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Office of the
Commissioner

**Queensland
Corrective Services**

Mr Peter Russo MP
Chair
Legal Affairs and Community Safety Committee
Queensland Parliament
lacsc@parliament.qld.gov.au

Dear Mr Russo

Thank you for your letter of 23 March 2020 about the Legal Affairs and Community Safety Committee's consideration of the Corrective Services and Other Legislation Amendment Bill 2020.

Queensland Corrective Services (QCS) and Queensland Police Service (QPS) appreciate the opportunity to provide a written response to the committee about the issues raised in the public submissions on the Bill, which were published on 27 April 2020. Please find enclosed a table that summarises the key issues raised in the submissions and the responses from QCS and QPS.

If you require further information regarding this matter, please contact Mr Tom Humphreys, Chief Superintendent, Ministerial Communications and Executive Services Command, on [REDACTED] or [REDACTED].

I trust that this information is helpful to you.

Yours sincerely

**Peter Martin APM
Commissioner**

Enc.

cc The Honourable Mark Ryan MP
Minister for Police and Minister for Corrective Services
[REDACTED]

Ms Katarina Carroll APM
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Response to Legal Affairs and Community Safety Committee
Written submissions

The following 13 submissions were received in relation to the Corrective Services and other Legislation Amendment Bill 2020 (the Bill):

No.	Submission	<i>Corrective Services Act 2006</i>	<i>Criminal Code</i>	<i>Firearms Amnesty</i>	<i>Weapons Act 1990</i>
01	Robert Finlay				✓
02	Bar Association of Queensland	✓			
03	Crime and Corruption Commission	✓			
04	Aboriginal and Torres Strait Islander Legal Service	✓			
05	Keith York				✓
06	Firearm Owners United			✓	✓
07	Queensland Living History Federation				✓
08	Alannah & Madeline Foundation			✓	✓
09	Queensland Human Rights Commission	✓	✓		
10	Shooters Union			✓	✓
11	Firearm Dealers Association			✓	✓
12	Sisters Inside	✓	✓		
13	Queensland Law Society	✓			

Issue	Submission/Submission Key Points	Response – Queensland Corrective Services (QCS)/Queensland Police Service (QPS)
Corrective Services Act 2006		
Insertion of new section 68A – Restriction on eligibility for transfer to low custody facility	<p><u>Queensland Human Rights Commission</u> – 09</p> <ul style="list-style-type: none"> • The Commission suggests the proposed amendment be reconsidered, and that the government provide further justification for how this change will not be an arbitrary interference with rights, particularly for female or infirm detainees. • The Commission submits that a prisoner's right to liberty is engaged by this amendment, as this amendment could result in prisoners otherwise eligible for less restrictive custody remaining in higher security environments. • The Commission submits that the amendment fails to provide a balance between ensuring a prisoner is provided with rehabilitative and reintegration opportunities and ensuring the ongoing safety and security of the community, as rehabilitation and reintegration opportunities are ignored by the blanket inability for certain prisoners to be accommodated in lower security areas. • The Commission states that the Statement of Compatibility fails to consider any alternative options or articulate in detail how the current system diminishes public confidence. • The Commission notes that in the 2019 Women in Prisons Report it found keeping women 'lifers' in high security for their whole sentence did not assist their reintegration into the community, nor was it an appropriate administrative decision. It noted the disproportionate impact on women life sentenced prisoners who are low risk. 	<p>In response to the Queensland Parole System Review the Queensland Government made it clear that it did not support any changes to 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.</p> <p>This amendment supports this position by introducing an additional eligibility criterion for prisoners being considered for accommodation in a low custody facility.</p> <p>Queensland Corrective Services (QCS) manages each prisoner according to individual risk. Prisoner security classifications are one tool used to assess a prisoner's risk. They take into consideration the nature of the offence for which the prisoner has been charged or convicted, the risk of the prisoner escaping or attempting to escape from custody, the risk of the prisoner committing a further offence and the impact the commission of the further offence is likely to have on the community, and the risk the prisoner poses to himself or herself, and other prisoners, staff members and the security of the corrective services facility.</p> <p>Only prisoners with a low security classification are eligible to be considered for placement in a low custody facility. This requirement will not change. Rather, the amendment places an additional eligibility criteria that prisoners must meet before being considered for placement in a low custody facility.</p>

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	<ul style="list-style-type: none"> The Commission appreciates public confidence in the prison system is an important goal. However, decisions about the placement of prisoners ought to be based on a case by case basis, and not upon blanket criteria that fails to weigh up all relevant considerations appropriate to each case. The Commission therefore suggests removing the blanket prohibition on people convicted of certain offences of ever being accommodated in low custody facilities. <p><u>Sisters Inside – 12</u></p> <ul style="list-style-type: none"> Sisters Inside does not support this new provision, which makes a person in prison ineligible for transfer to a low custody facility if they have been convicted of a sexual offence, murder or are serving a life sentence. Decisions about security classification and custody placement should be determined on a case-by-case basis. This section makes it impossible for a person to be afforded an appraisal of their individual circumstances and their actual potential for risk. Inserting this section does not increase safety. There is already the power to deny a transfer to a low custody facility if necessary. This provision denies that an individual may be more than the sum of their past actions. 	<p>Accommodation in a low custody facility is not a right and QCS will continue to make decisions about prisoner placement on a case by case basis.</p> <p>In both high and low custody facilities prisoners have access to a range of interventions to help change their offending behaviour. This may include education, training or work opportunities aimed at helping to break the cycle of reoffending.</p>
Amendment of section 114 – Breach of discipline constituting an offence	<p><u>Bar Association of Queensland - 02</u></p> <ul style="list-style-type: none"> The Association supports the creation of a discretion for the Chief Executive to refer or not to refer, in so far as such an amendment would allow the Chief Executive to decide not to refer disciplinary 	<p>This amendment supports implementation of recommendation 32(b) from the Taskforce Flaxton report to ensure that only appropriate incidents are referred to the QPS for investigation.</p>

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	<p>breaches which may also amount to a minor criminal offence.</p> <ul style="list-style-type: none"> • However, the Association is concerned that there is no mechanism within the proposed amendment allowing for the prisoner to have any input into whether or not the Chief Executive should refer the matter. Whereas the section currently requires the Chief Executive to inform the prisoner that the referral will be made before the referral has been made, under the proposed amendment, the Chief Executive would be permitted to refer the matter to the Commissioner and then tell prisoner that the referral has been made (see proposed section 114(5)(b)). • In the Association's submission, the amendment to section 114 should provide for a short timeframe in which the prisoner is consulted before the referral is made. <p><u>Crime and Corruption Commission - 03</u></p> <ul style="list-style-type: none"> • The CCC welcomes this amendment as it adequately addresses Recommendation 32(b) of the Taskforce Flaxton report. 	<p>Taskforce Flaxton noted that existing requirements mandating that QCS refer every prisoner act or omission that could be dealt with either as a breach of discipline or as a criminal offence to the QPS for investigation was resource intensive and added to the significant workload of the Queensland Police Service (QPS) Corrective Services Investigation Unit (CSIU).</p> <p>Currently, if a corrective services officer observes or obtains knowledge of a prisoner's act or omission that could be dealt with either as an offence or as a breach of discipline, the officer must inform the chief executive. Under section 114 of the <i>Corrective Services Act 2006</i> (CS Act) the chief executive is required to inform the prisoner that the matter will be referred to the police commissioner and refer the matter to the police commissioner.</p> <p>Under the proposed amendment the prisoner will continue to be informed the matter has been referred to QPS. If the matter is to be dealt with as a breach of discipline, the amendment supports a timely response, rather than waiting for CSIU to investigate and return the matter to QCS for breach action.</p> <p>Prisoners will continue to have the right to appeal these decisions.</p> <p>QCS will develop an administrative procedure under section 265 of the <i>Corrective Services Act 2006</i> (CS Act) in consultation with the Queensland Police Service (QPS) to operationalise this amendment.</p>

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Amendment of section 140 - Forfeiting seized thing	<p><u>Crime and Corruption Commission</u> - 03</p> <ul style="list-style-type: none"> The CCC welcomes this amendment as it adequately addresses Recommendation 22 of the Taskforce Flaxton report. <p><u>Queensland Law Society</u> – 13</p> <ul style="list-style-type: none"> It is not clear what this amendment will achieve other than it will provide some relief from the administrative burden of storing exhibits. The QLS are of the view that such provisions carry with them a risk to the integrity of evidence in criminal proceedings. QLS suggest it might be appropriate to include a clause that acknowledges '(iii) if the property has not come into the custody or possession of a public officer in connection with any charge or prosecution' – destroying it. 	<p>This amendment supports implementation of Taskforce Flaxton recommendation 22 to review property and exhibit management policies and practices.</p> <p>Taskforce Flaxton found that because the CS Act does not have a clear disposal authority, seized prohibited items remain in an exhibit safe under the prison's control until CSIU investigators attend the prison and remove the items, including tobacco and mobile phones. While these items are legal and accessed in society, they are prohibited items in correctional centres and often seized.</p> <p>This amendment is not intended to cover exhibits which would be provided to QPS for their investigations. The amendment is to provide QCS with the clear authority to dispose of items that are not returnable and would otherwise have to be stored long term by QCS.</p>
Amendment of section 173 – Search of staff member	<p><u>Crime and Corruption Commission</u> - 03</p> <ul style="list-style-type: none"> The CCC supports the proposed amendment to section 173, however it is recommended that the powers to conduct searches could be further clarified. It is suggested this section could include a requirement that a person be subject to a search under powers similar to section 29 of the <i>Police Powers and Responsibilities Act 2000</i>. Alternatively, a non-exhaustive list of the types of powers that may be carried out on staff members as done in New South Wales under sections 253I and 253J of the <i>Crimes (Administration of Sentences) Act 1999</i>. This would give improved clarity over the extent of powers intended to be given to correctional officers. 	<p>The search provisions relating to staff, visitors and prisoners are spread across the CS Act.</p> <p>It is acknowledged that when read in isolation the staff search powers may appear more limited than those in the <i>Police Powers and Responsibilities Act 2000</i> or the <i>Crimes (Administration of Sentences) Act 1999</i> (NSW).</p> <p>However, when read with existing CS Act provisions, in particular section 174 (power to search corrective services facility), and section 175 (power to search vehicle), the provisions are considered to capture the types of conduct authorised by section 253J(1) of the New South Wales <i>Crimes (Administration of Sentences) Act 1999</i>.</p>

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	<p><u>Sisters Inside</u> – 12</p> <ul style="list-style-type: none"> Sisters Inside supports the amendment to allow greater searching of corrective services officers. <p><u>Queensland Law Society</u> – 13</p> <ul style="list-style-type: none"> Supports the amendment to allow search of staff members at any time the staff member is at the facility or before entering the facility. 	<p>QCS will consider the need for a more comprehensive review and/or consolidation of CS Act search provisions in the future.</p>
<p>Insertion of section 173A – Prohibition on intimate relationship between staff members and offenders</p>	<p><u>Bar Association of Queensland</u> - 02</p> <ul style="list-style-type: none"> The offence provision has a potentially wide scope of operation. In light of the definitions of “offender” (which includes a person on a community based order) and “staff member” (which includes any employee of the department or an engaged service provider or a corrective services officer), an offence could be committed in circumstances which render the offence very serious (such as where a prison officer has sexual relations with a prisoner under that officer’s watch) or very minor (such as where a departmental administrative officer dates a person on a community service order in circumstances where the administrative officer has nothing to do with the offender’s community service order). Where the offence is very serious (such as in the case of the first example provided above), an officer may be charged with rape (section 349 of the Criminal Code) or sexual assault (section 352 of the Criminal Code) on the basis that consent was not freely and voluntarily given as it was obtained by an exercise of authority pursuant to section 348 of the Criminal Code. If such an offence is charged, the prosecution may charge the new offence as an 	<p>This amendment addresses the corruption risk of inappropriate relationships identified during Taskforce Flaxton hearings. The amendment recognises the seriousness of the risk associated with inappropriate relationships and provides a greater deterrent than code of conduct breaches.</p> <p>The amendment is clear in that the prisoner does not commit an offence.</p> <p>The new offence is not intended to prevent more serious crimes from being reported to QPS for further investigation.</p> <p>All allegations of corrupt or inappropriate conduct are referred to the QCS Professional Standards and Governance Command (PSGC) for investigation. Any allegation of a criminal offence will be referred to the QPS and CCC for further investigation in line with existing processes.</p> <p>QCS notes that ATSILS also raised an allegation concerning potential inappropriate conduct in their submission. This matter has been referred to the QCS PSGC for investigation.</p>

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	<p>alternative count in the event that the jury cannot be satisfied beyond a reasonable doubt on the element of consent.</p> <ul style="list-style-type: none"> For that reason, the Association submits that the offence should be an indictable offence. In less serious cases, an election could be made for the prosecution to proceed summarily (which will require an amendment to Chapter 58A of the Criminal Code). <p><u>Aboriginal and Torres Strait Islander legal Service – 04</u></p> <ul style="list-style-type: none"> ATSILS note that Section 348 of the Criminal Code (Queensland) already provides with respect to the offences of rape and sexual assault that: <ul style="list-style-type: none"> <i>348 Meaning of consent</i> <i>(1) In this chapter, consent means consent freely and voluntarily given by a person with the cognitive capacity to give the consent.</i> <i>(2) Without limiting subsection (1), a person's consent to an act is not freely and voluntarily given if it is obtained – (a) by force; or (b) by threat or intimidation; or (c) by fear of bodily harm; or (d) by exercise of authority; or (e) by false and fraudulent representations about the nature or purpose of the act; or (f) by a mistaken belief introduced by the accused person that the accused person was the person's sexual partner.</i> If this offence is to be introduced, it is ATSILS view that the onus of proof should be reversed, that it should not be for the prosecution to prove the elements of the offence beyond reasonable doubt, but for the onus to fall on the defendant. 	

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	<ul style="list-style-type: none"> • ATSILS notes that abuses are visited upon prisoners in the forms of misuse of authority by corrective service officers for a variety of motivations for gratification (such as withholding access to medical care, turning their backs and failing to call a code yellow when a prisoner is being bashed, and reprisals for complaints). A prisoner should not have to buy safety from those abuses by engaging in sexual acts with corrective services officers. • In ATSILS view the scope of the offence should be widened to define a relationship which is inappropriate as one which would cause a risk or potential risk to the safety and security or good order of the correctional centre or compromises the proper administration of a sentence or community-based order or would lead to manipulation, intimidation, or coercion. This offence should not be used in circumstances when rape or sexual assault is a more appropriate charge. <p><u>Queensland Law Society – 13</u></p> <ul style="list-style-type: none"> • QLS have reservations about the proposed new offence to prohibit sexual conduct between staff and offenders. While acknowledging the purpose and policy intent, the proposed offence is particularly broad in scope, noting the definition of 'intimate relationship' encompasses 'physical expressions of affection' and/or 'the exchange of written or other forms of communications of a sexual or intimate nature'. • Further, the penalty of 100 penalty units or 3 years imprisonment is not insignificant and would apply to an employee of the department, an employee of an 	

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	<p>engaged service provider or a corrective services officer. In most other professional circumstances, this would be an employment or conduct issue. The QLS therefore queries the appropriateness of this being dealt with as a criminal law issue.</p> <ul style="list-style-type: none"> • If the offence is to progress, QLS submits that the legislation should expressly exclude the operation of the party provisions in sections 7 and 8 of the Criminal Code (Ch 2 Parties to offences) to offenders. This appropriately recognises the power imbalance which may exist. 	
<p>Amendment of section 188 – Submission from eligible person</p>	<p><u>Bar Association of Queensland</u> - 02</p> <ul style="list-style-type: none"> • The Association is opposed to the amendment to allow an eligible person registered on the Victim's Register to apply to extend the timeframe for them to provide a written submission to the Parole Board Queensland beyond the 21 day timeframe. • It is not clear to the Association why an eligible person would be unable to provide a submission within the 21 days provided for under the current legislation. The Association remains concerned that prisoners who are eligible to apply for parole have their parole application decided promptly and without undue delay. For this reason, the Association opposes the proposed amendment. 	<p>This amendment implements Queensland Parole System Review recommendation 85, which was supported by the Queensland Government.</p>
<p>Amendment of section 268 – Declaration of emergency</p>	<p><u>Queensland Human Rights Commission</u> – 09</p> <ul style="list-style-type: none"> • Declarations under section 268 are not required to be gazetted or otherwise communicated publicly via the QCS website. As these are significant powers, which the Statement of Compatibility notes engage several human rights, section 268 should be amended to include an obligation to publish these directions when they are made. This would provide 	<p>QCS is committed to the highest standards of transparency and accountability.</p> <p>While there is no legislative requirement for a declaration of emergency made under section 268 of the CS Act to be communicated publicly on the QCS website, QCS will endeavour to provide this information</p>

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	<p>greater transparency for the community about the use of this power.</p> <ul style="list-style-type: none"> The Commission therefore suggests that the <i>Corrective Services Act 2006</i> be amended so that that emergency directions made under section 268 must be published online and/or via gazettal. 	<p>to the public where it is appropriate, and as soon as reasonably practicable.</p> <p>During the COVID-19 public health emergency, QCS initially released chief executive declarations of emergency issued under section 268 via media statements. QCS has now published all declarations on its website.</p>
Amendment of sections 266, 283-284 – Programs and services to help offenders	<p><u>Aboriginal and Torres Strait Islander legal Service</u> – 04</p> <ul style="list-style-type: none"> ATSILS welcomes the broader language requiring the chief executive to support health and wellbeing of prisoners. ATSILS notes that inquests into recent deaths in custody have highlighted the complexity of policy and service delivery of offender health services, in particular, mental health services. 	<p>QCS acknowledges that prisoners and offenders often have poorer health indicators than the general population, including disproportionately higher rates of problematic substance use, mental health issues and disability needs. Prisoner and offender access to quality healthcare has implications for the health of the wider community and is often linked to increased re-offending and anti-social behaviour. QCS is actively working with relevant stakeholders to improve information-sharing, identification and management of prisoners with complex needs.</p>
Amendment of section 294 – Appointing inspectors	<p><u>Bar Association of Queensland</u> - 02</p> <ul style="list-style-type: none"> The Association supports the amendment in principle. However, the Association remains concerned that, to be effective, investigative entities should function independently of the services which they are tasked to investigate. It is the view of the Association that all misconduct and corruption allegations related to custodial settings out to be investigated by an independent entity with no professional ties to QCS or to the officer or person under investigation. A similar provision should apply as in section 295, where one of the inspectors must not be employed by the department. This would 	<p>This amendment supports implementation of Taskforce Flaxton recommendation 30(a) to broaden the remit of the Ethical Standards Unit.</p> <p>The proposed amendment will provide clear authority for PSGC inspectors to have unhindered access to corrective services facilities and information relevant to an investigation of alleged staff misconduct or corruption.</p> <p>These amendments will support the ability of PSGC inspectors to respond to complaints promptly, proactively identify agency-wide risks, and implement mitigation or prevention strategies.</p>

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	<p>ensure the investigation is independent and is seen to be independent.</p> <p><u>Crime and Corruption Commission</u> - 03</p> <ul style="list-style-type: none"> The CCC welcomes this amendment as it adequately addresses Recommendation 30(a) of the Taskforce Flaxton report. 	<p>The powers of inspectors will be limited to improving QCS's internal anti-corruption measures and oversight, with PSCG continuing to refer allegations to the QPS and CCC in line with existing processes.</p>
<p>Amendment of section 311A – dealing with amounts received for prisoners in particular cases</p>	<p><u>Aboriginal and Torres Strait Islander legal Service</u> – 04</p> <ul style="list-style-type: none"> ATSILS notes that there must be an appropriate balance between the desire to protect the security of the corrective services facility and the safety of prisoners and the protection of prisoners from unfair decisions which impact their wellbeing. In ATSILS view the approval or disapproval of donors of money should be done in a transparent and fair fashion and the exercise of a power to deny payments into prisoner trust fund accounts should be subject to a merits review. <p><u>Sisters Inside</u> – 12</p> <ul style="list-style-type: none"> Sisters Inside does not support the insertion of section 311A(1)(ab) as it discriminates against people who have been in prison by assuming that they are untrustworthy. It will also have a discriminatory effect on people in prison who have a criminal family and may not have anyone else to send them money. The amendment introduces the category of 'approved donor' but does not define this term. To ensure clarity and consistency the Bill should include a definition and a test for determining whether a donor should be deemed approved or not. 	<p>Safety is QCS's number one priority. This amendment is intended to support prisoner safety by preventing standover tactics and illicit payments moving through prisoner trust accounts. The chief executive's discretion to accept or refuse deposits into a prisoner's trust account will be based on intelligence advice and other relevant information.</p> <p>QCS anticipates that prisoners will be informed in writing of a decision to refuse money into their trust account and will be afforded a 'show cause' or equivalent right of review. QCS will continue to refer any suspicious payments into a prisoner's trust account to the QPS.</p>

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	<ul style="list-style-type: none"> In its current form the Bill does not sufficiently circumscribe QCS' power to deny trust fund donors at will. 	
Insertion of Chapter 6 Part 9A – Alcohol and drug testing	<p><u>Crime and Corruption Commission</u> - 03</p> <ul style="list-style-type: none"> The CCC welcomes this amendment as it adequately addresses Recommendation 18 of the Taskforce Flaxton report. <p><u>Queensland Human Rights Commission</u> – 09</p> <ul style="list-style-type: none"> The Commission appreciates that alcohol and drug testing addresses risks of corruption. However, these proposals present a significant infringement on the rights of staff and it is difficult to fully consider the compatibility with human rights as some aspects are to be included in regulation. The commitment during the public briefing that QCS would generally not use invasive tests such as blood tests unless absolutely necessary is consistent with its obligations as a Public Entity under the Human Rights Act. The Commission submits that the ability for invasive testing be removed, or that it be explicit that it is only used as a last resort when no other testing is possible and only by a suitably qualified person. If there is justification for the legislation permitting invasive tests, further information should be provided including consideration of how other human rights jurisdictions have approached these issues. The right to equality may be engaged in relation to the refusal to give a sample being considered a positive sample and staff with disabilities, who may be unable to provide a sample in the manner set out 	<p>This amendment implements Taskforce Flaxton recommendation 18 to amend the CS Act to permit an appropriate QCS delegate to direct a person (other than a prisoner) at or entering a prison to submit to a prescribed alcohol/drug test. The Government supported this recommendation.</p> <p>This amendment is aimed at identifying staff with substance abuse problems as staff who are under the influence of drugs or alcohol are more likely to engage in problematic decision making and behaviour. This is a corruption risk for QCS.</p> <p>The amendment is based on existing provisions for the testing of Queensland Police Service officers under part 5A of the <i>Police Service Administration Act 1990</i> and similar legislation including the <i>Transport Operations (Passenger Transport) Act 1994</i>.</p> <p>The amendment provides that an alcohol sample can include a blood test, and that a substance test can include a sample of urine, or another bodily substance including, for example, hair, blood or saliva to account for emerging technologies.</p> <p>QCS is committed to the highest standards of integrity and accountability and will work closely with key stakeholders to develop the operational detail of this amendment, including development of a supporting regulation. This is to include who is authorised to</p>

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	<p>in the regulations (for example provide a urine sample on demand).</p> <ul style="list-style-type: none"> • A further safeguard would be to include a clear review process for staff who dispute a positive test, particularly those who may have a medical need to take a targeted substance. This should be included in the Bill. • Other safeguards that might also be considered include restricting the release of samples and information about a positive test result to third parties and providing details on how samples will be stored, retained and destroyed. • The Commission therefore suggests amending the provisions regarding alcohol and drug testing of staff to ensure they are the least invasive, or provide greater justification for these changes including consideration of how other human rights jurisdictions have addressed the issue. <p><u>Sisters Inside</u> - 12</p> <ul style="list-style-type: none"> • Sisters Inside support the amendments to allow drug testing of corrective services officers. 	<p>conduct the test, how the test is to be taken and appropriate delegations except for the random drug testing direction which is unable to be delegated.</p>
<p>Omission of section 319F – complaint to official visitor required first</p>	<p><u>Queensland Human Rights Commission</u> - 09</p> <ul style="list-style-type: none"> • The Commission welcomes clause 50 which repeals section 319F of the CS Act as this reflects previous recommendations of the Commission. Prisoners must currently satisfy a series of pre-conditions before they are entitled to make a discrimination complaint against correctional centre staff or the State. This is a significant hurdle for prisoners and inhibits and delays the independent oversight of such complaints. 	<p>Noted. QCS is working to implement the highest standards of transparency and accountability. This amendment supports increased transparency in line with obligations under the <i>Human Rights Act 2019</i>.</p>

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	<ul style="list-style-type: none"> In the Commission's 2019 Women in Prisons report, the Commission recommended Queensland Corrective Services and the Queensland Government review Part 12A of the Corrective Services Act 2006 with a view to repealing those sections. While ideally both section 319E and section 319F would be repealed, any simplification of the current system is welcome. 	
Amendment of Schedule 4 - Dictionary	<p><u>Queensland Law Society – 13</u></p> <ul style="list-style-type: none"> QLS supports the power to touch or move a person's possessions without touching the person to search for contraband. It may also be appropriate to include a power to open and examine (without damaging) in reasonable circumstances. The scanning search proposal is also supported however to ensure minimal touching it may be appropriate to amend the proposed definition of scanning search to: 'a scanning search of a person is a search of the person by electronic or other means that does not require the person to remove the person's clothing but may require an apparatus to touch or come into contact with the person'. 	<p>This amendment supports appropriate and effective searching of staff and prisoners at corrective services facilities.</p> <p>In particular, changes to the definition of a scanning search are to enable the use of an ion scanning device to collect a sample from a person's clothing with minimal touching to search for contraband. This will streamline existing processes used by QCS to search people entering prisons. It also covers situations where a person may be incidentally touched by another person when they are subject to a scanning search.</p>
'No Body, No Parole'	<p><u>Queensland Law Society – 13</u></p> <ul style="list-style-type: none"> QLS notes the various minor amendments with respect to the operation of the 'No Body, No Parole' laws. While unable to comment further on their practical impact at this stage, QLS emphasise the need to provide for and maintain adequately resourced legal assistance services to provide assistance to prisoners impacted by parole decisions particularly where there is a prospect of life detention. QLS has previously raised the 	<p>While the Society's concerns are noted, it is not appropriate for QCS to be providing funding for the legal representation of prisoners.</p>

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	inherent flaws in these laws which the Society has historically opposed.	
Electronic Mail	<p><u>Crime and Corruption Commission</u> - 03</p> <ul style="list-style-type: none"> • The CCC's Taskforce Flaxton report highlighted that contraband remains an issue in Queensland prisons and other jurisdictions have implemented a process to allow prisoners to receive emails. • The CCC supports full implementation of Taskforce Flaxton Recommendation 26 to implement electronic mail. • It is further recommended that new provisions dealing specifically with electronic communication be inserted in the Act to address monitoring of such communication. Amendments could mirror sections 50 and 51 of the CS Act which regulate phone calls and personal video conferences respectively. 	<p>Legislative amendments to support implementation of other Taskforce Flaxton recommendations, including: recommendation 26 (Implementation of an electronic mail process) and recommendation 33(a) (Establishment of a properly resourced independent inspectorate of prisons), require further work and stakeholder consultation to develop and implement policy changes.</p> <p>This work is underway and, subject to Government consideration and approval, will be progressed in a future Bill.</p>
Independent Inspectorate	<p><u>Crime and Corruption Commission</u> - 03</p> <ul style="list-style-type: none"> • The CCC's notes that Taskforce Flaxton Recommendation 33: Establishment of an Independent Inspectorate of Prisons was not addressed in the Bill. The CCC maintains the importance of implementing recommendation 33 to ensure the QCS prison inspectorate model meets the recognised international standards of independence, performance and transparency. <p><u>Aboriginal and Torres Strait Islander legal Service</u> – 04</p> <ul style="list-style-type: none"> • ATSILS notes that the current QCS inspectorate model does not meet recognised international standards of independence. ATSILS echoes the recommendations of the 2016 Queensland Parole 	

Issue	Submission/Submission Key Points	Response – Queensland Corrective Services (QCS)/Queensland Police Service (QPS)
	System Review recommending that the Queensland Government establish an independent inspectorate of Correctional Services.	
Criminal Code		
Section 340 – Penalty for serious assault	<p><u>Queensland Human Rights Commission – 09</u></p> <ul style="list-style-type: none"> Increased penalties engage the right to liberty and security of the person. However, the limitation on the right to liberty is not discussed in the Statement of Compatibility. The Commission supports measures to protect corrections staff from assault but notes that it is premature for the government to legislate increase penalties prior to the outcome of that review in the context of penalties for assaults on other workers. The Commission therefore suggests providing further justification for why penalties for assaulting staff should be increased now before the QSAC releases its report into the issue. <p><u>Sisters Inside – 12</u></p> <ul style="list-style-type: none"> Sisters inside highlights the ways that the prison environment and QCS protocols create circumstances that are likely to precipitate serious assault. In the majority of instances, biting, spitting and throwing bodily fluid or faeces only occurs when a woman is experiencing an acute psychosocial or cognitive disability and that this is most likely to occur in the detention or safety unit. Accommodation in detention or safety units exacerbate existing mental health conditions or disabilities is likely to contribute to these behaviours due to extreme distress. 	<p>Corrective services officers deserve recognition and respect for the important work they do every day to keep Queensland safe. There is no justifiable reason for the legislative framework to provide less protection to corrective services officers than for other public service officers. A prisoner who assaults an officer should be liable to receive the same penalty as an offender who assaults any other public service officer.</p> <p>Legislative clarity is necessary to provide a strong deterrent to this type of behaviour (biting, spitting, throwing bodily fluid or faeces, being armed with a dangerous or offensive weapon) occurring in the custodial environment and give reassurance to corrective services officers of the importance of their health and safety.</p> <p>This amendment does not remove any element of judicial discretion or the requirement of the court to consider the perpetrator's culpability.</p>

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	<ul style="list-style-type: none"> Sisters Inside recommend that psychological and cognitive disabilities should be explicitly taken into account when charging or sentencing a person under section 340. 	
Weapons Act 1990		
Section 67 - Replicas of firearms	<p><u>Robert Finlay - 01</u></p> <ul style="list-style-type: none"> Mr Finlay raises concerns regarding the application of the amendments to the use of replica firearms for historical re-enactment activities. The submission assumes re-enactment activities will be considered 'recreational activities' for the purposes of the amendments. The submission provides an example of a replica firearm owned by a museum that is not held under a collector's licence. This is held to be an example of something not captured by the amendments. 	<p>The amendments regarding 'recreational activities' are not specifically intended to encapsulate historical re-enactment activities.</p> <p>The amendments to section 67 of the <i>Weapons Act 1990</i> are aimed at clarifying two, specific circumstances that are to be considered a 'reasonable excuse' to possess a replica firearm. They are drafted so as to not limit what other circumstances may also be a reasonable excuse.</p> <p>Whether something is or is not a reasonable excuse will depend on all circumstances at the time and is a matter ultimately to be determined by a court.</p> <p>Possession of an item for the purpose of historical re-enactment or by a museum may be considered to be a 'reasonable excuse' under the current wording of section 67 of the Act.</p> <p>It is not practicable, nor in keeping with the spirit of the legislation, to provide in legislation for all circumstances that may be a 'reasonable excuse'.</p> <p>'Reasonable excuse' is a commonly used term in legislation and it is one which police, and courts have extensive experience applying and making determinations upon. Attempting to fully outline the</p>

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		parameters of the term in legislation may be deemed to impinge on the ability of a court to determine the matter.
Section 67 - Replicas of firearms	<p><u>Keith York</u> - 05</p> <p>Mr York discusses in his submission the process historical and military re-enactors, are currently required to comply with to obtain a licence for replica category R weapons. He states that he believes these weapons should be treated the same way in legislation as 'gel blasters' and that 'gel blasters' should not require a licence.</p>	<p>While the submission is unclear on this point it is taken to be in support of a broader proposed QPS replica firearm policy. If approved, the proposed QPS replica firearm policy would require separate regulatory amendments to regulations not contained in the present Bill.</p> <p>The QPS can advise that the proposed policy would involve <i>all</i> replicas of firearms, being classified as 'restricted item' including those which are currently category R weapons.</p> <p>The QPS appreciates the perceived inequity identified by Mr York about current licensing requirements for historical and military re-enactors. The owners of certain replica firearms are required to obtain a licence, however, owners of others (such as gel blasters) have no restrictions. The QPS advise that the proposed broader policy, would serve to address this imbalance and see all replica firearms treated the same way.</p>
	<p><u>Firearm Owners United</u> - 06</p> <ul style="list-style-type: none"> The submission expresses concerns about the regulation of deactivated category A, B and C firearms. It notes that the replica <i>firearms</i> policy has been prompted by concerns about gel blasters but holds that deactivated firearms of these categories are not likely to pose a problem and should, therefore, not be included. 	<p>The QPS acknowledges Firearms Owners United concerns about deactivated category A, B and C firearms. However, the issues caused by replica firearms, relate to their appearance and not their functionality. It is the overall appearance of an item in resembling a functioning firearm that can lead to public alarm, not the way it functions, or what it is constructed of. Similarly, police responses to calls for assistance regarding a replica firearm will, of necessity, be based on its appearance and not on its construction.</p>

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		<p>As such, any effective policy regarding replica firearms must have regard to the appearance of an item only and not its intended use or functionality.</p> <p>The policy also reflects the current definition of 'replica' in the <i>Weapons Act 1990</i> which includes '<i>a category A, B, or C weapon that has been rendered permanently inoperable</i>'.</p>
	<ul style="list-style-type: none"> • The submission also points to the fact that while the Bill provides an exemption for holders of collector's licences, that many owners of these deactivated firearms may not hold such licences. It says that the issue would be alleviated if the Bill were amended to allow for wider possession of these items for private use, such as for display. • It further points to the fact that it is generally unknown how many people are currently in possession of such items and, therefore, how many people will be effected. 	<p>The QPS acknowledges that not all owners of deactivated category A, B, or C weapons will hold collector's licences. For other owners whether a reasonable excuse exists to possess the item will be determined having regard to all relevant circumstances. It is not practicable to state in legislation all situations that may be regarded as a reasonable excuse.</p> <p>The QPS acknowledges that some persons, who may have a reasonable excuse to continue possessing deactivated category A, B or C firearms or other replica firearms, may currently store them in ways other than that stipulated by regulation. The <i>Weapons Regulation 2016</i> requires that a restricted item be stored in a locked container.</p> <p>As part of the broader replica firearms policy, if approved, the <i>Weapons Regulation 2016</i> will provide for the ability of approved officers to authorise an alternative means of storage, if it is at least as secure as that stipulated in regulation. As such, the QPS Weapons Licensing Branch will be authorised to approve alternative means of storage for replica firearms,</p>

Issue	Submission/Submission Key Points	Response – Queensland Corrective Services (QCS)/Queensland Police Service (QPS)
	<ul style="list-style-type: none"> The submission also addresses the issue of gel blasters and states that more focus should be placed on a community education campaign. It also argues that issues may arise with the storage requirements that would be imposed if replica firearms become restricted items, as proposed with the broader policy. The submission suggests the policy should not create an offence for possession of a replica firearm, but rather for having one in a public place. 	<p>including deactivated category A, B and C firearms, if an equitable level of security is met.</p> <p>In relation to gel blasters, the submission suggests the focus be placed on community awareness campaigns. The QPS advises that a community awareness campaign was launched state-wide in late 2019 through QPS Crime Prevention officers. These officers are equipped to deliver an awareness package to a variety of community networks including, Senior Citizen Groups, Neighbourhood Watch, the Safer Schoolies Initiative and organisers for Gel Blaster events. A flyer has also been distributed to gel blaster retailers and other stakeholders promoting the safe use and carriage of gel blasters.</p> <p>Offences for using replica firearms in public have long been in existence and are enforced by police. Unfortunately, these offences have not proved sufficient deterrence to prevent instances of the inappropriate use of these items in public occurring.</p>
	<p><u>Queensland Living History Federation - 07</u></p> <ul style="list-style-type: none"> The QLHF submission advocates for a specific licence for re-enactors Weapons Act 1990 and provides background on their discussions with the QPS about this suggestion. The submission states that most incidents of inappropriate use of replicas in public relate to gel blasters and not replica firearms owned by historical re-enactors. 	<p>The suggestion that the Weapons Act 1990 be amended to include provisions relating to a licence for historical re-enactors is outside of the scope of the Bill.</p> <p>The QPS acknowledges that the majority of persons involved in historical re-enactment use replica firearms responsibly. However, any policy about replica firearms must focus on the appearance of an item and not its intended use. The issues caused by replica firearms relate to their appearance and not their functionality. It is</p>

Issue	Submission/Submission Key Points	Response – Queensland Corrective Services (QCS)/Queensland Police Service (QPS)
	<ul style="list-style-type: none"> • The submission points out that the full QPS replica firearms policy would, if approved, involve amendments to regulation that fall outside of the current Bill. They request that any draft of such amendments be provided to them. • The submission states that the proposed amendments do not achieve the desired outcome of the proposed broader QPS replica firearm policy of making all replica firearms restricted items and of requiring no licence to possess them. • The submission notes that the exception created for certain recreational activities do not cater for historical re-enactments. 	<p>the overall appearance of an item in resembling a functioning firearm that can lead to public alarm, not the way it functions, or what it is constructed of. Similarly, police responses to calls for assistance regarding a replica firearm will, of necessity, be based on its appearance and not on its construction.</p> <p>These issues fall outside of the contents of the current Bill.</p> <p>The submission points out that additional regulatory amendments would be required to give full effect to the proposed QPS replica firearm policy. Such regulatory amendments are not part of the scope of the Bill.</p> <p>It is correct that the amendments regarding 'recreational activities' are not specifically intended to encapsulate historical re-enactment activities.</p> <p>Rather, it is envisaged that persons in possession of a replica firearm for the purpose of participating in organised, historical re-enactment activities may be considered to have a 'reasonable excuse' to possess the item under the current wording of the provision.</p> <p>It is not practicable, nor in keeping with the spirit of the legislation, to provide in legislation for all circumstances that may be a 'reasonable excuse'.</p>

Issue	Submission/Submission Key Points	Response – Queensland Corrective Services (QCS)/Queensland Police Service (QPS)
	<ul style="list-style-type: none"> • The submission acknowledges that the provision which provides that holders of collector's licences will have a reasonable excuse for possession of a replica, will be of benefit to historical re-enactors that possess a licence. • The submission further points out, however, that not all re-enactors hold collector's licences. 	<p>'Reasonable excuse' is a commonly used term in legislation and it is one which police, and courts have extensive experience applying and making determinations upon. Attempting to fully outline the parameters of the term in legislation may be deemed to impinge on the ability of a court to determine the matter.</p> <p>The QPS acknowledges that the policy will benefit re-enactors who will have a reasonable excuse to possess a replica firearm.</p> <p>The QPS acknowledges that not all historical re-enactors are in possession of a collector's licence. The provisions are drafted, however, so as to not exclude other circumstances constituting a reasonable excuse to possess a replica firearm.</p>
	<ul style="list-style-type: none"> • In relation to inoperable category A, B and C firearms the submission states that the provisions imply that possession will be restricted to persons who hold a collector's licence. • The submission discusses the absence of additional drafting relating to amendments to the Weapons Categories Regulation 1997. • The submission refers to the use of the term 'association' and reference to the Associations Incorporation Act in the draft. It suggests that additional regulatory arrangements should be applied to 'associations' in this context. 	<p>This assertion is not correct. The drafted provisions specifically state that they do not limit the other circumstances that may constitute a reasonable excuse.</p> <p>The potential amendments referenced refer to the broader, proposed, QPS policy. If approved, such policy would require additional amendments to regulation which are outside of the parameters of the Bill.</p> <p>The amendments use the definition of 'associations' from the Associations Incorporations Act and allow for such associations to be either incorporated or unincorporated.</p> <p>The provisions relating to 'recreational activities' are designed to target organised activities such as 'gel</p>

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		balling'. Both incorporated and unincorporated associations are included in the provisions to allow for all organised groups carrying out these activities. This may include clubs or not for profit groups that are carrying out similar activities to more commercial enterprises.
	<ul style="list-style-type: none"> The submission refers to existing provisions about astronomical societies and suggests that the new provisions be more reflective of these. 	Whilst the submission makes correlations with the existing provisions about astronomical societies, the nature of associations undertaking recreational activities involving replica firearms are typically structured differently and for very different purposes. As such, a differing legislative response is required.
	<p><u>Alannah & Madeline Foundation - 08</u></p> <ul style="list-style-type: none"> The submission supports the proposed broader QPS policy to make all replica firearms 'restricted items' under the <i>Weapons Categories Regulation</i>. The submission also broadly supports of the wording of the provisions in the Bill. The submission questions; however, the use of the phrase 'reasonable excuse' and the need for it in addition to the term 'genuine reason' as used in both the Weapons Act 1990 and the National Firearms Agreement. 	<p>The QPS acknowledges the support of the Foundation for the replica firearm policy.</p> <p>The QPS advises that the National Firearms Agreement, requires that a person may only possess a <i>firearm</i> if they have a 'genuine reason'. Replica firearms are not actual firearms as they do not fire projectiles capable of causing harm.</p> <p>These genuine reasons are reflected in section 11 of the <i>Weapons Act 1990</i>. This section references the possession of a 'weapon' rather than a firearm. 'Restricted items' also do not fall within the definition of a 'weapon'.</p> <p>As such, the current application of the term 'genuine reason' does not extend to replica firearms.</p>

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		The term 'reasonable excuse' has long been used as the standard to be reached to determine possession of a restricted item. It is considered appropriate that this standard be continued in relation to replica firearms.
	<p><u>Shooters Union</u> - 10</p> <ul style="list-style-type: none"> The submission holds the view that replica firearms pose no threat to public safety and that existing legislation exists to deal with any issues. It states that there is no need for them to be treated as restricted items. The submission discusses use of the term 'public place' in the Bill. It states that: <i>'The definition of public place should be changed to reflect what is the generally accepted view of a public place.'</i> The submission states that the inclusion of deactivated category A, B and C firearms in the scheme acts to establish a new type of licence. 	<p>This is a reference to the broader proposed QPS policy on replica firearms, which response to an increase in the number of incidents of replica firearms being used to cause fear and alarm in public, and a corresponding increase in calls for police service. The categorisation of replica firearms as restricted items, if approved, would require regulatory amendment in addition to that contained in the Bill.</p> <p>The definition of 'public place' in the <i>Weapons Act 1990</i> is: <i>'any place that the public is entitled to use, is open to the public, or used by the public, whether on payment or otherwise.'</i> This is used in the amendments to restrict use of replica firearms by those carrying out recreational activities to locations in which members of the public are unlikely to inadvertently sight the items and, therefore, minimise the risk of alarm being caused by them. Any discussion regarding changes to the current definition falls outside of the parameters of the Bill.</p> <p>This assertion is incorrect. No new licences are proposed as part of this policy. Category A, B and C firearms that have been made inoperable currently defined as replicas of firearms under the Act. The proposal would see this continue.'</p>
	<p><u>Firearm Dealers Association of Queensland</u> - 11</p> <ul style="list-style-type: none"> The submission does not support the inclusion of replica firearms as restricted items as it argues that 	The broader proposed QPS replica firearms policy, which incorporates making all replica firearms restricted items, responds to a dramatic increase in incidents

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	any concerns regarding them do not justify this measure.	involving the inappropriate use of replica firearms in the community. Such incidents place a substantial drain on policing resources and pose an increased risk of lethal force being used against a person in possession of such an item if police mistake it for an actual firearm.
Permanent firearms amnesty	<u>Firearm Owners United - 06</u> <ul style="list-style-type: none"> The submission states: <i>The proposed move to a permanent amnesty strikes us as a reasonable measure that will enhance public safety. We find the requirements to either provide details or otherwise surrender anonymously, with the firearm to be surrendered to the police only, and to call the dealer/police in advance to be well reasoned and justified. This is a sensible proposal and will undoubtedly help reduce the problem posed by illicit firearms in Queensland.</i> 	The QPS acknowledges the support for the permanent amnesty scheme and the associated measures designed to safeguard against the scheme being taken advantage of for illicit means.
	<u>Alannah & Madeline Foundation - 08</u> <ul style="list-style-type: none"> The submission states that the Foundation supports provisions about the establishment of a permanent firearms amnesty as a means of enhancing community safety. The submission requests that the amnesty not be used as a justification for lifting current COVID-19 restrictions on gun shops. The submission recommends that the QPS Weapons Licensing remind holders of firearms licenses of the amnesty and that funding be made available for advertising to promote the amnesty over the next three years 	<p>The QPS acknowledges the Foundations support in this important issue.</p> <p>The formulation or amendment to COVID-19 Health Directives is outside of the scope of this Bill.</p> <p>The QPS supports the ongoing promotion of the permanent amnesty</p>

Issue	Submission/Submission Key Points	Response – Queensland Corrective Services (QCS)/Queensland Police Service (QPS)
	<p><u>Shooters Union – 10</u></p> <ul style="list-style-type: none"> The submission supports the establishment of a permanent firearms amnesty; however, it does not <i>'support the requirement for a dealer to surrender the firearm to a police officer'</i>. It states that this removes any incentive from firearms dealers to participate in the scheme. 	<p>Under the proposed scheme a dealer will only be required to hand a relinquished firearm to police if they receive it anonymously. Otherwise, they may apply to the QPS to have ownership of the firearm transferred to themselves if desired.</p> <p>The requirement for firearms relinquished anonymously to be handed to police is necessary in order to eliminate any risk of criminals taking advantage of the scheme for the purpose of laundering firearms.</p> <p>Previous firearms amnesties have functioned on a short-term basis only. The last amnesty in 2017, for example, ran for approximately 12 weeks. Illicit activity, such as laundering of firearms, would be unlikely to arise over such a short time. However, a permanent scheme presents heightened risks of such behaviour developing if appropriate safeguards were not in place. The provision is necessary to guard against any such risks.</p>
	<p><u>Firearm Dealers Association of Queensland - 11</u></p> <ul style="list-style-type: none"> The submission supports the establishment of a permanent firearms amnesty; however, it does not <i>'support the requirement for a dealer to surrender the firearm to a police officer'</i>. It states that this removes any incentive from firearms dealers to participate in the scheme. 	<p>Under the proposed scheme a dealer will only be required to hand a relinquished firearm to police if it is handed over anonymously. If, however, a dealer receives a firearm from a licensed firearm holder, they may apply to the QPS to have ownership of the firearm transferred to themselves.</p> <p>The requirement for firearms relinquished anonymously to be handed to police is necessary in order to eliminate any risk of criminals taking advantage of the scheme for the purpose of laundering firearms.</p>

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		<p>Previous firearms amnesties have functioned on a short-term basis. The last amnesty in 2017, for example, ran for approximately 12 weeks. Illicit activity, such as laundering of firearms, would be considered unlikely to arise over such time. However, a permanent scheme presents heightened risks of such behaviour developing if appropriate safeguards were not in place. The provision is necessary to guard against any such risks.</p>