

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

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Committee Secretary
Education, Employment and Training Committee
Parliament House
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Dear Committee Members

APS Submission to the Inquiry into the Corrective Services (Emerging Technologies and Security) and Other Legislation Amendment Bill 2022

The Australian Psychological Society (APS) welcomes the opportunity to provide a submission to the Education, Employment and Training Committee's Inquiry into the Corrective Services (Emerging Technologies and Security) and Other Legislation Amendment Bill 2022.

The APS is the peak body for psychology in Australia, representing more than 28,000 members. Psychologists have an important role in correctional settings, providing expert psychological assessment and treatment, as well as contributing to multidisciplinary team decision-making relating to the health, wellbeing and security of prisoners. In order to fulfil these duties, it is essential for psychologists in correctional settings to adhere closely to their scope of practice and ethical standards, and for all due care to be taken to prevent incursions into the therapeutic relationship that is required for effective mental health assessment, treatment and decision-making to take place.

We therefore express our concern with clause 10 of the Corrective Services (Emerging Technologies and Security) and Other Legislation Amendment Bill 2022 (the Bill). This clause would amend section 39 of the Corrective Services Act 2006, which regulates the conduct of body searches of prisoners where there is a reasonable belief that the prisoner has ingested something harmful, has concealed a prohibited item or where the search may reveal evidence of the commission of an offence or a breach of discipline.

Clause 10 replaces references to 'doctor' and 'nurse' in section 39 with 'health practitioner'. The effect of this amendment (together with clause 36) is that that any Ahpra registered health practitioner — including a psychologist — may be authorised to conduct a body search of a prisoner. Moreover, a health practitioner, including a psychologist, may be required to attend and observe a search (under section 39(2)).

The APS strongly believes that it is inappropriate for psychologists to conduct or observe internal body searches of prisoners for the following reasons:

- 1. Conducting physical searches of prisoners in order to identify potentially harmful or dangerous ingested or concealed items is not within the scope of practice of psychologists.** Psychologists are not trained to conduct physical examinations, which are the proper domain of medical practitioners and nurses within a correctional setting; and

2. **Requiring psychologists to be involved in body searches (either as the person conducting the search or as an observer) is prejudicial to the therapeutic relationship between psychologists and prisoners.** This applies both where there is an existing relationship between the psychologist and prisoner (e.g., where a prisoner is being searched by a psychologist from whom they have previously received psychological treatment) and in general (where psychologists' participation in searches may erode trust and create suspicion which undermines effective treatment, assessment and decision-making by psychologists).

We understand that the rationale for this amendment, as set out in the Explanatory Notes, is to bring section 39 in line with other legislation, particularly section 157Y of the *Public Health Act 2005* and section 388 of the *Mental Health Act 2016*. These provisions allow a health practitioner to conduct a scanning or personal (i.e. pat-down) search of a person if they believe that the patient 'may have possession of a harmful thing', allowing health practitioners to respond to threats to their safety and the safety of others. However, we believe that these provisions should be distinguished from the operation of section 39 of the *Corrective Services Act 2006*, which authorises a much more physically-invasive level of search specifically relating to the identification of ingested or concealed items, or items which may show the commission of an offence or breach of discipline. We therefore recommend that clause 10 be amended to restore the status quo, authorising only medical practitioners and nurses to participate in body searches of prisoners.

The APS also notes with concern other replacements of specific professional groups with 'health practitioner' in the Bill, including:

- Clause 7, which amends section 21(5), and clause 6 of Schedule 1 (under the amendments to the Act), amending section 42. Together, these amendments would allow other health practitioners (including psychologists) to take a sample of a prisoner's blood or other bodily substance. This is again outside the scope of practice for psychologists and most other health practitioners.
- Clause 6 of Schedule 1 (under the amendments to the Act), which amends sections 57, 64 and 121(3). The requirements here for a prisoner to receive an examination for 'any health concerns' should be discharged only by an appropriate health practitioner – not any health practitioner. It would be inappropriate, for example, for a psychologist to examine a prisoner with a history of cardiac concerns and therefore fulfil the requirements of sections 57 or 65, but it would be appropriate for a psychologist to examine a prisoner in relation to mental health concerns.
- Clause 1 under the amendments to the Corrective Services Regulation 2017, which amends section 4 of the Regulations. It would generally be inappropriate for a psychologist alone, without a multidisciplinary team consultation and decision, to advise that it is not in the interests of a prisoner's health to exercise for a stated period or indefinitely.
- Clause 2 under the amendments to the Corrective Services Regulation 2017, which amends section 5(g) of the Regulations. A psychologist has no professional authority to approve the possession, taking or administration of medication.

- Clause 3 under the amendments to the Corrective Services Regulation 2017, which amends section 5(f) of the Regulations. A psychologist has no professional authority to prescribe medication.

We also recommend that these amendments be reviewed to ensure that the provisions reflect the scope of practice and unique professional contribution of psychologists and other health practitioners.

Thank you again for the opportunity to provide a submission to the Education, Employment and Training Committee's Inquiry into the Corrective Services (Emerging Technologies and Security) and Other Legislation Amendment Bill 2022. If any further information is required from the APS, I would be happy to be contacted through our National Office on (03) 8662 3300 or by email at:

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Yours sincerely

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