EDUCATION, EMPLOYMENT AND TRAINING COMMITTEE

Members present:
Ms KE Richards MP—Chair
Mr JP Lister MP
Mr MA Boothman MP (virtual)
Mr N Dametto MP
Mr BL O'Rourke MP
Mr JA Sullivan MP

Staff present:
Mr R Hansen—Committee Secretary
Dr S Dodsworth—Assistant Committee Secretary

PUBLIC HEARING—INQUIRY INTO THE CORRECTIVE SERVICES (EMERGING TECHNOLOGIES AND SECURITY) AND OTHER LEGISLATION AMENDMENT BILL 2022

TRANSCRIPT OF PROCEEDINGS

MONDAY, 23 JANUARY 2023

Brisbane

MONDAY, 23 JANUARY 2023

The committee met at 11.01 am.

CHAIR: Good morning. I declare this public hearing open. My name is Kim Richards. I am the member for Redlands and chair of the Education, Employment and Training Committee. I would like to acknowledge that we sit on the lands of the oldest living civilisation in the world and pay my respects to elders past, present and emerging. We are very fortunate in this country to live with two of the world's oldest continuing living cultures in Aboriginal and Torres Strait Islander peoples whose lands, winds and waters we all now share.

With me here today from the committee are: Mr James Lister, the member for Southern Downs and our deputy chair; Mr Mark Boothman, the member for Theodore, who is joining us via teleconference; Mr Nick Dametto, the member for Hinchinbrook; Mr Jimmy Sullivan, the member for Stafford; and Mr Barry O'Rourke, the member for Rockhampton. Today's hearing forms part of the committee's inquiry into the Corrective Services (Emerging Technologies and Security) and Other Legislation Amendment Bill 2022. On 29 November 2022, the Hon. Mark Ryan MP, Minister for Police and Corrective Services and Minister for Fire and Emergency Services, introduced the bill to the Queensland Parliament. On 1 December, the bill was referred to the committee for detailed consideration and report.

The committee received 14 submissions on the bill. Thirteen of those submissions have been published on the committee's website. Today, we will be hearing from some of the stakeholders who made submissions to the committee. Would any members like to declare any interests relevant to today's proceedings?

Mr O'ROURKE: Just the standing one for me, Chair.

Mr SULLIVAN: The standing one for me, Chair.

CHAIR: Thank you. We have the standing declarations from the member for Rockhampton and the member for Stafford.

The committee's proceedings today are proceedings of the Queensland parliament and subject to the parliament's standing orders. The proceedings are being recorded by Hansard and broadcast live on the parliament's website. Witnesses will not be required to give evidence under oath, but I remind everyone that intentionally misleading the committee is a serious offence.

LUCAS-SMITH, Ms Tina, Social Worker, Children and Parenting Support Program, Sisters Inside

McHENRY, Ms Katie, Policy Officer, Sisters Inside

CHAIR: I welcome our first witnesses from Sisters Inside. Thank you for joining us here today. I invite you to make some opening comments after which the committee will have some questions for you.

Ms McHenry: Good morning. We would also like to acknowledge the traditional owners of the land which we are gathered on today, the Turrbal and Jagera people. I pay my respects to elders past and present. Sovereignty was never ceded. This country always was and always will be the land of First Nations people.

Ms Lucas-Smith: We would also like to acknowledge the women and girls in prison, especially Aboriginal and Torres Strait Islander women and girls who are massively over-represented in systems of social control. We would like to thank the Education, Employment and Training Committee for inviting us to speak today about the Corrective Services (Emerging Technologies and Security) and Other Legislation Amendment Bill. Sisters Inside is an independent, community organisation that exists to advocate for the collective human rights of women and girls who are in prison. Sisters Inside was established and grew out of the lifers and long termers committee at Boggo Road prison. Many of the women involved in Sisters Inside from the beginning are still involved today.

Ms McHenry: We provide individual services for women, girls and their families and we also advocate for the issues, needs and interests of criminalised women and marginalised girls. We are a prison abolitionist organisation which means that we actively work towards the end of prisons and

other carceral structures and forms of social control in our society. First and foremost, we do not support the criminalisation of people being in restricted areas of the prison. In our experience, criminalisation routinely leads to further criminalisation and in our view Queensland is becoming a state of hypercriminalisation, which is coming at a significant cost to the state. We consider that this amendment is unnecessary and punitive.

Ms Lucas-Smith: With regard to the use of X-ray body scanners, body worn cameras and other emerging technologies, we want to make it clear that as an organisation we do not support the continued use of strip searches in prison and the use of strip searching in all prisons should be removed immediately. The continuation of strip searches when other more effective and less degrading forms of searches are readily available is an unacceptable violation of the rights of women in prison. There are a variety of other alternative forms of searches such as the use of X-ray body scanners which can be utilised as an alternative and should be implemented within the prison immediately.

It is important to note that the women we support have stated with regard to being strip searched—

> Being strip searched was the same as being sexually assaulted. It felt exactly the same. It still affects me to the same degree as my sexual molestation as a child.
>
> The process of strip searching is traumatic. I felt violated. I did not want people to see my body, but I was made to do it. It felt like I was being sexually assaulted: 'Take your clothes off. Do it now or else.'
>
> I felt sick every time I was searched. How much lower can you be made to feel?

These searches breach section 17 of the Human Rights Act 2019 Queensland which protects from being treated or punished in a cruel, inhumane or degrading way. A strip search is unnecessarily degrading, especially when there are more effective and less degrading alternatives.

Ms McHenry: We are also concerned about the proposed amendments regarding the security classification framework. The particular concern we have is the mandatory placement in a high-security prison of a person with a high-security classification and the discretionary placement in a low-security correctional facility a person with a low-security classification.

At the moment we support many women in prison who have a low-security classification but who are unable to progress to low-security prisons. This has a massive impact on their ability to do lots of different things. It can be significantly less traumatising for women to go to a low-security prison as well as a lot of the positive benefits that they get from low security. We are concerned about that amendment in particular and have proposed that instead of the discretionary language 'may' being used that it read that they 'must' be placed in a low-security connectional facility.

Further, we do not support the amendments made in proposed subsection 13(2A) which allows for a security classification minimum period of 12 months after a request has been made. We believe that this period is too long and it does not reflect the proper assessment of risk and what may be happening currently for that person. We recommend more frequent reviews be put in place. We are also concerned that the three-year period for a review classification is too long and is not frequent enough.

To supplement our submission on the emergency declarations, we also point out that we do not support the amendments made regarding the emergency declarations. In our experience during the COVID pandemic we saw that measures in locking down the prison were very harmful for the women and were actually disproportionate to risk. Even when someone is placed in solitary confinement for short periods of time it can have severe effects on a person. We do not support the proposed amendments regarding the emergency declarations. Thank you for your time. We are open to any questions that you may have for either of us.

CHAIR: We will move to questions.

Mr LISTER: I thank you for the thoroughness of your submission and for your appearance here today. You just spoke about the impacts on women in custody of the COVID pandemic. Can you talk a little more about your statement that measures taken to protect against the spread of COVID were heavy-handed or more than was necessary under the circumstances?

Ms McHenry: In terms of what we saw with people being locked down for significant periods of time, it is difficult because initially with the pandemic there was no vaccine. Then there was a vaccine and when the vaccine was implemented the restrictions still continued. People were still being placed in isolation. For people coming from the watch house to the prison there was a period of, I think, 14 days where they would be isolated even if they had no symptoms and even when they were vaccinated. In those circumstances it was disproportionate because the person was not presenting

with any symptoms. I am aware that sometimes people do not present with any symptoms necessarily, but two-weeks isolation locked in a cell takes a toll on a person. Further to that, when people are moved from another correctional facility—say moved from Brisbane Women's Correctional Centre to Southern Queensland—they had to undertake that 14-day isolation process.

Mr LISTER: Would you concede that under other circumstances a future pandemic may have characteristics that would make those kinds of restrictions necessary and therefore it is to our advantage to have those provided for in the legislation?

Ms Lucas-Smith: I think you have the ability to do that already. We have shown that you have the ability to do that. The difficulty in including things in legislation is then it is much easier to implement. Things like this have a massive effect not just on the women and men in prisons but also on families who are unable to do visits. Making decisions like this needs to be considered very carefully. We were able to do that through this pandemic in the way you did. We are concerned about giving that power to corrective services.

Mr SULLIVAN: On that particular issue, you started by recognising the over-representation of First Nations people in prisons more generally and in women's connectional centres as well as that they rely on the communities that they and their visitor return to. Do you not accept that in an emergency like the pandemic we had that some of the most vulnerable people we have in our society are in prisons, with the health risks, higher Indigenous population and the communities that they would return to? So you do not think it was appropriate to do everything we could to stop a massive spread like we saw in America and Italy when it spread through the corrective system and hurt the most vulnerable people in the community? You do not think that is appropriate?

Ms McHenry: I think it has to be proportionate to what is happening.

Mr SULLIVAN: Saving people's lives is pretty proportionate, I would have thought?

Ms McHenry: Yes.

Mr SULLIVAN: And the fact that we managed to not let it spread through the northern communities, for example, and it did not get up to the cape. There are issues where we deliberately targeted vulnerable communities.

Ms McHenry: Yes, but again we are concerned that the power is proportionate.

Mr DAMETTO: Thank you very much for coming along and giving your evidence. I support the member for Southern Downs's comments earlier with regard to the way you have looked at the bill and how you responded in your submission. You were speaking earlier about not criminalising breaching restricted areas and places—for example, rooftops and things like that are prescribed in the proposed bill. If we are not punishing people for doing the wrong thing while in prison, what are your ideas around deterring people from doing things and breaking those rules?

Ms Lucas-Smith: They are already being punished within the prison system. It is a double dip. Our concern is that there are breaches and things already happening, and it is unnecessary that they are further criminalised on top of those breaches. The punishment is happening within the prison system.

Mr DAMETTO: Would it not be fair to say that if you are in the prison system and you are continuing to breach further rules, that there is a need and a necessity to show that person that they cannot continue to breach legislation or rules? Part of the whole idea of sending someone to a prison or corrective service facility in the first place is to show that if they do break the rules in society there needs to be a consequence.

Ms McHenry: Yes. Part of the issue is currently there are already consequences for people who are in prison and break the rules and regulations of the prison. That can include being sent to the detention unit which we consider is a form of solitary confinement. They can have their privileges removed. There is a range of consequences for a person already in prison which is based on the Queensland Corrective Services framework of what already are their rules and regulations. We are concerned about the further criminalisation of people. That is the key issue. I understand where you are coming from in your questioning, however we do not want people, as my colleague has advised, further punished because, as she said, they are already in prison.

CHAIR: I am not sure if you have had a chance to read the response from Corrective Services in regards to that point on the double dipping, but their response with regard to section 115 of the act says it—

> … ensures a prisoner's actions cannot be doubly punished by providing that anything prosecuted as an offence in prisoner cannot also be dealt with as a breach of prisoner discipline and vice versa.

I think that has been clarified by Corrective Services.

Mr O'ROURKE: In regards to the sharing of confidential information around prisoners, particularly women and girls, can you talk to that and what the negatives are for prisoners in that space?

Ms McHenry: Yes. Our concern with that was that people are already subject to great violations in prison, and we are concerned that the disclosure of confidential information possibly could impact the treatment that may be provided to a woman; that it might possibly bias her. The example that we used in our submission was a woman who might be suspected of diverting her medication. If that information is shared, she may not necessarily get the medications that she needs because there is a concern around her diverting that medication. The concern that we had around that was in relation to confidentiality; that women, even if they are in prison, should be provided with dignity, and that health information especially, which is particularly personal to a person, should not be shared in that way.

CHAIR: Again, I will go back to the response from the department which says that they have a positive duty to ensure the health and wellbeing of persons in custody and that they already have a strong partnership with Queensland Health and other entities who are responsible for delivering healthcare services within our correctional facilities. A reasonable piece of this is about the emerging technologies, and you spoke about the X-rays and scanners. You would support that move to using these emerging technologies? We see it at airports. We have to take our jackets off now to go through an airport scanner to make it from one side to the other. Do you think these technologies will improve the process for screening, whether they be for prisoners or people attending a facility?

Ms Lucas-Smith: With the removal of strip searching, yes.

Mr BOOTHMAN: I want to go back to the questions that the member for Hinchinbrook was asking, particularly when it comes to the new offence of accessing restricted areas. You made a comment in your opening statement that criminalisation leads to other criminalisation. Can you elaborate on that? I am trying to understand what you mean by that.

Ms McHenry: What we mean by 'criminalisation leads to further criminalisation' is that, in our experience, often we see people for whom it might be their first time entering prison and essentially they are severely displaced—they lose their home, they might not have family support, they lose a lot of the things that they have had in the community and then they enter a prison.

People in prison will inevitably be released at some point into the community. When they are released back into the community, they are completely displaced. A lot of the things which they might have had which provided them a lot of stability they no longer have. In a way, the criminalisation that sent them to prison or whatnot, displaces them so significantly.

What we mean when we say criminalisation leads to further criminalisation—what benefit does continuing to criminalise people serve if eventually they are going to come back into the community? By the time they come back into the community, they are so displaced: they do not have a home to go to, they do not have family, they might not have enough money to do basic things, or they might have significant vulnerabilities. We see a lot of people in prison who have disability or have mental health issues. Most of the time people end up in prison because of a circumstance they cannot always help. The problem with criminalising people is that it makes it a lot harder for them to try to establish a life in the community.

Ms Lucas-Smith: I would also state as well in regards to criminalisation leading to further criminalisation that we would like to see a diversion away from criminalisation into support. When looking at some of these things that are happening within the prison, I think it is important to understand the context of why there may be protests or people going onto roofs. The mental health services are severely lacking in prison as well. We are punishing people for not being able to manage mental health inside when they do not have access to what they would be able to have in the community. We would like a diversion from further criminalisation into support in the community to stop criminalisation, and further support inside to be able to help support people inside so that these incidents are not even happening in the first place.

Mr BOOTHMAN: Thank you for that. You would prefer better support when they are released so they can assimilate back into the community a lot more efficiently and effectively then. I was very confused about criminalisation leads to other criminalisation. Obviously if you do something wrong in the prison, then you still are governed by rules and regulations. I get the gist of what you are trying to say; that you need better support for when the individual is finally released back into community. There needs to be better support for them to reintegrate with society.

CHAIR: That concludes our time for this session. Thank you, Ms McHenry and Ms Lucas-Smith, for attending and sharing your insights. A transcript of these proceedings will be available on the committee's inquiry web page in due course.

BLABER, Ms Helen, Director/Principal Solicitor, Prisoners' Legal Service

CHAIR: Welcome, Ms Blaber. Good morning and thank you for agreeing to appear before the committee today. Would you like to make some opening comments before the committee has some questions for you?

Ms Blaber: I would like to begin by acknowledging the traditional owners of the land on which we meet and pay my deep respects to elders past and present. For those of you who are not familiar with PLS, we are a community legal centre that represents people who experience disadvantage in prison. The majority of our clients are First Nations people and people with disability.

Before I get into my statement, I wanted to clarify something that was discussed just now in relation to double punishment. The departmental response explained that there would not be double punishment. There are provisions within the act to say that if you are given a breach of discipline, you cannot also be prosecuted for that same action, and that is to prevent double punishment.

The problem with the creation of the offence is that while a breach of discipline may not occur because you get on the roof or whatever, you will very likely be put, if you are a man, in the maximum security unit in solitary confinement for conditions of, from my experience, six months, and if you are a woman, you will probably be placed on a safety order. It is a different response because that response is about managing risk, as opposed to punishing, but the consequence is one of punishment because you are held in solitary confinement. If you are a man on a maximum security order for getting on the roof, you are looking at spending six months in solitary confinement. If you are a woman, there is a high likelihood that you will be put on a safety order which is about 28 days in solitary confinement.

PLS has not made the submission about that provision, to be frank, because of the limited time we had to do a submission. Obviously the government thinks there is a necessity for that provision, but, again in my experience, when I have worked with people who have got on the roof, which seems to be the primary concern, I have seen people prosecuted, and I do not know what provision they have been prosecuted under. I do wonder why an additional offence is necessary. I wanted to clarify that because I think the departmental response does not fully explain the consequences for someone if they do behave that way.

CHAIR: It is my understanding that, in terms of the prosecution, the duration and time period under that offence was an insufficient deterrent.

Ms Blaber: Right.

CHAIR: That was my understanding. The existing—what was it—14 days?

Ms Blaber: If you get a breach of discipline, you can be put in solitary confinement for seven days which is probably not a sufficient deterrent, but the reality is, in my experience of over a decade working at PLS, people get put on a maximum security order for getting on the roof, and that is six months in solitary confinement, which is a very different thing. To be honest, if six months in solitary confinement is not going to deter you from getting on the roof, nothing is. I do not know that an additional offence is going to act as a deterrent.

I did a very brief submission. I wanted to confine my comments to the extension of the review period for security classifications and to also briefly talk about the emergency response powers. The bill obviously introduces subcategories around security classifications, but there is very limited information about what that is actually going to look like. The departmental response does make clear that it is going to sit within the existing high- and low-security classification framework.

We do not have much information about the risk subcategories, so I cannot comment on it, but our primary concern is that it is extending the review periods for high classifications from one year to three years. One of the reasons classification reviews are so important is that they facilitate one of the only forms of graduated release in Queensland. Graduated release constitutes best practice. It involves providing people in prison with less supervision and support over time so that they can progressively adjust to community life before they get out of prison. That reduces the likelihood of reoffending. Over a decade ago, almost all graduated release opportunities were removed from Queensland prisons. Release on parole and low-security prison are pretty much all that remain.

A transfer to a low-security prison cannot occur until a low-security classification is obtained. As Katie and Tina mentioned, a low-security classification is not always accompanied by a transfer to a low-security facility. However, it often is. If you get a low classification, you often will go to a low-security prison.

We are aware at PLS that reviews of high-security classifications are already not taking place within the legislative 12-month time frame. I have witnessed that taking place for many years. In 2019, the Queensland Productivity Commission reported that 92 per cent of prisoners on average were

being held in high-security prisons. That means that the majority of people getting out of prison are getting out from high security straight into the community. There is no opportunity for less strict supervision before you get out which might help you adjust. Extending the review periods for security classifications, in PLS's view, is going to make the situation worse. Rather than extending the period for reviewing security classifications, we think greater resources should be made available to support more regular reviews of high-security classifications so that more people in prison can be transferred to low-security prisons to promote their graduated release and promote community safety.

I acknowledge that there is flexibility within the legislation and the procedures for something called event based reviews. In PLS's view that will not ensure that people who are a low risk will receive regular reviews. In our experience, event based reviews tend to only happen when something adverse happens that warrants the increase of a security classification rather than a reduction of a security classification. If you look at the examples provided in the departmental response, you will see that a lot of those—almost three out of four—involve behaviours that would warrant an increase in a security classification. I am happy to take any questions on that before moving on to the other part of my submission.

CHAIR: That is all right. You can continue and we will come back.

Ms Blaber: In terms of the emergency response powers, we acknowledge that it was incredibly challenging for the pandemic to be managed. We also acknowledge that there are other emergencies like floods and measles outbreaks, which seem to happen in prison, which create the need for managing emergencies in prison. Our concern with the bill is that the threshold for the emergency powers is still too low. We agree with the Queensland Human Rights Commission's submission that an emergency should normally constitute an urgent, unexpected or dangerous situation that poses an immediate risk to health, life or property.

The proposed definition in the bill allows an emergency to be declared where a situation exists that is likely to threaten the security or good order of a prison or where the health or safety of a prisoner or another person at a prison is at risk provided the chief executive considers that it is justified. That is a very low threshold. Unfortunately, every day in prison there are issues that compromise security and good order. That is a daily occurrence. They are not unexpected and they should be manageable, and you should not require an emergency power to deal with them. Particularly where there is no explanation within the bill about when a power might be necessary to impose an emergency because of a security or good order incident, PLS considers the threshold is just too low.

Moving on to the powers that apply during an emergency, in short our submission is that additional restrictions in prison mean that people stay in prison longer. There are a few different ways that was illustrated during the pandemic. Firstly, the Corrective Services Act contains very few entitlements. Beyond contacting your lawyer, almost everything in prison beyond the basic necessities of life is a privilege. The bill allows privileges to be restricted where, because of the emergency, it would not be practicable for the prisoner to receive privileges. To talk about what that looks like in practice, during the pandemic we consistently had difficulties speaking to our clients on the telephone or by videoconference despite this being an entitlement, not a privilege. It was not practicable for us to be provided with telephone calls because people were locked down and there were safety concerns but it was possible. It just meant more time and resources.

Headsets, cordless phones, access to other forms of technology were all possible. We managed to get access facilitated because it was an entitlement and because we can navigate our way through the system being experts working with people in prison. This involved a lot of time and resources liaising with senior staff so that they could understand the difference between a privilege and an entitlement. We were regularly contacted by other lawyers seeking advice on how they could even contact their clients in prison during the pandemic. The result was that many criminal lawyers just did not access their clients, so they stayed in prison for longer because they did not apply for bail. In our case we are trying to help people get out on parole. If we cannot access them, we cannot get them out on parole. Not providing telephone calls means people stay in prison longer. That is all about entitlements. Privileges involve things like phone calls with families, activities and rehabilitation programs.

When you are locked down in prison during the pandemic you are living in a very small concrete cell. You have limited access to air. Many people had no exercise or books, no TV, no phone calls and a toilet that flushed several times a day. For anyone experiencing those types of conditions, a phone call to your family should be a priority. It should not be something that is only going to happen where practicable.

The restriction on access to rehabilitation programs has very obvious consequences because the Parole Board will not release someone if they have not engaged in rehabilitation. Imposing these kinds of restrictions in this environment is disproportionate in our view and the threshold for restricting privileges needs to be higher. Practicable is too low. If it is not possible, that is a different story. A message needs to be sent to the staff on the ground because they need to understand—one of the things that we found we were having to communicate with staff about was 'This is what the Human Rights Act says. This is what your obligations are. If there is a less restrictive way of imposing this, you need to do it.' The way it is drafted now does not reflect human rights obligations and places a really significant onus on decision-makers to have to work their way through those human rights decision-making processes themselves. Changing the language to make it more difficult to restrict a privilege is in keeping with the Human Rights Act and will make it less likely that people will stay in prison for longer. Those are the main things I wanted to discussion. I am happy to take any questions.

Mr LISTER: Thank you for your appearance today on behalf of the Prisoners' Legal Service. I bring you back to your submission and remarks regarding the importance of having medical safeguards around the use of body scanners. Can you elaborate on that a little, particularly in light of what Sisters Inside had to say earlier about the invasiveness of traditional body searches? What are your concerns regarding the scanners?

Ms Blaber: Again, there is limited information in the bill about what safeguards will be in place. We are in favour of body scanners because it reduces the need for strip searching. I understand there is another purpose which is to manage the introduction of contraband. If you look to other jurisdictions, there are things about body scanners that are built into legislation such as scans should not be done of a person with reproductive organs.

I acknowledge that the departmental response talks about the fact that any scans are going to be subject to radiation safety legislation. To be honest, I have not gone through the radiation safety legislation. I do not know how robust those medical safeguards are. I am sure they are probably quite robust.

The other part of our submission around that was informed consent. Somebody should be given a choice. If they have a choice about what type of search they are going to be subjected to and they understand the consequences of one type of search versus another then they can make an informed decision about whether they want to go through the scanning process or go through the strip searching or other processes. That is where we were talking about informed consent. Without spelling out in detail what the medical safeguards are, it is difficult to know if they are adequate.

Mr SULLIVAN: I do not know if you were in the room when I asked a question of Sisters Inside around the issue of lockdowns during emergencies. As you pointed out, there is high vulnerability within the prison population and a higher than average First Nations population and the risk during the pandemic was far higher for our prison population and the communities that they would return to or exchange with. As difficult as it was, just like other people were locked down in their own homes, it was for the purpose of stopping people dying during the pandemic.

Ms Blaber: Absolutely. You will notice I focused a lot on telephone calls because people in the community could still use their phone. When I am talking about the restrictions being too broad, I am not talking about imposing restrictions to protect human life. I am talking about what safeguards do you have in place to mitigate the harms associated with solitary confinement? If you can imagine your time during a COVID lockdown where if you did not have a TV and you did not have a phone and you did not have anything except the four walls of your cell? It did not have to be done that way to protect human life. Other jurisdictions like the United Kingdom gave prisoners mobile phones because they recognised the harm associated with isolating people for such extended periods of time with no human contact was so significant that the security risks normally considered unacceptable to do with giving prisoners mobile phones were outweighed.

Mr SULLIVAN: Mobile phones present a pretty high risk.

Ms Blaber: I understand that and there were things that were done in the UK to mitigate that. I am not saying that emergency powers should not exist. I am not saying that lockdowns should not take place. I am saying that imposing restrictions on privileges—and that is what is being done here—where it is not practicable to provide them is disproportionate and harmful.

Mr SULLIVAN: I want to hear your advice on the banning of or the explicit criminalisation of the use of drones over Corrective Services facilities. I do not think you covered it in your submission today. Do you have any objection to or do you recognise why drones pose a particular security risk?

Ms Blaber: I can understand why it is being imposed. I have not done a submission on it because I have not done the relevant research—I have no personal knowledge of how that might be in favour. I do not really have anything I can say on that which is why it is not covered in the submission.

Mr SULLIVAN: I am not asking you to reveal—

Ms Blaber: I am not suggesting I know!

Mr SULLIVAN:—your clients' use of—

Ms Blaber: Of course. It is obvious why you might want drones because of drugs being brought into the prison by the use of drones. I understand that. As a general proposition, creating further offences is not something PLS is particularly in favour of because we see the same people constantly come before the criminal justice system and they are people with very significant levels of disadvantage. Creating new offences rather than promoting supports—there are major problems to do with lack of supports for people in prison and reintegrating them in the community. It is disappointing to see the constant focus on creating new punishments rather than any focus on providing supports that might actually reduce recidivism.

Mr DAMETTO: My question is in regard to the implementation of emergency powers. You spoke earlier about the threshold being too low for the implementation. If we were to put in a higher threshold, do you have any recommendations on what that would be?

Ms Blaber: Yes. My primary concern relates to section 271B(1)(a) and (b). We are fine with subsection 271B(2). I believe that the Queensland Law Society and the Queensland Human Rights Commission made some submissions which talked about the fact that if you want to have a public health emergency and if you want a separate emergency, I think the threshold of security in good order and health or safety of a prisoner is too low. Using language that is discussed in the Queensland Human Rights Commission submission and the Queensland Law Society submission would be more appropriate for paragraph (a).

Mr DAMETTO: Thank you for that clarification.

CHAIR: That concludes our time this morning. Thank you very much, Ms Blaber, for your contribution this morning.

POPOVICH, Mr Sean, Deputy Chief Executive Officer, Queensland Network of Alcohol and Other Drug Agencies

CHAIR: I now welcome our next witness from the Queensland Network of Alcohol and Other Drug Agencies, Mr Sean Popovich, Deputy CEO of the Queensland Network of Alcohol and Other Drug Agencies. Welcome, Mr Popovich. Thank you for joining us here this morning. I invite you to make some opening comments. Then the committee will have some questions for you.

Mr Popovich: Thank you for the opportunity for QNADA to appear as a witness today. Before we begin, I would also like to acknowledge the traditional custodians of the land on which we are meeting today and pay my respects to elders past and present. I also acknowledge that these changes that are being proposed will affect Aboriginal and Torres Strait Islander people, and I think we should always keep that in mind.

QNADA is the peak organisation representing non-government alcohol and other drugs treatment services across Queensland. We have around 55 members, some of whom provide services within a prison context as an associated health service who have been impacted by some of the COVID restrictions which form part of our submission.

Our submission covers three main areas—I think one of those being the right to health care. We frame it up as continuing care or through care—from when someone who is remanded in custody all the way through the prison system and through to the community. There is also the right to privacy. We think that there are some issues within the custodial context where privacy is—sorry for my framing of this but it is a little loose in terms of how we would usually undertake that in health care.

The other thing that we cover off on is the need to ensure, as other witnesses today have spoken about, that there are appropriate supports within a custodial context in order to increase safety and wellbeing but also within the community in the context of that through care. I will leave it there and I am happy to answer any questions in relation to our submission.

CHAIR: Thank you, Mr Popovich. Deputy Chair?

Mr LISTER: Thank you, Mr Popovich. I apologise for coming in during your presentation. Can you speak about how you feel the ongoing drug and alcohol programs that prisoners are doing could be extended in circumstances like the COVID pandemic? I always like to hear solutions as well as concerns. Can you offer us anything in relation to that?

Mr Popovich: I think the solution is quite simple: increase resources. That is one of the solutions. In the context of the pandemic, we had situations—I think Prisoners' Legal Service may have also mentioned this—where it was very difficult to get access to the people our member services were working with. There are periods of lockdown, and that limits access to things like psychosocial interventions which might be delivered within the prison system for both adults and young people. That disconnection from health care poses risks later on as well where there is no continuing care or care through to the community, so you lose the momentum that you have gained by providing treatment consistently within the system. I think other solutions—recognising the need to lockdown in certain instances—those solutions have been mentioned today. Access to telehealth did eventually happen, but it took too long. In the context of these legislative amendments those things need to be considered. I think others have mentioned that thresholds are currently too low in a range of areas.

Mr BOOTHMAN: Following on from the member for Southern Downs, when it comes to programs dealing with drug and alcohol abuse you talked about increased resources. Do you have any data or examples in other jurisdictions where these programs are in prisons and they are making real differences when individuals are released? Do you have any data or examples of programs to support that?

Mr Popovich: You will have to clarify for me what 'real differences' means.

Mr BOOTHMAN: For instance, reoffending rates, lapsing back into those old ways, so to speak.

Mr Popovich: I would point towards the latest Productivity Commission report released in 2019 into imprisonment and recidivism. It talks about community-based supports and what supports are provided within the prison system. It also talks about low harm offences. We have a high proportion of people in the prison system for low harm offences. Forgive my layperson way of putting this, but there is a bit of a bell curve effect that happens where, if someone is incarcerated for a low harm offence, the more likely there will be recidivism later on because I guess it is difficult for people to then go on and get a job or reengage in employment and education after they have experienced time in the prison system. More to the point of your question, I cannot think of any specific reports other than the Productivity Commission report off the top of my head. I am happy to take that on notice and provide you with some examples after this hearing.

CHAIR: What would you deem low harm offences?

Mr Popovich: An example of a low harm offence according to the Productivity Commission—which is again one of the ones that we focus on—is possession of illicit substances. As I understand it, Queensland has the highest proportion of people who have been arrested for possession as their most serious offence. The Queensland Productivity Commission in their report termed that a victimless crime. Our most recent whole-of-government plan Achieving Balance talks about reducing criminal responses and increasing health responses to substance use. QNADA is in favour of the decriminalisation of all illicit substances because we have really good evidence that incarcerating people for the possession and use of illicit substances is hugely ineffective.

The other thing I want to mention is that in our submission—and this relates to the health care in prison issue—we have spoken about access to opioid substitution therapy, access to things like naloxone. On the point of throughcare, when people are released from a custodial setting they should absolutely be provided with things like naloxone because that is the point at which they are at greatest risk of overdose when they come back into the community. These things need to be considered in this bill as well as its relationship to other things already underway such as the Women's Safety and Justice Taskforce and other state plans as well.

Mr SULLIVAN: In terms of resources, your members probably would describe themselves as primary healthcare providers in terms of one on one, what would otherwise be GP care or mental health support and those sorts of things, as opposed to acute systems that we have in hospitals.

Mr Popovich: No. Primary health care we would refer to as GPs, as you said. Alcohol and other drugs treatment services are specialist services as part of the broader system. We certainly do not—

Mr SULLIVAN: I know we have ATODS in the health system, but do your members operate independent of Queensland Health?

Mr Popovich: They do. They are often funded by Queensland Health, the state government or through PHNs.

Mr SULLIVAN: My point is that when it comes to resources people do not usually recognise that our prison population does not have access to Medicare. Do you think that is a bit of a push on the resources when it comes to what I think you referred to as throughcare when it comes to care they would otherwise have access to in the community?

Mr Popovich: Medicare access is absolutely an important aspect of this, in my view; however, I am talking more broadly about limited funding. While we have had welcome increases in funding in the alcohol and other drugs system over recent years, it is not enough to scratch the surface. In terms of an alcohol and other drugs context, what you end up with is a system that is quite stretched. If you couple that with some of the proposed amendments we are talking about today and you remove access in emergency situations and that kind of thing, it makes access for people in prison and that aspect of throughcare even more difficult. There was a report released in 2014 called *New Horizons: Review of alcohol and other drug treatment services* that estimated the system would need double the funding in order to meet demand effectively in the alcohol and other drugs space, so I hope that answers your question.

Mr SULLIVAN: I have a practical question just out of interest. Do your members treat prisoners in prison and then continue to treat them if they are released, or do you tend to have a referral system—I know that prison legal services are aimed at that population—or do you have a continuation of that relationship?

Mr Popovich: It would depend on the service type. Within the alcohol and other drugs space you have psychosocial intervention services which are most likely to have that continuing support, potentially in the form of case management or counselling. You also have harm reduction services. Their primary role is to increase the safety and wellbeing of the people they are working with, not necessarily to provide treatment in terms of reducing substance use. Other services include withdrawal management, so that is a medicalised service, and then you have rehabilitation as well, both in the form of day programs and intensive community-based, lived-in rehabilitation. It really depends on the service type and service context. It also depends on what that service is funded for, so again bringing it back to that resourcing issue. There are not too many services that are funded specifically for reaching into prisons across Queensland.

Mr SULLIVAN: Perhaps location too.

Mr Popovich: Location as well, absolutely.

Mr SULLIVAN: Transferring it back to community.

Mr Popovich: Yes.

Mr DAMETTO: I have a follow-on question in relation to support programs in prisons for those dealing with substance abuse. How would you describe continued substance abuse while incarcerated? Is it a prevalent problem? Does it continue whether or not it is their drug of choice or a substitute?

Mr Popovich: I don't have data. I do think there is substance use in prisons. Illicit substance use in prisons is known to happen regularly. I think there are a range of reasons for that. You will note that our submission talks about X-rays. Obviously there is a reason for X-raying people in prisons. More importantly, if we are going to manage some of the substance use that happens in prisons we have to have the appropriate supports in place to do that. What we saw in recent years is increased access to opioid substitution therapy in prisons, which is an excellent step. There became a focus on long-acting injectable opioids, which is excellent for many people but it is also not appropriate for all. So the focus has been on long-acting injectables in prisons, but while it may work for a number of people it does not work for everybody.

To answer your question: yes, there are absolutely drugs in prisons, and we need to have things in place to reduce the range of harms that are caused by potential substance use. That includes needle and syringe programs as well. I know that is not a popular option. We do know that people use unclean equipment in prisons, and clean equipment would lead to a reduction of infections and bloodborne viruses and that kind of thing. We have really good evidence around these initiatives; it is just the will to implement them that is the issue.

Mr O'ROURKE: My question relates to concerns about proposed powers to share confidential information and how that would impact on your members in delivering services to the system.

Mr Popovich: Within the alcohol and other drugs space the evidence is quite clear that one of the things that leads to effective services is keeping them voluntary. We have seen instances where the custodial system will find ways to make it less voluntary for people to share their information, and I would take it to informed consent. I think there needs to be processes in place to ensure people know what type of information is relevant to be shared between the health service and the custodial system. For example, the other day in a document I saw, 'You must authorise your health provider to share information with us.' That is my paraphrasing of the wording. I think that is entirely unacceptable. I think we should be talking with our clients or the people we are working with about what information will be shared, how that information will be shared and why it is relevant to be shared, and then within an appropriate context that person should be able to make a decision about how, what and why. It also is good practice, particularly in a healthcare setting, in order to build rapport and maintain trust and motivation for treatment that communication happens with people and it is not just shared willy-nilly.

CHAIR: Member for Theodore, do you have any further questions?

Mr BOOTHMAN: No, thank you.

CHAIR: Thank you very much, Mr Popovich, for appearing before the committee today. I note that you are going to provide us with some examples of programs that have been successfully conducted in other jurisdictions. If you could get that information to our secretariat by the close of business Friday, 27 January 2023, that would be terrific. Thank you very much for appearing before us today.

BRUNELLO, Mr Dominic, Chair, Criminal Law Committee, Queensland Law Society

FOGERTY, Ms Rebecca, Vice President, Queensland Law Society

THOMPSON, Dr Brooke, Senior Policy Solicitor, Queensland Law Society

CHAIR: I now welcome our next witnesses from the Queensland Law Society. Thank you for appearing before the committee today. Would you like to make some opening comments and then I am certain that the committee will have questions for you?

Ms Fogerty: Thank you for inviting the Queensland Law Society to appear at the public hearing today. In opening, I would like to respectfully recognise the traditional owners and custodians of the land on which this meeting is taking place, Meanjin. I recognise the country north and south of the Brisbane River as the home of both the Turrbal and Jagera nations and pay deep respects to all elders past, present and future.

We support the underlying policy intent of the bill, which is to ensure that the correctional system can respond effectively to emerging threats in technology and to support frontline operations. Our submission, however, contains or outlines a number of what we say are adverse consequences arising out of the bill as it is currently drafted. The first relates to the new risk subcategories and the potential flow-on effects. There is no information contained in the explanatory notes about what the new risk subcategories are and what are the consequences of the subcategorisation. We have concerns that the bill will make the creation, amendment and deletion of risk subcategories an exercise of administrative power and we do not consider it appropriate that this information be contained in a regulation. The risk subcategories and their impact on the prisoner should be the subject of parliamentary oversight through being included in an act of parliament.

We also consider that a prisoner who is classified as low risk must be detained in a low-custody facility unless there are exceptional circumstances. New section 13(2A) appears to be aimed at reducing the volume of security classification reviews required to be completed by Corrective Services. This places the onus on the prisoner to request a security classification review and otherwise only enables these reviews to occur every three years. We consider that the three-year time frame is excessive. It is inappropriate, particularly for prisoners who are on maximum and high-risk classifications, so we recommended in our submission significant changes.

The other issue, and this is not outlined in our written submission but is one that we have recently identified, relates to the definition of a 'prescribed surveillance device' in the new section 173A, to regulation. We consider this definition to be a fundamental issue to how the future section 173A operates. We think that there needs to be a definition and it needs to be inserted into the new bill because if new surveillance technology emerges such that it should be incorporated into the definition of a 'prescribed surveillance device' then this needs to be the subject of amending legislation so that there is both the option for community consultation and parliamentary scrutiny.

Finally, we do share concerns expressed by other stakeholders about the lower threshold for a declared emergency and the additional powers granted to the chief executive during such emergencies. We recommend express provision be made in the act to mandate that prisoners must, to the extent practicable, retain access to legal representation, health care and programs during any emergency declaration relating to a public health or other health related emergency.

Today I am joined by Dominic Brunello, the chair of the QLS Criminal Law Committee. We welcome any questions you may have.

CHAIR: Terrific. Thank you very much, Ms Fogerty.

Mr LISTER: Thank you to the Queensland Law Society for your submission and for your appearance today. Forgive me: I will probably look at who is sitting in the middle but the question might be directed to somebody who is better prepared to answer it. You have argued that section 60 of the act should be retained. In your submission you state—

> The need for a maximum (or equivalent risk sub-category) security classification prior to the making of a maximum security order should be retained.

Do I take it from that that there ought to have been, by virtue of other circumstances, a finding that a prisoner should be deemed a maximum security person prior to whatever misdemeanour they have committed causing the authorities to put them in maximum security? I am sorry that that sounds a bit disjointed, but I could not quite see where you are coming from there.

Dr Thompson: The current Corrective Services Act allows for three security classifications: low, high and maximum. For the making of a maximum security order, it is my understanding that you have to be classified as a maximum security prisoner before that maximum security order can be

made. This bill proposes to remove that maximum security classification and only have the low and the high threshold and then the series of risk subcategories that will exist in each of those two security classifications. This maximum security order appears to sit separately from that system whereby the chief executive will simply make a maximum security order on the basis of the thresholds contained in, I think, section 60.

Mr LISTER: I take it that the proposal is that the behaviour or actions of a prisoner, if they meet a certain threshold, could cause them to be treated as a maximum security prisoner by virtue of those actions. Is it really necessary to have them already have reached that threshold through prior circumstances or even concurrently having the two administrative processes rather than simply saying, 'This has occurred and they're responsible for it. It's serious and therefore they will be classified as maximum security'?

Ms Fogerty: The issue is that there is a lack of transparency in the proposed bill about what risk subcategories mean. They are not defined anywhere. We do not know how they are going to be used and we do not have information about the ways in which it will impact a prisoner and the way they are processed through the system.

Mr LISTER: Is that why you are saying that these things should be determined or described in the bill itself rather than as regulation?

Ms Fogerty: That is right. In effect, at the moment we are being asked to comment on a series of subcategories that do not exist. We do not know what they are. They are not written down anywhere.

Mr Brunello: Additionally, there is no information about the implications that each one will have, which is difficult, of course, to identify when the subcategories themselves do not exist. If I could add to the answer about the maximum security order? The bill removes a condition precedent for the making of an order, which is that the person is already a maximum security prisoner. It replaces it only, as I understand it, with an assessment about whether they are generally a substantial threat. That type of order, as I understand it, is a grave one. It can lead to solitary confinement, which is significant. I suppose the crux of our concern is that they are absolutely warranted by virtue of both past and current behaviour.

Mr LISTER: I think I have learned a thing or two there, thank you very much.

CHAIR: Following on from that, the current classifications that exist are quite broad, in essence, when you say 'you are low' or 'you are high'. In their responses, the department has said that this framework of subcategories will provide the opportunity to be more nuanced and tailored to each prisoner's risk and behaviour, whether that be good, bad or otherwise. Isn't it a good thing to have something that is more nuanced than 'here's a low' and 'here's a high'?

Ms Fogerty: It could well be more nuanced but we do not know because we do not have any information about what they are and how they are intended to be used and what the consequences are.

CHAIR: In the responses that I have seen, and I look forward to hearing from the department further when they come back, the intent of subcategories is described as to be more nuanced in approach.

Mr SULLIVAN: I know you were in the room a bit earlier but I do not know if you heard the submissions from Sisters Inside and Prisoners' Legal Service. I will raise with you an issue that I similarly raised with them in relation to emergency declarations. I want to put this question to you as well. In terms of prisoners' rights or the view of taking away rights through emergency declarations, do you at least concede that when it comes to things such as pandemics, floods or fires that prisoners' lives are the reason behind it? When we are talking about the pandemic in particular, we have overrepresentation of First Nations people in prison and high vulnerabilities in terms of health care. Therefore, stopping a pandemic sweeping through the Corrective Services system, as we saw overseas, was absolutely coming from a prisoner-safety point of view.

Ms Fogerty: I do not think anybody would reasonably disagree with reforms or processes that are put in place that are aimed at protecting human life. I will have Dom manage the detail, but what we are talking about at a broader level here is ensuring that exceptional powers are subject to the right level of accountability and transparency and that they are only broad to the absolute extent necessary, involving, as they do, competing and contrasting claims upon freedom and other human rights.

Mr Brunello: Our recommendation to this committee was that the words 'poses an imminent risk' be inserted as a safeguard to the imposition of those sorts of declarations simply on the basis of a public health emergency. Public health emergencies, I presume, can be a continuum between a

pandemic at the top end and something much less dangerous. That balancing act, we say, should have another safeguard attending it in the statutory words, which is imminent danger, to ensure there is not function creep in the use of the power.

Mr SULLIVAN: Can you give some examples? I know we are talking hypothetically. You recognise that a pandemic would be imminent. If Wivenhoe Dam burst and water is coming down to the Wacol facilities, you would assume that that is imminent. What are you talking about in terms of creep? I am not being flippant. In terms of your background, can you give us some examples of what you fear it may be used inappropriately for?

Ms Fogerty: To manage internal issues within the prison; to manage things that are not properly emergencies.

CHAIR: Do you have examples of what not a proper emergency would be, where that would be used?

Mr Brunello: It is difficult because you can always imagine something.

CHAIR: There is a concept you are framing that around, so there must be some sort of thought on what that might look like.

Mr Brunello: There was a lot of controversy about the declaration of the public health emergency concerning the pandemic. There is a great deal of diversity in community opinion about when the executive should restrict people's freedoms to look after them. Here you have a cohort of people whose rights are already largely extinguished whom this declaration would allow to be locked down and deprived of fundamental privileges. It is difficult for me to envisage when there would be a public health emergency that may or may not hypothetically justify that. We think that the risk should be imminent. If there is an imminent risk, it is justified; if that criteria is not met as a jurisdictional fact, then it is not.

CHAIR: I think we were the first state to lock down back in January 2020. Community sentiment at that point in time was that nobody knew what it was.

Ms Fogerty: We are not here to litigate the rightness or wrongness of lockdowns. The point we are making is that exceptional powers need to be clearly defined. When they can be used and the limits of that power need to be clearly defined. The idea of imminence is a brake on executive power by ensuring that decisions with serious consequences for prisoners can only be made when there is a clear, discernible and justifiable immediate threat—a proper emergency. Something like the pandemic is difficult. It is an exceptional circumstance, and because of that in a weird way it is not the best basis to justify legislation because even two years out we know there is a wide divergence not just in the community but among medical officers and researchers now that more information is out there about how that sort of threat can properly be managed.

Mr BOOTHMAN: I want to address the topic of electronic surveillance. The Queensland Law Society expressed some concerns. You obviously have some concerns about electronic surveillance and the changes. What potential amendments would you like to see in the bill to address these concerns?

Ms Fogerty: Define what you mean by 'electronic surveillance device' and define it in the act. As technology changes, the real risk remains that there could be new devices capable of deeply invasive surveillance that are beyond those contemplated in the act. Because it is not defined, it effectively then becomes the decision of a chief executive, someone whose decision is not subject to the same level of parliamentary oversight and scrutiny that would apply if it was defined in the act.

Mr DAMETTO: My question relates to concerns around the proposed sharing of confidential medical information. My understanding of the bill is that information can be shared so that prisoners can be cared for and attended to better. Can you please elaborate on those concerns and make any suggestions to provide some clarification in the bill. Can you put forward your ideas in relation to amendments?

Mr Brunello: We have the benefit of hearing the last speaker, and I thought his point on this was pretty persuasive. Voluntariness is a great prognosticator of success in treatment. If a prisoner is aware of why the information is to be shared, the reasons for it, and gives some consent, if the purpose of the sharing is in their best interests and health and wellbeing it is more likely to achieve the objective.

Mr DAMETTO: That makes a lot of sense.

Mr Brunello: I saw that as the crux of what the last speaker was saying and I thought it was pretty persuasive. You would think there should at least be some effort to explain the reasons why and obtain consent.

Mr DAMETTO: You are right; that was a good point.

Mr SULLIVAN: I will change the topic a little bit because I do not think this was covered in your submission today. In terms of one of the other elements of the bill, which is the explicit criminalisation of the use of drones over correctional facilities, does QLS have a view on that particular reform, or in the absence of one can we assume you do not have an objection?

Dr Thompson: We can take that on notice. We did not address it specifically in the submission, but we can certainly go and have a look at it and make some comment on it.

CHAIR: There being no further questions, thank you very much for appearing before us here today. It would be fantastic if we could get your feedback on drones by Friday, 27 January 2023. We are grateful for your insight. The committee will take a short break.

Proceedings suspended from 12.21 pm to 12.46 pm.

WALKER-MUNRO, Dr Brendan, Private capacity

CHAIR: Thank you for joining us as senior research fellow at the TC Beirne School of Law at the University of Queensland. Would you like to make an opening statement before the committee has some questions for you?

Dr Walker-Munro: Firstly, I would like to thank you for the opportunity to provide you with further information on the submission regarding the bill before you. Secondly, I would also like to just reiterate that, although I am a senior research fellow at the UQ law school, the views that I express today are my own and not necessarily those of the law school, the University of Queensland, or any other agency or body. Any errors in the submission are also my own.

This bill and the committee examining it must balance two extremely important factors: firstly, the unique environment of Corrective Services. It is vitally important that the commissioner and his or her officers have the legislative tools they require to do their job safely. The corrections environment is a law enforcement environment in which there are a multitude of risks and dangers not ordinarily present in any other industry or calling; however, the second factor which this committee must never lose sight of is that the corrections environment is also restorative. It is recuperative. True it is that imprisonment is a punishment and some prisoners may pose so great a risk to society that the courts have determined they may never be released, but for the vast majority of the balance prison is a place where they can hope to be rehabilitated into persons who will not offend our criminal laws again.

To that end, corrections legislation must only ever interfere with the basic human rights of prisoners to the minimum necessary to achieve a reasonable, proportionate and evidence-based outcome. Restrictions and limitations must not be imposed arbitrarily, covertly or without proper review and oversight. In short, members of the committee, as you perform your review I commend to you the words of Gandhi, who said—

The true measure of any society can be found in how it treats its most vulnerable.

Mr LISTER: You are not alone in having submitted to the committee it is undesirable that the subcategories of risk with prisoners be implemented by means of regulation rather than a legislative instrument. In the context of the competition that you mentioned between essentially looking after the individual's and community's rights and the needs of the prison system, how do you see that as being inappropriate given the flexibility and the ability to respond to circumstances that a regulation pathway has over the legislative one?

Dr Walker-Munro: I think the opening position essentially is that the proposal to move it into a regulation is not of itself necessarily problematic. I think the difficulty arises in that, in terms of then providing for a regulation to be passed by the Governor-in-Council, the effect of that regulation and the limits of what can be included in it are not prescribed by the act. It essentially provides an unfettered pathway. There is no provision in the act to say, for example, that the regulation must consider A, B or C or the regulation may consider A, B and C in determining what those risks, subcategories and security classifications are. Without having the left and right of arc, essentially there is a real sense that you will only know the kinds of potential human rights impacts this regulation will have once it has been imposed and is actually affecting these prisoners' human rights directly.

Mr LISTER: Are you saying that using a regulation to implement some of these aspects of itself is not necessarily a bad thing as long as the act which underpins that regulatory power is sufficiently prescriptive to make sure that certain fundamental principles are taken into account when they are drafted?

Dr Walker-Munro: It goes some way, yes, but there are still some aspects of it that, by virtue of the way that the regulation is proposed to be passed, will never actually be addressed. In a legislative framework, as committee members would be very well aware, there are opportunities for public consultation and hearings much like this one to examine the scope of the legislation to determine: is it appropriate; is it something we should be enacting; or does it need modifications to achieve best practice? With a regulation there are a lot fewer opportunities for public consultation. There are a lot fewer opportunities for people like myself to provide a submission, for the people who might be affected—such as prisoners and their legal representatives—to view these types of legislation and say, 'We have a problem with this.' That is not to say that then every problem needs to be solved. It is enough perhaps to just have it on the record. But without having those opportunities for consultation there are some real difficulties in terms of the structure of this proposed legislation.

CHAIR: Member for Theodore?

Mr BOOTHMAN: I might save my questions for the next witness.

Mr DAMETTO: My question relates to a question I asked Sisters Inside earlier today: the criminalisation of prisoners breaching secured and restricted areas. I see your submission takes some issue with that. Can you elaborate on that? If we are not going to criminalise that behaviour, what do you believe is the best way we can deter people from getting up on roofs or going into restricted areas and things like that?

Dr Walker-Munro: As I understand it, the proposed requirements would effectively again allow a regulation to be passed that prescribes particular restricted areas within a correctional facility, and at least one aspect of that would be a prohibition on prisoners climbing on roofs. The issue that I take with it—noting QCS's response in terms of the work health and safety issues not just for prisoners but also the Corrective Services officers who have to then deal with them—is that the ability for prisoners to have a voice that operates outside of the prisoner system in terms of raising issues not directly with the prison itself has been a feature of that particular life since about the 1970s.

The concern I have is that you are essentially proposing to criminalise an act that prisoners have been using as an expression of their frustration or an expression of their dissatisfaction with aspects of prison life as part of a criminal offence. The difficulty is, of course, the balance that is to be struck, as I said in my opening statement, between the safety of the corrections environment and the human rights of the people who are there.

The issue that I took with it was not so much the actual criminalisation itself but the fact that it lacked a defence against advocacy, dissent or protest. I think that, where there is no requirement for a prosecutor to have to negative that particular defence, essentially they would just be able to say, 'The prisoner was in this location. The regulation says it is a prohibited area. They have therefore committed the offence.' I think it is essentially on the prisoner then to provide some other kind of excuse, and there are very, very few that would apply in that circumstance.

Mr DAMETTO: I would agree, yes. Thank you for that explanation; I appreciate it.

Mr SULLIVAN: In terms of fulsomeness, I should declare that I am an alumni of your school but I do not think it creates any conflict for today's hearings. In relation to your concern around regulation and oversight, you would acknowledge there are processes where, as you said, it does go to Governor-in-Council, it is gazetted and published. The opposition can move disallowance motions, for example. There are ways to oversight that in a way. Do you concede that?

Dr Walker-Munro: I do, but again you are talking about two vastly different mechanisms of oversight and review in terms of when the law becomes a law, essentially. In terms of the modifications to an act, for example, what we are discussing today is how an act might be amended. That act has not taken effect. It has no legal influence, so all of the provisions that we are discussing today are in a bit of a legal vacuum and they may actually not be enacted. They may have no impact at all in the corrections environment. Parliament may, in its wisdom, decide that they are not going to pass the act.

The difference between that and passing it in a regulation is that the moment the regulation is gazetted, the moment the regulation becomes public, it has force of law. It takes effect from the moment it is published. Effectively, the only way you can monitor the human rights impact of that regulation is once it is already affecting human rights. It is essentially a recursive argument.

Mr SULLIVAN: In your submission I do not think you covered one element of the bill that criminalises the use of drones over Corrective Services facilities. Can I take it that you do not have an objection to that?

Dr Walker-Munro: I think it is more that I understand the need for that particular provision. On my review of the proposed text in that offence I did not personally identify any issues that I wanted to include in the submission.

Mr SULLIVAN: I was not trying to put words in your mouth; I just wanted to give you the chance to explain that. You made particular reference to concerns around the sensitive nature of domestic violence issues. Can you talk to that in a more practical sense?

Dr Walker-Munro: The concern I raised in terms of the domestic violence provisions was really in relation to information-sharing requirements that come out of the Domestic and Family Violence Protection Act and whether or not Corrective Services is capable of disclosing information on persons it knows about or has information about to third parties where that information may prevent a domestic violence risk to another person. The response from QCS, which I have some issue with, essentially hinges the disclosure on the commissioner's belief that a person's life or physical safety could otherwise reasonably be expected to be endangered.

I have three problems with that. The first is that the commissioner is really not the person best placed to determine that level of information: it is the third party who is asking for that information. It might be a not-for-profit organisation. It might be an outreach service. It might be someone who is trying to provide support to the survivor of domestic violence. They are the person who is best placed to know whether the information might assist with their risk management.

The other issue I have is that the commissioner is, by virtue of his or her appointment, in charge of a Corrective Services environment. They are not a domestic and family violence practitioner. They are not an expert in what domestic violence looks like.

The third issue I have is that the bar is set very high in terms of 'could otherwise reasonably be expected to be endangered'. That particular definition does not capture certain changes to the law; for example, for coercive control, which the parliament has only recently passed. It does not recognise a number of facilities of domestic and family violence that are emotional or financial in nature, and these are things that can occur even when someone is behind bars. My concern again is that there is a very, very high bar for that information sharing and that the decision sits with a person not best placed to make that decision. If the example of Hannah Clarke taught us anything, it is that this is the kind of information that needs to be shared.

Mr O'ROURKE: Thank you for your attendance and your submission. You raised some concerns around the imaging searches in corrective services centres. Can you expand on that, please?

Dr Walker-Munro: Again, this is perhaps at a lower level in terms of the impact on human rights than the security and risk classifications might otherwise be. It seems to take a very great deal on faith in terms of the types of technologies that might be prescribed by regulation.

I do note QCS's response in relation to the imaging searches where they have indicated they are required to comply with the Human Rights Act. The difficulty, though, is that there is one thing between stating, 'You must comply with an act' and having it actually written is that the machinery that they are going to employ must meet a particular set of criteria. One of those, for example, might be that the prescribed imaging system, whichever one it is that they go with, must not be capable of retaining images for longer than 24 hours unless there is a prescribed law enforcement purpose—it may relate to evidence-gathering for someone trying to bring contraband into a corrective services environment.

The difficulty I had with it is that there is no discrimination in there for essentially those persons who are most vulnerable who might be entering the corrections environment—children, persons with disabilities, people who do not otherwise necessarily understand the way that Australian law works in that they have English as a second language. This is an entire subgroup of people who really are having their privacy invaded at that interaction point, and I do not feel that there is a sufficient degree of safeguards in terms of the way that those imaging searches are conducted and what happens to the information afterwards: where it is stored, how it is stored, how long it is taken before it is deleted—all of that sort of information is not there.

CHAIR: Going through my mind is going to the airport, having done that on the weekend and going through that whole X-ray body scanner process. What would be the difference between the process of an individual taking a flight and going through a body scanner and the information kept there versus—

Dr Walker-Munro: I hold the same concerns for either process, Madam Chair. I think the difficulty here would be that there is an opportunity in terms of what is being put into the legislation to prescribe a minimum level of safeguards to say that the imaging search must meet a baseline or must have a certain standard; it must meet a certain criteria. I think we may have passed the point where we can write that into the legislation surrounding airports, unfortunately.

CHAIR: I was going to say, I wonder how many hundreds of thousands of people pass through the varying airports across the state of Queensland versus the number of people visiting correctional facilities in terms of what we are prepared to do to get on an aeroplane to go somewhere.

That concludes our session with you, Dr Walker-Munro. Thank you very much for your insights today. There was nothing taken on notice. A transcript of these proceedings will be available on the website in due course. Thank you very much for your time today.

BOOTH, Mr Paxton, Privacy Commissioner, Office of the Information Commissioner

FORBES, Mr Jim, Principal Policy Officer, Office of the Information Commissioner

CHAIR: I now welcome to the table our next witnesses from the Office of the Information Commissioner. Good afternoon. Thank you for joining us here today. I invite you to make a brief opening statement and then the committee will have questions for you, thank you very much.

Mr Booth: Thank you, Madam Chairperson and committee members. We appreciate the opportunity to address the committee on the Corrective Services (Emerging Technologies and Security) and Other Legislation Amendment Bill in support of our written submission in relation to parts of the bill. Firstly, I wish to acknowledge the traditional custodians of the land on which we meet today, the Turrbal and Jagera people, and pay our respects to elders past, present and emerging.

The committee may well be aware that the Office of Information Commissioner is an independent statutory authority with information, privacy and right to information oversight and support functions. Our written submission focuses on two main aspects of the bill: firstly, clauses 16 to 20 and 36 of the bill which will, if passed, authorise the use of scanners, body worn cameras and other emerging technologies within corrective services facilities; and, secondly, clauses 31 and 32 which will establish a framework for the sharing of prisoner personal information.

I will turn firstly to clauses 16 to 20 and 36 of the bill in relation to authorising the use of scanners, imaging searches and other emerging technologies for surveillance purposes. Each of these pose a potential risk to privacy of people within a correction services facility. That includes prisoners, staff and visitors. OIC acknowledges, however, that the bill does contain various safeguards and protections, as summarised in our written submission. Significant in this regard is the express obligation for the chief executive to consider the privacy of prisoners, Corrective Services officers and visitors to the facilities prior to authorising the use of electronic surveillance devices. The OIC supports this and other related measures.

The bill also provides for the implementation of further controls of both imaging searches and surveillance device use by the way of regulation. As we have noted in our submission, the OIC would welcome the opportunity to provide additional comment and advice on the development of such regulations. We would be particularly concerned to ensure that future regulations make appropriate provision for the use and retention of any recorded images that may be generated by the imaging searches proposed by the bill and, as a consequence, the use of electronic surveillance devices.

Our submission also recommends administrative measures to be considered prior to the use of new surveillance devices and methods. Specifically, we would encourage the completion of a privacy impact assessment or PIA. A PIA will assist to identify any privacy risks posed by surveillance measures and appropriate mitigation strategies.

Further, we have highlighted in our submission additional safeguards which are contained in the Youth Justice Act 1992 which operate to mitigate privacy impacts posed by electronic surveillance in the youth justice custodial context. These are stated in section 263B of the Youth Justice Act and which require the issuing of guidelines about the recording of images and sounds in detention centres and the use of body worn cameras by detention centre employees, and notice to be given to detain children and young people in a detention centre, and detention employees and visitors to those centres, that sounds and images may be recorded by the devices within those facilities. Measures of this kind further abate the potential adverse privacy impacts posed by an expanded use of electronic surveillance devices and may be matters to which the committee is minded to have regard in considering the bill.

The second major focus of our submission is the enhanced information-sharing framework posed by clauses 31 and 32 of the bill. At the outset, we appreciate that this enhanced sharing framework is intended to promote various public interests, including prisoner health, service delivery and interagency collaboration. We also acknowledge that the bill includes various safeguards noted in summarising our submission. Our key concern with this aspect of the bill is that it permits the disclosure of information without the consent of an individual to whom that information relates. This presents a particularly serious privacy concern in the case of health information, much of which, if not all, may comprise of relatively sensitive personal information. The OIC's suggestion is that this concern could be significantly reduced by the incorporation into the bill of a principle requiring those contemplating the disclosure of prisoner personal information, particularly sensitive health information, to obtain the consent of the affected parties before it is disclosed, unless, of course, it is not practical to do so.

As noted in our submission, such a principle might be modelled on section 297C of the Youth Justice Act 1992. Importantly, this section does not prohibit disclosure absent consent, but does guide or encourage those responsible for contemplating disclosure to obtain consent before disclosing confidential information wherever practicable.

In making this recommendation, the OIC recognises that the right to privacy is not absolute. We also acknowledge that there may arise circumstances in which it is not possible to obtain an individual's consent prior to disclosure. A human rights statement of compatibility accompanying the bill gives an example of an unconscious prisoner where it would obviously be impracticable. Equally, however, it seems to us that there would be many other contexts or situations in which it would be possible to seek prisoner consent prior to deciding whether to disclose information concerning the prisoner. In this context, it is important to bear in mind that a consent principle, modelled on section 297C, would not, as I noted, prohibit the release of information without consent. It would instead encourage those contemplating disclosure to obtain consent wherever possible and practical. Where obtaining consent was plainly impossible or impractical due, for example, to unconsciousness or some other extenuating circumstance, the consent principle would have no application. In other less extreme circumstances, it would operate to promote the obtaining of consent as a matter of privacy best practice. Thank you, and I am happy to take any questions.

CHAIR: You may be able to answer the question that I posed to our last witness. In regards to airport scanners—I went through them a couple of times last week and went through the whole scan process and then had the patted down search as well because something was triggering it—what is the difference in safeguards in terms of information collected in those scanners versus what potentially might, depending on the appliance selected—

Mr Booth: Having been through the scanners myself, I must confess I am not aware for how long they retain those images for either.

CHAIR: You are the Information Commission—what!

Mr Booth: Privacy Commissioner. I suppose the analogy is relevant in the context that it is a similar process, or could be a similar process.

CHAIR: I was going to say, hundreds and thousands of people traverse our airports on a daily basis going through that exact thing, for the very same reasons of keeping one another safe.

Mr Booth: I suppose it comes back to the point we make that privacy is not absolute and it is often a balancing exercise in the context of in order to engage in social activities, we generally have to give up some aspects of our privacy, particularly when entering a correctional facility; there is obviously a balancing exercise in one sense to give up aspects of your privacy to enter that facility and maintain its security at the same time.

Mr LISTER: Thank you, gentlemen, for coming in today. Commissioner, if we allow, for a moment, for the sake of argument, that the context between the Youth Justice Act and the one we are dealing with here are the same from a privacy perspective, can you offer any insights as to why the former does contain the kinds of protections that you are talking about, and that this bill does not? For instance, were you consulted during development of this bill? Was that any difference to the process that occurred to the youth justice one?

Mr BOOTHMAN: I cannot speak to the youth justice one.

Mr LISTER: It predates you?

Mr Booth: That is well and truly before my time. My recollection is that I do not recall being consulted in relation to the bill beyond the commenting on the bill as it currently stands. If that is wrong, I will obviously correct it, but I do not believe we were consulted in the drafting of the bill.

Mr LISTER: I ask then, on the basis of what you have seen, would a cut and paste of the kinds of protections that you mention in the Youth Justice Act into this bill satisfy you in terms of the privacy implications for data, scanning, surveillance and so forth?

Mr Booth: Certainly it goes a long way to improving the risks around privacy by incorporating those types of provisions into the current bill, yes.

CHAIR: It is interesting, in regards to whether it be CCTV or body worn cameras which we see in a whole range of different contexts. Outside of the privacy, what are your thoughts on the safety provisions that might provide for people as the counter to the reason that you might be wanting to provide privacy, but at the same time you might be wanting to provide security as well, to make sure it is a safe environment for our prisoners and those attending the facilities to be within.

Mr Booth: There are certainly lots of studies that demonstrate that the use of body worn cameras are beneficial to both parties—the correctional officers who wear them and the other parties who are recorded on them. It does help provide an objective sense of what occurred if there is an

incident. Whilst there is a giving up of some privacy in that regard by the use of those devices, I think the benefits largely outweigh the giving up of the privacy, provided there are other controls and mechanisms in place to deal with the information that is recorded that can be very sensitive, too.

Mr BOOTHMAN: I have no further questions beyond what you were asking, Chair, and the member for Southern Downs. It was very interesting. I want to say to the witness, thank you for being present here today and it is quite interesting listening to you.

Mr Booth: Thank you.

Mr DAMETTO: Commissioner, I have a question with regard to scanned images and images collected through body worn cameras and things like that and how long the data is being kept. In terms of your line of work and the things you have seen, what are the breaches of privacy that could result from the images being kept longer than necessary?

Mr Booth: There are a few things that we have seen. Certainly one of the things that was discussed during Operation Impala, which was an inquiry by the Crime and Corruption Commission in relation to the misuse of confidential information, is people accessing information for unintended purposes or improper purposes so people out of curiosity—stickybeaking if you will—accessing information because they want to have a look at that. That is certainly one risk. We have certainly also seen the risks around storing data and where it is the subject of cyber attacks. There is no shortage of examples in that space around the risks of cyber attacks and people accessing that sort of information—the bad actors out there who are looking for information.

Mr DAMETTO: Would it be fair to say that the longer you keep any of this information the more window of opportunity there is for someone to access and use it incorrectly?

Mr Booth: Absolutely. If you have not got it you cannot lose it.

Mr SULLIVAN: I wanted to pick up on one of your suggestions that privacy is always a balancing act. I refer to the new X-ray machines and those sorts of things. In a different life as an industrial officer I visited prisons. I know that they are not nice places to go. Is it not part of adopting new technology that you can maybe make that experience for prisoners, staff and legal visitors or family visitors easier and that that might take away breaches of privacy, including your personal privacy, that other searches currently make?

Mr Booth: I think that in part depends on how the technology is used. What is not entirely clear—and it is potentially hard for corrective services to say at this stage—is the extent to which it will replace other formal, more traditional, for want of a better word, types of searches and whether it is going to replace or supplement those types of searches. I think there is certainly the opportunity for it to reduce the otherwise intrusive nature of physical searches. Time will tell the extent to which these types of scans replace those other types of searches going forward.

CHAIR: The airport is a very good example—the physical pat down if something does trigger on the scanner or the X-ray and bag searches because something might look indiscriminate within your baggage. I do not think it is a knock-it-all-out situation.

There being no further questions, thank you for appearing before us today. There were no questions taken on notice. A copy of this transcript will be available on the committee's website in due course. Thank you very much for sharing that valuable information.

Mr Forbes: May we quickly add something before we close?

CHAIR: Please do.

Mr Booth: I am told that we did see an exposure draft of the bill before we were asked to comment on the bill. I did make a comment before that I could not exactly say whether we did make comments on the bill. We did see an exposure draft.

Mr LISTER: Is it an ordinary process as a general principle that you will cooperate and assist the government and the departments when they are constructing bills before they are brought to parliament?

Mr Booth: Absolutely, we often see exposure drafts and we often get involved in early consultation with agencies around drafting bills. It is not uncommon.

CHAIR: Thank you very much for appearing before us today. I declare this hearing closed.

The committee adjourned at 1.19 pm.