

Queensland



**CORRECTIVE SERVICES
AMENDMENT BILL 1998**

Queensland



**CORRECTIVE SERVICES AMENDMENT
BILL 1998**

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MINOR AMENDMENTS

1998

A BILL

FOR

An Act to amend the Corrective Services Act 1988

Corrective Services Amendment

The Parliament of Queensland enacts—	1
Short title	2
Clause 1. This Act may be cited as the <i>Corrective Services Amendment Act 1998</i> .	3
Commencement	4
Clause 2. This Act commences on a day to be fixed by proclamation.	5
Act amended	6
Clause 3. This Act amends the <i>Corrective Services Act 1988</i> .	7
Amendment of s 10 (Definitions)	8
Clause 4. Section 10—	9
<i>insert—</i>	10
‘ “person entering a prison” , for part 2, division 8, subdivision 2, see section 108.	11
	12
“Review Commissioner” see section 196I.	13
“search” , for part 2, division 8, subdivision 2, see section 108.’.	14
Amendment of s 44 (Control of prisoners)	15
Clause 5. Section 44—	16
<i>insert—</i>	17
‘(4) A custodial correctional officer or police officer may discharge a firearm, in a direction that will ensure no person is injured—	18
	19
(a) as a warning to a prisoner who is escaping or attempting to escape from secure custody or to a person who is aiding the prisoner in escaping or attempting to escape; or	20
	21
	22

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-
- (b) to stop a disturbance in a prison. 1
- ‘(5) A custodial correctional officer or police officer may discharge a 2
firearm— 3
- (a) against a prisoner who is escaping or attempting to escape from 4
secure custody, if the officer believes on reasonable grounds that 5
the discharge is the only practicable way to stop the escape; or 6
- (b) against a person, including a prisoner, if the officer believes on 7
reasonable grounds that the person is aiding a prisoner mentioned 8
in paragraph (a) in escaping or attempting to escape and the 9
discharge is the only practicable way to stop the escape; or 10
- (c) against a person, other than a prisoner, who threatens to use or 11
uses force against— 12
- (i) another person in a prison; or 13
- (ii) an officer or employee of the commission acting in the 14
course of duty; or 15
- (iii) a prisoner; 16
- if the officer believes on reasonable grounds that the force being 17
threatened or used is likely to cause death or grievous bodily 18
harm and the discharge is the only practicable way to stop the 19
force being used; or 20
- (d) against a prisoner who threatens to use or uses force against 21
another person, including another prisoner, if the officer believes 22
on reasonable grounds that the force being threatened or used is 23
likely to cause death or grievous bodily harm and the discharge is 24
the only practicable way to stop the force being used. 25
- ‘(6) Subsection (5) authorises the discharge of a firearm even though the 26
discharge may cause death, grievous bodily harm or other injury. 27
- ‘(7) A custodial correctional officer or police officer must not discharge a 28
firearm at a person under subsection (5)— 29
- (a) unless the officer has first given the person a verbal warning of 30
the intention to discharge the firearm; and 31
- (b) the discharge of the firearm will not place any other person at 32
unnecessary risk of death or grievous bodily harm. 33

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‘(8) Subsection (7)(a), does not apply if the custodial correctional officer or police officer believes on reasonable grounds that—	1 2
(a) it is likely the officer or another person will suffer death or grievous bodily harm if the firearm is not discharged without a warning; and	3 4 5
(b) a warning would increase that likelihood.	6
‘(9) In this section—	7
“ escaping from secure custody ” includes the continuing escape in the immediate proximity after departure from secure custody.	8 9
“ maximum, high or medium security classification ” prisoner means a prisoner given any of those classifications under a regulation.	10 11
“ secure custody ” means custody—	12
(a) of a prisoner in a prison with a perimeter constructed as a barrier to stop escape; or	13 14
(b) of a maximum, high or medium security classification prisoner under escort by a custodial correctional officer or police officer.’.	15 16
Amendment of s 47 (Search of prisoners)	17
Clause 6.(1) Section 47—	18
<i>insert—</i>	19
‘(1A) If the general manager of a prison suspects on reasonable grounds that a person entering a prison has given a prohibited article to a prisoner, the general manager must order a custodial correctional officer to search the prisoner.	20 21 22 23
‘(1B) A custodial correctional officer searching a prisoner under subsection (1A)—	24 25
(a) must order the prisoner to undress, either completely or partially; and	26 27
(b) may touch the prisoner only to enforce compliance with the order or to search the prisoner’s head hair.’.	28 29
(2) Section 47(2), ‘the circumstances’—	30

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omit, insert— 1

‘other circumstances’. 2

(3) Section 47(6), from ‘Where’ to ‘(5)’— 3

omit, insert— 4

‘If a correctional officer, under subsection (3) or (7)’. 5

(4) Section 47— 6

insert— 7

‘(13) In this section— 8

“**person entering a prison**” means a person, other than a prisoner or the holder of a judicial office, who is— 9
10

(a) visiting a prison or seeking entry to a prison or is visiting a prisoner; or 11
12

(b) in or near a prison and is a commissioner, an official visitor, an inspector, or a prison’s medical officer, chaplain, staff member, officer or employee, or an officer or employee of the commission. 13
14
15
16

“**prohibited article**” means an article or substance prescribed as a prohibited article under section 93(1)(c).¹. 17
18

(5) Section 47(1A) to 10— 19

renumber as section 47(2) to (12). 20

Amendment of s 48 (Body searches and samples) 21

Clause 7.(1) Section 48(1) and(2), ‘legally qualified medical practitioner’— 22

omit, insert— 23

‘doctor’. 24

(2) Section 48(4)— 25

omit, insert— 26

‘(4) The general manager of a prison or the person in charge of a 27

¹ Section 93 (Prisoner offences)

Corrective Services Amendment

community corrections centre or place prescribed by rule under section 69(1)(g)² may order a prisoner to provide a sample of the prisoner's breath or urine for a test to indicate whether the prisoner has ingested anything that the prisoner may not lawfully possess.

(4A) The general manager of a prison may authorise a registered nurse who is an officer or employee of the commission, or a medical officer or other doctor, to take a sample of a prisoner's blood, saliva or hair if the general manager believes on reasonable grounds that the sample may afford evidence of the commission of—

(a) an offence by the prisoner during the prisoner's term of imprisonment or period of detention; or

(b) a breach of discipline by the prisoner.'

(3) Section 48(5) and (7), 'medical practitioner'—

omit, insert—

'doctor'.

(4) Section 48(5), after '(4)'—

insert—

'or (4A)'.

Amendment of s 93 (Prisoner offences)

Clause **8.** Section 93(1)(c), 'by rule'—

omit, insert—

'under a regulation'.

Replacement of s 107 (Search and arrest of persons suspected of offences)

Clause **9.** Section 107—

omit, insert—

² Section 69 (Transfer of prisoners)

Corrective Services Amendment

‘Arrest of persons suspected of offences

‘107.(1) This section applies if a correctional officer suspects on reasonable grounds that a person has committed, is committing or is about to commit—

- (a) an offence against section 104;³ or
- (b) another offence that may threaten the security or management of a prison or the security of a prisoner.

‘(2) The correctional officer may, using the force that is reasonably necessary, arrest the person without warrant and detain the person for not more than 3 hours after the arrest.

‘(3) The correctional officer must immediately tell a police officer the following—

- (a) that the person has been arrested;
- (b) the reason for the arrest;
- (c) the time until which the person is detained.

‘(4) If a police officer takes control of the person in relation to the matter, the detention ends.

‘(5) Also, the correctional officer must release the person from detention as soon as either of the following happen—

- (a) the end of the 3 hour detention period;
- (b) if, after contacting a police officer under subsection (3), the correctional officer no longer suspects that the person has committed, is committing or is about to commit the offence.’.

Replacement of ss 108 and 109

Clause **10.** Sections 108 and 109—
omit, insert—

³ Section 104 (Offences by persons other than prisoners)

‘Definitions for sdiv 2

‘108. In this subdivision—

“person entering a prison” means a person, other than a prisoner or the holder of a judicial office, who is—

- (a) visiting a prison or seeking entry to a prison or is visiting a prisoner; or
- (b) in or near a prison and is a commissioner, an official visitor, an inspector, or a prison’s medical officer, chaplain, staff member, officer or employee, or an officer or employee of the commission.

“search” of a person means 1 or more of the following—

- (a) search using a hand-held scanning device;
- (b) pat down search of the person’s clothed body;
- (c) search of anything in the person’s possession, including a vehicle;
- (d) search of a child in the person’s care in the way mentioned in paragraphs (a) to (c).

‘Searching of persons entering a prison

‘109.(1) A person entering a prison may be searched by a custodial correctional officer on the order of the prison’s general manager given under subsection (3).

‘(2) Persons entering a prison are to be warned by a notice posted at the entry gate that they may be required to submit to a search.

‘(3) The general manager of a prison may, for any purpose, order a custodial correctional officer to search a person entering a prison.

‘(4) The order must state the type of search to be conducted.

‘(5) A custodial correctional officer may give a person being searched any order necessary to allow the search to be conducted.

‘(6) Subsection (1) does not authorise a custodial correctional officer searching a person to touch the person other than in the course of a pat down search of the person’s clothed body or to the extent necessary for a search with a hand-held scanning device.

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‘(7) A pat down search of a person may only be conducted by a person of the same gender as the person being searched. 1
2

‘(8) Subsection (1) does not authorise a custodial correctional officer to search legal documents brought into a prison by a prisoner’s lawyer. 3
4

‘(9) If a person entering a prison fails to submit to a search conducted under subsection (1), the prison’s general manager may order the person to leave or not to enter the prison. 5
6
7

‘(10) If a person fails to immediately leave a prison after being ordered to do so by the prison’s general manager under subsection (8), the general manager may order a custodial correctional officer to remove the person from the prison. 8
9
10
11

‘(11) The custodial correctional officer may use the force that is reasonably necessary to remove the person from the prison. 12
13

‘Seizure of evidence’ 14

‘109A. A custodial correctional officer searching a person under section 109(1) may seize anything during the search that the officer suspects on reasonable grounds is connected with or provides evidence of the commission or intended commission of an offence.’. 15
16
17
18

Insertion of new pt 2, div 8, sdiv 3 19

Clause 11. After section 110— 20

insert— 21

‘Subdivision 3—General manager’s power to exclude from prison’ 22

‘General power to exclude persons from prison’ 23

‘110A.(1) The general manager of a prison may order a person to leave, or not to enter, the prison if the general manager believes on reasonable grounds that the order is necessary for the security or management of the prison. 24
25
26
27

‘(2) If a person fails to immediately leave a prison after being ordered to do so by the prison’s general manager under subsection (1), the general 28
29

Corrective Services Amendment

manager may order a custodial correctional officer to remove the person
from the prison.

‘(3) The custodial correctional officer may use the force that is
reasonably necessary to remove the person from the prison.’.

Amendment of s 130 (Regulations for purposes of pt 2)

Clause **12.** Section 130—

insert—

‘(o) prohibiting things that may not be possessed in a prison.’.

Omission of s 192 (Action by way of prerogative order does not lie)

Clause **13.** Section 192—

omit.

Insertion of new pt 5

Clause **14.** After part 4—

insert—

**‘PART 5—REVIEW OF DECISIONS AFFECTING
PRISONERS**

*‘Division 1—Application of Judicial Review Act 1991 and Acts
Interpretation Act 1954, and written reasons for decisions*

‘Judicial Review Act 1991

‘**196A.(1)** This section applies to any of the following decisions (the
“**decision**”)—

(a) a decision about the control or management of a prisoner made
by any of the following—

(i) the commission;

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(ii) a community correctional officer;	1
(iii) a custodial correctional officer;	2
(iv) the general manager of a prison;	3
(v) an officer or employee of the commission;	4
(b) a decision about the remission of a prisoner’s sentence of imprisonment made by the commission;	5 6
(c) a decision about a prisoner made by the Queensland Community Corrections Board or a regional community corrections board;	7 8
(d) a decision made by a reviewer under division 2.	9
‘(2) The <i>Judicial Review Act 1991</i> , parts 3 and 4 ⁴ do not apply to the following matters—	10 11
(a) conduct engaged in for the purpose of making the decision;	12
(b) other conduct that relates to the making of the decision;	13
(c) the making of a decision or the failure to make the decision;	14
(d) the decision.	15
‘(3) In particular, but without limiting subsection (2), the Supreme Court does not have jurisdiction to hear and decide applications made to it under the <i>Judicial Review Act 1991</i> , part 3 or 4 about matters mentioned in that subsection.	16 17 18 19
‘Acts Interpretation Act 1954	20
‘196B. The <i>Acts Interpretation Act 1954</i> , section 27B (which states particular matters that must be included in written reasons) does not apply to any written reasons required to be given under this Act.	21 22 23
‘Reasons for decisions	24
‘196C.(1) The purpose of this section is to ensure that prisoners are given clear, concise and readily understandable explanations for decisions	25 26

⁴ *Judicial Review Act 1991*, parts 3 (Statutory orders of review) and 4 (Reasons for decision)

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affecting them. 1

‘(2) A person making a decision about a prisoner must, if practicable, 2
give the prisoner oral reasons for the decision whether or not the person is 3
otherwise required to give the prisoner written reasons for the decision. 4

‘(3) If a person makes a decision about a prisoner under this Act or the 5
Corrective Services (Administration) Act 1988 and the person is not 6
otherwise required to give the prisoner written reasons for the decision, the 7
prisoner may ask the person to give the prisoner written reasons for the 8
decision. 9

‘(4) The request must be written and made within 28 days after the 10
prisoner receives notice of the decision. 11

‘(5) The person must give the written reasons to the prisoner as soon as 12
possible but within 28 days after receiving the request. 13

‘(6) Written or oral reasons given under this Act must be clear, concise 14
and readily understandable by the prisoner. 15

‘(7) Written reasons given under this Act must state the following— 16

(a) the person’s authority for making the decision; 17

(b) the reasons for the decision. 18

‘(8) Subsections (2) and (3) do not apply if giving reasons for the 19
decision would adversely affect the security of a prison. 20

‘Division 2—Review 21

‘Application of div 2 22

‘**196D.(1)** Section 196F applies to a decision by a person (the “**original 23
decider**”) about any of the following matters affecting a prisoner— 24

(a) transfer; 25

(b) giving or revoking leave, unless the decision is made by a 26
community corrections board; 27

(c) classification; 28

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(d) remission. ⁵	1
‘(2) Section 196G applies to a decision by a person (also the “ original decider ”) about any of the following matters affecting a prisoner—	2 3
(a) special treatment;	4
(b) transfer;	5
(c) giving or revoking leave, unless the decision is made by a community corrections board;	6 7
(d) disciplinary action;	8
(e) classification;	9
(f) remission.	10
‘Purpose of div 2	11
‘ 196E.(1) The purpose of this division is to provide a speedy resolution of prisoner grievances about decisions mentioned in section 196D in a way that is cost effective, efficient, informal and as simple as possible.	12 13 14
‘(2) This purpose is to be achieved by—	15
(a) establishing a speedy, informal and simple internal review mechanism; and	16 17
(b) establishing the Review Commissioner as a speedy, informal and simple external review mechanism; and	18 19
(c) requiring a prisoner who is dissatisfied with a decision mentioned in section 196D and who wants the decision reviewed to have it reviewed internally before seeking a further review by the Merit Commissioner.	20 21 22 23
‘Internal review	24
‘ 196F.(1) A prisoner dissatisfied with a decision mentioned in section 196D(1) may apply as provided under a regulation to the original	25 26

⁵ For internal review of a decision about a matter mentioned in subsection (2)(a) or (d), see section 39 (Special treatment) or part 2, division 7, subdivision 3 (Breaches of discipline).

decider for a review of the decision. 1

‘(2) The original decider must refer the decision for review as provided 2
under a regulation to another person (the “**internal reviewer**”) who did not 3
participate in the decision under review and who is not subject to the 4
direction or control of the decider and is appropriately qualified as provided 5
under a regulation. 6

Example— 7

An appropriately qualified person to review the decision may be a person in the 8
same organisation as the original decider but employed at a more senior level. 9

‘**Review by Review Commissioner**’ 10

‘**196G.(1)** A prisoner who is dissatisfied with a decision that has been 11
the subject of an internal review under section 39,⁶ part 2, division 7, 12
subdivision 3⁷ or section 196F may apply as provided for under a 13
regulation to the Review Commissioner for a review of the decision. 14

‘(2) The Review Commissioner may— 15

- (a) vary the decision, or set it aside and substitute another decision; or 16
- (b) affirm the decision; or 17
- (c) set the decision aside and return the matter to the original decider 18
with directions the Review Commissioner considers appropriate. 19

‘(3) Despite any other law, the Review Commissioner may prohibit or 20
limit access by a prisoner to documents or information on which the 21
decision on the review is to be or was made if the Review Commissioner 22
reasonably believes giving the access would adversely affect— 23

- (a) the security of a prison; or 24
- (b) the safety of any person; or 25
- (c) the expeditious conduct of the review. 26

⁶ Section 39 (Special treatment)

⁷ Part 2, division 7, subdivision 3 (Breaches of discipline)

‘General provisions about reviews	1
‘196H.(1) A review must be conducted as informally and expeditiously as possible.	2 3
‘(2) A review under section 196F or 196G does not stay the decision under review unless the person reviewing the decision otherwise decides.	4 5
‘(3) A person reviewing a decision under section 196F or 196G has the same powers as the original decider.	6 7
‘(4) A regulation may provide for all matters relating to the conduct of a review and giving effect to its decision, including, for example, the following—	8 9 10
(a) that a prisoner may not be legally represented or present for the review;	11 12
(b) that the review may be conducted by telephone, audio, video or another form of telecommunication, or by the Review Commissioner visiting the prisoner in prison;	13 14 15
(c) that the Review Commissioner may decide the procedures for conducting the review;	16 17
(d) that a review may be decided on documents or information before the reviewer or in another way;	18 19
(e) how the reviewer may obtain the documents or information mentioned in paragraph (d).	20 21
‘Review Commissioner	22
‘196I.(1) The Governor in Council may—	23
(a) appoint a person as a Review Commissioner; and	24
(b) fix the Review Commissioner’s conditions of appointment.	25
‘(2) The Governor in Council may also appoint a person to act as the Review Commissioner—	26 27
(a) during a vacancy in the Review Commissioner’s office; or	28
(b) during a period when the Review Commissioner is absent from duty or from the State or is, for another reason, unable to perform the duties of the office.	29 30 31

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‘(3) The commission may provide the Review Commissioner with the staff and other resources necessary for the Review Commissioner to perform functions under this division, including, for example, persons to assist the Review Commissioner or a prisoner to place documents or information before the Review Commissioner. 1
2
3
4
5

‘(4) The Review Commissioner must, not later than 4 months after the end of each financial year, prepare and give to the Minister a report on the Review Commissioner’s operations during the year. 6
7
8

‘(5) The Minister must cause a copy of the report to be laid before the Legislative Assembly within 14 days after the Minister receives it. 9
10

‘(6) The Minister must arrange for the operation of this division during the first 2 years to be reviewed and a report prepared for submission to the Legislative Assembly. 11
12
13

‘(7) The report must be laid before the Legislative Assembly before the end of 2 years and 6 months after the commencement of the division. 14
15

‘(8) The Review Commissioner is a tribunal for the purposes of the *Parliamentary Commissioner Act 1974*.’ 16
17

Insertion of new ss 207A and 207B 18

Clause 15. After section 207— 19
insert— 20

‘Approved forms 21

‘207A. The director-general may approve forms for use under this Act. 22

‘Transitional forms 23

‘207B.(1) This section applies if— 24

(a) immediately before its commencement, there was a prescribed form for a matter; and 25
26

(b) on the commencement, there is to be an approved form for the matter. 27
28

‘(2) The form that was the prescribed form for the matter immediately before the commencement is taken to be the approved form for the matter 29
30

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until there is an approved form for the matter or this section expires,
whichever happens first.

‘(3) This section expires 1 year after it commences.’.

1
2
3
4

SCHEDULE	1
MINOR AMENDMENTS	2
section 3	3
1. Section 10—	4
<i>insert—</i>	5
‘ “approved form” see section 207A.’	6
2. Section 10, definition “corrective services”, paragraph (f), ‘by order in council’—	7
<i>omit, insert—</i>	8
‘under a regulation’.	9
3. Section 13(3), ‘prescribed form’—	10
<i>omit, insert—</i>	11
‘approved form’.	12
4. Section 61(5)(a), ‘prescribed form’—	13
<i>omit, insert—</i>	14
‘approved form’.	15
5. Section 69(3), ‘prescribed form’—	16
<i>omit, insert—</i>	17
‘approved form’.	18
	19

6. Section 70(1), ‘prescribed form’—	1
<i>omit, insert—</i>	2
‘approved form’.	3
7. Section 72(4), ‘prescribed form’—	4
<i>omit, insert—</i>	5
‘approved form’.	6
8. Section 86(5), ‘prescribed form’—	7
<i>omit, insert—</i>	8
‘approved form’.	9
9. Section 99(1), from ‘who’ to ‘holds’—	10
<i>omit, insert—</i>	11
‘who holds’.	12
10. Section 101(1)(a), ‘a form prescribed by regulation’—	13
<i>omit, insert—</i>	14
‘the approved form’.	15
11. Section 101(2), from ‘who’ to ‘holds’—	16
<i>omit, insert—</i>	17
‘who holds’.	18
12. Section 102(1), from ‘who’ to ‘holds’—	19
<i>omit, insert—</i>	20
‘who holds’.	21

13. Section 163(2), ‘prescribed form’—	1
<i>omit, insert—</i>	2
‘approved form’.	3
14. Section 168(2), ‘prescribed form’—	4
<i>omit, insert—</i>	5
‘approved form’.	6
15. Section 169(2), ‘prescribed form’—	7
<i>omit, insert—</i>	8
‘approved form’.	9
16. Section 208(2)(a)—	10
<i>omit.</i>	11
17. Section 208(2)(b) to (d)—	12
<i>renumber</i> as section 208(a) to (c).	13
	14