EDUCATION, EMPLOYMENT AND TRAINING COMMITTEE

Report No. 31

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

QUEENSLAND GOVERNMENT RESPONSE

INTRODUCTION

On 29 November 2022, the Corrective Services (Emerging Technologies and Security) and Other Legislation Amendment Bill 2022 (the Bill) was introduced to Parliament. The Bill was referred to the Education, Employment and Training Committee (the Committee), with the Committee presenting its report on 10 February 2023.

RESPONSE TO RECOMMENDATIONS:

Recommendation 1 -

The committee recommends that the Bill be passed.

Queensland Government response:

The Government notes the recommendation.

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* (CSA) is appropriate.

Queensland Government response:

The Government notes the recommendation and confirms that the threshold for making a declaration under proposed section 271B of the CSA is appropriate.

The power to declare an emergency at a corrective services facility has been designed to better respond to significant recent events that have presented a real risk to the safety and security of corrective services facilities and the health and safety of people at those facilities.

The provisions in the Bill have been designed to be able to adapt to a range of situations to avoid impacting or delaying future responses to emergencies. In order to be effective, these responses must be able to be put in place swiftly.

The threshold for making a declaration has been designed to be flexible, but also to set a high bar for emergency declarations regardless of the type of emergency.

To make a declaration, there are several steps that the chief executive must take.

The chief executive must first reasonably believe a situation exists that is likely to threaten the security or good order of a facility or the health or safety of a prisoner or another person at a facility. The chief executive must secondly, be further satisfied the situation justifies making the declaration. This is a two-step process.

The chief executive must then only make a declaration of emergency with Ministerial approval.

Significant legislative safeguards have also been built into the Bill to ensure that the limits on human rights are the least necessary to achieve the purpose of limiting the impacts of emergencies to the health and safety of prisoners, corrective services officers, and other persons at a corrective services facility.

These safeguards include:

- the chief executive power to make a declaration being expressly non-delegable under section 271,
- a requirement for the chief executive to consult with a relevant department or emergency response lead before making a declaration,
- the inclusion of strict maximum durations for a declaration to reflect the risk of each type of emergency situation,
- a requirement for the chief executive to ensure the declaration is no longer than is reasonably necessary given the emergency,
- if the declaration is made in response to a public health emergency, the declaration lapses as soon as the public health emergency declaration under the *Public Health Act 2005* ceases,
- a prisoner's privileges can only be limited where the chief executive reasonably believes that it will not be practicable to provide for the privilege because of the emergency,
- other limitations can be put in place by the chief executive only to the extent necessary because of the emergency,
- a declaration must be published, including the reasons for making the declaration, and
- all decisions to make a declaration, and any directions under a declaration are still subject to the *Human Rights Act 2019* (HRA).

The threshold for the making of a declaration is therefore considered appropriate.

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.

Queensland Government response:

The Government notes the recommendation.

The use of technology such as CCTV, body worn cameras, and audio recording devices is imperative to maintain corrective services officer, prisoner and visitor

safety. Surveillance devices enable Queensland Corrective Services (QCS) to collect, evaluate, and analyse information to identify and manage risk, respond to or investigate emergency incidents, support a breach hearing or review, prosecute an offence, and deter prisoners and visitors from attempting to breach security requirements.

Surveillance technology plays an important role in safeguarding corrective services officers and prisoners, by providing an objective source of evidence about events within what is otherwise a closed environment. This includes providing a mechanism for footage of an incident to be reviewed after the fact, supporting the humane treatment of prisoners.

The Bill provides that in authorising the use of a surveillance device, the chief executive must be satisfied that use of the device will enhance one or more of the prescribed matters, including the safety of persons, the security of facilities, preventing corruption and detecting contraband. These prescribed matters do not include performance management or staff discipline, as this is not the purpose for the use of devices.

As a matter of practicality, devices are not actively monitored to assess staff performance. Recordings are accessed retrospectively following an incident or allegation of corruption or misconduct. Responding to allegations of such conduct, including through staff discipline where appropriate, is essential to maintaining a safe and secure correctional environment. In this respect, the amendment does provide for the use of recordings for staff conduct matters, as this relates to the purposes that monitoring can be authorised for under the Bill.

Use of recordings in this manner is communicated to persons entering a corrective services facility. The entry to each custodial facility is clearly signed, with a warning that video and audio surveillance devices are used at all times. This signage advises that information may be used for the investigation of safety and security incidents, or staff conduct matters.

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.

Queensland Government response:

The Government notes the recommendation.

Offenders managed by QCS do not always stay in Queensland. When offenders relocate, including when removed or deported from Australia to another country after the completion of their custodial sentence in Australia, a receiving jurisdiction may still hold concerns about the individual.

Confidential information about the offender held by QCS, including any rehabilitation activities that were undertaken, risk assessments or other such information, assists the receiving jurisdiction in considering the risk profile of the person, and determine what risk mitigation strategies might be appropriate.

As a result, clause 32 of the Bill amends section 341 of the CSA to provide a clear head of power for QCS to share information with corrective services agencies in other jurisdictions.

As an example of how this works in practice, information shared with New Zealand to support their management of offenders under the *Returning Offenders (Management and Information) Act 2015* (NZ) has included, history of convictions, details of any sentence of imprisonment, any rehabilitation activities undertaken or risk assessments.

This information is released following a formal request by the other jurisdiction, and an internal decision-making process to consider the request and what information should be released in accordance with relevant legislation, procedures and policies. In the case of New Zealand, the information sharing is guided by a Memorandum of Cooperation, entered into by the Department of Corrections of New Zealand and the Australian State Corrective Services Authorities (including Queensland Corrective Services).

The Bill will further guide this process by creating a threshold for the release of such information. The amendments require that information released must be 'relevant to support the supervision or management of the offender'. The delegate would need to be satisfied that any information released met this threshold.

Further, the HRA requires that the decision to release the information must be compatible with human rights. This is a significant safeguard for release of information, requiring a decision maker to consider the context and ensure that any release of information is justified, having regard to the nature of the impact on the individual's privacy, purpose for release, any less restrictive alternatives, and safeguards in place.

While assessed on a case-by-case basis, the example provided in the report, of releasing information about an offender's sexuality, religion or HIV status where a requesting country criminalises homosexuality, on the face could be incompatible with human rights, and so a disclosure would not be made.