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

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Queensland Nurses & Midwives' Union

Submission to

Community Safety and Legal Affairs Committee

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

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Introduction

The Queensland Nurses and Midwives' Union (QNMU) thanks Community Safety and Legal Affairs Committee for the opportunity to provide feedback on the *Corrective Services (Promoting Safety) and Other Legislation Amendment Bill 2024* (the Bill).

The QNMU is Queensland's largest registered union for nurses and midwives, representing over 72,000 members. The QNMU is a state branch of the Australian Nursing and Midwifery Federation (ANMF) with the ANMF representing over 322,000 members.

Our members work in health and aged care including public and private hospitals and health services, residential and community aged care, mental health, general practice, and disability sectors across a wide variety of urban, regional, rural, and remote locations.

The QNMU is run by nurses and midwives, for nurses and midwives. We have a proud history of working with our members for over 100 years to promote and defend the professional, industrial, social, and political interests of our members. Our members direct the QNMU's priorities and policies through our democratic processes.

The QNMU expresses our continued commitment to working in partnership with Aboriginal and Torres Strait Islander peoples to achieve health equity outcomes. The QNMU remains committed to the Uluru Statement from the Heart, including a pathway to truth telling and treaty. We acknowledge the lands on which we work and meet always was, and always will be, Aboriginal and Torres Strait Islander land.

The QNMU re-affirms the position and recommendations outlined in our previous consultation to the draft Bill. We acknowledge the purpose of some of the amendments to the *Corrective Services Act 2006 (CSA)* are to support greater efficiencies in the delivery of health care to prisoners and promote the safety and accountability of corrective services functions. Although we broadly support this intent, we continue to raise concerns around two of the primary policy objectives of the Bill and how they will operate in the healthcare context. Our submission focuses specifically on the proposed use of body-worn cameras and amendments to enable prisoner transfers for palliative or personal care.

Recommendations

The QNMU Recommends:

Use of body-worn cameras

- There is careful consideration given to the use of surveillance devices, including body-worn cameras and the wide implications for health care providers, nurses, midwives, other health practitioners, patients and their carers;
- Where body-worn cameras are employed, staff should be instructed to turn the audio off (i.e. record visual only) when prisoners are receiving healthcare to ensure prisoners' rights to privacy and confidentiality are protected;
- Ensuring that the engagement of body-worn cameras does not deter prisoners from seeking health care or disrupting the therapeutic relationship between patients and health practitioners;
- Requiring that Corrective Services Officers (CSOs) must notify all individuals before activating a body-worn camera;
- Strengthening the definition of *sensitive location* under section 173B of the CSA and including additional explanatory notes to provide clarity about the types of health care settings that fall under this definition;
- Considering the protection and privacy of surrounding patients, health practitioners and members of the public that may be captured by body-worn cameras;
- Ensuring that disclosure of body-worn camera videos, images and information must only take place where it is necessary to assist with an investigation into an alleged offence;
- Developing best practice guidelines, procedures, and policies for health practitioners to understand when body-worn cameras are authorised in the clinical care context and ensure consistency with how the legislation is applied and how care is provided across healthcare settings; and
- Considering an escalation framework for patient safety and staff that provides guidance regarding the use of alternative measures and using body-worn cameras only when necessary.

Transferring patients for palliative and personal care

- Building the capacity of prisoner primary and specialist health services, including palliative and chronic care services, to be co-located with corrective services facilities;
- Minimising patient transfers unless absolutely required, in order to reduce unnecessary hospital admissions and associated costs;
- Improving healthcare assessments for aged care prisoners who will be released back into the community but for whom their health needs are complex;
- Improving corrective services clinical environments to reflect the aging prison population and their age-related health needs; and
- Increasing infrastructure, interdepartmental coordination, and collaboration between Queensland Health and Queensland Corrective Services (QCS) to facilitate better and more integrated health service delivery when transferring patients between facilities.

Use of body-worn cameras outside of corrective facilities

The QNMU recognises that surveillance devices such as body-worn cameras are now commonly deployed by law enforcement, correctional and security agencies and are increasingly used in healthcare environments. The application of these devices may be useful in providing contextual evidence when investigating incidents and promoting the safety and security of individuals, health practitioners and the community.

There has been little independent evaluation of body-worn cameras in healthcare settings, with many concerns left unanswered, including the potential impacts on therapeutic relationships and ethical concerns regarding privacy, consent, confidentiality, and patient dignity. Research remains largely inconclusive regarding the impacts that body-worn cameras have on occupational violence and work health and safety issues in the healthcare environment (Skinner et al., 2022). One systematic review study noted that mental health services are beginning to use body-worn cameras for purposes similar to the law enforcement sector to document and deter aggressive incidents, rather than taking a more patient-centred approach commonly found in physical healthcare environments. The question remains as to whether body-worn cameras are an effective and acceptable method of achieving safer workplaces, while maintaining parity of esteem between mental and physical healthcare (Wilson et al., 2021).

It is also important to acknowledge the limitations body-worn cameras may place on prisoners' and other individuals' human rights and the potential disruption to delivering health care. Individuals are entitled to a reasonable expectation of privacy, access to health services without discrimination and the right to humane treatment when deprived of liberty, in accordance with the *Human Rights Act 2019*. Body-worn cameras have the potential to disrupt these rights.

In determining whether a limitation may be reasonable and justified, the use of body-worn cameras in the healthcare environment should be necessary, proportionate and for a legitimate purpose, and consider the impact on therapeutic relationships between health practitioners and patients.

The QNMU acknowledges that the Bill includes a number of safeguards that intend to ensure that the limits on human rights imposed by body-worn cameras are necessary and justified to achieve safety, deterrence and accountability. It is the view of the QNMU that the provided safeguards do not capture the wider implications for health care providers, nurses, midwives, other health practitioners, patients, and their carers. It is important to ensure there is clear lawful authority for the use of surveillance devices that appropriately safeguards individual privacy and does not impede patient's access to safe, quality care.

We raise the following concerns and suggest some guiding principles and measures to facilitate the amendments, whilst balancing prisoners' rights when receiving health care.

Recording when receiving health care

Due to the nature of audio-visual footage and the interactions that body-worn cameras are likely to record in the healthcare setting, health information and personal information are likely to be collected. The QNMU strongly maintains our position that where body-worn cameras are

employed, staff should be required to turn the audio off (i.e. record visual only) when prisoners are receiving healthcare to ensure prisoners' rights to privacy and confidentiality are protected. This is based on the principle of confidentiality as health practitioners are required to keep a patient's personal health information private. It also aligns with current practice in Hospital and Health Services (HHSs) where body-worn cameras are only used if security personnel are responding to an emergent situation.

The QNMU encourages various restrictions on the use of surveillance devices proposed in the Bill, including ensuring that the use of prescribed surveillance devices under new section 173B of the CSA is subject to existing restrictions and obligations about recording and monitoring prisoner communications, as prescribed in the existing section 52 of the CSA.

Potential deterrent to seeking health care

Recording a patient interaction can give rise to a general sense of mistrust and apprehension from prisoners about when and how they are being recorded. The QNMU raises concerns that body-worn cameras may deter prisoners from seeking health care when needed and have the potential to disrupt the therapeutic relationship between patients and staff.

Our nursing members have raised concerns that they are often unaware that body-worn cameras are in use when they are providing care to patients. We are aware of instances where body-worn cameras have been activated without notifying nursing staff, and in some cases, this has compromised patient care. For instance:

- a member presented to a medical emergency but was not able to access the patient who was behind a locked door. QCS staff were filming the incident, intending to capture the member saying that the patient had 'faked their symptoms'.
- keeping a body-worn camera activated during a private medical procedure, where the patient posed no threat to nursing staff.

To avoid compromising confidentiality or limiting patient disclosure to health practitioners, CSOs must notify individuals, including prisoners, staff, and health practitioners, before activating a body-worn camera. The Bill must further consider balancing the potential benefits of using cameras with the possible impact this technology may have on patient experiences and outcomes.

Definition of sensitive location

The Bill provides that the use of a body-worn camera in a sensitive location is only permitted if the CSO believes there is an imminent and significant risk to the life, health, or safety of an individual. The QNMU seeks further clarity regarding the definition of *sensitive location* and its application in the healthcare environment. The proposed definition is unclear about the clinical and healthcare settings captured. This may create ambiguity about when CSOs are authorised to record in these settings. Nurses and other health practitioners must be aware and informed when body-worn cameras are activated when providing care. We suggest that the definition is strengthened within the legislation and is accompanied by explanatory notes to give additional context.

For example, we propose the following amendment to the definition of sensitive location, under section 173B (9). (Amendments are highlighted in **bold**).

Clause 43 – section 173B Body-worn camera used by corrective services officer outside corrective services facility

(9) In this section –

> *Sensitive location means any of the following –*
>
> *(b) a room or other place, other than a patient waiting area, where a person is being personally **or clinically** assessed or treated by a health practitioner or authorised mental health service*

The QNMU questions whether the definition gives sufficient regard to the privacy of other patients receiving care. There should be a reasonable expectation that body-worn cameras do not impinge upon anyone's right to privacy while receiving care. This includes patients receiving care in the surrounding environment. Where practicable, reasonable attempts must be made not to capture on recording any consultation occurring between health practitioners, surrounding patients, or members of the public.

Privacy and information governance

The use of surveillance devices and other emerging technologies, including body-worn cameras, poses a number of privacy risks to individuals. Further, the information captured using these technologies will include personal information, enlivening the privacy obligations in the *Information Privacy Act 2009* (IP Act) and rendering collected information subject to the rights of access and amendment conferred by the IP Act and *Right to Information Act 2009*.

While the collection of personal information using these technologies may be considered necessary to better achieve the objects of the CSA, it should be appropriately balanced so as not to intrude unreasonably into the personal affairs of prisoners, visitors, and staff. There must be clear responsibility and accountability for all body-worn camera activities including images and information collected, held, and used, including how videos will be stored and how long they will be retained. The QNMU considers that disclosure of body-worn camera recorded information, including videos, images, must only take place where it is necessary to assist with an investigation into an alleged offence. We support the need for strong natural justice mechanisms for health practitioners to utilise body-worn camera recordings if a dispute, incident, or offence takes place.

Policy development

Using surveillance and recording devices can be an aggravating action and should not be the first preference in managing patient interactions (Wilson et al., 2023). Sufficient consideration must be given to alternative measures and de-escalation pathways that are less restrictive and reasonably available to promote safety and accountability. The QNMU encourages the development of an escalation framework for patient safety and staff that enables the use of body-worn cameras in instances, where appropriate, and there are no other effective options available.

Nurses and midwives have raised concerns about their limited understanding of this technology from a legislative and implementation perspective when delivering care to patients. The QNMU recommends that employers develop best practice guidelines, procedures, and policies for health practitioners to support the proper and safe operation of body-worn cameras when providing care. Such guidance will ensure consistency regarding how the legislation is applied and how care is provided across health care settings.

The QNMU raises concern that practices involving body-worn cameras must not compromise or override the therapeutic relationship or clinical decision-making and judgement of nurses and midwives in delivering care to patients. Likewise, the judgement of a CSO to use a body-worn camera to manage and handle a patient in an emergent situation, must not override nurses and midwives' ability to deliver care. In practice, our members indicate that the decision to record an incident is generally guided by operational determinants that take precedence over the other directives. Further guidance is required to ensure the therapeutic relationship between health practitioners and patients is maintained in these instances.

In practice, our members have experienced CSOs wearing body-worn cameras in a range of scenarios when care is being delivered, such as transporting patients to a hospital and health service facility or during medication rounds, to monitor prisoner's adherence to medications. Nurses do not have any authority to question CSOs over their use of body-worn cameras, despite the potential impact this may have on care delivery. The QNMU is concerned that the effect of these amendments will be to override current practice directives and existing legal obligations in healthcare settings, for instance the *Hospital and Health Boards Act 2011.* If the proposed amendments are implemented, we emphasise the need for better intersection between Queensland Health and QCS operations as it relates to the care environment and operational safeguards that are either in place or proposed.

Enabling prisoner transfers for palliative or personal care

QCS has a duty of care to provide optimal health care for prisoners managed within QCS facilities. It is acknowledged that delivering care in this unique context can be challenging. The prison environment creates additional barriers to the provision of care than those faced in the community, such as balancing the priorities of security and access to health care (Australian Institute of Health and Welfare, 2022; Deeble Institute for Health Policy Research, 2020)

We support the intended purpose of the amendments to increase prisoners' access to vital health services. However, where possible, we encourage the provision of health care services to be co-located with corrective service facilities. This includes the establishment of on-site primary and specialist health care services to proactively manage the health of prisoners and improve their wellbeing and provide optimal palliative and end of life care. The transfer of prisoners to hospital facilities should be minimised unless absolutely required to reduce unnecessary hospital admissions and associated costs.

Our members have indicated the following concerns with transferring aging or palliative care prisoners:

- prisoners are not necessarily physically fit enough to manage routine or regular transfers for medical appointments.

- There is limited access to specialist medical practitioners, nurse practitioners and medical coverage is inadequate to meet their care needs.
- To minimise hospital transfers, nurses need access to the systems used in a hospital (IeMR and medical equipment) as well as the education provided within a tertiary facility and space for patients to be housed within a hospital-like setting on the correctional grounds.

To support this amendment, there is a need for increased infrastructure, interdepartmental coordination, and service wide collaboration between Queensland Health and QCS to facilitate better and more integrated health service delivery. The need for increased health services integration is recognised by Queensland Health and is a key focus of *The Queensland Prisoner Health and Wellbeing Strategy 2020–2025 (Queensland Health, 2020).*

People in prison often have multiple and complex health needs that can impact their transition back into the community. The QNMU suggests the need for better discharge planning, to support the continuity of health care between prison. Further consideration must also be given to improved healthcare assessments for prisoners who will be released back into the community but for whom their health needs are complex.

Such assessments should ensure the following:

- Prisoner's healthcare needs are adequately met, and their decline isn't hastened due to the environment in which they have been released to.
- The support structures are equally adequate, noting that many have complex and laborious needs.
- Release based on compassionate grounds is given due consideration, but not seen as a means to merely release a prisoner without considering what would be in their best interests.

As mentioned above, the principle of equivalence of care states that prisoners must have access to the same standard of health care as the general population. This extends to prisoners who are eligible and requesting voluntary assisted dying. The QNMU questions how this framework interacts with the Voluntary Assisted Dying framework and prisoners' ability to access suitable care both within the prison setting and external health facilities.

We also raise the issue that private hospital facilities are not required to deliver the same standard of care as provided by Queensland Health and Aged Care facilities, that are obligated to meet minimum RN and EN care minutes. Prisoners must be afforded equivalent care in the event they are transferred to a private health facility.

Exploring models of care

The QNMU emphasises that prisoners are entitled to receive care that is equitable to the care received in the general community. To adequately address the health needs of the prison population, we reiterate the need for a systemic review of the models of care available to better accommodate aging and chronic conditions of prisoners within the system. Although outside the scope of the Bill, we encourage the involvement of experienced health staff, including

nurses and midwives, to be engaged in future consultations and strategies to improve access to health care for prisoners and explore innovative models of care.

Additional comments

The QNMU notes that it is important to acknowledge within the legislation that prisoners can also be victims of crime. This is important to establish to ensure that prisoners who are also victims of crime have access to adequate support services and assistance.

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