, p 3.

232 See for example, Robert Finlay, submission 1, pp 1-3; Keith York, submission 5, p 1; Firearm Owners United, submission 6, pp 1-2; Queensland Living History Federation, submission 7, pp 1-34; Shooters Union Queensland, submission 10, pp 4-6; Firearm Dealers Association – Qld, submission 11, pp 4-5.

233 Submission 10, p 4.

234 Submission 7, p 7.

235 Submission 7, p 7.

236 Submission 10, p 5.

237 Submission 10, p 5.

238 Submission 11, p 4.

239 Queensland Corrective Services, correspondence dated 5 May 2020, attachment, pp 24-25.

Gel blasters

A gel blaster 'is like a replica firearm'.[240] Gel blasters come in the form of different weapons including semi or fully automatic machine guns, and handguns. They fire a water based pellet that breaks when it hits the skin.[241]

The QPS advised that some groups in the community use gel blasters responsibly for recreational purposes, but that from mid-December 2017 to mid-March 2020, there were 352 incidents involving gel blasters, with 85 offences directly involving them.[242] The QPS provided the following examples of incidents:

> *… where people who have extensive criminal history are found in possession of these weapons, people firing these gel blasters on members of the public without their lawful permission, and people displaying these gel blasters in public and causing members of the public fear.*[243]

The Shooters Union contended that if s 67 is intended to regulate gel blasters, 'they should be mentioned by name (and defined) and replicas should be specifically excluded'.[244]

Another submitter, Mr York, considered that gel blasters should not be subject to any type of licence.[245] FOU held a similar view. It believed that 'more focus should be given to developing and promoting a public education campaign to prevent their misuse in public places, rather than the proposed restrictions.'[246] FOU believed that the requirement to belong to an association does not contribute to public safety but benefits the associations which offer events involving gel blasters.[247]

FOU was concerned that the amendments proposed in the Bill may result in owners of gel blasters having to have secure storage 'for what is essentially a toy'.[248] FOU proffered the example of a multi-resident household in which one person owns a gel blaster and has a reasonable excuse to possess it, but another person does not and could end up in possession of it if the item is not stored in a safe.[249]

The QPS advised:

> *The QPS acknowledges that some persons, who may have a reasonable excuse to continue possessing deactivated category A, B or C firearms or other replica firearms, may currently store them in ways other than that stipulated by regulation. The* Weapons Regulation 2016 *requires that a restricted item be stored in a locked container.*
>
> *As part of the broader replica firearms policy, if approved, the* Weapons Regulation 2016 *will provide for the ability of approved officers to authorise an alternative means of storage, if it is at least as secure as that stipulated in regulation. As such, the QPS Weapons Licensing Branch will be authorised to approve alternative means of storage for replica firearms, including deactivated category A, B and C firearms, if an equitable level of security is met.*[250]
>
> *In relation to gel blasters, the submission suggests the focus be placed on community awareness campaigns. The QPS advises that a community awareness campaign was launched state-wide in*

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240 Queensland Police Service, public briefing transcript, 30 March 2020, Brisbane, p 4.

241 Queensland Police Service, public briefing transcript, 30 March 2020, Brisbane, p 4.

242 Queensland Police Service, public briefing transcript, 30 March 2020, Brisbane, p 4.

243 Queensland Police Service, public briefing transcript, 30 March 2020, Brisbane, p 4.

244 Submission 10, p 5.

245 Submission 5, p 1.

246 Submission 6, p 2.

247 Submission 6, p 2.

248 Submission 6, p 2.

249 Submission 6, p 2.

250 Queensland Corrective Services, correspondence dated 5 May 2020, attachment, pp 19-20.

late 2019 through QPS Crime Prevention officers. These officers are equipped to deliver an awareness package to a variety of community networks including, Senior Citizen Groups, Neighbourhood Watch, the Safer Schoolies Initiative and organisers for Gel Blaster events. A flyer has also been distributed to gel blaster retailers and other stakeholders promoting the safe use and carriage of gel blasters.

Offences for using replica firearms in public have long been in existence and are enforced by police. Unfortunately, these offences have not proved sufficient deterrence to prevent instances of the inappropriate use of these items in public occurring.[251]

Airsoft

The FDAQ recommended that Airsoft be included as restricted items because 'they are essentially the same as gel blasters and are used in the same setting'.[252]

Regulation of Category A, B and C weapons

FOU submitted that it understood that 'QPS has had increasing concerns with regards to call outs involving replica firearms' but that it appears that 'deactivated firearms have been grouped together with concerns nearly entirely driven by the recent proliferation of "gel ball blasters"'.[253]

The QPS responded:

The QPS acknowledges Firearms Owners United concerns about deactivated category A, B and C firearms. However, the issues caused by replica firearms, relate to their appearance and not their functionality. It is the overall appearance of an item in resembling a functioning firearm that can lead to public alarm, not the way it functions, or what it is constructed of. Similarly, police responses to calls for assistance regarding a replica firearm will, of necessity, be based on its appearance and not on its construction.

As such, any effective policy regarding replica firearms must have regard to the appearance of an item only and not its intended use or functionality.

The policy also reflects the current definition of 'replica' in the Weapons Act 1990 *which includes '*a category A, B, or C weapon that has been rendered permanently inoperable*'.*[254]

Some stakeholders were concerned that proposed new s 67(5) indicates that a collector's licence would be required for non-firing replica weapons of category A, B or C,[255] which currently do not require a licence.[256]

FOU noted that collectors licenses are 'relatively uncommon', comprising less than one per cent of all licenses issued under the Weapons Act. It noted further that onerous requirements are placed on holders of a collector's licence, including using an official registry book to document their firearms, and maintaining an association membership. FOU commented that that a collector's licence is not suitable for 'someone who merely desires to have a deactivated .303 SMLE to use as a mantel piece'.[257]

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251 Queensland Corrective Services, correspondence dated 5 May 2020, attachment, pp 19-20.

252 Submission 11, p 4.

253 Submission 6, p 1.

254 Queensland Corrective Services, correspondence dated 5 May 2020, attachment, pp 18-19.

255 See for example, Queensland Living History Federation, submission 7, p 11; Firearm Dealers Association – Qld, submission 11, p 5.

256 Queensland Police Service, 'Replica, temporary or permanently inoperable weapons', https://www.police.qld.gov.au/weapon-licensing/replica-temporary-and-permanently-inoperable-weapons. See also, Queensland Living History Federation, submission 7, p 11; Shooters Union Queensland, submission 10, p 6.

257 Submission 6, pp 1-2.

FOU believed there are a substantial number of inoperable weapons that would be category A, B or C weapons.

> *… there are an unknown number of deactivated Category A, B & C firearms within the community. Given the popularity of these items as 'wall hangers' and the unrestricted way in which they have been sold over the years we believe there could be a substantial number in homes around Queensland.*[258]

FOU advised that its concerns would be alleviated 'if the bill was amended to clarify that this type of harmless decorative use of deactivated firearms constituted a "reasonable excuse" for possession'[259] or, alternatively, that the offence of possession of a restricted replica firearm without a reasonable execute only apply to possession in a public place.[260]

The QPS acknowledged that not all owners of deactivated category A, B or C weapons will hold a collector's licence. The QPS added:

> *… For other owners whether a reasonable excuse exists to possess the item will be determined having regard to all relevant circumstances. It is not practicable to state in legislation all situations that may be regarded as a reasonable excuse.*[261]

The Shooters Union was of the view that if it is intended that an additional category of firearms licence is to be created, it 'must be done directly and on sound reasons of policy'.[262]

The QPS made it clear that its intention is not to establish a new type of licence:

> *... No new licences are proposed as part of this policy. Category A, B and C firearms that have been made inoperable currently defined as replicas of firearms under the Act. The proposal would see this continue.*[263]

The amendments do not cater for historical re-enactment

Some stakeholders expressed concern that the proposed amendments to the meaning of 'reasonable excuse' do not appear to cater for people using replica weapons in historical re-enactments.[264]

In its submission, the QLHF described historical re-enactment:

> *Historical re-enactment is an educational or entertainment activity in which mainly amateur hobbyists and history enthusiasts wear uniforms and costumes and recreate aspects of a historical event or period. This may be as narrow as a specific moment from a battle, or as broad as aspects from an entire period, such as the First World War.*
>
> *While historical re-enactors are generally amateurs, some participants are members of the armed forces or historians. Historical re-enactors do research on the costume, uniform, and other gear they will carry or use. Re-enactors buy the apparel or items they need from specialty suppliers or make items themselves. Historical re-enacting covers a wide span of history, from the Roman Empire to the Dark Ages, through the Medieval and Renaissance eras to the World Wars and the Vietnam War. …*[265]

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258 Submission 6, p 2.

259 Submission 6, p 2.

260 Submission 6, p 2.

261 Queensland Corrective Services, correspondence dated 5 May 2020, attachment, p 19.

262 Submission 10, p 6.

263 Queensland Corrective Services, correspondence dated 5 May 2020, attachment, p 24.

264 See for example, Robert Finlay, submission 1; Keith York, submission 5; Queensland Living History Federation, submission 7.

265 Submission 7, p 2.

With respect to use of weapons by re-enactors, the QLHF stated:

> *Many of our members own firearms and other weapons under licences granted under the* Weapons Act 1990 *(Qld), and they do so for a variety of reasons. Some collect historical or antique weapons simply as an aspect of their interest in a period of history. Sometimes they display those weapons at events so that members of the public can view (but not handle) examples of weapons from a particular era. Management and handling of all weapons at events involving the public are subject to strict rules. Others use their weapons (either blank fire or inert replicas) in mock skirmishes at public events to demonstrate field tactics. Others use their weapons to be able to participate in parades, or other ceremonial or commemorative events: for example, ANZAC Day events, salutes and events hosted by RSLs and charities.*[266]

The QLHF was concerned that the amendments aimed at regulating gel blasters would impact on all users of replicas and result in unforeseen consequences.[267] It contended that re-enactors would face greater regulation of replicas and licensing requirements than those who use gel blasters.[268]

The QLHF submitted that re-enactors would not be able to benefit from the proposed addition of new s 67(4) because re-enactments are carried out in public, at events such as on ANZAC Day. It therefore proposed amendments to s 67 to cater for re-enactors.[269] The Shooters Union similarly suggested that the legislation should include a provision for the granting of an exemption for public and historical displays, including re-enactments.[270]

The QLHF sought greater clarity in the Bill for historical re-enactors than that provided by proposed new s 67(6). The QLHF contended that '[l]ack of clarity and specificity in the legislation will lead to confusion, cost and unnecessary process for owners of replica weapons, the police and the courts'.[271] The QLHF stressed the need for making it clear that re-enactors can use replicas in public events.[272] Mr Finlay recommended that s 67 be amended to include 'training and practices by bona fide re-enactment groups' and '[p]ublic events attended by bona fide re-enactment groups advised under the Weapons act and its regulations (MRD & MR5)'.[273]

Regarding historical re-enactments, the QPS advised:

> *The amendments to section 67 of the* Weapons Act 1990 *are aimed at clarifying two, specific circumstances that are to be considered a 'reasonable excuse' to possess a replica firearm. They are drafted so as to not limit what other circumstances may also be a reasonable excuse.*
>
> *Whether something is or is not a reasonable excuse will depend on all circumstances at the time and is a matter ultimately to be determined by a court.*
>
> *Possession of an item for the purpose of historical re-enactment or by a museum may be considered to be a 'reasonable excuse' under the current wording of section 67 of the Act.*
>
> *It is not practicable, nor in keeping with the spirit of the legislation, to provide in legislation for all circumstances that may be a 'reasonable excuse'.*
>
> *'Reasonable excuse' is a commonly used term in legislation and it is one which police, and courts have extensive experience applying and making determinations upon. Attempting to fully outline*

266 Submission 7, pp 2-3.

267 Submission 7, p 6.

268 Submission 7, p 8.

269 Submission 7, p 9. See also submission 7, p 3.

270 Submission 10, p 6.

271 Submission 7, p 11.

272 Submission 7, p 11.

273 Submission 1, p 2.

> *the parameters of the term in legislation may be deemed to impinge on the ability of a court to determine the matter.*[274]

The QPS added:

> *… If approved, the proposed QPS replica firearm policy would require separate regulatory amendments to regulations not contained in the present Bill.*
>
> *The QPS can advise that the proposed policy would involve* all *replicas of firearms, being classified as 'restricted item' including those which are currently category R weapons.*
>
> *The QPS appreciates the perceived inequity identified by Mr York about current licensing requirements for historical and military re-enactors. The owners of certain replica firearms are required to obtain a licence, however, owners of others (such as gel blasters) have no restrictions. The QPS advise that the proposed broader policy, would serve to address this imbalance and see all replica firearms treated the same way.*[275]

Ideally, however, the QLHF sought the introduction of a re-enactor's licence because currently no licence 'appropriately applies' to re-enactment activities.[276] The QLHF advised that the majority of its concerns with the Bill would be addressed by the introduction of such a licence.[277] It submitted that if a class of licence for re-enactors were introduced, an amendment could be made to s 67 to include possession of a re-enactor's licence as a reasonable excuse.[278]

The QPS advised that the QLHF's suggestion that a licence for re-enactors be included in the Weapons Act is outside the scope of the Bill. The QPS added:

> *The QPS acknowledges that the majority of persons involved in historical re-enactment use replica firearms responsibly. However, any policy about replica firearms must focus on the appearance of an item and not its intended use. The issues caused by replica firearms relate to their appearance and not their functionality. It is the overall appearance of an item in resembling a functioning firearm that can lead to public alarm, not the way it functions, or what it is constructed of. Similarly, police responses to calls for assistance regarding a replica firearm will, of necessity, be based on its appearance and not on its construction.*[279]

Public place

One of the limbs of proposed new s 67(4) requires that the activities are conducted other than in, and in a way not reasonably able to be seen from, a public place.[280] 'Public place' means any place that the public is entitled to use, is open to the public, or used by the public, whether on payment or otherwise.[281]

The FDAQ recommended that the definition of public place be amended 'to exclude a range or private property with the appropriate licences and permissions'.[282]

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274 Queensland Corrective Services, correspondence dated 5 May 2020, attachment, pp 17-18.

275 Queensland Corrective Services, correspondence dated 5 May 2020, attachment, p 18.

276 Submission 7, p 4. The Queensland Living History Federation advised that at present some aspects of their activities 'are covered variously by aspects of firearms licences, collectors' licences, and blank-fire licences': submission 7, p 4.

277 Submission 7, p 5.

278 Submission 7, p 10.

279 Queensland Corrective Services, correspondence dated 5 May 2020, attachment, pp 20-21.

280 Clause 62.

281 *Weapons Act 1990*, schedule 2.

282 Submission 11, p 4.

The QPS advised that the definition of 'public place' in the Weapons Act 'is used in the amendments to restrict use of replica firearms by those carrying out recreational activities to locations in which members of the public are unlikely to inadvertently sight the items and, therefore, minimise the risk of alarm being caused by them'.[283] The QPS added: 'Any discussion regarding changes to the current definition falls outside of the parameters of the Bill'.[284]

Associations

The QLHF queried why there is a difference in the requirements for astronomical organisations and associations providing recreational activities involving replicas of firearms.[285]

The QPS responded to the QLHF's comments:

> *Whilst the submission makes correlations with the existing provisions about astronomical societies, the nature of associations undertaking recreational activities involving replica firearms are typically structured differently and for very different purposes. As such, a differing legislative response is required.*[286]

Committee comment

The committee notes that the proposed amendments to the Weapons Categories Regulation were not contained in the Bill nor were they available. This appears to have increased the concerns of stakeholders regarding the amendments to the Weapons Act and the Weapons Regulations in the Bill. The committee is satisfied that many of the concerns were addressed by the QPS in its response to the issues raised in submissions.

The committee supports the permanent firearm amnesty and the other changes to the weapons legislation that enhance the safety of the community.

2.7 Amendment of the *Racing Integrity Act 2016*

2.7.1 Information sharing arrangements

The Bill proposes to make a 'minor technical amendment'[287] to the *Racing Integrity Act 2016* and the Racing Integrity Regulation 2016. The explanatory notes describe the proposed amendment and its rationale:

> *A relocation of current section 98A of the* Racing Integrity Act 2016 *from chapter 4 headed 'Racing Bookmakers' to another location in the legislation is required to clarify that information sharing arrangements may be entered into with a relevant agency for the purposes of all Racing Integrity Commission functions. Currently there may be a perception that information sharing arrangements are limited to information related to racing bookmakers and associates.*[288]

2.8 Matters outside the scope of the Bill

Some stakeholders raised matters that were outside the scope of the Bill.

The CCC, for example, supported the full implementation of recommendation 26 of the Taskforce Flaxton report and further recommended that 'new provisions dealing specifically with electronic

283 Queensland Corrective Services, correspondence dated 5 May 2020, attachment, p 24.

284 Queensland Corrective Services, correspondence dated 5 May 2020, attachment, p 24.

285 Submission 7, pp 13-14.

286 Queensland Corrective Services, correspondence dated 5 May 2020, attachment, p 23.

287 Explanatory notes, p 1.

288 Explanatory notes, p 5.

communication be inserted in the [CS] Act to address the monitoring of such communication'.[289] It also recommended the implementation of recommendation 33 of the Taskforce Flaxton report:

(a) the establishment of a properly resourced independent Inspectorate of Prisons

(b) the development of nationally consistent inspection standards, cycles, methods and reporting templates

(c) inspection reports be made publicly available.[290]

ATSILS also expressed support for recommendation 33.[291]

In response to the CCC's and ATSIL's submissions, QCS advised:

> *Legislative amendments to support implementation of other Taskforce Flaxton recommendations, including: recommendation 26 (Implementation of an electronic mail process) and recommendation 33(a) (Establishment of a properly resourced independent inspectorate of prisons), require further work and stakeholder consultation to develop and implement policy changes.*
>
> *This work is underway and, subject to Government consideration and approval, will be progressed in a future Bill.*[292]

The FDAQ proposed additional amendments to the Weapons Act:

- omitting 'primarily' from the definition of 'primary producer'
- replacing 'immediately' with 'as soon as practicable' in s 71(2).[293]

2.9 Commencement

If the Bill is passed, most of its provisions will commence on the date of assent. The following provisions will commence on a day to be fixed by proclamation:

- the amendments to the Weapons Act and the Weapons Regulation 2016
- the amendments relating to the health of prisoners
- the omission of s 319F of the CS Act which requires certain steps to be taken before a complaint can be made to the human rights commissioner under the AD Act.[294]

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289 Submission 3, p 2. Recommendation 26 provides: That QCS implement an electronic mail process to decrease the volume of mail entering prisons via the postal service: Crime and Corruption Commission Queensland, *Taskforce Flaxton: an examination of corruption risks and corruption in Queensland prisons*, 2018, p 41.

290 Submission 3, p 3; Crime and Corruption Commission Queensland, *Taskforce Flaxton: an examination of corruption risks and corruption in Queensland prisons*, 2018, p 53.

291 Submission 4, pp 5-6.

292 Queensland Corrective Services, correspondence dated 5 May 2020, attachment, p 15.

293 Submission 11, pp 6-7.

294 Clause 2. See also, clauses 39, 43, 50, 61-66, 67-68 and schedule 1, part 2.

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals
- the institution of Parliament.

The committee has examined the application of the fundamental legislative principles to the Bill.

The committee notes at the outset that the explanatory notes offer virtually no analysis of issues of fundamental legislative principle (as is explained in more detail in Part 3.2 of this report). There is therefore little reference to the content of the explanatory notes in the following discussion of issues of fundamental legislative principle. Given this deficiency, where a relevant provision also raises an allied issue of human rights, and where appropriate, this report will reference the relevant content of the statement of compatibility.

The committee notes also that cl 62 amends s 67 of the Weapons Act which relates to possessing and acquiring restricted items. The amendment adds certain 'reasonable excuse' provisions to s 67, which already contains such provisions. Such provisions are sometimes seen to involve a reversal of the onus of proof (which raises an issue of fundamental legislative principle - see s 4(3)(d) of the LSA.) The new provisions relate to possession of a firearm replica for members of certain associations and of inoperable firearms by persons holding a collectors licence. Given that the issue is not raised in the explanatory notes nor submissions, and noting that any reversal of the onus is in amendments which expand upon already existing 'reasonable excuse' provisions, any impact on fundamental legislative principle is at most minor, and so the issue has not been further considered.

3.1.1 Rights and liberties of individuals

Section 4(2)(a) of the LSA requires that legislation has sufficient regard to the rights and liberties of individuals.

Clauses 11, 20, 21, 40, 48 and 55 of the Bill raise issues of fundamental legislative principle relating to the rights and liberties of individuals.

Each of these clauses is also discussed in Part 2 (Examination of the Bill) of this report. Clause 11 is also discussed in Part 4 (Compatibility with human rights).

3.1.1.1 Clause 11 – general rights and liberties

Clause 11 inserts a new section 68A in the CS Act to provide that a prisoner convicted of a sexual offence or of murder, or serving a life sentence is not eligible to be transferred to a low custody corrective services facility.[295]

New s 68A(3) defines 'low custody facility' to mean a prison, other than a secure facility, a community corrections centre or a work camp.[296]

[295] Clause 11 is also discussed in 2.2.4 and 4.1.1 of this report.

[296] Low custody facilities include, for example, the Helana Jones Centre, the Numinbah and Palen Creek Correctional Centres, and the Capricornia, Townsville, and Lotus Glen Correctional Centre Farms.

Issue of fundamental legislative principle

This provision could be seen as raising an issue of fundamental legislative principle by limiting the rights and liberties of individuals.

Comment

Given the explanatory notes are silent on this issue, the committee noted the commentary in the statement of compatibility:

> *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.*[297]

This raises the question of whether the blanket prohibition in the amendment enhances the management tool referred to, or in fact limits it, by reducing flexibility and available prisoner management options.

The statement of compatibility continues:

> *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.*
>
> *…*
>
> *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.* [298]

The QHRC referred to this passage in submitting:

> *… the amendment actually fails to provide any such balance, as the particular rehabilitation and reintegration opportunities of individual prisoners are ignored by the blanket inability for such prisoners to be accommodated in lower custody areas. The Statement of Compatibility seeks to justify the change by suggesting that it will enhance public confidence in the system.*[299]
>
> *…*
>
> *The Commission appreciates public confidence in the prison system is an important goal. However, decisions about the placement of prisoners ought to be based on a case by case basis, and not upon blanket criteria that fails to weigh up all relevant considerations appropriate to each case. As the explanatory material accompanying the Bill identifies, this amendment is potentially arbitrary, as it does not require decision makers to apply criteria based on risk of escape or other security risk. It could result in the lowest risk detainees, for example women and prisoners who are infirm, being held in higher security areas.*[300]

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297 Statement of compatibility, p 19.

298 Statement of compatibility, pp 19, 20.

299 Submission 9, p 4.

300 Submission 9, p 5.

The QHRC proposed the removal of the blanket prohibition.[301] Sisters Inside also opposed the provision:

> *Decisions about security classification and custody placement should be determined on a case-by-case basis. This section makes it impossible for a person to be afforded an appraisal of their individual circumstances and their actual potential for risk.*
>
> *Inserting this section does not increase safety. There is already the power to deny a transfer to a low custody facility if necessary. This provision denies that an individual may be more than the sum of their past actions.*[302]

The Prisoners' Legal Service Inc. was strongly opposed to the provision:

> *We acknowledge the* Human Rights Act 2019 (Qld) *allows restrictions to be placed on human rights. However, restrictions are only permissible where they are reasonable and justifiable. There is no evidence to justify making a distinction between particular categories of prisoners being accommodated in low security facilities. Indeed, research has established that life sentence-prisoners have the lowest rate of recidivism of any category of prisoner following release ... we consider that the proposed amendment is not reasonable and cannot be justified.*[303]

Conclusion

The committee acknowledges the concerns of stakeholders but considers any breach of fundamental legislative principle involved in the 'blanket' prohibition in cl 11 is justified.

3.1.1.2 Clauses 21, 40, 48 and 55 – proportionality and relevance of penalties

Clause 21 introduces new s 173A of the CS Act. It creates an offence for a staff member to have an intimate relationship with an offender. The maximum penalty is 100 penalty units or 3 years imprisonment.

Clause 40 amends s 267 of the CS Act, which relates to monitoring devices for offenders. It introduces a penalty (which did not previously exist) for an offender to remove or tamper with a device, without a reasonable excuse. The maximum penalty is 30 penalty units or 3 months imprisonment.

Clause 48 inserts new chapter 6, Part 9 of the CS Act in relation to alcohol and drug testing. New s 306P makes it an offence for a person to unlawfully interfere with a sample given for an alcohol or substance test, with a maximum penalty of 100 penalty units.

Clause 55 amends s 340(2) of the Criminal Code to provide that a prisoner who unlawfully assaults a working corrective services officer commits a crime.

It also specifies a new maximum penalty of 14 years imprisonment for the serious assault of a corrective services officer under s 340(2) of the Criminal Code, where:

- the offender bites or spits on the corrective services officer or throws at, or in any way applies to, the corrective services officer a bodily fluid or faeces
- the assault causes bodily harm to the corrective services officer
- the offender is, or pretends to be, armed with a dangerous or offensive weapon or instrument.

In all other circumstances, a person convicted of serious assault of a corrective services officer under s 340(2) is liable to a maximum penalty of 7 years imprisonment.

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301 Submission 9, p 7.

302 Submission 12, p 1.

303 Submission 14, p 5.

Issue of fundamental legislative principle

Proportion and relevance

The creation of new offences and penalties affects the rights and liberties of individuals.

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, penalties and other consequences imposed by legislation are proportionate and relevant to the actions to which the consequences relate. A penalty should be proportionate to the offence:

> *In the context of supporting fundamental legislative principles, the desirable attitude should be to maximise the reasonableness, appropriateness and proportionality of the legislative provisions devised to give effect to policy.*
>
> *… Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other.*[304]

Comment

Clause 48 is also considered in 3.1.1.5 of this report.[305]

In relation to cl 21 (the prohibition on intimate relationships between staff members and offenders), the Minister stated:

> *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.*[306]

The QLS stated:

> *… the penalty of 100 penalty units or 3 years imprisonment is not insignificant and would apply to an employee of the department, an employee of an engaged service provider or a corrective services officer ... In most other professional circumstances, this would be an employment or conduct issue. We therefore query the appropriateness of it being dealt with as a criminal law issue.*[307]

The department responded:

> *This amendment addresses the corruption risk of inappropriate relationships identified during Taskforce Flaxton hearings. The amendment recognises the seriousness of the risk associated with inappropriate relationships and provides a greater deterrent than code of conduct breaches.*[308]

In relation to cl 40 (monitoring devices), the Minister stated:

> *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*

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304 Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 120.

305 See also 2.1.1 of this report.

306 Statement of compatibility, p 13.

307 Submission 13, p 2.

308 Queensland Corrective Services, correspondence dated 5 May 2020, attachment, p 6.

person's right is limited to the installation of associated equipment, not the monitoring process.[309]

In relation to cl 55, the QHRC submitted:

The Commission notes that the Queensland Sentencing Advisory Council is currently reviewing these provisions and others involving assaults on public officers. In our submission to that review, the Commission noted that increased penalties engage the right to liberty and security of the person (which had been identified in the compatibility analysis of similar legislation in the ACT). However, the limitation on the right to liberty is not discussed in the Statement of Compatibility.

While the Commission supports measures to protect corrections staff from assault, it is perhaps premature for the government to legislate increased penalties prior to the outcome of that review in the context of penalties for assaults on other workers. Also, the review may find that increased maximum penalties are not necessarily effective in reducing such assaults. [310]

QCS provided the following in response:

… A prisoner who assaults an officer should be liable to receive the same penalty an offender who assaults any other public service officer.

Legislative clarity is necessary to provide a strong deterrent to this type of behaviour (biting, spitting, throwing bodily fluid or faeces, being armed with a dangerous or offensive weapon) occurring in the custodial environment and give reassurance to corrective service officers of the importance of their health and safety.[311]

Conclusion

The committee considers the penalties are proportionate, such that any breach of fundamental legislative principle is justified.

3.1.1.3 Clause 20 – general rights and liberties – powers of search and the right to personal privacy

Clause 20 amends s 173 of the CS Act. The section currently provides that the chief executive may require a staff member at a corrective services facility to submit to a general search or scanning search before entering the facility. Clause 20 extends this power of search to also include any time the staff member is at the facility. Clause 20 also extends the power for the chief executive to direct a staff member to leave the facility if they do not submit to a *scanning* search. (Currently this power applies only to general searches.)

Issue of fundamental legislative principle

The reasonableness and fairness of treatment of individuals is relevant in deciding whether legislation has sufficient regard to the rights and liberties of individuals. The extension of the power to search a person interferes with the rights and liberties of the individual. Powers of search involve an intrusion into an individual's personal privacy.

Comment

This amendment gives effect to recommendation 20 of the Taskforce Flaxton report, that the CS Act 'be amended to grant broader powers to search staff working in prisons'. Regarding staff searches, the CCC stated:

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. Section 173

309 Statement of compatibility, p 20.

310 Submission 9, p 7.

311 Queensland Corrective Services, correspondence dated 5 May 2020, attachment, p 16.

of the CS Act provides a general legislative power to search staff entering corrective services facilities in Queensland. This power, however:

- *only requires staff to submit to a general search or scanning search*
- *only provides for searching a staff member on entry*
- *outlines that the consequence of a staff member refusing to submit to a general search, when required, is that they may be directed to leave a prison.*

In contrast, … other states, including New South Wales, Victoria and South Australia, have broader powers in respect of searching persons generally in corrective services facilities. Further, in Queensland the relevant COPD states that staff must be searched, at minimum, every three months. However, evidence from Taskforce Flaxton found that not all correctional centres comply with the requirement. The frequency and nature of searches must not be static or predetermined, but rather be commensurate with the risk.[312]

In its submission to the committee, the CCC indicated its support for the proposed amendments to s 173, though it recommended that the powers to conduct searches be further clarified:

The section could include a requirement that a person be subject to a search under powers similar to section 29 of the Police Powers and Responsibilities Act 2000*. Another approach would be to outline a non-exhaustive list of the types of powers that may be carried out on staff members as done in New South Wales. This approach would give improved clarity over the extent of powers intended to be given to correctional officers.*[313]

The statement of compatibility, in considering this search power in the context of human rights, gives this background to the mischief at which the amendment is aimed:

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.[314]

…

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.[315]

The statement of compatibility also states:

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.[316]

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312 Crime and Corruption Commission Queensland, *Taskforce Flaxton: an examination of corruption risks and corruption in Queensland prisons*, 2018, p 37. Footnotes in original omitted.

313 Submission 3, p 2.

314 Statement of compatibility, p 5.

315 Statement of compatibility, p 6.

316 Statement of compatibility, p 5.

The statement of compatibility concludes:

> *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.*[317]

Some submitters were generally supportive of the amendments. Sisters Inside stated:

> *Sisters Inside supports the amendments to allow greater searching and drug testing of corrective services persons. Our staff have heard consistent reports of drugs being smuggled into prison by QCS staff.* [318]

The QHRC, while acknowledging that the proportionality of the provisions was enhanced by safeguards such as limiting the admissibility of positive tests to specific non-criminal legal proceedings, sounded some notes of caution, observing:

> *The Commission appreciates that alcohol and drug testing addresses risks of corruption. However, these proposals represent a significant infringement on the rights of staff and it is difficult to fully consider the compatibility with human rights as some aspects are to be included in regulation.* [319]
>
> *…*
>
> *The Commission submits that the legislation remove the ability for invasive testing or explicitly require that it is only used as a last resort when no other testing methods are possible and only by a suitably qualified person. If there is a justification for the legislation permitting invasive tests, further information should be provided including consideration of how other human rights jurisdictions have approached these issues.* [320]
>
> *…*
>
> *A further safeguard would be to include a clear review process for staff who dispute a positive test, particularly those who may have a medical need to take a targeted substance and may dispute that the drug impairs their capacity to perform their duties without danger to the person or someone else.* [321]

Conclusion

The CCC's recommendation was expressed in very general terms, and did not specify the nature of the recommended amendment. However, on balance, having regard to that recommendation and to:

- the fact that cl 20 extends a power of search which already exists in the CS Act
- the need to combat contraband entering correctional centres and to deter staff from facilitating such behaviour

the committee is satisfied that the extension is reasonable, and that any interference with the rights and liberties of the individual is justified.

317 Statement of compatibility, p 6.

318 Submission 12, p 1. See also Queensland Law Society, submission 13, p 1.

319 Submission 9, p 5.

320 Submission 9, p 6.

321 Submission 9, p 6.

3.1.1.4 Clause 21 – general rights and liberties – right to personal privacy

Clause 21 inserts new s 173A in the CS Act to prohibit intimate relationships between correctional staff and offenders. As noted in the statement of compatibility:

> *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.*[322]

Issue of fundamental legislative principle

The reasonableness and fairness of treatment of individuals is relevant in deciding whether legislation has sufficient regard to the rights and liberties of individuals. The prohibition on such relationships imposes limits on an individual's personal life and relationships, and right to privacy.

Comment

The statement of compatibility, in considering this search power in the context of human rights, gives this background to the mischief at which the amendment is aimed:

> *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.*[323]

The statement of compatibility concludes:

> *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. Some submitters were generally supportive of the amendments.* [324]

The QLS expressed concerns about the scope of the behaviour covered by the prohibition:

> *We have reservations about the proposed new offence to prohibit sexual conduct between staff and offenders. While acknowledging the purpose and policy intent, the proposed offence is particularly broad in scope, noting the definition of 'intimate relationship' encompasses 'physical expressions of affection' and/or 'the exchange of written or other forms of communications of a sexual or intimate nature'.*[325]

The BAQ submitted:

> *The Association notes that the offence provision has a potentially wide scope of operation. In light of the definitions of "offender" (which includes a person on a community based order) and "staff member" (which includes any employee of the department or an engaged service provider or a corrective services officer), an offence could be committed in circumstances which render*

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322 Statement of compatibility, p 12.

323 Statement of compatibility, p 12.

324 Statement of compatibility, p 13.

325 Submission 13, p 9.

the offence very serious (such as where a prison officer has sexual relations with a prisoner under that officer's watch) or very minor (such as where a departmental administrative officer dates a person on a community service order in circumstances where the administrative officer has nothing to do with the offender's community service order).[326]

Conclusion

The committee is satisfied, having regard to the policy intent, that the prohibition is reasonable, and that any breach of fundamental legislative principle through the limitation on the rights and liberties of the individual is justified.

3.1.1.5 Clause 48 – general rights and liberties

Clause 48 inserts new part 9A in chapter 6 of the CS Act, giving the chief executive powers to require corrective services officers (and corrective services officer recruits) to submit to (random) alcohol and drug testing. (These provisions give effect to recommendation 18 of the Taskforce Flaxton report.)

In the case of a positive test of a person, section 306N allows the chief executive to:

- suspend the person from duty until they are no longer over the alcohol limit or no longer have evidence of a dangerous drug or targeted substance in a sample
- correct the person by way of guidance
- require the person to undergo counselling or rehabilitation approved by the chief executive.
- require the person to submit to a medical examination (under chapter 5, part 7 of the *Public Service Act 2008*)
- take disciplinary or other action against the person under chapter 5 or 6 of that Act
- require the person to submit to further testing from time to time until the chief executive is satisfied the reason for making the requirement no longer exists.

New section 306P creates an offence for a person to unlawfully interfere with a sample given under this part for an alcohol or substance test, with a maximum penalty of 100 penalty units.

New section 306Q provides that anything done under part 9A or any test result is inadmissible in a civil or criminal proceedings. The chief executive (and others involved in actions taken under part 9A) cannot be compelled to produce to a court any document or any information obtained under part 9A.

(Note these restrictions on the production of material and giving evidence do not apply to:

- a proceeding for a charge of an offence arising from an incident
- an inquest in a Coroners Court into the death of a person in an incident
- a proceeding on an application (under s 74 of the *Industrial Relations Act 1999*) for reinstatement on the grounds of unfair dismissal
- an investigation or other proceeding under the *Crime and Corruption Act 2001*, or
- disciplinary action as provided for under the *Public Sector Ethics Act 1994*.)

Issue of fundamental legislative principle

Clause 48 raises an issue of fundamental legislative principle relating to the rights and liberties of individuals, particularly regarding an individual's right to privacy.[327]

[326] Submission 2, p 2.

[327] See *Legislative Standards Act 1992*, s 4(2)(a).

Comment

The QHRC raised concerns regarding the proposed provisions:

> *The Commission submits that the legislation remove the ability for invasive testing or explicitly require that it is only used as a last resort when no other testing methods are possible and only by a suitably qualified person. If there is a justification for the legislation permitting invasive tests, further information should be provided including consideration of how other human rights jurisdictions have approached these issues.*[328]

Conclusion

The committee considers, on balance, having regard to the policy objectives, the breach of fundamental legislative principle is justified.

3.2 Explanatory notes

Part 4 of LSA requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. Other than as set out below, the notes are fairly detailed and contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.[329]

Some observations about the content of the explanatory notes dealing with consistency with the fundamental legislative principles are appropriate. The treatment of issues of consistency with fundamental legislative principle is inadequate.

The explanatory notes state:

> *The Bill is considered consistent with fundamental legislative principles as per section 4(2) of the Legislative Standards Act 1992.*
>
> *Amendments in the Bill, such as introducing an offence to prohibit removal or tampering with a monitoring device, clarifying that the chief executive may approve or refuse funds into a prisoner's trust account and restricting the placement of certain prisoners may be considered inconsistent with fundamental legislative principles. However, these are considered justified in that the amendments reflect community expectations, appropriate management of prisoners and offenders, and community safety.*[330]

These two paragraphs are contradictory. Further, the second paragraph misapprehends the operation of s 4(2) of the LSA.

The first paragraph in the above quote asserts that the Bill is considered consistent with fundamental legislative principles. But the reality is there are inconsistencies with fundamental legislative principles, as is at least implicitly recognised in the second paragraph. The subsequent assertion that the amendments 'reflect community expectations, appropriate management of prisoners and offenders, and community safety' can be more properly categorised as going to the question of whether or not any inconsistencies with, or breaches of, fundamental legislative principle are justified.

Further, dealing with multiple issues of fundamental legislative principle with a single broad statement of justification as contained in that assertion is inadequate, and falls well short of compliance with s 23(1)(f) of the LSA, which requires:

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328 Submission 9, p 6.

329 The hard copy (green) explanatory notes do not actually identify themselves as such, with the usual title 'explanatory notes' on page 1 missing, presumably through oversight. The on-line version includes this title.

330 Explanatory notes, p 8.

… a brief assessment of the consistency of the Bill with fundamental legislative principles and, if it is inconsistent with fundamental legislative principles, the reasons for the inconsistency.

Bearing in mind the desirable outcome of better informing the community about proposed legislation, best practice is for explanatory notes to:

- clearly identify each specific issue of fundamental legislative principle that arises and the specific clause giving rise to the issue
- set out the reasons for any inconsistency with the fundamental legislative principles
- provide any justification for that inconsistency.

4 Compatibility with human rights

Section 39 of the *Human Rights Act 2019* (HR Act) requires that the portfolio committee responsible for examining a Bill must consider and report to the Legislative Assembly about whether the Bill is not compatible with human rights, and consider and report to the Legislative Assembly about the statement of compatibility tabled for the Bill.

4.1 Potential human rights limitations

4.1.1 Clause 11

As discussed earlier in this report, cl 11 introduces a new s 68A into the CS Act.[331] In subsection (1) it makes prisoners totally ineligible for transfer from a secure facility to a low custody facility if they have been convicted of a sexual offence, murder, or are serving a life sentence.

The relevant sections of the HR Act are s 15 (equality before the law), s 26(2) (protection of children), s 30 (humane treatment of people deprived of liberty) and s 33 (children in the criminal process).

Clause 11 provides a blanket ban on transfer for certain prisoners. The purpose of this ban is public protection with respect to the most dangerous prisoners.

It could be argued that a blanket ban is excessive when:

- it relates to a person convicted of "a sexual offence" where this can include any, even minor, sexual offences; and/or
- where the offender is or was a child at the time of the offence.

While the new provision is expressed to be subject to s 268, this only allows a discretionary override to these rules in emergency situations.

The penitentiary system should not be solely retributory; it should also seek the reformation and social rehabilitation of the prisoner.[332] This is particularly so if the prisoner is a child.[333]

Transfer to low custody facilities promotes reintegration into civil society. Clause 11 of the Bill assumes that for the commission of any sexual offence, however minor, this must never occur. This is also the case if, at the time of such offence, the prisoner was a child.

Similar concerns arise with respect to convictions for murder and life sentences. The operation of s 302 of the Criminal Code means that unintentional killing (the so-called felony murder rule) can be classified as murder. Today, this might include actions in retaliation to domestic violence or actions in retaliation to bullying (including between children).

The issue of the mental illness of the offender can also arise.[334]

A better balance between the purpose of the limitation on rights and implementing the right in a meaningful way would be to:

- make the ban applicable to "serious sexual offences" (with a definition of this), together with,

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331 See 2.2.4 and 3.1.1.1.

332 See *General Comment No. 21 of the UN Committee on Human Rights* relating to Article 10 of the International Covenant on Civil and Political Rights, adopted 10 April 1992, www.refworld.org/docid/453883fb11.html.

333 *General Comment No.10 of the UN Committee on the Rights of the Child 25 April 2007,* CRC/C/GC/10 at paragraph 10.

334 See *R v Beacham* [2006] QCA 268.

- a provision that in the case of child offenders the decision of transfer to a low custody facility will be decided on a case by case basis, and
- providing for a general case by case override of the section when justified by the overall circumstances.

Committee comment

The committee is satisfied that the Bill is generally compatible with human rights and that the human rights issues identified above are justified in the circumstances, having regard to s 13 of the HR Act.

4.2 Statement of compatibility

Section 38 of the Human Rights Act 2019 requires a statement of compatibility to be tabled for the Bill. The statement of compatibility was tabled with the introduction of the Bill. The statement contains a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights with the exception of the matters relating to cl 11 of the Bill outlined above.

Appendix A – Submitters

Sub #	Submitter
001	Robert Finlay
002	Bar Association of Queensland
003	Crime and Corruption Commission
004	Aboriginal and Torres Strait Islander Legal Service
005	Keith York
006	Firearm Owners United
007	Queensland Living History Federation
008	Alannah & Madeline Foundation
009	Queensland Human Rights Commission
010	Shooters Union
011	Firearm Dealers Association
012	Sisters Inside
013	Queensland Law Society
014	Prisoners' Legal Service Inc

Appendix B – Officials at public departmental briefing

Queensland Corrective Services

- Mr Tom Humphreys, Chief Superintendent, Ministerial Communications and Executive Services Command
- Ms Annika Hutchins, Manager, Legislation Group

Queensland Police Services

- Mr Tony Brown, Acting Director, Legislation Branch
- Ms Robyn Reynolds, Senior Sergeant, Legislation Branc
- Mr Tony Tatkovich, Sergeant, Weapons Licensing Branch

Appendix C – Witnesses at public hearing

Queensland Human Rights Commission

- Scott McDougall, Commissioner
- Sean Costello, Principal Lawyer

Bar Association of Queensland

- Jeff Hunter

Sisters Inside

- Debbie Kilroy, CEO
- Hannah Stadler, Policy Officer

Firearm Dealers Association – Qld Inc

- Jade Cleaver

Queensland Living History Federation

- James Sunter, President

Firearm Owners United

- Kirk Yatras, Vice President

Shooters Union Queensland

- Prof Ross Grantham

Statement of Reservation

The LNP members of the Legal Affairs and Community Safety Committee are generally supportive of the Bill.

The members note that there are a range of important measures that will be implemented by this Bill. However, there are concerns around the intention to regulate the use of gel blasters in Queensland, as well as the policy to release prisoners early on parole.

While the members acknowledge that there has been a small number of offences which relate to the misuse of gel blasters, the members query the Palaszczuk Labor government's priority to community safety. In particular, the members query why the Labor government has prioritised cracking down on 'toys', as defined by Magistrate Shearer in *Comptroller-General of Customs v Clark CFP Pty Ltd*, rather than focusing on weapon and firearm crime committed by violent and organised criminals. The members note the LNP introduced the Weapons and Other Legislation (Firearms Offences) Amendment Bill 2019, which targeted high-risk offenders such as outlaw motorcycle gangs and organised criminals, but the Labor State Government, which uses its numbers in parliament to control the order of legislative business, appears to be content to accord these important measures the same low priority accorded to all private members' bills, and as a result, the bill has not yet been afforded a second reading.

Importantly, there are already a number of indictable offences a person can be charged with for the misuse of a gel blaster. Furthermore, it is of concern that the proposed provisions arbitrarily compel a person to be a member of a gel blaster association as a prerequisite to lawfully using a gel blaster. Consequently, this would without doubt create an unfair disadvantage for members of the public situated in rural or regional Queensland who have limited access to gel blaster clubs. There is also a genuine concern that the strict regulation will come at a cost to many small businesses who supply an estimated 50,000 gel blasters per month to people across Queensland, according to industry.

It should be noted that clause 15, which aims to release prisoners early on parole was recently introduced in the Justice and Other Legislation (COVID-19 Emergency Response) Amendment Bill, but was scrapped by Labor the following day after backlash from the community and criticism from the LNP. The members query whether the Palaszczuk Labor government will again remove this unpopular policy which favours criminals over community safety. It once again shows that Labor puts the rights of criminals ahead of community safety.

James Lister MP

Deputy Chair

Member for Southern Downs

Laura Gerber MP

Member for Currumbin