15 April 2020

Committee Secretary
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane Qld 4000

By email only: lacsc@parliament.qld.gov.au

Dear Committee Secretary

Re: Corrective Services and Other Legislation Amendment Bill 2020

The Bar Association of Queensland ('the Association') is grateful for the opportunity to comment on the Corrective Services and Other Legislation Amendment Bill 2020 ("the draft Bill") which, primarily, provides for amendments to the *Corrective Services Act* 2006 ("the Act").

The Association notes that it previously had the opportunity to comment on a request from Queensland Corrective Services ('QCS') to the proposed amendments to the Act, and that it provided those submissions to QCS on 2 March 2020.

The Association's submissions of 2 March 2020 were provided at a time prior to receiving the draft Bill. These further submissions respond to four specific matters of concern in the draft Bill.

1. New offence to prohibit intimate relations between staff members and offenders

The draft Bill proposes the insertion of section 173A into the Act. That section would make it an offence for a staff member to have an intimate relationship with an offender. The offence would be punishable by a maximum penalty of 100 penalty units or three years' imprisonment.

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The Association notes that 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 alternative count in the event that the jury cannot be satisfied beyond a reasonable doubt on the element of consent.

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*).

2. Section 114

The proposed amendment to section 114 provides a discretion to the Chief Executive with regard to breaches of discipline or offences alleged to have been committed by a prisoner. Under the current provisions, where a corrective services officer observes or becomes aware of a breach of discipline or an offence, that officer must immediately inform the Chief Executive of the details (section 114(1)). Under those provisions, upon being so notified, the Chief Executive **must** first, tell the prisoner that the matter is to be referred to the Commissioner of Police and then, within 48 hours of informing the prisoner, **must** refer the matter to the Commissioner.

Under the proposed amendment, it would no longer be mandatory for the Chief Executive to refer the matter to the Commissioner. The Chief Executive would enjoy a discretion to refer or not to refer.

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 breaches which may also amount to a minor criminal offence.

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.

3. Section 294

The Association supports this 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. There is a risk that inspectors appointed by the Chief Executive of QCS are not independent. Independence of investigation and consequent decision making is of utmost importance in custodial settings to facilitate transparency of process and demonstrate to the general public that alleged misconduct and corruption issues in custodial settings are appropriately managed. It is the view of the Association that all misconduct and corruption allegations related to custodial settings ought to be investigated by an independent entity with no professional ties to QCS or to the officer or person under investigation.

Relevantly, section 295 of the Act provides that, in relation to an *incident* (defined as a death, serious injury, escape riot, or other event involving prisoners that the chief executive determines requires investigation), the Chief Executive must appoint at least two inspectors. One of those must be a person not employed by the department.

In the Association's submission, a similar provision should apply when an inspector is appointed to investigate misconduct or corruption. Such a provision would ensure the investigation is independent and is seen to be independent.

4. Section 188

The Association is opposed to the proposed amendment to section 188(3) of the *Corrective Services Act* 2006 which would allow an eligible person registered on the Victim's Register to apply to extend, beyond the 21 days presently allowed for under the Act, the period of time they have to provide their written submission to the Parole Board.

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.

If you have any questions or concerns regarding any aspect of this submission please do not hesitate to contact me.

Yours faithfully

Rebecca Treston QC
President