

Protecting Queenslanders from Dangerous Prisoners and Strengthening Victims' Rights Amendment Bill 2026

Statement of Compatibility

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

In accordance with section 38 of the *Human Rights Act 2019* (HRA), I, Laura Gerber, Minister for Youth Justice and Victim Support and Minister for Corrective Services, make this statement of compatibility with respect to the Protecting Queenslanders from Dangerous Prisoners and Strengthening Victims' Rights Amendment Bill 2026 (the Bill).

In my opinion, part of the Bill is compatible with the rights protected by the HRA for the reasons outlined in this statement. In my further opinion, part of the Bill is not compatible with the human rights protected by the HRA. The nature and extent of the incompatibility is outlined in this statement.

Overview of the Bill

The Bill proposes to amend the *Corrective Services Act 2006* (CSA), the *Youth Justice Act 1992* (YJA) and the *Victims' Commissioner and Sexual Violence Review Board Act 2024* (VCA).

The Bill delivers significant reforms to Queensland's parole and corrective services framework to strengthen community safety, better protect and support victims, and ensure decisions about the management and release of prisoners prioritise community safety. Central to these reforms, the Bill significantly strengthens the restricted prisoner framework by expanding it to all prisoners serving a sentence of life imprisonment and requiring an initial mandatory restricted prisoner declaration of between five and 10 years. It also closes critical legislative gaps in the No Body, No Parole framework to ensure homicide offenders cannot benefit from withholding or delaying cooperation and strengthens the existing exceptional circumstances parole framework by providing clear and stringent criteria that better reflect community expectations about the exceptional circumstances in which a prisoner should be considered for release before their parole eligibility date.

These reforms reflect a fundamental principle underpinning the Bill: parole is a privilege, not a right. A prisoner's parole eligibility date does not mark the end of their sentence or create an entitlement to release into the community. The Bill strengthens the safeguards that apply before prisoners may be considered for release on parole and expressly requires community safety to be the paramount consideration in parole decision-making. The Bill also places victims more firmly at the centre of Queensland's parole system, strengthening the rights, protections and participation of victims throughout the parole process, improving their access to timely and relevant information, and recognising the physical and psychological impact that parole processes and decisions can have on victims and their families.

A number of the amendments in the Bill give effect to recommendations arising from the 2025 *Review of Parole Board Queensland Final Report* (the Review). The Review considered the rights, participation and treatment of victims within the parole process and the practices, procedures and decision-making processes of the Parole Board Queensland (the Board). Following consideration of the Review, the Government published its *Response to the Parole*

Board Queensland Review (the Response) supporting a number of recommendations directed towards strengthening victims' rights and promoting community safety. The Bill gives effect to a number of those recommendations, enhancing the participation of victims in parole decision-making processes, ensuring information sharing provisions operate effectively, and aligning the Board's operations with community expectations.

Minor and technical amendments address other operational issues relating to the management of prisoners and parolees, ensure the effective operation of the CSA and support community safety and the security and management of corrective services facilities. Consistent with amendments to the Victims' Register under the CSA, the Bill will also amend the YJA to align the registration processes for victims on the Youth Justice Victims' Register. Consequential amendments are also made to the VCA to ensure the Charter of Victims' Rights uses consistent terminology for persons registered under the YJA and CSA.

Relevant human rights

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

The amendments in the Bill engage a range of rights protected by the HRA, namely:

- the right to equality before the law (section 15)
- the right to life (section 16)
- the right to protection from cruel, inhuman or degrading treatment (section 17)
- the right to freedom of movement (section 19)
- the right to freedom of expression (section 21)
- the right to privacy and reputation (section 25)
- the right to protection of children and families (section 26)
- the right to liberty (section 29)
- the right to humane treatment when deprived of liberty (section 30)
- the right to a fair hearing (section 31)
- the right not to be tried or punished more than once (section 34)
- the right to not have retrospective criminal laws applied (section 35)

The amendments in the Bill promote a number of human rights by strengthening community safety and placing greater emphasis on the rights, safety and interests of victims throughout the parole process. In particular, the amendments promote the right to recognition and equality before the law (section 15) by strengthening the recognition and participation of victims within the parole framework and ensuring the law appropriately recognises their rights and interests.

The amendments also promote the right to life (section 16), the right to privacy and reputation (section 25) and the protection of families and children (section 26) by strengthening the consideration of community and victim safety in parole decision-making, providing greater protections for victims participating in the parole process, and reducing the risk of further harm and re-traumatisation to victims and their families. The right to freedom of expression (section 21) is promoted by removing restrictions on the contents of their submissions. More broadly, the Bill expressly provides that community safety is the paramount consideration in parole decision-making and strengthens the safeguards applying to the release of prisoners into the community. In doing so, the Bill recognises that the human rights protected by the HRA extend not only to prisoners, but to victims, their families and members of the broader Queensland community.

Human Rights Issues

If human rights may be subject to limitation if the Bill is enacted – consideration is to be given to whether the limitations are reasonable and demonstrably justifiable (section 13).

Restricted Prisoner Framework

The Bill amends the CSA to expand the definition of restricted prisoner to include all prisoners who are serving a sentence of life imprisonment. It also amends the CSA to introduce a mandatory restricted prisoner declaration and a subsequent restricted prisoner declaration. While a restricted prisoner declaration is in force, the prisoner is prohibited from applying for parole, although the prisoner may remain eligible for exceptional circumstances parole. Transitional provisions apply the framework to relevant life sentenced prisoners who have reached parole eligibility but have not yet applied for parole; or whose parole application has not yet been determined.

The Bill also amends the YJA to clarify the application of parole eligibility dates for youth sentenced to detention for life, clarifying that the expanded restricted prisoner framework will apply to youth sentenced to detention for life.

Relevant Human Rights

I have considered whether the amendments may limit the following human rights:

- the right to protection from cruel, inhuman or degrading treatment (section 17(b))
- the right to protection of children and families (section 26)
- the right to liberty, in particular the right not to be detained arbitrarily (section 29(1) and (2))
- the right to humane treatment when deprived of liberty (section 30(1))
- the right not to be punished more than once (section 34)
- the prohibition on retrospective criminal laws (section 35)

The amendments also promote the human rights of victims and their families to the protection of life (section 16) and security of the person (section 29).

The right to liberty (section 29) is engaged because the amendments regulate when a life sentenced prisoner may seek conditional release from custody. However, life sentenced prisoners do not have an entitlement to be released on parole. Their deprivation of liberty arises from the imposition of the life sentence imposed by the Court and their continued detention while serving that lawful sentence cannot constitute arbitrary detention. Therefore, while the right is engaged, it is not limited.

For similar reasons, the prohibition on retrospective criminal laws (section 35) and the right not to be punished more than once (section 34) could be considered engaged because the restricted prisoner framework will apply to prisoners who are already serving sentences of life imprisonment. However, the amendments do not increase or otherwise alter the sentence imposed by the court. Therefore, these rights are not limited.

The right to humane treatment when deprived of liberty means that individuals who are detained should not be subject to any hardship or constraint that is in addition to those inevitable constraints resulting from the deprivation of their liberty and which unreasonably interferes with their other human rights. The declaration does not create hardship or constraint in the sense that these prisoners were already sentenced to life imprisonment, however, it could be considered that there is some mental hardship given the introduction of a mandatory declaration

will delay the ability for life sentenced prisoners to apply for parole. In that way only, this right may be limited. For the same reason, the right to protection from cruel, inhuman or degrading treatment under section 17(b) may be limited.

I do not consider that the amendments to clarify the application of the restricted prisoner framework to relevant youth offenders limits or engages the right of every child to the protection that is needed by the child and is in the child's best interests (section 26), given that the law will only apply when they are an adult and these amendments are merely intended to provide clarity around the current law.

Are the limitations reasonable and demonstrably justifiable

The amendments do not alter the sentence imposed on a restricted prisoner. Each prisoner to whom the framework applies has been sentenced by a Court to imprisonment for life. A parole eligibility date does not mark the expiry of that sentence and does not create a right or entitlement to release from custody. Rather, it identifies the point at which a prisoner may ordinarily become eligible to seek conditional release into the community. Accordingly, the amendments do not impose an additional sentence of imprisonment or extend the sentence imposed by the sentencing Court. They regulate when a person lawfully serving a sentence of life imprisonment may seek consideration for conditional release on parole.

The purposes of the amendments are to protect victims, their families, and the broader community from re-traumatisation, provide certainty to victims and their families, and support community safety. Prisoners who have been sentenced to life imprisonment have either committed the offence of murder (which has mandatory life imprisonment) or committed other serious offences such that the Court has determined that the maximum penalty available is necessary to punish, deter, recognise the harm done to a victim, denounce, or protect the community.¹ These purposes also promote the rights of members of the community to the protection of life and security of the person in sections 16 and 29(1) of the HRA. It is of the utmost importance that the risk these prisoners pose of further offending against members of the community is reduced to the greatest extent possible.

The mandatory restricted prisoner declaration and expansion of the restricted prisoner scheme to all life sentenced prisoners helps achieve the purpose of community safety and provide certainty to victims and their families. The restricted prisoner scheme will be expanded to all life sentenced prisoners, which will ensure that there is suitable rigour before dangerous offenders are released. Further, victims will not have to 'wait and see' if a restricted prisoner declaration will be made.

There are no less restrictive and reasonably available ways to achieve the purpose of the Bill, however, to ensure the limitation is justifiable, exceptional circumstances parole remains, and there can only be one mandatory declaration. In deciding the length of the mandatory declaration, the Board will be required to consider human rights.

I am therefore satisfied that the limits on the rights of prisoners affected by these amendments is not disproportionate or arbitrary.

No Body, No Parole (NBNP) Framework

The Bill amends the NBNP framework to address critical legislative gaps to ensure convicted homicide offenders cannot avoid the consequences of failing to cooperate in locating their victim's remains simply because those remains no longer exist or are incapable of being

¹ Section 9(1) of the *Penalties and Sentences Act 1992*.

located, removing the requirement for the failure to locate the body or remains to be because of an act or omission of the prisoner or another person (for example, where the body or remains has been dismembered or destroyed). The amendments also reinforce the need for cooperation to be timely and clarify that a person is a NBNP prisoner if they are serving a period of imprisonment that includes a term or terms of imprisonment for a homicide offence, including where a term or terms of other non-homicide offences are being served cumulatively or concurrently.

Relevant Human Rights

I have considered whether the amendments may limit the following human rights:

- the right to recognition and equality before the law (section 15(3))
- the right to protection from cruel, inhuman or degrading treatment (section 17(b))
- the right to liberty (section 29)
- the right to humane treatment when deprived of liberty (section 30)
- the right to a fair hearing (section 31)
- the prohibition on retrospective criminal laws (section 35)

The amendments also promote the human rights of the community, including families and children of victims (section 26) and the right to privacy (section 25(a)).

Are the limitations reasonable and demonstrably justifiable

The purpose of the amendments is to incentivise early cooperation to locate the victim's remains and disincentivise destruction of remains and/or delayed cooperation, providing victims' families with closure. The Bill addresses legislative loopholes identified following the decision of *Armitage v Parole Board Queensland* [2023] QCA 239 (*Armitage*) in which the Court determined that under the NBNP framework, 'remains' means remains that are still in existence and capable of being located. This means that under the existing NBNP framework, the definition of a NBNP prisoner cannot be met in circumstances where a prisoner fails to cooperate or delays cooperation for such a long period that the remains no longer exist, or are unlikely to exist due to natural disasters, predators or decomposition, or as a result of natural conditions of where the body was placed, for example, where the body is dumped in the ocean. It also means the existing NBNP framework does not apply where the prisoner destroys the body and any remains to ensure that there is nothing left to be found.

This is inconsistent with community expectations and limits the incentive to cooperate in locating the victim's remains.

The amendments recognise that the pain of losing a family member is further compounded when the body or remains of loved ones are unable to be recovered, and their last location remains unknown. In my opinion, the amendments promote the rights of the families and children left behind after loss through a criminal act and promote the right to privacy by protecting interference with a person's mental integrity.

The right to recognition and equality before the law (section 15(3)) provides that every person is equal before the law and is entitled to the equal protection of the law without discrimination. Removing the possibility of parole for certain offenders (those whose offending involves a 'no body' case) treats these offenders differently from other offenders having committed the same offences (offences where the body is located). These amendments therefore treat persons differently based on their conduct and the circumstances of their offending. However, this is

an accepted form of differential treatment which already occurs in many other aspects of the sentencing and parole system and therefore does not limit section 15.

The right to liberty (section 29) is engaged because the amendments may lead to more prisoners falling under the NBNP framework (due to the expansion of the definition regarding 'remains'), or to being subject to the NBNP framework for longer (due to the amendment to the scope of 'period of imprisonment for a homicide offence'). However, the amendments do not impose or extend a prisoner's sentence. A prisoner's deprivation of liberty arises from the sentence of imprisonment for a homicide offence imposed by the Court, and a prisoner does not have an entitlement to release merely because they have reached their parole eligibility date. Therefore, the right is not limited.

The right to a fair hearing (section 31) entitles a party to a civil proceeding to have the proceeding decided by a competent, independent, and impartial Court or Tribunal after a fair and public hearing. While amendments to section 193A will clarify that certain pending parole applications (e.g. those pending at the time a no-cooperation declaration is made, under the deferral required in section 193A) are to be taken to be refused without proceeding to hearing, this was always the intended operation of the regime. This does not alter the human rights engaged and, accordingly, while the right is engaged, it is not limited.

The prohibition on retrospective criminal laws (section 35) provides that a penalty must not be imposed on any person for a criminal offence that is greater than the penalty that applied to the offence when it was committed. As discussed above, the amendments to the NBNP framework will apply to currently serving prisoners and may have the effect of bringing currently serving prisoners within the operation of the framework. However, consistent with the High Court's approach, changes to parole eligibility do not alter the penalty imposed for the crime (being the sentence to imprisonment imposed by the Court), and therefore this right is not limited.

I recognise that these amendments may expand the cohort of prisoners to whom the NBNP framework may apply. I also recognise that the effect of the regime is that those individuals may be ineligible for parole until they cooperate in a timely and satisfactory way to identify the location or last known location of all of the victim's body or remains, and that these amendments provide greater clarity around what is required for cooperation to be timely and satisfactory. This may engage the right to be free from cruel, inhuman or degrading treatment (section 17(b)), or inhumane treatment when deprived of liberty (section 30), as the amendments will have the effect of removing the prospect of release of certain prisoners on life sentences. This may lead to a sense of hopelessness for NBNP prisoners which may constitute a limit on the rights in sections 17(b) and 30 of the HRA. International authorities on similar provisions have interpreted this right as being limited where a prisoner serving a life sentence is given no real prospect of release, which may be contrary to human dignity and amount to inhuman and degrading treatment. However, in Queensland, there is no positive right to be released on parole. The effect of the NBNP regime is that a person who remains under the framework is required to serve their entire head sentence, even if there is a fixed minimum non-parole period.

These amendments are intended to address critical legislative gaps in the current NBNP framework and incentivise early cooperation to locate victims' remains and disincentivise destruction of remains and/or delayed cooperation.

I consider there are no less restrictive and reasonably available ways to achieve the purpose of fixing these gaps and consider any limitation on the offenders' human rights is outweighed by the need to provide closure to victim's families and incentivise offenders to cooperate.

Therefore, in my opinion, the limitations on the rights of the prisoner are reasonably justified and the amendments are therefore compatible with human rights.

Victims' Register Notification

The Bill amends the CSA to require the Queensland Police Service (QPS) or the Office of the Director of Public Prosecutions (ODPP), dependent on which is the prosecuting agency, to provide relevant victim information, if known, to the chief executive as soon as practicable following sentencing.

The chief executive must then proactively notify a victim of their right to register for updates of information about the prisoner, unless the chief executive does not have sufficient information from the prosecuting agency or is aware the victim does not wish to be contacted about the Queensland Corrective Services (QCS) Victims' Register.

Where the victim is a child or person of impaired capacity, the parent/guardian or attorney may be contacted as the victim, similarly to the provisions for an eligible person who is a child or a person with impaired capacity in current section 323A of the CSA.

Relevant Human Rights

The amendments in the Bill relating to Victims' Register notification engages the right to privacy (section 25(a)).

A person has the right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with. The scope of the right to privacy is very broad. It protects personal information and data collection.

The amendments will require the QPS or ODPP to provide, upon sentence, relevant victim information (including name and contact details) to the chief executive in order for the chief executive to proactively notify a victim or their guardian of their right to register on the Victims' Register.

Are the limitations reasonable and demonstrably justifiable

The QPS or DPP are required to provide relevant victim information to the chief executive. While this limits the victim's right to privacy, as their information may be provided without their consent, the limitation is reasonable and proportionate and is not arbitrary as it is intended to promote the victim's safety. The amendments provide a limited mechanism to enable the chief executive to provide victims with initial information about the Victims' Register, relevant to their safety. I consider that the amendments enhance the right of children to be protected in their best interests (section 26(2)) by providing relevant information about being added to the Victims' Register to their parent.

Youth Justice Victims' Register and transition to the QCS Victims' Register

The amendments enable the chief executive (the Department of Youth Justice and Victim Support (DYJVS)) to request registration on behalf of a person registered on the Youth Justice Victims' Register when the youth offender is transferred to adult custody after turning 18 years of age. This will be done with the consent of the person registered.

Relevant Human Rights

The amendments engage the right to privacy under section 25 of the HRA because the mechanism for supporting registration on the QCS Victims' Register may involve the DYJVS

providing personal information about a victim to QCS for the purpose of the victim's registration.

Are the limitations reasonable and demonstrably justifiable

The limitation is reasonable and proportionate. The amendment is directed to the legitimate objective of supporting continuity of assistance for victims when a youth offender moves from the youth justice system to the adult corrective services system. The amendment provides a limited mechanism for DYJVS to make an application on behalf of a victim who has requested or consented to the application.

The limitation on the right to privacy is therefore confined to the sharing of information necessary to facilitate the victim's registration and is subject to the victim's request or consent. The limitation is appropriately tailored to the legitimate objective of facilitating continuity of support and access to the existing statutory victims' register scheme.

Submissions from Registered Victims to the Board

The Bill promotes the engagement of victims with the Board by making the following amendments:

- increasing the period for a registered victim to make a submission to the Board from 21 days to 42 days;
- allowing a registered victim's submission to include information relevant to the likely impact on the registered victim or their family if a parole order were made;
- requiring the chief executive to provide registered victims with additional information about the parole process;
- protecting the confidentiality of submissions by prohibiting the release of a registered victim's submission, or information in the submission, to a prisoner or their representative and excluding the rules of natural justice in relation to the submission; and
- allowing a registered victim or their support person or advocate to, with leave of the Board, appear before the Board to make submissions.

Relevant Human Rights

I have considered whether the amendments may limit the right to a fair hearing (section 31).

The amendments promote the human rights of registered victims. In particular, the amendments promote the right to freedom of expression (section 21) by providing registered victims with more time and greater opportunity to participate in the parole process.

The amendments also promote the right to privacy (section 25(a)) by protecting the confidentiality of registered victim submissions. The amendments further promote the protection of families and security of the person by enabling the Board to consider the likely impact of a prisoner's release on a registered victim or their family when making conditions that could be imposed to protect a victim from harm.

Are the limitations reasonable and demonstrably justifiable

The right to a fair hearing (section 31) is engaged because a registered victim's submission, and information contained in the submission, cannot be provided to the prisoner or their representative. A prisoner may therefore not have access to all material considered by the Board when determining their parole application.

The purpose of the amendments is to protect the safety and privacy of registered victims and support their meaningful participation in the parole process. Protecting the confidentiality of registered victim submissions provides victims with confidence that they can communicate openly with the Board about the impact of a prisoner's potential release and any concerns for their safety without their submission being provided to the prisoner or their representative. These are legitimate and important purposes.

While a prisoner will not have access to the registered victim's submission or information contained in it, the amendments do not prevent the Board from affording the prisoner procedural fairness in relation to matters arising from the submission where this can occur without disclosing protected victim information. The Board's decisions also remain subject to judicial review, in which relevant material may be available to the Court in accordance with law.

Providing the submission itself or requiring its contents to be disclosed to the prisoner, would undermine the protection the amendments are intended to provide and may discourage victims from participating fully and openly in the parole process.

I consider the importance of protecting the safety, privacy and meaningful participation of registered victims outweighs the limitation on the prisoner's right to a fair hearing. The limitation is appropriately confined to the registered victim's submission and information contained in it, while preserving the Board's ability to afford procedural fairness in relation to matters arising from the submission where appropriate and without compromising the victim's safety or privacy. Accordingly, I am satisfied that the limitation on the right to a fair hearing is reasonable and demonstrably justified under section 13 of the HRA.

Information sharing with victims & expansion of eligibility for the Victims' Register

The Bill amends the CSA to enhance the information that can be shared with registered victims and ensures that the Board provides to the chief executive all the information that should be shared with registered victims.

The Bill also ensures that if a Court takes a totality approach to sentencing in respect of an offence of breach of bail by committing a prescribed offence, the victim of a sexual or violent offence is not disadvantaged by expanding the eligibility to include where there is a sentence of detention for an offence against the *Bail Act 1980* (Bail Act), related to an offence of violence or a sexual offence.

Relevant Human Rights

I have considered whether the amendments may limit the right to privacy (section 25(a)). The right to freedom of information (section 21(2)) will be enhanced for registered victims as they will now receive information that the chief executive currently has a discretion, but not an obligation, to provide under section 325 of the CSA. Information that now must be provided by the chief executive under section 324A of the CSA includes the length of term of imprisonment a prisoner is serving, the results of a prisoner's parole application and the transfer of a prisoner interstate or overseas.

Are the limitations reasonable and demonstrably justifiable

The right to privacy will likely be limited as the chief executive will be required to provide more personal information to a registered victim where previously they had a discretion. Further, some additional information (including the making and duration of a restricted prisoner declaration) that was previously not available for disclosure by the chief executive

(either on a mandatory or subsequent basis), will now be required to be provided to a registered victim. However, this is an expansion of an existing requirement, and the additional information is of the same character as the information already contained in sections 324A and 325 of the CSA.

In my opinion, the need to provide victims with relevant information about significant events regarding a prisoner outweighs the additional burden on the right to privacy of prisoners. The relevant protections under section 324AA, which preclude a registered victim from disclosing information provided to them by the chief executive under the CSA, still apply. I am satisfied there is no other way to give victims the relevant information other than through the amendments. Therefore, I consider the limitations on a prisoner's right to privacy to be reasonably justified, and the amendments are therefore compatible with human rights.

Community safety as the paramount consideration for parole and parole conditions the Board may include

The Bill amends the CSA by:

- providing that the paramount consideration for the Board in deciding all parole applications is the safety of the community;
- including a list of matters the Board must consider in assessing a prisoner's level of risk to community safety, as well as providing that the Board may consider, in addition to community safety, any other matters it deems relevant;
- inserting a requirement for the Board to consider what parole conditions are necessary to ensure appropriate conditions are included in a parole order for the safety and protection of a victim, including psychological safety, and the safety of the community; and
- providing that a parole order granted by the Board may also contain conditions the Board reasonably considers necessary to protect the safety of a victim and the community.

In my opinion, the imposition of a statutory framework within which the Board is to consider a prisoner's application for parole is unlikely to limit any rights. Having specific criteria will enhance consistency in decision making that meets community expectations and reduce delays and the number of deferrals. While the Board will now be required to consider any submission made by the victim and the impact the prisoner's release is likely to have on the victim or their family, this is only one of the criteria the Board must consider. The Board is already entitled to take submissions of the victim made under section 188 of the CSA into account. A prisoner's human rights will also need to be considered by the Board when making a decision on a parole application.

Requiring the Board to specifically consider what conditions may be necessary for the safety of the victim and the community (and to allow for an imposition of those conditions) may potentially lead to more restrictive parole conditions for the offender, which may limit human rights, however this is necessary to protect victims and promote community safety. Therefore, I consider specifically identifying and including victim and community safety as a category of conditions to be reasonably justified as it assists in achieving the purpose of making community safety the paramount consideration in the granting of parole.

Publication of Board decisions

The Bill omits section 235A of the CSA and inserts a new section 235A to provide that the President of the Board may publish a decision of the Board and the reasons for it, or only part, a redacted version or a summary of the reasons, if the President considers it in the public

interest. For decisions relating to a prisoner's application for a parole order, in determining whether publication is in the public interest, the President must have regard to the interests of victims and community safety. Where the President considers that the decision should be published, notice must be provided to any registered victims, who will have 21 days to make a submission about the proposed publication.

Relevant Human Rights

I have considered whether the amendments may limit the right to privacy (section 25(a)).

The amendments also promote the right to freedom of expression (section 21), including the right to seek and receive information, by enabling the public to access information about decisions of the Board where publication is considered to be in the public interest.

Are the limitations reasonable and demonstrably justifiable

The right to privacy (section 25) is engaged because a published decision or reasons may contain personal information about a prisoner or other information from which the prisoner may be identified. Publication may also affect the privacy of victims where information relating to them is contained in the decision or reasons.

The purpose of the amendments is to promote community safety by enabling greater transparency and accountability in relation to decisions to release prisoners on parole. Publication of decisions in appropriate cases will provide the community with greater visibility of the reasons for a decision to release a prisoner and support public confidence in the operation of Queensland's parole system.

The amendments contain safeguards to minimise any interference with privacy. Publication is discretionary and may only occur where the President considers it to be in the public interest. In determining the public interest, the President must have regard to the interests of any victims and community safety. Where the President considers that a decision about a parole application should be published, any registered victim must also be notified and given 21 days to make a submission about the proposed publication. This provides registered victims with an opportunity to raise concerns about the disclosure of information that may affect their privacy or safety before publication occurs. The President is also not required to publish the decision or reasons in full and may instead publish only part, a redacted or summary of the reasons, where in the public interest.

The limitation is appropriately confined and subject to safeguards that enable the privacy and safety of victims, and prisoners, to be considered in each case. Accordingly, I am satisfied that any limitation on the right to privacy is reasonably justified under section 13 of the HRA.

Exceptional Circumstances Parole

The Bill amends section 176 of the CSA to align the treatment of applications for exceptional circumstances parole to the current framework for restricted prisoners. The Board must refuse to make the parole order unless the Board is satisfied:

- a) the prisoner has demonstrated that the prisoner, as a result of a diagnosed disease, illness or medical condition—
 - i. is in imminent danger of dying and is not physically able to cause harm to another person; or
 - ii. is incapacitated to the extent the prisoner is not physically able to cause harm to another person; and

- b) the prisoner has demonstrated that the prisoner does not pose a risk to the public; and
- c) that the making of the parole order is justified in the circumstances.

The amendments also require that the Board notify the chief executive in writing as soon as practicable after a decision is made to grant a prisoner parole on grounds of exceptional circumstances.

Relevant human rights

In my opinion, the human rights relevant to the amendments in the Bill about changes to exceptional circumstances parole are:

- the right to privacy (section 25(a))
- the right to protection of families and children (section 26)

Are the limitations reasonable and demonstrably justifiable

Currently, due to the broad basis on which an application for exceptional circumstances parole can be made, the Board receives a large number of applications each year. The purpose of the amendments is to reflect the reality and gravity of circumstances that should qualify as 'exceptional', and to reduce the burden on the Board in considering many applications that do not approach that threshold (as currently happens many times each year) where granting exceptional circumstances parole would not align with community expectations and appropriately recognise that parole is a privilege, not a right.

The amendments may impose limitations on the rights of prisoners and their families by not allowing a prisoner to be granted parole to care for ill family members. However, the inability to care for family members is a consequence of incarceration, rather than a circumstance warranting the granting of exceptional circumstances parole. In my opinion, any limitation of the rights of prisoners and their families are outweighed by the need to reserve exceptional circumstances parole for those prisoners who, because of a disease or illness, are in imminent danger of dying or are incapacitated, are no harm to their victims and the community and where their condition can no longer be managed in a corrective services facility.

Therefore, I consider any limitation on rights are reasonably justified and the amendments are therefore compatible with human rights. To the extent the amendments interfere with privacy, they are proportionate and therefore it is not arbitrary. Accordingly, that right is not limited.

Modified discrimination complaints

The Bill inserts new subparagraphs in relation to the safety of the community and victims and national security under sections 319G(3) and 319H(2) of the CSA. These clauses will require the Queensland Civil and Administrative Tribunal (QCAT) to explicitly take the need to protect the safety or wellbeing of the community or a victim of a crime, and the need to protect national security into account when determining the reasonableness of the treatment or proposed treatment of an offender. Treatment by a protected defendant (such as QCS) of an offender is not direct discrimination under the *Anti-Discrimination Act 1991* if the treatment is reasonable.

In my opinion, the amendments are unlikely to limit any rights. The CSA currently provides that in determining an allegation of direct discrimination by an offender QCAT can consider 'any other matters the tribunal considers relevant' when deciding whether the treatment or proposed treatment is reasonable. This could possibly encompass the safety of the community and victims, and national security. However, the amendments clarify the matters that QCAT should consider when determining a discrimination application and are in-line with the broader

initiatives of the Bill, which prioritises the rights of victims over offenders, and community safety. The safety of the community and victims, and national security are relevant considerations in cases where a person may make a complaint about a QCS decision to refuse a request that, if granted, would have adversely impacted community safety or national security.

The amendments may engage the right to recognition and equality before the law under section 15(3). As outlined above, this right ensures that all laws and policies are applied equally, and do not have a discriminatory effect. In my opinion, this right is engaged but not limited. As noted above, the CSA currently provides that QCAT has a wide discretion under sections 319G or 319H of the CSA in determining whether treatment or proposed treatment is reasonable in relation to a discrimination complaint. The amendments recognise that there will be times that treatment or proposed treatment is justified on grounds of safety of the community and victims and national security.

Schedule 1 Offences

The CSA has specific provisions applying to prisoners convicted of a sexual offence, including restrictions on transfers to low custody, limitations on parole eligibility and narrowed access to leave. A victim of a sexual offence may also seek inclusion on the Victims' Register and access to information about the prisoner. The Bill updates Schedule 1 to reflect a more comprehensive list of sexual offences, including adding Commonwealth sexual offences and updating Schedule 1 to include all the prescribed offences listed for reportable child sex offenders under the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* (Qld). This misalignment undermines consistency in how sexual offenders are identified and managed by QCS, creating uncertainty for QCS and undermining community safety by allowing serious sexual offenders to avoid the high levels of scrutiny and restrictions intended to apply.

The inclusion of additional sexual offences in Schedule 1 of the CSA may impact the right to freedom of movement (section 19) as an offender will now have their access to leave narrowed. However, I consider any potential limitation on the rights of offenders is outweighed by the need to include these types of sexual offences in Schedule 1 to ensure consistency in the management of sexual offenders who pose a specific risk to the community, and the availability of access to the Victims' Register. I consider any potential limit to human rights to be reasonable and demonstrably justified.

Additional Amendments to the YJA

Amendments to the YJA expand the circumstances in which a person may be registered to receive information under the Youth Justice Victims' Register to include where a child has been sentenced to detention for an offence against the Bail Act, related to an offence of violence or a sexual offence. The Bill also removes the provisions that provide a youth who is the subject of an application for registration with an opportunity to make submissions to the chief executive about why the person should not be registered. The amendments may engage the youth's right to privacy (section 25) because registration of a victim may involve information about the youth being recorded and disclosed to the registered victim under the existing Youth Justice Victims' Register framework.

To the extent the right to privacy may be limited, the limitation is reasonable and proportionate. Any interference on the youth's privacy is not arbitrary as it is intended to promote the victim's safety.

The amendment supports the legitimate objective of facilitating the access of victims to the Youth Justice Victims' Register and protecting victims from being deterred from registration by concerns about the disclosure of their personal information to the youth.

Introduction of new exemption in the CSA

The Bill inserts new section 5B into the CSA which provides that section 58 of the HRA does not apply to acts and decisions of the chief executive or a corrective services officer in the administration of this CSA or the *Dangerous Prisoners (Sexual Offenders) Act 2003* that relate to a prisoner in a corrective services facility, the placing of a prisoner in a corrective services facility or a supervised dangerous prisoner (sexual offender) not in a corrective services facility.

Section 58 ordinarily requires a public entity to act and make decisions compatibly with human rights. Corrective services is an inherently high-risk operating environment. QCS officers are required to make operational decisions to safely and effectively manage prisoners, maintain the security and good order of corrective services facilities, and protect officers and the broader community from harm.

QCS officers should not be required to undertake additional human rights assessments in the interests of an individual prisoner before taking otherwise lawful action necessary to perform these functions. Requiring officers to undertake this additional assessment imposes an unnecessary administrative burden, consumes resources and can impede the efficient and effective performance of QCS' core community safety functions. This is particularly important in respect of persons supervised and managed under the *Dangerous Prisoners (Sexual Offenders) Act 2003*. These are offenders who have completed their sentence and cannot continue to be held in prison, but who have been found by a Court to pose an ongoing risk of committing a serious sexual offence if released into the community without appropriate supervision. In managing these offenders, QCS officers must be empowered to act protectively and with no tolerance for risk to community safety. The individual human rights of an offender should not prevent, delay or unnecessarily constrain QCS from taking otherwise lawful action necessary to maintain the safe and effective operation of contingency accommodation precincts, enforce the conditions applying to offenders, or protect officers, other persons and the broader community from harm.

I acknowledge that section 58 provides an important mechanism for protecting human rights in executive decision-making and that its disapplication represents a significant departure from the ordinary operation of the HRA. It is noted that the disapplication of section 58 in this context does not remove the substantive protections and safeguards otherwise applying under the CSA or other laws regulating the treatment of prisoners as well as Australia's obligations under international law.

The disapplication of section 58 does not authorise otherwise unlawful conduct.

For this reason, despite being incompatible with human rights, the exemption is necessary to ensure QCS officers can perform their functions efficiently and decisively.

Amendments that do not engage or limit human rights

Renaming the Eligible Person's Register and Eligible Persons

The Eligible Person's Registers under the CSA and YJA allow victims or other eligible persons to register to receive notices or information about prisoners or homicide offenders (or violent or sexual youth offenders).

The term 'Victims' Register' is already used to describe the 'Eligible Persons Register' on web pages, brochures, fact sheets, application and inquiry forms. The amendments will therefore provide clarity and reduce confusion for those interacting with the register.

I consider this change is unlikely to limit any rights.

Considering the interests of victims in parole reapplication decisions

The Bill inserts a requirement for the Board to consider the likely effect that the making of a further application for a parole order may have on any victim of the prisoner. The amendment ensures that the impact of repeated parole applications on victims is expressly and consistently considered as part of the Board's decision-making process.

I consider this change is unlikely to limit any rights as parole is a privilege, not a right and the amendment does not prevent a prisoner from making a further parole application indefinitely.

Reporting on education for Board Members

The Bill amends the CSA to require the Board's Annual Report to include, amongst its activities, the continuing education engaged in by Board members.

I consider this change is unlikely to limit any rights.

Promoting the efficient and operation of the Parole Board Queensland Secretariat

The Bill amends the CSA to include an additional subsection that clarifies the President of the Board must ensure the practices and procedures of the Board facilitate the efficient and effective operation of the secretariat as well as the Board.

I consider this change is unlikely to limit any rights. It may possibly enhance the right to work of employees of the Board as the right to privacy in section 25(a) encompasses aspects of the right to work.

Clarifying parole application timeframes

The Bill amends the CSA to clarify that a prisoner may apply for parole in the 180 days prior to their parole eligibility date if no restrictions apply.

I consider this change is unlikely to engage or limit any rights as it does not change the timeframe for when a person can apply for parole. Redrafting section 180 of the CSA in plain English will improve transparency and certainty in how the parole process operates.

Qualifications for appointment to the Board

The Bill amends the appointment requirements for the President and each Deputy President in section 222 of the CSA to require the appointee to have qualifications, experience or standing that is equivalent to a judge of the Supreme Court of Queensland or another state or the Federal Court of Australia.

The Bill amends section 221 of the CSA to include qualifications in psychiatry or forensic psychology as additional examples of a professional Board Member qualification.

The amendment regarding the appointment requirements for the President and each Deputy President is a clarifying amendment only, provides transparency and ensures that the positions are occupied by persons with the necessary legal qualifications and standing to oversee the effective and efficient operation of the Board.

Electronic Scanning of Privileged Mail

The Bill clarifies that a corrective services officer authorised by the chief executive may use an electronic scanning device to search privileged mail without opening the mail to assist in identifying dangerous or prohibited items. This will support the forming of a reasonable suspicion required to conduct a search of the privileged or purported privileged mail under section 45(2) of the CSA. An electronic scanning device is one that cannot be used to read the written contents of privileged mail. An electronic search is not required to be recorded in the register of searches of privileged mail.

The purpose of the amendments to electronically scan privileged mail is to detect prohibited or harmful items without compromising the confidentiality of the mail's written content. In my opinion, the amendments will not limit a prisoner's right to privacy as any electronic scanning device will not be able to read the contents of privileged mail. The amendments may also potentially enhance the right as less mail may be opened because electronic scanning will reduce the need for as much mail to be manually reviewed. The right to privacy (which includes physical integrity) of other prisoners and prison staff may be furthered by better detecting contraband that has the potential to cause physical harm (such as weapons or drugs).

Further, the right to property is not engaged or limited as the ability of the chief executive to seize harmful or prohibited things contained in privileged mail under section 47 of the CSA remains unaltered.

Conclusion

In my opinion, part of the Bill is not compatible with the human rights protected by the HRA for the reasons set out above.

In my further opinion, the remainder of the Bill is compatible with protected human rights because it limits human rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom and to make Queensland safer and deter repeated serious offending.

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