

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

Explanatory Notes

FOR

Amendments to be moved during consideration in detail by the Honourable Nikki Boyd MP, Minister for Fire and Disaster Recovery and Minister for Corrective Services

Short title

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

Policy objectives of the amendments

The objectives of the amendments to be moved during consideration of the Bill are to:

- respond to a recommendation made by the majority of the Community Safety and Legal Affairs Committee (the Committee) regarding new section 340AA by clarifying the operation of this provision,
- validate past parole decisions made by the Parole Board Queensland (the Board) that were made using a ‘subject to’ process, and
- validate ‘subject to’ decisions made by the Board that did not meet the quorum requirements in the *Corrective Services Act 2006* (CSA).

The amendments to the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act) are necessary to correct an administrative oversight. The objective of the amendments is to validate the exercise of jurisdiction by a supplementary member of the Queensland Civil and Administrative Tribunal (QCAT) who failed to take or make the prescribed oath before performing a function of the office of supplementary member during the period 1 February 2017 to 15 May 2024.

Achievement of policy objectives

Protecting victim and intelligence information

Amendment 1 relates to the protection of victim and intelligence information in decisions made under the CSA.

New section 340AA of the CSA clarifies that when a decision maker is required to provide reasons for a decision made under the CSA, the decision maker may withhold the detail of information that informed the decision for prescribed reasons.

On 12 April 2024, the Committee reported on the Bill and recommended that it be passed. The Committee's report included a recommendation to consider amending new section 340AA to:

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

In response to these recommendations, amendment to new section 340AA will require a decision maker to balance the reasonably expected consequences of disclosure against the unfairness associated with withholding the information. While not a public interest test as recommended, the balancing test will achieve the purpose while protecting sensitive victim information from release.

In addition, the amendment to new section 340AA will require the decision maker to keep a record of reasons for withholding information in a decision.

Validating conditional parole decisions

Amendment 4 relates to validating decisions made by the Parole Board Queensland (the Board) using the 'subject to' process.

A validating provision in the Bill will apply to parole decisions made by the Board from 26 May 2017 until commencement. The validating provision applies to decisions where the Board approved a parole application or lifted a parole suspension 'subject to' a prisoner meeting prescribed conditions. The validating provision will apply to a 'conditional parole decision' that is defined to mean a parole decision which had effect if the prisoner fulfilled a condition, or alternatively, a decision by the Board to make a parole decision if a condition was satisfied.

QCAT Act amendments

The amendments to the QCAT Act will retrospectively validate any exercise of jurisdiction by a supplementary member of the QCAT who did not take or make the prescribed oath under the QCAT Act before performing a function of the office during the period 1 February 2017 to 15 May 2024.

Alternative ways of achieving policy objectives

There are no alternative means of achieving the policy objectives.

Estimated cost for government implementation

There are no additional costs to government in implementing the amendments.

Consistency with fundamental legislative principles

The amendments have been drafted with regard to the fundamental legislative principles in the *Legislative Standards Act 1992* (LSA).

The amendments to new section 340AA do not create any inconsistencies with fundamental legislative principles.

Potential inconsistencies with fundamental legislative principles for other amendments are considered justified and are addressed in detail below.

Validating conditional parole decisions

Inserting a provision to validate past decisions by the Board to grant a parole order application or re-release a prisoner from a suspended parole order subject to certain conditions being satisfied may be viewed as inconsistent with section 4(3)(g) of the LSA as it may be considered to adversely affect the rights and liberties of a limited number of individuals retrospectively. This is because, subject to the operation and application of relevant provisions and timeframes required by the *Judicial Review Act 1991* (JRA), the provision could operate to remove the prisoner's right to seek judicial review of the decision under the JRA on the grounds that there was an error of law in making the decision.

Validating these decisions is crucial to ensuring prisoners who were released or re-released on the basis of an invalid decision and have not breached the conditions of their parole order can lawfully remain in the community. These prisoners understood the Board's decision to grant parole to be valid and lawful.

It could be considered that prisoners who were not granted parole on the basis that the Board or a member of the Board deemed that they failed to meet a condition have been adversely affected. This may enliven section 4(3)(b) of the LSA in that the removal of the ability to make a claim under the JRA could be viewed as depriving an individual of their right to be heard and therefore inconsistent with the principles of natural justice.

This is considered justified, however, because these prisoners would have otherwise been refused parole and their right to judicial review of the Board's decision on other grounds has not been extinguished, subject to the operation and application of relevant provisions and timeframes required under the JRA. The validating provision is curative in nature and does not remove a right or liberty that an individual was intended to possess.

QCAT Act amendments

The amendments to the QCAT Act are consistent with fundamental legislative principles.

Consultation

The amendments to new section 340AA are considered minor and are consistent with the Government response to the Committee report. Therefore, no further consultation on the amendments was undertaken. The Board was consulted at officer-level regarding this validating provision.

The amendments to the QCAT Act are of a technical nature and did not require consultation other than with the relevant heads of jurisdiction.

Consistency with legislation of other jurisdictions

The amendments are specific to the State of Queensland, relate to specific legislation in Queensland, and are not uniform with or complementary to legislation of the Commonwealth or another state.

Notes on provisions

Amendment 1, Clause 32 (Insertion of new s 340AA)

Amendment 1 provides additional clarification in relation to new section 340AA of the Bill.

Subsection (1A) clarifies that in deciding whether to rely on subsection (1), a decision maker must weigh the need to avoid the reasonably expected consequence of disclosure mentioned in subsection (1) against the need to avoid unfairness to an individual because information is withheld.

Subsection (1B) clarifies that if a decision maker relies on subsection (1), the decision maker must keep a written record of the decision and the reasons for the decision. This gives effect to a component of the Committee's recommendation.

Subsection (1C) provides that the contents of the decision maker's record may only be disclosed to a court for the purpose of a proceeding relating to the decision or proposed decision or with the approval of the Queensland Corrective Services chief executive.

Subsection (1D) provides that the court must ensure the contents of the record are not disclosed except to a member of the court as constituted for the purpose of the proceeding.

Amendment 2, Clause 34 (Insertion of new ch 7A, pt 17)

Amendment 2 removes the reference to 'provision' in line 20 and replaces it with 'provisions.'

Amendment 3, Clause 34 (Insertion of new ch 7A, pt 17)

Amendment 3 inserts subsection (3A) after line 11 to clarify that for subsections (2) and (3), any non-compliance with new section 340AA(1A) or (1B) is to be disregarded.

Amendment 4, Clause 34 (Insertion of new ch 7A, pt 17)

Amendment 4 inserts a validation provision 490ZJ (Validation of certain decision of parole board) after line 22, which applies to a conditional parole decision.

Subsection (1) provides that the section applies to a conditional parole decision made by the Board on or after 26 May 2017 and before commencement of the Bill.

Subsection (2) provides that a decision made before the commencement by the Board or one or more members of the Board that conditions in a conditional parole decision have or have not been fulfilled is taken to be a parole decision of the Board.

Subsection (3) clarifies that a decision made after the commencement by the parole board (properly constituted for a parole decision) that the conditions referred to in a conditional parole decision have or have not been fulfilled is also taken to be a parole decision of the parole board.

Subsection (4) specifies that if a decision under subsection (2) or (3) is that the conditions have been fulfilled, the parole decision is a decision to release the prisoner on parole.

Subsection (5) specifies that if the decision under subsection (2) or (3) is that the conditions have not been fulfilled, the parole decision is a decision not to release the prisoner on parole.

Subsection (6) provides that a parole decision is, and is taken to have always been, as valid as it would have been if the decision had been made by the Board as a parole decision without a conditional parole decision having been made.

Subsection (7) clarifies that anything done or purported to be done by an entity relying on the decision or the conditional parole decision is, and is taken to have always been, as valid as it would have been if the entity had relied on a valid decision of the Board. An entity includes Queensland Corrective Services.

Subsection (8) clarifies that the section applies despite any lack of power for the making of the conditional parole decision or the decision that conditions in a conditional parole decision have or have not been fulfilled. This subsection further clarifies that the section applies despite any defect in the constitution of the Board, lack of quorum or other procedural defect. The effect of this subsection is that the section applies despite any non-compliance by the Board with any procedural requirements in the *Corrective Services Act 2006*.

Subsection (9) defines *conditional parole decision* and *parole decision* for the purpose of the section. *Conditional parole decision* is defined as a decision, however

expressed, that is a parole decision that will have effect if a condition is fulfilled, or a decision to make a parole decision if a condition is fulfilled. *Parole decision* is defined as a decision to release or not release a prisoner by making or refusing to make a parole order or changing or not changing a decision suspending a prisoner's parole order.

Amendment 5, after clause 57

Amendment 5 inserts a new division 4 in part 4 of the Bill, which will amend chapter 10 of the QCAT Act to validate the exercise of jurisdiction by a supplementary member of the QCAT who failed to take or make the prescribed oath before performing a function of the office of supplementary member during the period 1 February 2017 to 15 May 2024.

Amendment 6, long title

Amendment 6 is a consequential amendment to the long title of the Act as a result of the amendments to the QCAT Act.