

## Corrective Services (Emerging Technologies and Security) and Other Legislation Amendment Bill 2022

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Queensland  
**Human Rights  
Commission**

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## Corrective Services (Emerging Technologies and Security) and Other Legislation Amendment Bill 2022

Submission  
to the  
Education, Employment and Training Committee

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## Summary

1. The Corrective Services (Emerging Technologies and Security) and Other Legislation Amendment Bill 2022 (the **Bill**) would amend various legislation with the aim to ensure the safety and security of the custodial environment.
2. This submission of the Queensland Human Rights Commission is limited to the following subject matter:
  - (a) The emergency response framework.
  - (b) Sharing prisoner health information.
  - (c) Restrictions on transfer to a low custody facility.
3. The Queensland Human Rights Commission recommends:
  - (a) The threshold in proposed new section 271B for the declaration of an emergency should be limited to an urgent, unexpected, or dangerous situation that poses an immediate risk to health, life, or property.
  - (b) The power to restrict access to a corrective services facility during a period of declared emergency should not extend to key oversight agencies such as the Queensland Ombudsman, the Inspector of Detention Services, the Official Visitor, and the United Nations Subcommittee on the Prevention of Torture.
  - (c) The power to withhold or limit phones calls between a prisoner and their family should be limited to times when it is necessary to respond to the emergency.
  - (d) An assessment of compatibility with human rights should be included with the information that is required to be published after a declaration of emergency is made.
  - (e) The Committee consider how medical recommendations about the accommodation for prisoners are given directly from the health service to the prison management to better achieve the policy objective of supporting prisoner and offender health and welfare by enhancing information sharing.
  - (f) The Committee recommend the repeal of the mandatory restriction of certain prisoners being placed only in high security prisons.

## Introduction

4. The Queensland Human Rights Commission (the **Commission**) is a statutory authority established under the Queensland *Anti-Discrimination Act 1991*, with functions under the *Anti-Discrimination Act 1991* and the *Human Rights Act 2019*.
5. The functions of the Commission include promoting an understanding and public discussion of human rights in Queensland and providing information and education about human rights.
6. The Commission also deals with complaints of discrimination, vilification and other objectionable conduct under the *Anti-Discrimination Act 1991*, reprisal under the *Public Interest Disclosure Act 2009*, and human rights complaints under the *Human Rights Act 2019*. Unresolved complaints dealt with under the *Anti-Discrimination Act 1991* may be referred to a tribunal for hearing and determination.<sup>1</sup>
7. The Commission deals with complaints by prisoners about a range of issues in the prison environment, including health services. Some health service complaints may be dealt with as complaints of discrimination, and some may be dealt with as human rights complaints.

## Emergency response framework

8. Clause 28 of the Bill would insert a new Part 2 Division 3 in chapter 6 of the *Corrective Services Act 2005* (the **CS Act**) to facilitate the declaration of an emergency. The purpose is to modernise the emergency response framework.

### Threshold for declaring an emergency

9. A new section 271B of the CS Act would provide a threshold for when a declaration can be made. The chief executive must reasonably believe a situation exists that is likely to threaten the security or good order of a corrective services facility, or the health or safety of a prisoner or another person at a corrective services facility. The chief executive must also be satisfied the situation justifies making a declaration.
10. This threshold is low and could result in disproportionate limitations of human rights. Given that a declaration of emergency triggers significant limitations of rights, the threshold should be higher than that proposed in the Bill. The Commission considers that an emergency would usually

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<sup>1</sup> *Anti-Discrimination Act 1991* sections 164A, 166, and 167.

involve an urgent, unexpected, or dangerous situation that poses an immediate risk to health, life, or property.

### **Emergency powers**

11. A new section 271C would give the chief executive broad additional powers during a period of emergency. These include restricting movement within a corrective services facility, restricting access to a corrective services facility, isolating prisoners, limiting or withholding the privileges of a prisoner, and transferring prisoners to another corrective services facility.

### **Access to corrective services facilities**

12. The power to restrict access to a corrective services facility should be circumscribed so as not to prevent access by key oversight agencies such as the Queensland Ombudsman, the Inspector of Detention Services, the Official Visitor, and the United Nations Subcommittee on the Prevention of Torture. This would maintain transparency and confidence in the corrective services system and ensure any disproportionate limitations of human rights are identified and resolved promptly.

### **Telephone contact with family**

13. Prisoner privileges are broadly defined in the Corrective Services Regulation 2017 section 18 and include making or receiving phone calls other than to or from the prisoner's lawyer or the Ombudsman. Under the new section 271C(2)(d) phone calls between a prisoner and their family could be limited or withheld if the chief executive reasonably believes it would not be practicable for the prisoner to make or receive phone calls.
14. The COVID-19 emergency has demonstrated the need for prisoners to remain in contact with family and other supports during a pandemic. Withholding and limiting this type of contact can severely limit the rights of the prisoner and their family. The Commission considers that a less restrictive approach is to confine the use of this power in relation to telephone contact with family to when it is necessary to respond to the emergency.

### **Publication of information**

15. The obligations to properly consider human rights and to act and make decisions in a way that is compatible with human rights will apply to the making of a declaration of emergency.<sup>2</sup> These obligations will also apply to the exercise of consequential powers.

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<sup>2</sup> *Human Rights Act 2019* section 58.

16. Proper consideration of human rights includes identifying all human rights that may be affected by the decision and considering whether the decision would be compatible with human rights.<sup>3</sup> Given that a declaration and the consequential exercise of powers will limit human rights, the decisions will be compatible with human rights if the identified human rights are limited only to the extent that is reasonable and demonstrably justified in accordance with section 13 of the *Human Rights Act 2019*.
17. A new section 271D would require the chief executive to publish on the department's website information about a declaration of emergency, including the reasons for making the declaration.
18. The Commission considers that the assessment of compatibility with human rights should be required to be published with the other information set out in the new section 271D. This would promote transparency and compliance with the *Human Rights Act 2019*. It would also be consistent with the obligation on the Chief Health Officer to publish a justification statement for a public health direction. A justification statement must include the Chief Health Officer's opinion as to whether the direction is compatible with human rights and the nature and extent of any incompatibility.<sup>4</sup>

## Sharing prisoner health information

19. The policy objective of amendments to section 341 of the CS Act in clause 32 of the Bill is to enhance information sharing. The Explanatory Notes say that amendments are 'to clarify that confidential information about a prisoner can proactively be shared with a health practitioner, if the person disclosing the information reasonably believes the disclosure is relevant for the care, treatment or rehabilitation of the prisoner'. The Explanatory Notes also state that information sharing is already occurring under section 341 of the CS Act.
20. However, the communication by health practitioners of recommendations regarding a prisoner's health and wellbeing may not be occurring under section 341 of the CS Act or at all, as demonstrated by a complaint to the Commission.
21. In the complaint, the prisoner alleged that he had been given a medical recommendation that he be accommodated in a single cell due to the

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<sup>3</sup> *Human Rights Act 2019* section 58(5); see also *Owen-D'Arcy v Chief Executive, Queensland Corrective Services* [2021] QSC 273 (22 October 2021) [134] to [141].

<sup>4</sup> *Public Health Act 2005* section 142C (Meaning of justification statement) and section 142H (Requirement to prepare and publish justification statement and inform affected persons).

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medical conditions that he was enduring. The practice is for the health practitioner to give such a recommendation directly to the prisoner who is then responsible to submit it to the prison management. While in this complaint there was a dispute as to whether the prisoner passed the medical recommendation on to a corrective services officer, the fact was that the prisoner remained accommodated in a shared cell for a significant period.

22. The Commission considers that medical recommendations about the placement of a prisoner in a single cell should be made by the health service directly to the prison management. Relying on prisoners to pursue the implementation of health-based recommendations may lead to confusion and delays such as those in the complaint. There is a significant risk that written documents will be lost as well as privacy concerns in expecting a prisoner to manage the information in a prison environment. A prisoner's rights to humane treatment when deprived of liberty and to privacy would be better aligned if health-based recommendations were given directly from the health service to the prison management.
23. It may be that health practitioners feel constrained in providing this type of medical information directly to the prison management, despite section 341 of the CS Act and the proposed amendments to it. Under sections 142 and 142A of the *Hospital and Health Boards Act 2011*, a designated person (health service employee and others) or a prescribed health professional (in a regulation) is prohibited from disclosing confidential information about a person unless required or permitted under that Act, that is, under the *Hospital and Health Boards Act 2011*.
24. The Commissions asks the Committee to consider means of better implementing the policy objective of supporting prisoner and offender health and welfare by enhancing information sharing so that medical recommendations about the accommodation for prisoners are given directly from the health service to the prison management. This might include an example in section 341 of the CS Act and specific reference to the CS Act in section 143 of the *Hospital and Health Boards Act 2011* (Disclosure required or permitted by an Act).

## **Restrictions on transfer to low custody facility**

25. Section 68A of the CS Act prohibits the transfer to a low custody facility of a prisoner who:
  - (a) has been convicted of a sexual offence;



- (b) has been convicted of murder; or
  - (c) is serving a life sentence.
26. The section was introduced in 2020 by the Corrective Services and Other Legislation Amendment Act 2020. It was said to implement the Government's position on recommendation 58 of the Queensland Parole System Review.<sup>5</sup>
27. Recommendation 58 of the Queensland Parole System Review conducted by Walter Sofronoff KC<sup>6</sup> was:
- The government should review the *policy* restricting placement of sexual offenders and those prisoners convicted for murder or those with a serious violent offence declaration with a view to reintroducing appropriate candidates to low security facilities.
28. The recommendation formed part of improvement of reintegration of long-term prisoners into community on parole. The report noted that 'Prisoners may be sentenced for very serious crimes but pose very little risk to prison security and some also pose very little risk of reoffending'. It considered that seriously overcrowded high security prisons must be reserved for the placement of prisoners who are dangerous or unsuitable due to the risk they pose to the security of the correctional system and the community.
29. The government response released on 16 February 2017 said the recommendation could not be supported at that point in time, because the risk of escape has a high potential to undermine public confidence in the low security program. Rather than reverse the policy as suggested by the reviewer, the government later enshrined the policy into legislation.
30. Section 68A is arbitrary in nature. It does not allow prison authorities to consider risks on a case-by-case basis. It also removes incentive for good behaviour and limits reintegration and is inconsistent with the object of rehabilitation.
31. In the 2019 Women in Prison Report<sup>7</sup> the Commission expressed concern of the policy at the time on the impact on women who had been sentenced to life imprisonment. It noted that Queensland Corrective Services staff expressed the view that suitable 'lifers' should be placed in low security prisons as they assist with the stability, culture, and grounding of the

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<sup>5</sup> Explanatory Notes to the Corrective Services and Other Legislation Amendment Bill 2020 at page 3.

<sup>6</sup> Queensland Parole System Review, Final Report 2016.

<sup>7</sup> *Women in Prison 2019: A human rights consultation report*, Anti-Discrimination Commission Queensland, 2019.

prison population. The report found that keeping all women 'lifers' in the secure Brisbane Women's Correctional Centre or the Townsville Women's Correctional Centre for their whole sentence did not assist their reintegration into the community.

32. The Commission urges the Committee to recommend the repeal of section 68A of the CS Act.

## **Conclusion**

33. The Commission thanks the Committee for the opportunity to make a submission on the Bill. As noted in the Explanatory Notes, the Commission was consulted on a Consultation draft of the Bill, and some feedback is reflected in the current Bill.