

Public Health and Other Legislation (COVID-19 Management) Amendment Bill 2022

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Inquiry into the Public Health and Other Legislation (COVID-19 Management) Amendment Bill 2022

Thank you for the opportunity to provide the following submissions to the Inquiry into the Public Health and Other Legislation (COVID-19 Management) Amendment Bill 2022 (the **Bill**).

About Prisoners' Legal Service

Prisoners' Legal Service (**PLS**) is a community legal centre that has operated in Queensland for over 30 years. We provide legal advice and representation to people in prison about matters arising from imprisonment. PLS has significant expertise regarding the impact of incarceration on the most vulnerable members of our society.

PLS conducts prison visits, operates a telephone advice line, provides community legal education and responds to mail from people in prison across the state. PLS also provides legal representation to people in prison, in relation to parole decisions and prison matters. The majority of people who receive legal representation from PLS are First Nations people and people with disabilities.

Throughout the COVID-19 pandemic, PLS has observed the impacts of temporary amendments to the *Corrective Services Act 2006* (Qld) (**CSA**) upon prisoners' wellbeing, access to personal, legal and health services, and human rights. The purpose of these submissions is to outline PLS' objections to the Bill, particularly regarding its purported extension of the chief executive's emergency powers under section 268 of the CSA.

Implications of the Bill for the CSA

PLS accepts the Bill's proposal to extend certain measures to prevent COVID-19 from spreading in corrective services facilities, including temperature checking and refusing entry to visitors displaying flu-like symptoms.¹ These measures are proportionate to the aim of protecting the safety of staff and prisoners from the risks of COVID-19 in prison environments.

PLS' central objection to the Bill is how it purports to entitle the Commissioner of Queensland Corrective Services (**QCS**) to make "emergency declarations" for up to 90 days, as opposed to the former 3-day limit.² Under section 268 of the CSA, making an emergency declaration gives the Commissioner broad powers to restrict activity in, and access to, a prison or part of a prison, order a prisoners' privileges be

¹ See generally *Corrective Services Act 2006* (Qld) s 351D ('CSA').

² *Ibid* ss 268, 351C(b).



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withheld, and authorise police officers to perform the functions and power of a corrective services officer under the supervision of a senior police officer.³

PLS is concerned about the lack of limitations and external oversight upon these broad, discretionary powers. The only conditions upon the extended power are that the Commissioner receives Ministerial approval, and holds “*a reasonable belief that a situation exists at the prison, or in part of the prison, that threatens or is likely to threaten the good order and security of the prison, or the safety of a prisoner or another person in the prison*”.⁴

These emergency powers, alongside other COVID-19 provisions in the CSA, are set to expire on 31 October 2023.⁵ Considering that COVID-19 will remain in the community for the foreseeable future, PLS is concerned that these provisions may again be liable to extension.

The Bill will also allow the Commissioner to make emergency declarations without any public health declaration being in place. Since public health declarations are set to be more heavily regulated under the Bill,⁶ PLS is concerned as to the comparatively few limitations imposed upon the Commissioner’s powers. PLS submits that the proposal to allow the extension of the Commissioner’s authority to effectively declare an emergency and impose significant restrictions in the same legislation that seeks to reduce other measures to manage risk associated with COVID-19 is unreasonable.

Lack of justification for 90-day extension

PLS submits that there has been a lack of appropriate justification provided for the continued extension of section 268 emergency declarations for up to 90 days. While ensuring the health and safety of prisoners and corrective services staff is essential, PLS is of the view that existing measures relating to visitor screening, mask wearing, isolating positive cases, and vaccination requirements are an appropriate and less restrictive means of achieving this aim as Queensland transitions out of the pandemic.

Relevantly, the Bill recognises that the original emergency framework implemented under the PHA is no longer necessary, instead favouring “*temporary more targeted powers to manage COVID-19 as a notifiable condition*” as part of a “*step-down approach to managing the pandemic response*”.⁷

The Bill’s application to the CSA does not reflect this approach, nor does it provide for more targeted and proportionate responses to the ongoing risks posed by COVID-19. Instead, it enables the Commissioner to continue to declare a state of emergency in a prison for up to three months, which will significantly restrict the rights of prisoners. Contrary to the purpose of the amendments, the Bill does not introduce any new procedures, limitations and safeguards with respect to these powers, nor does it enhance transparency and scrutiny of the Commissioner.⁸

The Explanatory Notes reference other control mechanisms, but do not provide reasons for a declaration that would implement a facility-wide lockdown. The Explanatory Notes state:

³ See *bid* s 268(4)(a)-(c).

⁴ See *bid* s 268(2)(a)-(b); See also Explanatory Notes, Public Health and Other Legislation (COVID-19 Management) Amendment Bill 2022 (Qld) 18 (‘Explanatory Notes’).

⁵ Public Health and Other Legislation (COVID-19 Management) Amendment Bill 2022, cl 5-7 (‘The Bill’); CSA (n 1) ss 351A and 351C(3) (CSA); See also Explanatory Notes (n 4) 1.

⁶ See generally The Bill (n 5) cl 9.

⁷ Explanatory Notes (n 4) 1.

⁸ *Ibid*.



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“QCS has determined that given the operational environment, a baseline level of controls is still required whilst there continues to be community transmission of COVID-19, with the flexibility to increase controls alongside escalating risk. This includes screening individuals entering facilities for COVID-19 symptoms, excluding visitors that are exhibiting COVID-19 symptoms (or offering non-contact visitation), mask wearing and isolating prisoners who have tested positive or who are symptomatic.”⁹

PLS submits that the mitigation measures listed in the statement about are sufficient to manage the risk whilst there “continues to be community transmission of COVID-19”.

There is no justification provided for a declaration to impose a centre-wide lockdown for up to 90 days in the absence of a public health declaration imposing similar restrictions in relation to similar institutional environments.

Impacts upon prisoners’ wellbeing

The Bill recognises the core function of QCS as providing for ‘the humane containment and rehabilitation of prisoners’.¹⁰ However, PLS has observed how the extended emergency powers in section 268 have adversely affected prisoners’ wellbeing, particularly through imposed ‘medical segregation’ methods.

Throughout the pandemic, PLS has been concerned about the use of medical segregation in prisons. Often, this measure tends to amount to ‘de facto solitary confinement’.¹¹ New admissions to prisons, those returning from temporary absences, COVID-19 positive prisoners, close contacts and vulnerable prisoners have been subject to these isolation requirements since March 2020. This has involved prisoners being locked down in their cell for at least 22 hours a day with limited or no association with other prisoners,¹² for anywhere between 14 days and 11 weeks.¹³

There is an extensive body of international research that evidences that placing prisoners in solitary confinement, even for short periods of time, can cause serious psychological harm which may be irreversible.¹⁴ A recent report out of the University of Queensland suggests that people in solitary confinement often display symptoms of psychosis,¹⁵ and frequently engage in disordered and obsessive behaviour as well as acts of self-harm.¹⁶

During 2020, PLS encountered some prisoners being isolated in cells for 24 hours a day, with the toilet only being allowed to flush 6 times.¹⁷ Many prisoners had little to no access to exercise or fresh air or

⁹ Ibid 5.

¹⁰ Ibid.

¹¹ Helen Blaber, Tamara Walsh and Lucy Cornwell, ‘Prisoner Isolation and COVID-19 in Queensland’, *Griffith Journal of Law & Human Dignity* 8(2) (2021): 52 (‘Prisoner Isolation’); ‘Coronavirus: Healthcare and human rights of people in prison’, Penal Reform International (Briefing Note, 16 March 2020) 8.

¹² Tamara Walsh and Helen Blaber, ‘Imposed Isolation Plagues Queensland Prisons During Pandemic’, *Queensland Law Society Proctor*, 11 December 2020 < <https://www.qlsproctor.com.au/2020/12/imposed-isolation-plagues-queensland-prisons-during-pandemic/>>; See also United Nations Office on Drugs and Crime, *The United Nations Standard Minimum Rules for the Treatment of Prisoners*, GA Res 70/175, UN Doc A/RES/70/175 (8 January 2016, adopted 17 December 2015) rule 44.

¹³ Blaber, Walsh and Cornwell, ‘Prisoner Isolation’ (n 11) 57-9.

¹⁴ Ibid 52; Stuart Grassian, ‘Psychiatric Effects of Solitary Confinement’, *Washington Journal of Law & Policy* 22 (2006): 325, 332; Terry Kupers, ‘What To Do With the Survivors? Coping With the Long-Term Effects of Isolated Confinement’ *Criminal Justice and Behaviour* 35(8) (2008): 1005, 1006.

¹⁵ Tamara Walsh, Helen Blaber and Lucy Cornwell, ‘Legal Perspectives on Solitary Confinement in Queensland’, University of Queensland School of Law (Report, 2020): 6 (‘Legal Perspectives’).

¹⁶ Ibid 10-11.

¹⁷ Blaber, Walsh and Cornwell, ‘Prisoner Isolation’ (n 11) 57-8.



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calls to friends and family.¹⁸ These conditions for prisoners have been exacerbated by further limitations upon access to legal and health services.¹⁹

Impacts upon access to legal and health services

PLS is concerned that extending the Commissioner's power to make 90-day emergency declarations will continue to unduly impact prisoners' access to legal, health and mental health services.

Between March and September 2020, the emergency declarations imposed throughout Queensland's prisons resulted in the ceasing of all personal and legal visits to correctional facilities.²⁰ As a result of this, and a lack of appropriate alternatives being put in place, PLS consistently encountered difficulties providing legal assistance to people in prison during the pandemic.

In February 2021, the Queensland Human Rights Commission published a report recommending, among other things, that QCS ensure prisoners in isolation were provided with adequate facilities to communicate with lawyers.²¹ Despite this, some prisoners in lockdowns had no access to the Arunta telephone system to get legal advice, and little to no access to doctors, psychologists or counsellors.²²

PLS notes that restricting access to lawyers has significant implications for the outcomes of prisoners' criminal charges or parole decisions.²³ PLS has also observed how the use of COVID-19 emergency powers in prisons has impeded access to rehabilitative programs, which are often essential to a prisoner being granted parole and regaining liberty. Failure to provide access to these programs and the resultant outcomes for an individual will constitute an unreasonable limitation of protected rights pursuant to the *Human Rights Act 2019 (HRA)*.²⁴ These barriers have contributed to the overcrowding of Queensland's prisons, with corresponding costs to the government and community and increased risk of spread of COVID-19 with correctional facilities.

Despite considerable effort between PLS and QCS during the pandemic, these accessibility issues have been ongoing. PLS is concerned about how these issues will be managed alongside the extension of the Commissioner's emergency powers until October 2023.

Further human rights implications

The above points give rise to distinct human rights concerns for people in Queensland's prisons. The placement of prisoners in solitary confinement for any purpose has been found to breach prisoners' human rights to life, liberty and security of person,²⁵ to humane treatment when deprived of liberty,²⁶ and

¹⁸ Ibid 57-8, 63.

¹⁹ Ibid 63.

²⁰ 'High Level Summary of QCS Management of COVID-19 within Correctional Centres: current 23/04/2020', *Queensland Corrective Services* (Summary, 23 April 2020) <https://corrections.qld.gov.au/wp-content/uploads/2020/04/QCS-Stakeholder-infomation_Ir.pdf>; See also Walsh and Blaber (n 12).

²¹ Queensland Human Rights Commission, 'Prisoner Isolation Unresolved Complaint Under Section 88 *Human Rights Act*', 2 February 2021: 27 <https://www.qhrc.qld.gov.au/data/assets/pdf_file/0004/31000/2021.01.20-Final-Report-website.pdf>.

²² Blaber, Walsh and Cornwell, 'Prisoner Isolation' (n 11) 57-9.

²³ Ibid 63-4.

²⁴ *Human Rights Act 2019* (Qld) ss 19, 23 and 29 ('HRA').

²⁵ See *Columbia Civil Liberties Association v Canada (Attorney General)* 2018 BCSC 62, [247].

²⁶ See *Taunoa & Ors v The Attorney-General & Anor* [2008] 1 NZLR 429, 471 [80]; *Mathew v The Netherlands* (European Court of Human Rights, Application No 24919/03, 29 September 2005) [199], [205].



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to protection from cruel, inhuman or degrading treatment.²⁷ Preventing prisoners from communicating with others may also breach family and cultural rights protected under the HRA.²⁸

Under the HRA, public entities, including QCS,²⁹ are required to act and make decisions in a way that is compatible with human rights, and in making decisions, must give proper consideration to relevant human rights.³⁰ The HRA recognizes that rights may be limited, but only when these limitations are reasonable and demonstrably justified.³¹

While the Bill clearly has a legitimate purpose in seeking to maintain the health and safety of people in corrective services facilities, to be human rights compliant, there must not be any less restrictive alternatives available to achieve the same purpose.³²

The Statement of Compatibility with human rights provided alongside the Bill states that there are no less restrictive and reasonably available ways of achieving the Bill's purpose.³³ PLS once again submits that existing measures in relation to visitor screening, mask wearing, vaccination requirements, and so on, are a more appropriate means of achieving this aim. These measures are consistent with the Bill's 'step down' approach to managing COVID-19 in both the community and vulnerable settings, and do not disproportionately impinge upon the human rights of people in prison.

Conclusion

PLS does not support the Bill's extension of the section 268 emergency powers in the CSA until October 2023. There is an inherent lack of justification for and limitations upon the Commissioner's use of these powers, despite the Bill recognizing that a more targeted approach to managing COVID-19 is necessary as Queensland transitions out of the pandemic.

PLS is concerned that the continued use of these powers will have a disproportionate impact on prisoners' wellbeing, access to essential services, and human rights, and may increase the time people spend in prison. This approach is inconsistent with the legislative aim of the Bill, and with fundamental human rights under international law and the HRA.

Thank you for your consideration of this submission.

Yours faithfully

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A/ Principal Solicitor

²⁷ Blaber, Walsh and Cornwell, 'Prisoner Isolation' (n 11) p 62; Walsh, Blaber and Cornwell, 'Legal Perspectives' (n 15) 64-5.

²⁸ HRA (n 24) ss 26, 27; See also Walsh and Blaber (n 12).

²⁹ HRA (n 24) s 9(1).

³⁰ Ibid s 58(1).

³¹ Ibid s 13(1).

³² Blaber, Walsh and Cornwell, 'Prisoner Isolation' (n 11) 61.

³³ Statement of Compatibility, Public Health and Other Legislation (COVID-19 Management) Amendment Bill 2022 (Qld) 28.