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

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Education, Employment and Training Committee

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Education, Employment and Training Committee

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All web address references are current at the time of publishing.

Contents

Chair's foreword

On behalf of the Education, Employment and Training Committee, I present this report on the committee's examination of the Corrective Services (Emerging Technologies and Security) and Other Legislation Amendment Bill 2022.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

The primary objective of the Bill is to modernise and update the legislative frameworks for corrective services facilities and youth detention centres in Queensland to respond to new technologies, emerging security threats and other changes in the correctional environment.

To inform its examination of the Bill, the committee called for – and received – written submissions from stakeholders, was briefed by Queensland Corrective Services and the Department of Children, Youth Justice and Multicultural Affairs, and heard evidence from key stakeholders at a public hearing on 23 January 2023.

On the basis of this evidence, the committee is satisfied that the Bill will achieve its policy objectives. The committee has made 4 recommendations, firstly that the Bill be passed, and 3 further recommendations designed to clarify the Bill's compatibility with human rights and fundamental legislative principles.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill. I also thank our Parliamentary Service staff as well as the officers from Queensland Corrective Services and the Department of Children, Youth Justice and Multicultural Affairs who assisted the committee during this inquiry.

I commend this report to the House.

Kim Richards MP

Chair

Recommendations

Executive Summary

This report presents a summary of the Education, Employment and Training Committee's examination of the Corrective Services (Emerging Technologies and Security) and Other Legislation Amendment Bill 2022 (the Bill).

The Bill aims to modernise and update the legislative frameworks for corrective services facilities and youth detention centres in Queensland to respond to new technologies, emerging security threats and other changes in the correctional environment.

The committee is satisfied that the Bill will meet these policy objectives, and therefore recommends that the Bill be passed.

The Bill raises several issues relating to human rights and the fundamental legislative principles (FLPs) set out in the *Legislative Standards Act 1992* (LSA), including:

- the extent to which the proposed emergency powers under the *Corrective Services Act 2006* (CSA) would limit human rights, and whether those powers are appropriately limited and subject to adequate safeguards
- whether the Bill includes adequate safeguards in relation to where a temporary youth detention centre could be established and for how long
- whether the proposed powers to use electronic surveillance and scanning searches are subject to adequate safeguards
- the extent to which the proposed powers to share confidential information about prisoners would limit the right to privacy, and whether such limitations are reasonable and justifiable
- whether it is appropriate for prisoner risk sub-categories to be prescribed by regulation.

After considering these issues, the committee has made 3 recommendations designed to clarify the Bill's compatibility with the *Human Rights Act 2019* (HRA) and FLPs.

These recommendations for clarification relate to the proposed threshold for making an emergency declaration under the CSA, the purposes for which electronic surveillance may be used, and the process for sharing confidential information about prisoners with foreign corrective agencies.

Introduction

1.1 Policy objectives of the Bill

The Bill aims to modernise and update the legislative frameworks for corrective services facilities and youth detention centres in Queensland to respond to new technologies, emerging security threats and other changes in the correctional environment.

The main objectives of the Bill are to:

- modernise how corrective services facilities and youth detention centres respond to emergencies that threaten the health and safety of people within them
- respond to new security risks by criminalising the use of drones over corrective services facilities and youth detention centres, as well as entry onto their rooftops and other restricted areas
- provide clear authority to use x-ray body scanners, closed circuit television (CCTV), body-worn cameras and other emerging technologies to maintain safety and security in correctional environments
- promote prisoner health and wellbeing, and support frontline service delivery and interagency collaboration, by facilitating greater information sharing
- update the prisoner security classification framework to better align with corrective services facility infrastructure and appropriately respond to risk
- clarify sentence calculation issues, enable the effective operation of the Official Visitor Scheme, and support the delivery of prisoner health services provided by Queensland Health by updating out-dated terminology within the CSA.[1]

In order to achieve these objectives, the Bill proposes amendments to the:

- *Corrective Services Act 2006* (CSA)
- *Corrective Services Regulation 2017*
- *Police Powers and Responsibilities Act 2000*
- *Youth Justice Act 1992* (YJA).

The Bill also proposes minor amendments to the:

- *Inspector of Detention Services Act 2022*
- *Justice and Other Information Disclosure Act 2008*
- Medicine and Poisons (Medicines) Regulation 2021
- *Mental Health Act 2016*
- *Penalties and Sentences Act 1992*
- *Public Guardian Act 2014.*

1.2 Human Rights

The Bill engages a number of human rights. As such, one of the key issues considered by the committee was whether the safeguards included in the Bill are sufficient to protect human rights and – where human rights would be limited – the extent to which those limitations are reasonable and justified.

[1] Explanatory notes, p 1.

Some parts of the Bill also raise issues relating to the fundamental legislative principles (FLPs) set out in the *Legislative Standards Act 1992* (LSA), including the requirement to have sufficient regard to the institution of Parliament.

The most significant human rights and FLP issues considered by the committee include:

- the extent to which the proposed emergency powers under the CSA would limit human rights, and whether those powers are appropriately limited and subject to adequate safeguards
- whether the Bill includes adequate safeguards in relation to *where* a temporary youth detention centre could be established and for *how long*
- whether the proposed powers to use electronic surveillance and scanning searches are subject to adequate safeguards
- the extent to which the proposed powers to share confidential information about prisoners would limit the right to privacy, and whether such limitations are reasonable and justifiable
- whether it is appropriate for prisoner risk sub-categories to be prescribed by regulation.

In light of these issues, the committee has made 3 recommendations designed to clarify the Bill's compatibility with the *Human Rights Act 2019* (HRA) and FLPs.

1.3 Should the Bill be passed?

The committee is required to determine whether or not to recommend that the Bill be passed.

Recommendation 1

The committee recommends that the Bill **be passed**.

Examination of the Bill

This section discusses key issues raised during the committee's examination of the Bill. It does not discuss all consequential, minor or technical amendments.

1.4 Emergency response powers

Recent emergencies, including bushfires, floods and the COVID-19 pandemic, have exposed gaps and shortcomings in the existing emergency response powers relating to corrective services facilities and youth detention centres in Queensland.

The existing emergency powers provided by s 268 of the CSA were designed to deal with short-term emergencies arising within prisons, such as a riot. They do not appropriately provide for other types of emergencies, such as:

- natural disasters that cause an emergency from outside of a prison
- emergencies at other types of corrective services facilities, such as community corrections centres and work camps
- health emergencies
- emergencies that continue for a prolonged period of time.[2]

The YJA does not provide for emergency response powers, or for safeguards on such powers.

> In 2020, temporary amendments were made to both the CSA and YJA to facilitate an emergency response to the COVID-19 pandemic. However, the temporary amendments to the YJA ceased on 30 April 2022, and the temporary amendments to the CSA will cease on 31 October 2023. The Bill is designed to address these legislative gaps on a permanent basis.

1.4.1 New emergency response framework for adult corrective services facilities

Clause 28 of the Bill proposes replacing s 268 of the CSA with a new, more nuanced, emergency response framework.[3] This new framework would:

- allow the chief executive to make declarations of emergency in relation to all corrective services facilities (not just prisons)[4]
- allow the chief executive to make declarations of emergency in relation to a wider variety of situations, including emergencies arising from disasters and public health emergencies[5]
- clarify the additional powers of the chief executive[6] during declared emergencies, which would include powers to restrict movement to a facility, refuse entry to a facility, quarantine or isolate prisoners, and limit or withhold privileges depending on the emergency situation.[7]

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2 Explanatory notes, p 2.

3 Clause 28, which inserts a new ch 6, pt 2, div 3 into the CSA.

4 Proposed s 271B, CSA. The CSA Schedule 4 states that 'corrective services facility' means a prison, community corrections centre, work camp or a temporary corrective services facility declared under s 268(2).

5 Proposed ss 271B(1) and (2), CSA.

6 For the purposes of the CSA, the 'chief executive' is currently the Commissioner of the Queensland Corrective Services. See s 33(11), *Acts Interpretation Act 1954* and the Administrative Arrangements Order (No. 2) 2021.

7 Proposed s 271C, CSA.

The Bill proposes that a declaration of emergency could be made in 3 situations:

- where a situation is likely to threaten the security or good order of a corrective services facility, and the chief executive is satisfied it justifies a declaration of emergency
- where a situation is likely to threaten the health or safety of a prisoner or person at a corrective services facility, and the chief executive is satisfied it justifies a declaration of emergency
- where there is a public health emergency that may affect the health or safety of a prisoner or person within a corrective services facility.[8]

The new emergency response powers in the CSA proposed in cl 28 would be subject to a number of safeguards, including:

- a prohibition on delegation of the power to make a declaration of emergency[9]
- a requirement that a declaration be approved by the Minister[10]
- a requirement that the chief executive take reasonable steps to consult the senior official (or officials) responsible for co-ordinating the state's emergency response (such as the Commissioner of the Queensland Fire and Emergency Service, if the emergency relates to a disaster) prior to making a declaration[11]
- a requirement that the emergency be declared for a period not longer than reasonably necessary[12]
- limits on the length of time for which an emergency could be declared (21 days for public health emergencies, 14 days for disasters, 7 days for risks to health that are not public health emergencies, and 3 days for all other emergencies)[13]
- a requirement that a declaration of emergency be published as soon as possible.[14]

> The new emergency response framework proposed in the Bill has the potential to limit a range of human rights, a fact acknowledged in both the explanatory notes and the statement of compatibility tabled with the Bill.

The government's position is that these limitations are reasonable and justified in light of:

- their purpose, which is to mitigate significant threats to the health and safety of prisoners and others people within corrective services facilities[15]
- the legislative safeguards built into the Bill (detailed above)[16]
- the government's belief that the main alternative, shorter timeframes for emergency declarations, 'would not provide the necessary flexibility to adequately respond to each different type of emergency.'[17]

8 Proposed s 271B of the CSA.

9 Clause 27, which amends s 271 of the CSA.

10 Proposed s 271B(4), CSA.

11 Proposed s 271B(5), CSA.

12 Proposed s 271B(6), CSA.

13 Proposed s 271B(7), CSA.

14 Proposed s 271D, CSA.

15 Statement of compatibility, p 6.

16 Statement of compatibility, p 7.

17 Statement of compatibility, p 8.

1.4.1.1 Is the threshold for declaring an emergency appropriate?

Some submitters questioned whether the threshold for declaring an emergency under proposed s 271B of the CSA is appropriate, with several proposing it be raised. They stressed that the emergency powers proposed in the Bill are exceptional, and so should only be used in exceptional circumstances and subject to an appropriate level of oversight.[18]

At present, the Bill would permit an emergency to be declared under the CSA where the chief executive reasonably believes that a situation is likely to threaten the security or good order of a corrective services facility, or the health or safety of a person within a corrective service facility.[19]

Both the Queensland Human Rights Commission (QHRC) and the Queensland Law Society (QLS) submitted that this threshold is too low given that emergency declarations trigger significant limitations of prisoners' human rights. They proposed that the power to declare an emergency under proposed s 271B(1) of the CSA be limited to situations where a threat is immediate or imminent.[20] At the public hearing, Ms Fogarty, Vice President of QLS, explained:

> … exceptional powers need to be clearly defined. When they can be used and the limits of that power need to be clearly defined. The idea of imminence is a brake on emergency power by ensuring that decisions with serious consequences for prisoners can only be made when there is a clear, discernible and justifiable immediate threat – a proper emergency.[21]

Queensland Corrective Services (QCS) advised the committee that the threshold for declaring an emergency 'has been designed to be flexible, but also to set a high bar'.[22] QCS explained that a broad power was necessary to ensure it is able to respond to a range of possible situations.

QCS stated although 'the threshold is not as high as some might wish', any declaration of an emergency will be conditioned by both the HRA and 'the general requirement for decisions to be reasonable and proportionate to the incident that is occurring'.[23] QCS took the view that this would, for example, preclude the presence of rioters on the roof-top of a facilities from being declared as an emergency because it could be adequately managed using other existing powers.[24]

Committee comment

The committee is satisfied that there is a genuine need for powers that would allow QCS to respond in a timely manner to a broader range of emergency situations. The committee also notes that care has been taken to include a number of safeguards that will limit the use of the proposed emergency powers.

However, given the exceptional nature of those powers and their potential to affect both prisoners and the broader community in an adverse manner (as discussed in section 2.1.1.2 below), the committee would like confirmation that the threshold for making an emergency declaration is appropriate.

18 See for example QLS, public hearing transcript, Brisbane, 23 January 2023, p 13.

19 Proposed s 271B(1).

20 QHRC, submission 6, p 4; QLS, submission 5, p 10.

21 Public hearing transcript, Brisbane, 23 January 2023, p 14.

22 Correspondence dated 19 January 2023, p 2.

23 Mr Humphreys, public briefing transcript, Brisbane, 23 January 2023, p 5.

24 Mr Humphreys, public briefing transcript, Brisbane, 23 January 2023, p 6.

Recommendation 2

The committee recommends that the Minister for Police and Corrective Services and Minister for Fire and Emergency Services **confirm** that the threshold for making an emergency declaration under proposed s 271B(1) of the *Corrective Services Act 2006* is appropriate.

1.4.1.2 Limits on the proposed emergency powers

Several submitters expressed concern that the new emergency powers in the CSA will be used to isolate prisoners during declared emergencies, noting the potential for this to breach the HRA where it amounts to prolonged solitary confinement.[25]

Some submitters suggested that additional limitations be placed on the emergency powers proposed by the Bill to ensure they are subject to appropriate oversight, and to reduce their impact on human rights. These suggestions included:

- limiting the power to restrict access to corrective services facilities during an emergency so that it cannot be used to prevent access by key oversight agencies, such as the Queensland Ombudsman, the Inspector of Detention Services, the Official Visitor, and the United Nations Subcommittee on the Prevention of Torture[26]
- limiting the power to restrict prisoners' privileges so that telephone contact with family members can only be limited or withheld where this is necessary to respond to the emergency, rather than when this is 'not practicable', as currently proposed[27] in the Bill[28]
- amending proposed s 271C of the CSA to expressly provide that 'prisoners must, to the extent practicable, retain access to legal representation, health care and programs during any emergency declaration'.[29]

Several submitters noted that unnecessarily restricting prisoners' privileges, access to legal representatives, and access to support services has negative consequences. It can limit the effectiveness of drug and alcohol programs[30] or lead to prisoners spending more time in prison – because disruptions to rehabilitation programs affect their eligibility for parole.[31]

QCS advised the committee that the proposed emergency powers would be subject to safeguards that make these additional limitations unnecessary.[32] For example, QCS pointed to the requirements of the HRA, which will apply to any decisions to isolate prisoners or limit visitor access, telephone contact with families, or access to legal representation. QCS also stated that the intention is to only limit access or contact to the extent necessary to enable an appropriate response to a given emergency.[33] Notably, QCS stated:

> It is extremely unlikely that a situation would justify the prevention of prisoner access to critical health care, particularly for any sustained period.[34]

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25 PLS, Submission 7, p 2; Sisters Inside, submission 11, pp 4-5.

26 QHRC, submission 6, p 4.

27 In proposed s 271C(2)(d) of the CSA.

28 QHRC, submission 6, p 4.

29 QLS submission 5, p 10. QNADA and PLS made similar suggestions, see submissions 3 and 7, respectively.

30 QNADA, public hearing transcript, Brisbane, 23 January 2023, p 9.

31 PLS, public hearing transcript, Brisbane, 23 January 2023, p 7.

32 Correspondence dated 19 January 2023, pp 3-4.

33 Correspondence dated 19 January 2023, pp 3-4.

34 Correspondence dated 19 January 2023, p 4.

1.4.2 Power to declare temporary youth detention centres

The Bill at clause 48 proposes amendments to the YJA to enable the chief executive[35] to declare a youth detention centre to be disaster-affected, and to also declare one or more places as a temporary youth detention centre.[36]

This new power would be subject to a number of limits, including a requirement that the chief executive consider certain matters when selecting a place to be a temporary detention centre.[37] These matters include:

- the nature of the disaster, its impact on the affected centre, and its likely duration
- the number of children likely to be detained at the place and the services they are likely to require
- the current purpose of the place, and the purposes permitted under planning laws
- the facilities available to accommodate children, provide programs and services to them, and secure the temporary detention centre
- the extent to which the youth justice principles would be able to be complied with at the place. The youth justice principles include the principle that a child detained in custody should only be held in a facility suitable for children[38]
- the extent to which the place is compatible with the human rights of detainees, staff and other community members.

The Bill (cl 48) proposes several other safeguards relating to the establishment of temporary detention centres, including:

- a requirement to publish the declaration of a temporary detention centre as soon as practicable[39]
- limiting the total length of a declaration by the chief executive and any extensions to 21 days[40]
- a requirement that the chief executive revoke their declaration of a temporary detention centre if the disaster-affected detention centre is no longer adversely affected, and the temporary detention centre is no longer needed[41]
- a requirement that the chief executive regularly review whether the declaration of a temporary detention centres is still needed, and whether more suitable places are available[42]

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35 For the purposes of the YJA, the 'chief executive' is currently the Director-General of the Department of Children, Youth Justice, and Multicultural Affairs s 33(11), *Acts Interpretation Act 1954* and the Administrative Arrangements Order (No. 2) 2021.

36 Proposed ss 301G, YJA.

37 Proposed s 301H, YJA.

38 Schedule 1, YJA.

39 Proposed s 301I, YJA.

40 Proposed s 301K(3), YJA.

41 Proposed s 301L, YJA.

42 Proposed s 301R, YJA.

- a requirement that the chief executive notify, as soon as practicable, particular entities about the declaration, including the Queensland Family and Child Commission, the Human Rights Commissioner, the ombudsman, and the public guardian.[43]

1.4.2.1 Establishing temporary youth detention centres by regulation

The Bill at cl 48 also proposes changes that would enable temporary youth detention centres to be declared via regulation.[44] In such cases, the Minister must be satisfied that the place declared as a temporary detention centre has been selected in the same manner as when declared by the chief executive.[45] In other words, consideration must be given to the matters set out in proposed s 301H, which include compatibility with human rights and the youth justice principles.

Detaining children in temporary youth detention centres has the potential to impact a variety of human rights.

The government's position is that the power to declare temporary youth detention centres promotes the right to life, because it provides a clear legislative framework for responding to emergencies, facilitating prompt action where the safety and security of detainees is threatened. It takes the view that any limitations on other human rights are reasonable and justified because 'the overarching intention… is to ensure the protection of the right to life for detainees' and other people in youth detention centres.[46]

1.4.2.2 Limits on how long a temporary youth detention centre can be used for

Where the chief executive declares a temporary youth detention centre, the Bill limits the length of that declaration, including any extensions, to 21 days.[47] However, the Bill does not set an upper limit on how long a temporary youth detention could be declared by regulation.

The amendments proposed by the Bill (cl 48) would require the Minister to recommend making a regulation to end such a declaration where they are satisfied that it is no longer needed.[48] The Minister would also be required to recommend making a regulation declaring another place as a temporary detention centre where they are satisfied that a more suitable alternative is available.[49]

In its submission, OPG indicated it held concerns about the potential indefinite use of a temporary youth detention centre as this 'could result in permanently substandard levels of services and supports to children and young people'.[50]

QCS advised the committee that the Bill includes a number of relevant safeguards. Most notably, proposed s 301N(3) of the YJA provides that a regulation declaring a temporary detention centre must state when the declaration ends. This will give the parliament an opportunity to consider whether the length of any declaration is appropriate and justified.[51]

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43 Proposed s 301S, YJA.

44 Proposed s 301N, YJA.

45 Proposed s 301N(2)(b), YJA.

46 Statement of compatibility, p 9.

47 Proposed s 301K(3), YJA.

48 Proposed s 301P, YJA.

49 Proposed s 201O, YJA.

50 Submission 13, p 3.

51 Correspondence dated 23 January 2023, p 10.

1.4.2.3 The use of adult corrective services facilities as temporary youth detention centres

In its submission, the OPG stated that it 'would hold grave concerns if there was potential for a corrective services facility to be used as a temporary detention centre.'[52]

Generally, detaining children in the same facilities as adults is inconsistent with human rights, though there can be exceptions.

Notably, s 33 of the HRA provides that:

- an accused child who is detained, or a child detained without charge, must be segregated from all detained adults
- a child who has been convicted of an offence must be treated in a way that is appropriate for the child's age.

Detaining children in an adult facility could also limit other rights, such as the right to life,[53] the right to protection from cruel, inhuman or degrading treatment,[54] and the right to humane treatment while deprived of liberty.[55]

The department advised the committee that, as the power to establish a temporary youth detention centre will only be exercised in extreme circumstances, 'it is unlikely that there will be a good option available. The chief executive will select the best option available at the time, but inevitably it will not be ideal'.[56] It elaborated:

> The Department of Children, Youth Justice and Multicultural Affairs (DCYJMA) agrees that, in usual circumstances, establishing a youth detention centre within a correctional service facility would raise significant human rights issues; but there would be other places that would raise even greater human rights issues. The purpose of the provisions is not to prescribe any particular places as in or out of scope for use as a temporary detention centre. It is to provide a clear framework for decision-making, and ongoing accountability, in what will be difficult circumstances for children, staff, and all other stakeholders.[57]

Committee comment

The committee has considered the safeguards in proposed s 301H of the YJA, and is satisfied that there would be consideration of the HRA when establishing a temporary youth detention centre.

1.4.3 Other emergency powers relating to youth detention centres

The Bill proposes changes to expand staffing options for youth detention centres during declared emergencies (i.e. those declared under the *Public Health Act 2005*, the *Disaster Management Act 2003*, the *Public Safety Preservation Act 1986*, or the *Biosecurity Act 2014*).

During such emergencies, the amendments proposed in the Bill would allow the chief executive to:

- appoint 'appropriately qualified' people as temporary detention centre employees[58]
- delegate their powers under the YJA to appropriately qualified temporary detention centre employees.[59]

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52 Submission 13, p 3.

53 Section 16, HRA.

54 Section 17(b), HRA

55 Section 30(1), HRA.

56 Correspondence from QCS, dated 23 January 2023, p 9.

57 Correspondence from QCS, dated 23 January 2023, p 9.

58 Proposed s 301D, YJA.

59 Proposed s 301E, YJA.

The explanatory notes state that in appointing temporary employees, 'the preference will be for public service employees, ensuring the *Public Service Act 2008* and the Public Service Code of Conduct apply, but this may not always be possible'.[60]

The Bill also proposes the insertion of new provisions into the YJA which will allow for restorative justice conferences to be held remotely during declared emergencies.[61]

1.4.3.1 The definition of 'emergency situation' under the YJA

OPG submitted that the definition of an 'emergency situation' under the YJA is too broad, setting the threshold for the exercise of certain emergency powers too low.[62] At present, due to the reference to emergencies declared under the *Public Safety Preservation Act 1986,* that definition would include, alongside more serious events, 'any other accident or incident that causes or is likely to cause… distress to any person, or loss of or damage to any property.'[63]

OPG expressed concern that this broad definition would permit certain emergency powers 'to be invoked inappropriately to manage current issues within the detention centres which should not constitute an emergency under the Bill, such as bed capacity and staffing shortages.'[64]

QCS advised the committee that the definition of 'emergency situation' under the YJA determines only when temporary youth detention centre employees can be appointed and when restorative justice conferences can be held remotely.[65] Moreover, in both cases the existence of a declared emergency is only one of the criteria that must be met before the relevant powers can be exercised.

1.4.3.2 Temporary detention staff

Several unions, including those that represent employees working within youth detention centres, expressed concerns about proposed s 301D.[66] It provides that:

- a temporary detention centre employee is appointed under the YJA, not the *Public Service Act 2008*
- the chief executive can determine the terms and conditions on which a temporary detention centre employee holds office.

In their submissions, Together Queensland and AWUEQ expressed concern that this would allow temporary staff to be excluded from the protections that would otherwise be provided to such employees under the *Industrial Relations Act 2016* and the *Public Service Act 2008.*[67]

QCS advised the committee that the power to appoint temporary youth detentions centre employees is intended to be used in exceptional circumstances that are likely to render the application of the *Public Service Act 2008* and *Industrial Relations Act 2016* impractical and/or problematic.[68] QCS explained:

> The provision would allow the chief executive to appoint a large cohort of staff, such as a group offered 'on loan' by an interstate youth justice department or a youth services non-government organisation, as temporary detention centre employees. Requiring these employees to be appointed under the *Public*

60 Explanatory notes, p 7.

61 Proposed s 301C, YJA.

62 Submission 13, p 2.

63 Because the proposed definition under the YJA includes emergency situations declared under the *Public Safety Preservation Act 1986,* which defines in turn defines 'emergency situations' to include such events.

64 Submission 13, p 2.

65 Correspondence dated 19 January 2023, p 34.

66 Together Queensland, submission 12 and AWUEQ, submission 14.

67 Together Queensland, submission 12, pp 3-4; AWUEQ, submission 14, p 1.

68 Correspondence dated 19 January 2023, p 35.

> *Service Act*, without relinquishing their existing employment arrangements, would be problematic and any solution could take considerable time to negotiate.
>
> This provision will only be used as a last resort, where the available local workforce is exhausted.[69]

1.5 New criminal offences to improve the security of correctional environments

The Bill proposes the creation of several new offences designed to improve the security of correctional environments.

1.5.1 Access to restricted areas

The Bill proposes amending s 124 of the CSA to create a new offence of being in a restricted area of a corrective services facility without a reasonable excuse.[70] The maximum penalty is 2 years imprisonment. This penalty is consistent with those that apply to similar existing offences under s 124 of the CSA, such as wilful damage to a corrective services facility.

The Bill defines 'restricted area' of a corrective services facility as the roof of a facility, or another part of a facility prescribed by regulation. Accessing restricted areas prescribed by regulation will only be a criminal offence if a prisoner is given sufficient warning that the area is a restricted area (unless the area is controlled by a corrective services officer).[71]

1.5.1.1 The penalty

Several submitters expressed the view that the criminalisation of access to restricted areas (such as rooftops) is punitive, disproportionate and unlikely to effectively deter such behaviour.[72]

Sisters Inside noted that prisoners who access rooftops are typically sent to the detention unit (sometimes referred to as solitary confinement).[73] Ms Helen Blaber, from the Prisoners' Legal Service (PLS), made a similar comment, explaining:

> … in my experience of over a decade working at PLS, people get put on a maximum security order for getting on the roof, and that is six months in solitary confinement, which is a very different thing. To be honest, if six months in solitary confinement is not going to deter you from getting on the roof, nothing is. I do not know that an additional offence is going to act as a deterrent.[74]

Ms Blaber noted that these adverse consequences result from changes to a prisoner's security classification, rather than the disciplinary process. As a result, prisoners who access restricted areas may effectively be penalised for that behaviour twice, despite s 115 of the CSA, which provides that behaviour prosecuted as a criminal offence cannot also be dealt with as a breach of discipline, and vice versa.[75]

Submitters suggested that a more effective means of reducing instances of rooftop access would be to address the underlying factors that drive prisoners to engage in this behaviour, which prisoners often use to protest against conditions in corrective services facilities and raise complaints about the quality or availability of support services.[76]

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69 Correspondence dated 19 January 2023, p 35.

70 Clause 14.

71 Clause 14.

72 Mr Shane Cuthbert, submission 8, pp 10-11; Sisters Inside, submission 11, pp 1-2.

73 See Sisters Inside, public hearing transcript, Brisbane, 23 January 2023, p 3.

74 Public hearing transcript, Brisbane, 23 January 2023, p 5.

75 Public hearing transcript, Brisbane, 23 January 2023, p 5.

76 For example, see Sisters Inside, public hearing transcript, Brisbane, 23 January 2023, p 4; Dr Walker-Munro, submission 1, p 10.

In response, QCS stated that the criminalisation of access to restricted areas is reasonable and proportionate given the significant disruption caused by rooftop incidents, the risks they pose to prisoners, corrective services officers and other responders, and the ineffectiveness of existing disciplinary deterrents.[77]

1.5.2 Use of drones

The Bill also proposes creating new offences in the CSA and YJA that prohibit the use, or attempted use, of drones at or above corrective services facilities and youth detention centres (including the land on which they are located) without a reasonable excuse.[78]

Drones are already prohibited items within corrective services facilities.[79] However, this does not prohibit drones from being flown in the airspace above such facilities. The explanatory notes state that inappropriate incidences of drones being flown above corrective services facilities and youth detention centres continue to occur, posing a 'serious threat' to the safety and security of such facilities, 'which is not limited to the threat of contraband entry.'[80]

> No submitters raised explicit objections to this new offence. Some, such as the PLS and Dr Walker-Munro, stated that the reasons for creating it were understandable.[81]

The maximum penalty for these new offences will be 100 penalty units ($14,375),[82]or 2 years imprisonment. This aligns with the penalties for similar existing offences, such as taking a photograph of a prisoner without approval.[83]

1.6 Use of new technologies to monitor threats and maintain safety

The Bill proposes amendments to provide for the use of new and emerging technologies to monitor threats and maintain safety within corrective services facilities.

1.6.1 Electronic surveillance

The Bill is designed to provide clear authority for the use of CCTV, body-worn cameras and other emerging technologies to monitor threats and maintain safety in corrective services facilities. It does this at cl 19 by inserting a new s 173A into the CSA which allows the chief executive to authorise the use of a prescribed surveillance device to monitor and record activity in and around a corrective services facility.

In exercising this power, the chief executive:

- must be satisfied that the use of the device will enhance one or more prescribed matters (including the safety or persons and the security of facilities)[84]
- must have regard to the privacy of prisoners and other people within corrective services facilities[85]

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77 Correspondence dated 19 January 2023, pp 7-8.

78 Clauses 15 and 46.

79 Section 123, CSA.

80 Explanatory notes, p 15.

81 Ms Blaber, PLS, public hearing transcript, Brisbane, 23 January 2023, p 8; Dr Walker-Munro, public hearing transcript, Brisbane, 23 January 2023, p 17.

82 The Penalties and Sentences (Penalty Unit Value) Amendment Regulation 2022 prescribes the value of a penalty unit at $143.75.

83 Section 132, CSA.

84 Proposed s 173A(1), CSA.

85 Proposed s 173A(2), CSA.

- must set out requirements relating to the use, storage and destruction of recordings[86]
- cannot authorise covert surveillance (although the Bill does not limit the covert use of surveillance devices under other provisions of the CSA).[87]

The types of surveillance devices that can be used will be prescribed in regulation,[88] with transitional provisions providing for the use of surveillance devices already in use (i.e. CCTV and body-worn cameras).[89]

1.6.1.1 Limitations on the use of electronic surveillance

Several submitters proposed additional limitations on when and how electronic surveillance can be used within corrective services facilities. Specifically:

- QLS submitted that additional limits should be imposed on the use of electronic surveillance in prisoners' cells, and to protect prisoners' communication with legal representatives[90]
- both QTU and Together Queensland, which represent employees working within corrective services facilities and youth detention centres, propose that the Bill expressly exclude the use of data collected by electronic surveillance devices for the purpose of performance management and (in the case of Together Queensland) disciplinary matters[91]
- QNMU submits that where body-worn cameras are employed, staff should be required to turn the audio off (i.e. record visual only) when prisoners are receiving healthcare to ensure prisoners' rights to privacy and confidentiality are protected.[92]

However, some submitters expressed support for the increased use of electronic surveillance within corrective services facilities. Mr Shane Cuthbert, who has lived experience as a prisoner, expressed the view that increased prisoner safety would justify any limitation of the right to privacy.[93] Similarly, Mr Booth, the Privacy Commissioner, noted that body-worn cameras can be beneficial to both correctional services officers and prisoners, as they provide an objective record of incidents that occur in correctional environments.[94]

In response to these points, QCS advised the committee that:

- the use of electronic surveillance will be subject to the requirements of the HRA and the *Information Privacy Act 2009*[95]
- the proposed power to authorise the use of electronic surveillances will be subject to s 52 of the CSA, which prohibits the chief executive from recording or monitoring authorised communication between a prisoner and their lawyer[96]

86 Proposed s 173A(3)(a), CSA.

87 Proposed ss 173A(3)(b) and 173A(5), CSA.

88 Proposed s 173A(6), CSA.

89 Clause 35.

90 Submission 5, p 9.

91 QTU, submission 4, p 3; Together Queensland, submission 12, p 3.

92 Submission 10, p 3.

93 Submission 8, p 12.

94 Public hearing transcript, Brisbane, 23 January 2023, p 20.

95 Correspondence dated 19 January 2023, p 12.

96 Correspondence dated 19 January 2023, p 12.

- current practice directives provide that body-worn cameras must not be activated in the consultation rooms of a health centre, clinic or hospital unless a corrective services officer is responding to an emergency situation[97]
- the prescribed matters (which can be used to authorise the use of electronic surveillance) do not include performance management or discipline.[98]

However, in relation to the last point, QCS also advised the committee that it routinely reviews recordings when incidents take place 'and appropriate mechanisms can be put in place, for example if there is excessive force'.[99] This implies that recorded electronic surveillance is, and will be, used in disciplinary proceedings involving staff.

Committee comment

The committee is satisfied that s 52 of the CSA and the requirements of the HRA and *Information Privacy Act 2009* will provide adequate protections for prisoners' communications with legal representatives, and prisoners' right to privacy, respectively.

The committee notes, however, that while performance management is not one of the matters which can be used to authorised the use of electronic surveillance, there appears to be nothing in the Bill that would prevent recordings, once made, from being used for that purpose where they have been authorised on some other basis. The committee therefore recommends that the Minister clarify whether or not the Bill would permit recorded electronic surveillance, authorised for another purpose, to be used for performance management or in disciplinary proceedings involving staff.

Recommendation 3

The committee recommends that the Minister for Police and Corrective Services and Minister for Fire and Emergency Services **clarify** whether the Bill would permit recorded electronic surveillance, authorised for another purpose, to be used for performance management or in disciplinary proceedings involving staff.

1.6.2 Scanning searches

The Bill will create new heads of power to facilitate a trial of x-ray body scanners and a future roll out of body scan technology, if the trial is successful.[100] At the first public hearing, QCS advised the committee that it plans to conduct the initial trial of body scanners at Brisbane Women's Correctional Facility.[101]

The Bill also replaces chapter 4, part 5 (Scanning searches) in the CSA, to update the provisions that set out how searches are to be conducted.[102]

Body scanning technology would primarily be used to detect contraband through searches of detainees, visitors and staff members.[103] X-ray body scanners provide a less invasive means of detecting contraband compared to alternatives, such as strip searches.[104]

97 Correspondence dated 19 January 2023, p 12.

98 Correspondence dated 19 January 2023, p 11.

99 Ms Hutchins, public briefing transcript, Brisbane, 23 January 2023, p 4.

100 Clauses 8, 9, 16 and 18.

101 Public briefing transcript, Brisbane, 13 December 2022, p 3.

102 Clause 20.

103 Explanatory notes, p 8.

104 Explanatory notes, p 3.

The Bill supports the government's response to recommendation 136 of the Women's Safety and Justice Taskforce's report, Hear Her Voice 2,[105] which recommended that 'Queensland Corrective Services immediately move to introduce the widespread use of non-invasive screening technology to end the practice of strip searches in all women's correctional facilities.'[106]

> Several submitters expressed support for the use of scanning searches in place of more invasive searches, such as strip searches.[107] Sisters Inside stressed that strip searches are 'unnecessarily degrading, especially when there are more effective and less degrading alternatives'.[108]

The introduction of this new search type would also support the implementation of recommendation 20 of the Crime and Corruption Commission's Taskforce Flaxton,[109] which recommended that the CSA be amended to grant broader powers to search staff working in prisons.[110]

The power to conduct an imaging search would be subject to a number of safeguards including:

- a requirement that any device to be used to conduct an imaging search be prescribed by regulation[111]
- the potential prescription, by regulation, of other limits on searches (such as the maximum number of times a person can be searched in a stated period) or requirements relating to the use, storage and destruction of images produced during searches[112]
- any other laws or regulations governing the use of such devices, including the *Radiation Safety Act 1999* and the Radiation Safety Regulation 2021.[113]

1.6.2.1 Safeguards applicable to scanning searches

It is not clear what safeguards would apply if a regulation did not prescribe requirements relating to the use, storage and destruction of images produced by a scan.

In his submission, Dr Walker-Munro stressed that although a regulation *may* prescribe such requirements in relation to imaging searches, it is not required to do so. In contrast, proposed s 174A(3)(a) of the CSA provides that in authorising the use of a prescribed surveillance device, the chief executive *must* include such requirements. Mr Booth, the Privacy Commissioner, also emphasised the importance of ensuring that future regulations make appropriate provision of the use and retention of any images generating by scanning searches.[114]

Given the potential impact of imaging searches on the right to privacy, Dr Walker-Munro suggested amending the Bill to provide a clear 'default' position that:

- requires the deletion of images (except in limited circumstances)
- expressly provides that the *Information Privacy Act 2009* applies to images created via imaging searches.

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105 Explanatory notes, p 3.

106 Women's Safety and Justice Taskforce, *Hear Her Voice – Report 2, Volume 1*, 2022, p 31.

107 See for example, PLS, public hearing transcript, Brisbane, 23 January 2023, p 7.

108 Ms Lucas-Smith, public hearing transcript, Brisbane, 23 January 2023, p 2.

109 Explanatory notes, p 3.

110 Crime and Corruption Commission's Taskforce Flaxton, *An examination of corruption risks and corruption in Queensland prisons*, December 2018, p 38.

111 Proposed s 175A(4), CSA.

112 Proposed s174A(5), CSA.

113 Explanatory notes, p 8.

114 Public hearing transcript, Brisbane, 23 January 2023, p 19.

In response, QCS advised the committee that, in dealing with images generated by a scanning search, it will be required to comply with both the HRA and the *Information Privacy Act 2009.*[115] QCS advised that procedures relating to the deletion and retention of images producing by scanning searches will be shaped by the capabilities of specific devices, operational requirements, and human rights – factors which have also shaped its current procedures regarding the retention and deletion of recordings from CCTV and body-worn cameras.[116]

1.7 Enhanced information sharing

The Bill proposes changes that will facilitate enhanced information sharing in a variety of situations.

1.7.1 Sharing confidential information about a prisoner

The Bill would amend the CSA to provide that confidential information about a prisoner can be shared without their consent:

- with a health practitioner, where the person disclosing the information reasonably believes this is relevant for the care, treatment or rehabilitation of a prisoner[117]
- if the information relates to the condition of a prisoner and is communicated in general terms (e.g. that a person has been taken to hospital)[118]
- with a law enforcement agency, for functions of the agency[119]
- with corrective agencies in other states, or foreign countries, to support the ongoing detention, reporting, supervision or management of an offender in that other state or country.[120]

According to the explanatory notes, and additional information provided by QCS to the committee, these powers are necessary to:

- ensure QCS can fulfil its duty to ensure the health and well-being of persons in its custody
- ensure that QCS can provide prisoners' families and friends with general information about a prisoners' wellbeing
- allow QCS to work with State and Commonwealth law enforcement and intelligence agencies to reduce crime and protect the community
- allow QCS to support the effective management and supervision of offenders by foreign corrective agencies.[121]

QCS also advised the committee that the lack of clear authority to share information with health practitioners has led to 'officers on the ground feeling disempowered to share information that they feel a health practitioner in Queensland Health should have' such as information about a death in the family, or an adverse court outcome.[122]

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115 Correspondence dated 19 January 2023, p 10.

116 Public briefing transcript, Brisbane, 23 January 2023, p 5.

117 Proposed s 341(4)(g), CSA.

118 Proposed s 341(3)(h), CSA.

119 Proposed s 341(j).

120 Proposed s 341(3)(i).

121 Explanatory notes, pp 4-5; Correspondence dated 23 January 2023, pp 5-8.

122 Public briefing transcript, Brisbane, 23 January 2023, p 6.

1.7.1.1 Consent to information sharing

The OIC submitted that the proposed provisions relating to the sharing of confidential information, and in particular those relating to health information, be amended so that those disclosing such information are required to obtain a prisoner's consent to disclosure where possible and practicable. Mr Booth, the Privacy Commissioner, explained that the disclosure of health information without consent presents 'a particularly serious privacy concern' as it is likely to involve relatively sensitive personal information.[123]

The OIC submitted that s 297C of the YJA provides an appropriate model.[124]

The OIC submitted[125] that this approach would be consistent with the intent expressed in the explanatory notes, which state that obtaining a prisoner's consent to disclosure is 'preferred in the first instance' but 'may not always be possible.'[126] Other submitters took similar positions, including QLS, Queensland Network of Alcohol and other Drug Agencies (QNADA), and Sisters Inside.[127]

QCS advised that its existing practice is to obtain a prisoner's consent to share confidential information about them where this is practicable. QCS explained:

> Where practicable, QCS obtains a prisoner's consent prior to sharing their information. In some circumstances, gaining prior consent is not possible or appropriate… For example, a prisoner may be in a heightened state or not have capacity to provide consent, or they may be unwilling to disclose the information because they are suspected of ingesting contraband.[128]

Committee comment

The committee considers that there are valid reasons why QCS requires clear powers to share confidential information about prisoners including, for example, to fulfil its duty to ensure the health and well-being of persons in its custody.

1.7.1.2 Power to disclose confidential information

QCS explained that the power to disclose confidential information about prisoners in general terms is required to ensure that corrective officers can respond to queries from prisoners' families and friends if a prisoner is unable to communicate with them (for example because they have lost telephone privileges or run out of money). QCS elaborated:

> Family and friends outside of the custodial environment may become concerned when they stop receiving phone calls from a loved one that is in prison. In many instances, they ring the corrective services facility where the prisoner is located to find out what has happened.
>
> Under the existing provisions of the CSA it is unclear whether corrective services officers are able to disclose any information in this circumstance. This can exacerbate the distress experienced by those seeking information.[129]

123 Public briefing transcript, Brisbane, 23 January 2023, p 19.

124 Submission 2, p 5.

125 Submission 2, p 5.

126 Explanatory notes, p 23.

127 QLS, submission 5, p 10; QNADA, submission 3, p 5; Sisters Inside, submission 11, p 3.

128 Correspondence dated 19 January 2023, p 13.

129 Correspondence dated 23 January 2023, p 7.

Committee comment

The committee is satisfied that there is a valid reason why QCS requires the power to disclosure confidential information about the condition of prisoners, in general terms, to their families and friends.

1.7.1.3 Sharing of information with foreign governments

The new power to share information with corrective services agencies in other jurisdictions (including other countries) is limited to information relevant to support the supervision or management of an offender. The Bill could create the potential for confidential information about an offender (such as their sexuality, religion or HIV status) to be disclosed to an overseas corrective service, where that information could lead to the persecution of the offender. For example, a request to share information could be made by a corrective agency in a country that criminalises homosexuality.

QCS advised the committee that, where practicable, it obtains consent prior to sharing confidential information about a person. However, 'gaining prior consent from a prisoner or offender prior to sharing confidential information with a state or foreign corrections agency, is not always possible or appropriate'.[130] It further advised that, while any disclosure would be subject to the requirements of the HRA, the human rights compatibility of actions taken and laws adopted by foreign governments are matters for those jurisdictions.[131]

Committee comment

The committee would like further clarification of the processes for the sharing of confidential information about prisoners with foreign corrective agencies, as proposed s 341(3)(i) of the CSA may facilitate breaches of human rights by foreign governments. While the human rights compatibility of actions taken and laws adopted by foreign governments may be a matter for those jurisdictions, the circumstances under which it is appropriate for QCS to disclose confidential information about a prisoner to foreign agencies is a matter for Queensland's Parliament to determine.

Recommendation 4

The committee recommends that the Minister for Police and Corrective Services and Minister for Fire and Emergency Services **clarify** the information sharing processes with foreign corrective agencies.

1.7.2 Protection and disclosure of sensitive law enforcement information

Clause 31 of the Bill inserts s 340A into the CSA, which creates a new offence of unauthorised disclosure or recording of sensitive information received (by corrective services) from law enforcement agencies. It provides that such information can only be disclosed or recorded:

- for the purpose for which it was shared
- with the approval of the agency that provided the information
- if disclosure is likely to prevent a serious threat to life, health or safety.

The maximum penalty is 100 penalty units ($14,375)[132] or 2 years imprisonment.

This amendment is designed to facilitate information sharing between law enforcement agencies and the corrective services. The kind of information that is protected includes, for example, information

130 Correspondence dated 23 January 2023, p 8.

131 Correspondence dated 23 January 2023, p 8.

132 The Penalties and Sentences (Penalty Unit Value) Amendment Regulation 2022 prescribes the value of a penalty unit at $143.75.

that would allow a confidential source to be identified, endanger a person's life, or endanger the security of a building.

1.7.2.1 Provision for information sharing relating to domestic violence

In his submission, Dr Walker-Munro proposed minor amendments to improve the way the Bill deals with and protects information relating to domestic violence.[133] He suggested:

- expressly providing that sensitive law enforcement information may be disclosed:
  - to third parties (such as health practitioners) where the information relates to domestic violence or the wellbeing and safety of a child
  - under the information sharing arrangements in Part 5A of the Domestic and Family Violence Act 2012
- amending the definition of 'sensitive law enforcement information' to expressly include information that could reasonably be expected to expose a person to a risk of domestic violence.

In response, QCS advised the committee that it already has adequate powers to share information relating to domestic violence:

- as a prescribed entity for the purposes of section 5A of the *Domestic and Family Violence Act 2012*
- under existing s 341(3)(e) of the CSA, which authorises the disclosure of confidential information because a person's life or physical safety could otherwise reasonably be expected to be endangered or it is otherwise in the public interest.[134]

Committee comment

The committee notes the importance of ensuring that that the provisions relating to sensitive law enforcement information capture all forms of domestic and family violence.

1.8 Updating the prisoner security classification framework

The current prisoner security classification framework was established in 2006. Significant changes in the correctional environment have occurred over time, creating a need to update this framework.[135]

Clauses 4 and 5 of the Bill would update the prisoner security classification framework to:

- remove 'maximum' as a classification level and require a prisoner with a 'high' classification to be accommodated in a secure facility (as defined in Schedule 4 of the CSA)
- allow risk sub-categories to be established and prescribed in regulation
- expand the range of matters the chief executive considers when deciding a prisoner's classification to include the length of time remaining on their sentence, and any information about the prisoner received from a law enforcement agency
- provide that prisoners held in detention under a civil order will no longer be entitled to a review of their high security classification. These are prisoners that the courts have determined pose significant risks to the community and require detention beyond their criminal sentence[136]

133 Submission 1, p 5.

134 Correspondence dated 19 January 2023, p 15.

135 Explanatory notes, p 5.

136 Explanatory notes, p 18.

- changing the timing of classification reviews, which currently take place automatically every 12 months for all prisoners with a high security classification. Under the new system, set out in cl 5 of the Bill, such reviews will take place:
  - every 12 months, but only if a prisoner requests a review
  - every 3 years, where a prisoner has not requested a review
  - at the discretion of the chief executive, at any time.

Neither the Bill, nor the explanatory notes, detail the nature of the proposed risk sub-categories or how they will be used. However, QCS advised the committee that the risk sub-categories:

- would allow more individualised assessments of the risks posed by a prisoner, potentially allowing multiple sub-categorisations to be applied simultaneously to create an overall classification that is unique to a person
- could provide QCS with more nuanced information about the risk posed by a prisoner when they are being escorted, allowing QCS to make better decisions about how many staff go on escort and the level of accoutrements required by staff
- could provide more context to the parole board when they consider applications for parole
- could be incorporated into case management and planning
- may provide incentives for good behaviour by creating more opportunities for a prisoner to progress from a higher sub-category to a lower one.[137]

1.8.1.1 Risk sub-categories prescribed by regulation

Clause 4, which will allow risk sub-categories to be prescribed in regulation, raises questions relating to FLPs. These principles require a Bill to have sufficient regard to the institution of Parliament. The appropriateness of delegation of legislative power will thus depend on the subject matter of the legislation.

In their submissions, both QLS and Dr Brendan Walker-Munro questioned whether it is appropriate for risk sub-categories to be determined by regulation, given their potential to limit a prisoner's human rights.[138] Both expressed concern that delegating this power creates a danger that risk sub-categories will be established without adequate consultation and transparency. These concerns were heightened, they explained, by the lack of information provided about the kinds of risk sub-categories that are envisaged and the ways in which they will be used. At the public hearing, Ms Fogerty, Vice-President of QLS stated:

> The issue is that there is a lack of transparency in the proposed bill about what risk subcategories mean. They are not defined anywhere. We do not know how they are going to be used and we do not have information about the ways in which it will impact a prisoner and the way they are processed through the system.[139]

Dr Walker-Munro explained his concerns in detail in his submission. During the public hearing he drew attention to the fact that regulations have legal effect, and will impact prisoners' human rights, as soon as they are notified – that is, *before* the parliament would have a chance to assess their compatibility with human rights.[140]

To address these concerns, Dr Walker-Munro suggested that the Bill be amended to clarify 'the types, nature and characteristics of risk sub-categories' to be prescribed by regulation, and provide more

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137 Public briefing transcript, Brisbane, 23 January 2023, pp 8-9.

138 Dr Walker-Munro, submission 1, pp 1-2; QLS, submission 5, pp 4-5.

139 Public hearing transcript, Brisbane, 23 January 2023, p 13.

140 Public hearing transcript, Brisbane, 23 January 2023, p 16.

detail about the arrangements that the chief executive can then make in relation to those sub-categories.[141] At the public hearing, he suggested that this could be done by inserting a list of matters that must be considered in making regulations about risk sub-categories.[142]

Committee comment

The committee appreciates that there is a genuine need for flexibility and nuance in how the security risk posed by prisoners is assessed. The committee noted the current low and high classification prescription does not provide for a nuanced approach for formalising prisoner classification.

1.8.1.2 Restrictions of prisoners' rights to request a review of their security classification

Several submitters expressed concern that proposed restrictions on a prisoner's right to request a review of their security classification represented significant departures from the existing position, and had not been adequately justified.

QLS expressed 'significant concerns' about these changes, suggesting they appear 'to be aimed simply at reducing the volume of reviews required to be done by Corrective Services.'[143] In its submission, QLS stated that the circumstances of a prisoner often change in ways that would warrant an earlier review of their security classification.

Several other submitters, including PLS and Sisters Inside expressed similar concerns about this aspect of the Bill.[144] PLS explained that the ability of prisoners to seek reviews of their security classifications benefits the broader community, not just prisoners, by reducing recidivism:

> One of the reasons classification reviews are so important is that they facilitate one of the only forms of graduated release in Queensland. Graduated release constitutes best practice. It involves providing people in prison with less supervision and support over time so that they can progressively adjust to community life before they get out of prison. That reduces the likelihood of reoffending.[145]

Dr Walker-Munro provided a different perspective. He stated that limiting prisoners to requesting a review once every 12 months was 'appropriate and should service to discourage or eliminate spurious or vexatious requests for reviews'.[146]

However, Dr Walker-Munro submitted that the proposal to prohibit certain *types* of prisoners (such as those held under preventative detention orders) from requesting reviews of their security classifications – including their risk sub-category – is of greater concern.[147]

Both QLS and Dr Walker-Munro proposed amendments to the Bill which, they submitted, would allow it to better balance the rights of prisoners with the need to update the review process and, in some cases, impose limits on the frequency of reviews.[148]

In response, QCS advised the committee that the Bill would still permit prisoners to make requests for reviews of their security classifications more frequently, or when subject to a preventive detention order. Whether such a review took place, however, would be at the discretion of the chief executive. At the public hearing, officers from QCS stated that the exercise of this discretion would depend on the circumstances of each case but, for example, a request for a review of a prisoner's security

141 Submission 1, p 2.

142 Public hearing transcript, Brisbane, 23 January 2023, p 16.

143 Submission 5, p 6.

144 Submissions 7 and 11.

145 Ms Helen Blaber, public hearing transcript, Brisbane, 23 January 2023, p 5.

146 Submission 1, p 4.

147 Submission 1, pp 4-5.

148 Dr Walker-Munro, submission 1, pp 4-6; QLS, submission 5, p 7.

classification was likely to be denied if a review had taken place recently or there had been no change in a prisoner's behaviour.[149]

Committee comment

The committee notes that the changes to the framework for reviews of prisoners' security classifications are designed to facilitate a shift towards a more dynamic, event-based system. Evidence presented to the committee suggests that such a system has the potential to generate benefits for both prisoners and the wider community

1.9 Other amendments

The explanatory notes state that other amendments in the Bill 'aim to increase community safety, streamline processes to increase efficiencies, remove redundant provisions and update out-dated terminology.'[150]

1.9.1 References to 'health practitioners'

The Bill proposes replacing several references to 'doctor', 'nurse' and 'psychologist' with references to 'health practitioner' where appropriate.[151]

The Australian Psychological Society expressed concern that this change would authorise (and potentially require) certain health practitioners – such as psychologists – to undertake tasks for which they are not clinically qualified.[152]

In response, QCS noted that Queensland Health is responsible for the delivery of health services to prisoners, and advised the committee:

> Queensland Health have established processes and procedures in place to ensure that only appropriately qualified health practitioners are utilised to conduct the medical procedures and that this is in accordance with their scope of practice.
>
> The change in terminology provides additional choice and flexibility for prisoners accessing health services by appropriately trained and qualified health practitioners.[153]

QCS also advised that the amendments:

- will not alter the scope of practice of health practitioners, such as nurses, nor the professional registration requirements imposed by other laws
- will ensure equivalence in terms of who delivers health services to people in prison and people in the wider community.[154]

Committee comment

The committee is satisfied that the use of the term 'health practitioner', as proposed in the Bill, is appropriate.

149 Public briefing transcript, Brisbane, 23 January 2023, p 9.

150 Explanatory notes, p 5.

151 For example, clauses 7 and 52.

152 Submission 9.

153 Correspondence dated 19 January 2023, p 28.

154 Correspondence dated 23 January 2023, p 3.

Appendix A – Submitters

Sub #	Submitter
001	Dr Brendan Walker-Munro, Senior Research Fellow, University of Queensland
002	Office of the Information Commissioner
003	Queensland Network of Alcohol and other Drug Agencies
004	Queensland Teachers' Union of Employees
005	Queensland Law Society
006	Queensland Human Rights Commission
007	Prisoners' Legal Service
008	Mr Shane Cuthbert
009	Australian Psychological Society
010	Queensland Nurses and Midwives' Union
011	Sisters Inside
012	Together Queensland, Industrial Union of Employees
013	Office of the Public Guardian
014	Australian Workers' Union of Employees – Queensland

Appendix B – Officials at public departmental briefing

Public briefing on 13 December 2022

Queensland Corrective Services

- Ms Yi Chen, Assistant Commissioner, Policy and Legal Command
- Ms Annika Hutchins, Director, Legislation Group
- Ms Helen Ferguson, Manager, Legislation Group

Department of Children, Youth Justice and Multicultural Affairs

- Mr Michael Drane, Senior Executive Director, Youth Detention Operations and Reform
- Mr Phil Hall, Acting Director, Youth Justice Legislation Projects

Public briefing on 23 January 2023

Queensland Corrective Services

- Mr Tom Humphreys, Assistant Commissioner, Strategic Futures Command
- Ms Annika Hutchins, Director, Legislation Group
- Ms Helen Ferguson, Manager, Legislation Group

Department of Children, Youth Justice and Multicultural Affairs

- Mr Michael Drane, Senior Executive Director, Youth Detention Operations and Reform
- Mr Phil Hall, Acting Director, Youth Justice Legislation Projects

Appendix C – Witnesses at public hearing

Sisters Inside

- Katie McHenry, Policy Officer
- Tina Lucas-Smith, Social Worker, Children and Parenting Support Program

Prisoners' Legal Service

- Helen Blaber, Director/Principal Solicitor

Queensland Network of Alcohol and Other Drug Agencies

- Sean Popovich, Deputy CEO

Queensland Law Society

- Rebecca Fogerty, Vice President
- Dominic Brunello, Chair of the QLS Criminal Law Committee
- Dr Brooke Thompson, Senior Policy Solicitor

Dr Brendan Walker-Munro, Senior Research Fellow, University of Queensland

Office of the Information Commissioner

- Paxton Booth, Privacy Commissioner
- Jim Forbes, Principal Policy Officer

Appendix D – List of abbreviations

AWUEQ	Australian Workers' Union of Employees – Queensland
Bill	*Corrective Services (Emerging Technologies and Security) and Other Legislation Amendment Bill 2022*
CCTV	closed circuit television
committee	Education, Employment and Training Committee
CSA	*Corrective Services Act 2006*
department	Department of Children, Youth Justice and Multicultural Affairs
HRA	*Human Rights Act 2019*
LSA	*Legislative Standards Act 1992*
OIC	Office of the Information Commissioner
OPG	Office of the Public Guardian
PLS	Prisoners' Legal Service
QCS	Queensland Corrective Services
QHRC	Queensland Human Rights Commission
QLS	Queensland Law Society
QNADA	Queensland Network of Alcohol and other Drug Agencies
QNMU	Queensland Nurses and Midwives' Union
QTU	Queensland Teachers' Union of Employees
Together Queensland	Together Queensland, Industrial Union of Employees
YJA	*Youth Justice Act 1992*

All Acts are Queensland Acts unless otherwise specified.

Statement of Reservations

Statement of reservations

The LNP Opposition members of the committee welcome many aspects of this bill. We do however believe that the bill represents a missed opportunity to strengthen the penalties which apply to offenders who assault corrections staff. We note that the criminal code prescribes heavier penalties for assault against "public officers" who are discharging their official duties. However, alarming data concerning workplace assaults experienced by corrections staff was provided to the committee by the department (11 serious assaults and 76 assaults in the 2021/22 financial year).

We believe that these assaults necessitate heavier criminal penalties to punish and deter offenders, and to proclaim society's denouncement of assaults on prison staff. The Palaszczuk Government owes it to our corrections staff to ensure that corrections staff have safest possible working environment through better deterrents and stronger legislation.

James Lister MP
Member for Southern Downs

Shadow Assistant Minister for Veterans
Shadow Assistant Minister for Defence Industry
Shadow Assistant Minister for Higher Education
Shadow Assistant Minister for Research

9 February 2023

Mark Boothman MP
Member for Theodore

9 February 2023