



LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE

Members present:

Mr PS Russo MP (Chair) (via teleconference)
Mr JP Lister MP (via teleconference)
Mr SSJ Andrew MP (via teleconference)
Mr JJ McDonald MP (via teleconference)
Mrs MF McMahon MP
Ms CP McMillan MP (via teleconference)

Staff present:

Ms R Easten (Committee Secretary)
Ms M Westcott (Assistant Committee Secretary)

PUBLIC BRIEFING—INQUIRY INTO THE CORRECTIVE SERVICES AND OTHER LEGISLATION AMENDMENT BILL 2020

TRANSCRIPT OF PROCEEDINGS

MONDAY, 30 MARCH 2020

Brisbane

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The committee met at 12.00 pm.

CHAIR: Good afternoon. I declare open this public briefing for the committee's inquiry into the Corrective Services and Other Legislation Amendment Bill 2020. My name is Peter Russo. I am the member for Toohey and chair of the committee. With me via teleconference are James Lister, member for Southern Downs and deputy chair; Stephen Andrew, member for Mirani; Jim McDonald, member for Lockyer; Melissa McMahon, member for Macalister; and Corrine McMillan, member for Mansfield.

On 17 March 2020 the Hon. Mark Ryan MP, Minister for Police and Minister for Corrective Services, introduced the Corrective Services and Other Legislation Amendment Bill 2020 into the Legislative Assembly. The parliament has referred the bill to the committee for examination, with a reporting date of 29 May 2020. The purpose of the briefing today is to assist the committee with its examination of the bill.

The committee's proceedings are proceedings of the Queensland parliament and are subject to the standing rules and orders of the parliament. The proceedings are being recorded by Hansard and broadcast with a live audio feed on the parliament's website. Only the committee and invited officers may participate in the proceedings. As parliamentary proceedings, any person may be excluded from the briefing at my discretion or by order of the committee. I ask everyone to turn mobile phones off or to silent mode to avoid disrupting the broadcast. I now welcome representatives from Queensland Corrective Services and the Queensland Police Service.

BROWN, Mr Tony, Acting Director, Legislation Branch, Queensland Police Service (via teleconference)

HUMPHREYS, Chief Superintendent Tom, Ministerial Communications and Executive Services Command, Queensland Corrective Services (via teleconference)

HUTCHINS, Ms Annika, Manager, Legislation Group, Queensland Corrective Services (via teleconference)

REYNOLDS, Senior Sergeant Robyn, Legislation Branch, Queensland Police Service (via teleconference)

TATKOVICH, Sergeant Tony, Weapons Licensing Branch, Queensland Police Service (via teleconference)

CHAIR: I understand Mr Humphreys will be giving the committee an opening statement on behalf of both agencies after which committee members will have some questions. Mr Humphreys, would you like to begin?

Chief Supt. Humphreys: Thank you, Mr Chair, and thank you for the opportunity to speak to the Corrective Services and Other Legislation Amendment Bill 2020. The bill supports Queensland Corrective Services' purpose of making Queensland safer. The bill responds to the immediate risks identified in the Crime and Corruption Commission's *Taskforce Flaxton: an examination of corruption risks and corruption in Queensland prisons*; supports the implementation of the recommendations from the Queensland Parole System Review; and improves operational efficiencies for Queensland Corrective Services and the Parole Board Queensland.

The bill supports a resolution of the Ministerial Council for Police and Emergency Management to establish a permanent national firearms amnesty and implements one of the Queensland Police Service's proposals regarding the possession of replicas and gel blasters. The bill also makes a minor technical amendment to the Racing Integrity Act 2016 and consequential amendments to the Racing Integrity Regulation 2016 to clarify that the existing exchange-of-information provisions apply to all functions of the Queensland Racing Integrity Commission, rather than the implied limitation to racing bookmakers only.

In relation to the history of the bill, since 2016 Queensland's correctional system has been under review and reform. This presents a significant opportunity for Queensland Corrective Services to continue to develop as a forward-thinking service. In December 2018 the Crime and Corruption Commission's Taskforce Flaxton inquiry made 33 recommendations to reform Queensland's anti-corruption framework for corrective services facilities. The government also continues to implement the fundamental changes brought about by the Queensland Parole System Review to boost community safety, break the cycle of reoffending and make a real difference in people's lives and to the criminal justice system.

At a whole-of-government level, reform of the criminal justice system is ongoing, including the Queensland Sentencing Advisory Council's recent inquiry into community based sentencing orders, imprisonment and parole orders, and the Queensland Productivity Commission's recent inquiry into imprisonment and recidivism.

This bill supports the implementation of key Taskforce Flaxton recommendations including: recommendation 18, providing the chief executive with the authority to require a corrective services officer or corrective services recruit to submit to alcohol or drug testing; recommendation 20, providing the chief executive with the authority to require a staff member to submit to a search before they enter and at any time they are at a corrective services facility; recommendation 22, providing clear authority for Queensland Corrective Services to destroy forfeited things; recommendation 30(a), authorising the appointment, role and function of Queensland Corrective Services professional standards and governance command inspectors to investigate misconduct or corrupt conduct alleged against a staff member; and recommendation 32(b), providing Queensland Corrective Services with discretion to decide whether to refer a matter that could be dealt with either as an offence or as a breach of discipline to the Queensland Police Service. Sexual offences and offences with a maximum penalty of 14 years or more imprisonment must be referred to the Commissioner of Police.

The bill includes three new offences in the Corrective Services Act reflecting community expectations and enhancing the safety of the community and correctional environments. The offences prohibit a staff member from having an intimate relationship with an offender, with a maximum penalty of 100 penalty units or three years imprisonment; prohibit a parolee removing or tampering with an electronic monitoring device, with a maximum penalty of 30 penalty units or three months imprisonment; and prohibit a person from unlawfully interfering with a Queensland Corrective Services alcohol or drug test sample, with a maximum penalty of 100 penalty units.

The bill also amends the maximum penalty for a prisoner who seriously assaults a working corrective services officer under section 340(2) of the Criminal Code. The amendment addresses an ambiguity in the Criminal Code which was the subject of a petition to parliament by the Together union in October last year. The amendment ensures that where a prisoner bites, spits, throws bodily fluid or faeces, causes bodily harm to the officer or if the prisoner is or pretends to be armed with a dangerous or offensive weapon or instrument, circumstances of aggravation and a maximum penalty of 14 years imprisonment can be applied. In all other circumstances the maximum penalty of seven years imprisonment remains.

The bill makes amendments to support the implementation of the government's response to the Queensland Parole System Review, including allowing persons registered on the Victims Register to apply to the Parole Board Queensland for an extension of the time limit to provide a submission; providing flexibility for prisoners to access compassionate leave to establish and maintain relationships with children; and providing that a person on the Victims Register will be notified of a prisoner's discharge or release as soon as practicable after Queensland Corrective Services is made aware. This bill also includes an amendment to provide that prisoners convicted of a sexual offence, murder or sentenced to life imprisonment are ineligible for placement in a low-security facility.

Turning to the amendments relating to parole, a number of amendments have been requested by the Parole Board Queensland to achieve operational efficiencies and to support the operation of the no-body no-parole laws, including that the board can cancel a parole order following a request for immediate suspension by Queensland Corrective Services; the board is mandated to sit with a quorum of five members when considering all no-body no-parole matters; the board is only mandated to have regard to court transcripts relevant to the prisoner's cooperation in the location of the victim's remains under the no-body no-parole scheme; and Governor in Council may appoint an acting prescribed board member for up to 12 months. The board's requested amendments are addressed in this bill. The bill also makes amendments to support the efficient and effective operations of Queensland Corrective Services, including the repeal of outdated provisions that are no longer applicable such as the requirement for offenders to carry a physical copy of their parole order at all times.

Turning to the amendments to other legislation, the bill contains amendments to the Weapons Act and Weapons Regulation to give effect to two QPS policies, the introduction of a permanent firearms amnesty and provisions to support potential regulation of replica firearms which has been recommended to the government by the Police Commissioner. The bill brings into effect a permanent ongoing firearms amnesty for Queensland. This gives support to a resolution of the Ministerial Council for Police and Emergency Management that a nationwide permanent firearms amnesty is to be introduced by late 2020. The aim of a permanent firearms amnesty is to reduce the number of unregistered firearms in the community by making it easier for people to hand them in. This enhances public safety by reducing the risk of these firearms falling into the wrong hands and being used to cause harm. The bill provides that a person cannot be prosecuted for the possession of an unregistered firearm or a prescribed item if they are at or proceeding directly to an approved licensed dealer or a police station to relinquish the firearm or prescribed item. To take advantage of this protection from prosecution, unless they have a reasonable excuse, a person will be required to notify the dealer or police station prior to attending. Counteract the risk that a criminal intercepted by police unlawfully in possession of a firearm can falsely claim that they are on their way to relinquish it. A prescribed item includes firearms, magazines and category R weapons that are not firearms, such as bump stocks and other prohibited items and items prescribed in regulation.

The bill will also amend the Weapons Act to support a proposed Queensland Police Service policy to regulate replica firearms. The government is currently considering a Queensland Police Service proposal to amend the Weapons Categories Regulation which would see all replica firearms become restricted items. The Weapons Act makes it an offence to possess a restricted item without a reasonable excuse. Without limiting the circumstances that may be a reasonable excuse, the bill will provide clarity regarding circumstances which will be a reasonable excuse to possess a potential wider range of restricted items, including the participation in certain recreational activities and as part of a collection by a licensed collector. This will allow many current users of replica firearms to continue to legally possess them in the event that the government adopts the Police Commissioner's recommendation to amend the Weapons Categories Regulation.

In conclusion, the amendments in this bill will help to achieve Queensland Corrective Services' strategic objectives of safer correctional environments, humane management of prisoners and offenders, stopping crime, and partnering and community collaboration. I would welcome any questions from the committee. My colleagues from the Queensland Police Service are also on the line to answer any questions regarding the Weapons Act amendments. Thank you.

Mr LISTER: I have a question for Sergeant Tatkovich regarding the surrendering of firearms—under the amnesty. One of the things that I get from firearms dealers is that sometimes the serial number on the firearm can be indistinct and that can lead to it having been registered under multiple and sometimes incorrect serial numbers. They see this as being extra work, red tape and potentially risk for them. Can you see a situation where firearms dealers will be reluctant to accept firearms surrendered under the amnesty because of that extra difficulty for them? Do you have any plans to deal with that?

Sgt Tatkovich: I will put it to Tony Brown or Robyn Reynolds if they would like to interject. Otherwise, I am more than happy to answer that question.

Snr Sgt Reynolds: The amnesty scheme as it has been drafted is designed to allow an option for dealers to not participate at all if they are not willing. You referred to an approved licensed dealer, which will be dealers approved by the commissioner and published on the QPS website. There will be no onus on any dealers to participate if it is onerous to them or if they simply do not want to for other reasons.

In terms of difficult to decipher serial numbers, I am not exactly across the work involved for dealers with that. However, the scheme will involve an option to hand over any firearm to police if they do not have the relevant details of the person involved—or in the case of a serial number of the firearm itself, they will be obliged to give it straight to police. I understand that that type of practice occurs currently. In an informal manner dealers will give firearms to police if they are not otherwise able to deal with them.

Mrs McMAHON: If we stay on the issue of firearms, and in this particular instance the replica firearms and the amendments to do with gel blasters, can someone highlight to those people who are unaware what gel blasters are what they look like and what we do know about their use in potential offences that have been occurring in Queensland or other states?

Sgt Tatkovich: We started the Project Quebec Monitor from 2018, from around October of that year. From that time, what we were able to identify is that a gel blaster, for the rest of the persons present, is like a replica firearm. It looks in every other way like a semi or fully automatic machine gun. They do come in different types of weapons—that is, handguns and the like—but they are predominantly the ones that we deal with.

Obviously Magistrate Shearer's decision in December 2017 allowed for the interpretation of those to be considered toys. From that project, what we have been doing is monitoring incidents that involve police—I will call them, using my own words, 'true incidents', so incidents that we, the police, feel need to be monitored. Examples would be where people who have extensive criminal history are found in possession of these weapons, people firing these gel blasters on members of the public without their lawful permission, and people displaying these gel blasters in public and causing members of the public fear. We have been monitoring those offences, backdating it from the time of the interpretation of the legislation on 17 December 2017. As of Monday last week we found, true incident wise, that we are up to 352 incidents, and they make up those things that I have just mentioned. From that we have some 85 offences that have been committed directly involving gel blasters.

Gel blasters fire a water based pellet that breaks when it hits the skin. For those who are not familiar with it, it is very similar to paintball. However, the internal mechanisms are slightly different and it does not generate as much power, so it does not actually cause bruising or anything like that.

We have been monitoring those offences and we have also been engaging with all those people who are involved with that community. We held our first meeting with that group in March 2018. We had an open forum at police headquarters. From that we were able to get them to establish five associations from around the state. We have been continuing to engage with them to come up with some safety strategies around that, and that is where we developed the STOP and Think campaign. I hope that addresses the question for the member.

Mrs McMAHON: Have there been any instances that are available to the public in terms of the use of gel blasters in the commission of offences?

Sgt Tatkovich: Yes, absolutely. We have what is called district crime prevention coordinators from around the state with whom I have been in constant dialogue with regard to that product I mentioned before, the STOP and Think campaign. We have provided them with material which includes the A4 flyer as well as a PowerPoint presentation. We have been articulating the offences that are going on, the trends and the like, and the persons that are involved. We have identified that they are males under the age of 20, predominantly around 16 to 17 years of age, who are committing these offences. These district crime coordinators from around the state have been engaging, whether that is on radio, TV or in print. They have been reaching out to their broader community to get the message out there as best as they can with the best practices for those gel blasters.

Snr Sgt Reynolds: If I could elaborate further on what Tony has said for people like me, the gel blasters, as Tony said, look very much like actual firearms, usually military firearms. They do not cause any significant physical harm but purely it is their appearance that is of concern. We are aware that there are groups within the community that are using these responsibly and for recreational purposes, and Tony has been working closely with them. There is also, unfortunately, a small group within the community who have been very irresponsible with them and have, as the member alluded to, caused disruptions within society with gel blasters exposed in public, on public transport and out of vehicle windows. It has become an increasing issue for police to respond to sightings of what members of the public assume are actual high-powered firearms. That is why the QPS has felt a need to take some action in relation to them.

Mr ANDREW: In relation to magazines, the current form 16 and form 10 address all magazine denominations in terms of their carriage capacity along with everything else. Did we have to go further with that? Dealers make sure that we always fill in the magazine capacity on those forms. I wonder how it helps anyone to change that.

Snr Sgt Reynolds: I am sorry; I am not sure what provision you are referring to at the moment.

Mr ANDREW: I am talking about the change to how they describe magazines and how magazines are going to be looked at. Dealers already put in form 16s and form 10s which contain magazine capacities. I am wondering why there has been a change to that.

Snr Sgt Reynolds: There are no provisions relating to magazine capacity in this bill.

Mr ANDREW: Sorry, my apologies. In terms of the amnesty, dealers have been allowed to mark their own serial numbers on the firearms if there is an illegible serial number on there. Will that still be able to be done, either to put weapons back into dealer storage or to make it apparent that there is no serial number or it is just illegible?

Snr Sgt Reynolds: In relation to illegible serial numbers, it is something I am not completely across. The amnesty will not interrupt any other current processes. As has occurred at the temporary amnesties, there will be capacity for dealers to apply to the QPS to have the ownership of a firearm transferred to themselves if there is scope for them to do that, if they receive the relevant details from the person who is handing it in. Is that what you are referring to?

Mr ANDREW: Mr Lister asked about serial numbers, and I know there is an opportunity for dealers to mark down their own serial number and keep a register of serial numbers that go on firearms if they cannot be read. We have done that in the past.

Ms McMILLAN: I am interested in the drug and alcohol testing for the corrective services staff. I am interested in how long results will be retained on the person's record and who would receive the results.

Chief Supt Humphreys: I could not quite hear that question. Could I clarify that you were asking who would receive the results?

Ms McMILLAN: Yes, who would receive the test results and how long they would be retained.

Chief Supt Humphreys: The short answer is that Queensland Corrective Services will in general undertake the tests. Having said that, though, there will be thorough consideration of the appropriate methods and processes for conducting the alcohol and drug testing during the development of the supporting regulation. The reason for that is that we will need to work with internal and external stakeholders, including staff and unions, during the development of the regulation. This is to ensure that the regulation and any policies and procedures effectively facilitate the new provisions.

For example, while the scope of the amendments do provide the ability for Queensland Corrective Services to test bodily fluids, including blood testing, Queensland Corrective Services does not envisage that blood testing will be a primary method of testing unless invasive testing methods are available and will be preferred, such as breath analysis for alcohol or saliva and urine tests for drugs and other substances. That said, any blood testing will only be undertaken by an appropriately qualified person.

In the case of breath tests for alcohol or saliva and urine tests, they are tests that Queensland Corrective Services can undertake with appropriate training. We certainly have extensive experience in conducting those tests in relation to prisoners and offenders. In fact, we conduct thousands of those tests per year for prisoners and offenders. The results of those tests will be returned directly to Queensland Corrective Services.

In relation to the retention of that information, I do not have a specific answer to that question, except that the normal provisions of the Public Records Act would apply in relation to retention of information, if that helps answer the question.

Ms McMILLAN: Yes, thank you.

CHAIR: I have a question in relation to drug and alcohol testing. This is all going to be dictated by what is in the regulations, but how often and where will these random tests occur? Will the regulations deal with that?

Chief Supt Humphreys: It is a little bit difficult at this point to say exactly the level of detail we will go to in the regulation. As I have said, that will need to be worked through with stakeholders. I think the head of power in the act will provide the delegates with the ability to order the tests—whether they are random or targeted alcohol tests or whether they are random or targeted drug tests.

Targeted testing will generally mean the testing is based on a reasonable suspicion that an officer is in breach of the legislative requirements, such as being suspected of being under the influence or where the corrective services officer has been involved in an incident. In the case of suspected of being under the influence, I think that we would all hope that is a very rare occasion. In terms of incidents, they include the death or serious injury of someone in a corrective services facility or under the supervision of a corrective services officer, an escape from secure custody, a riot or another event the chief executive considers requires investigation by inspectors. As I said, the random testing processes will be formulated as part of the development of regulation to support the implementation of these provisions.

CHAIR: My next question is also about drug and alcohol testing. Again, this may be something that is going to be developed further with the different professional bodies including the union. What happens if someone disagrees with the test result? The bill does not appear to provide for a mechanism for the result to be challenged. I am sure, Mr Humphreys, you will correct me if I have misinterpreted that.

Chief Supt Humphreys: The amendments provide for a number of actions the chief executive may take where a staff member returns a positive test to alcohol or drugs. The actions include suspending the person from duty until they are no longer over the relevant limit or there is no further evidence of a drug in the person's system; correcting the person by way of guidance—that is, management guidance; requiring the person to undergo counselling or rehabilitation; requiring the person to submit to a medical examination under relevant provisions in the Public Service Act 2008; taking disciplinary action under relevant provisions in the Public Service Act; or requiring the person to submit to further testing from time to time until satisfied the reason for the requirement no longer exists.

Some of those actions are actually referring to actions that are already available under the Public Service Act—for example, formal disciplinary action. Any formal disciplinary action under the Public Service Act has appeal provisions and a general requirement in terms of making reasonable decisions. That requirement in relation to reasonable decision-making applies to all of those potential actions.

Where a staff member tests positive, say, to a prescribed drug and the staff member gives us a reason for testing positive—the fact that they are taking that drug lawfully for a medical requirement—then obviously that is something we would be reasonable about and would take into consideration in terms of our decision-making. The first step in relation to a positive test will always be a discussion with the officer involved to identify the specific circumstances that might have led to them returning a positive test.

CHAIR: What happens if they disagree with the test result?

Chief Supt Humphreys: There are a few different responses. For instance, if it is an officer who is attending work at a correctional facility, one response could simply be to refuse that person entry until we believe the substance is no longer in their system. Having said that, I think we need to go back to the original purpose of these amendments which was to implement the Taskforce Flaxton report into corruption in corrective services facilities.

The general point that the report is making is that we should be taking quite a conservative approach to where a staff member may be particularly using illicit drugs or is under the influence of alcohol on duty. It is intended that we would be quite conservative, acknowledging the potential corruption risks that flow from such usage particularly in the case of illicit drugs. However, as I have said, these are issues that we intend to work through very closely with our stakeholders in the development of this process and the development of the regulation. I am sure that the question you have raised will be one of the many topics that will be discussed through that process.

Mrs McMAHON: My question is in relation to electronic monitoring devices. I note the inclusion of monitoring devices that someone may wear or be installed in their place of residence. Could you talk us through how that differs from options available already? Where would there be a decision to place it on a person or place it in their house?

Chief Supt Humphreys: I am happy to clarify that. What that means is that it is not an either/or. For example, where we require an offender to wear a GPS monitoring device—and that is the type of device that we use for electronic monitoring currently—that device draws on a battery. The battery needs to be charged. As part of the offender having to wear that device, they also need to be able to recharge it. As part of the conditions attached to or the directions that we give for wearing the device, they also need to ensure that a charger is installed at their residence to enable the charging of the device. The reason for that is that if we did not give a direction around charging or the installation of that device then the offender could, once the battery is depleted, argue that they do not need to charge it again or did not have the means of charging it.

Mrs McMAHON: Thank you very much for the clarification.

CHAIR: I have some questions in relation to donors and prisoners who receive amounts of money into their accounts. I understand that the chief executive will be given discretion under the bill to accept an amount from a prisoner released from a corrective services facility within the previous 12 months. The bill also defines an 'approved donor' as a donor for a prisoner unless the chief executive decides not to receive an amount for the prisoner. Do we know what sorts of donors would likely be refused under the proposed approved donor provisions?

Chief Supt Humphreys: There is a little bit in that, so I might answer that fairly generally. Prisoner trust fund accounts are established to enable prisoners' access to additional items including toiletries, food, education materials, art and hobby materials, postage charges, television rental and telephone calls. Money can be transferred to a prisoner's trust account via a cash payment payable at the correctional centre reception by money order through a post office made payable to the prisoner and posted to the correctional centre for staff to process, and the ability to receive funds by electronic transfer varies from centre to centre and is done on a case-by-case basis.

Under section 311 of the Corrective Services Act, the chief executive is able to refuse deposits into a prisoner's trust account if the donor is not sufficiently identified or the amount deposited is more than the allowable amount. However, if the chief executive refuses the deposit and is unable to identify the donor, the prisoner receives the money when they are released from custody. In the large volume of cases the donor would generally be a family member—so a spouse or a parent. It is anticipated that the chief superintendent and superintendent—so the general manager and deputy general manager of the prison—will have the authority to approve donors for prisoner trust accounts. This is similar to the existing delegation of chief executive powers under section 311 of the Corrective Services Act.

If a person attends a corrective services centre to deposit funds into a prisoner trust account, they will be required to provide identification, and Queensland Corrective Services will confirm if they are an approved donor prior to accepting the funds. If they are not an approved donor, they will not be able to make a deposit. Prior to accepting electronic funds transfer, Queensland Corrective Services will confirm the person depositing funds into the prisoner's trust account is an approved donor. If a money order is received from a prisoner and the sender is not an approved donor, the money order is returned to the sender. Unfortunately, in some cases there is not sufficient information to allow for the return of the money order or cheque. In these instances it will be dealt with as a forfeited seized thing.

The amendments provide the chief executive with clear authority to require a prisoner to have approved donors. The amendment will improve Queensland Corrective Services' ability to prevent and respond to prisoners receiving money for illicit activity including drug payments or other purposes and prevent other suspicious payments into prisoner trust accounts. We are really trying to make sure that the prisoner trust funds process, which definitely has a legitimate purpose, is not used or we are not facilitating passage of money to prisoners or for illicit purposes.

CHAIR: Will there be guidelines drawn up to assist the chief executive to make consistent findings in deciding who is or is not an approved donor?

Chief Supt Humphreys: Yes, that is correct. We have practice directives that are issued to all staff. They may be amended to include these amendments. We already have practice directives relating to prisoner trust funds. If necessary, we will also be providing material to potential donors to explain the process to them.

CHAIR: There being no further questions, I conclude this briefing. Thank you very much to all of the representatives from Queensland Corrective Services and the Queensland Police Service for assisting the committee today in its deliberations. I would like to thank the secretariat staff and also Hansard. A transcript of these proceedings and an archive broadcast will be available on the committee's parliamentary webpage in due course. I declare this public briefing for the committee's inquiry into the Corrective Services and Other Legislation Amendment Bill 2020 closed.

The committee adjourned at 12.46 pm.