

Queensland



CORRECTIVE SERVICES AMENDMENT ACT 2003

Act No. 48 of 2003

Queensland



CORRECTIVE SERVICES AMENDMENT ACT 2003

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Queensland



Corrective Services Amendment Act 2003

Act No. 48 of 2003

An Act to amend the *Corrective Services Act 2000*, and for other purposes

[Assented to 27 August 2003]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Corrective Services Amendment Act 2003*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

PART 2—AMENDMENT OF CORRECTIVE SERVICES ACT 2000

3 Act amended in pt 2

This part amends the *Corrective Services Act 2000*.

4 Amendment of s 6 (Where persons to be detained)

Section 6(3)(d), ‘1974’—

omit, insert—

‘2000’.

5 Amendment of s 12 (Prisoner classifications)

Section 12(1)—

omit, insert—

‘(1) A prisoner on remand who is not serving a period of imprisonment is classified as—

- (a) high security; or
- (b) if the chief executive decides—maximum security.’.

6 Amendment of s 33 (Consequences of positive test samples)

(1) Section 33(4)(b) to (d)—

renumber as section 33(4)(c) to (e).

(2) Section 33(4)(a)—

omit, insert—

- ‘(a) refuses to supply a test sample; or
- (b) fails to supply a test sample within a reasonable time, unless the prisoner has a reasonable excuse; or

Example of a reasonable excuse—

A medical condition that prevents the prisoner from supplying a test sample within the time it might reasonably take another prisoner who does not have the medical condition to supply the sample.’.

7 Amendment of s 53 (Transfer to another facility or a health institution)

Section 53(8)—

omit, insert—

‘(8) If a prisoner is transferred to an authorised mental health service, the prisoner is taken to be in the custody of the service’s administrator.’.

8 Amendment of s 76 (Eligibility for conditional release)

Section 76(1)—

insert—

- ‘(e) the prisoner is not being detained on remand for another offence.’.

9 Amendment of s 77 (Risk to community)

Section 77(f) to (h), after ‘any’—

insert—

‘relevant’.

10 Replacement of s 80 (Cancellation of conditional release orders)

Section 80—

omit, insert—

‘80 Amending, suspending or cancelling conditional release order

‘(1) The chief executive may, by written order, amend, suspend or cancel a conditional release order (“**CRO**”) if the chief executive reasonably believes the prisoner subject to the order has—

- (a) contravened the CRO; or
- (b) been charged with committing an offence.

‘(2) If the chief executive suspends or cancels the CRO, the chief executive may issue a warrant for the prisoner’s arrest.

‘(3) The warrant may be issued to all corrective services officers and police officers and may be executed by any of them.

‘(4) When arrested, the prisoner must be taken to a prison—

- (a) if the CRO was suspended for a period—to be kept there for the suspension period; or
- (b) if the CRO was cancelled—to serve the unexpired portion of the period of imprisonment to which the prisoner was sentenced.

‘(5) The chief executive must give the prisoner an information notice on the prisoner’s return to prison.

‘(6) The chief executive must, as soon as practicable, consider all written submissions given to the chief executive by the prisoner within the 21 days mentioned in the information notice.

‘(7) The chief executive must, as soon as practicable, inform the prisoner, by written notice, whether the chief executive has changed the chief executive’s decision, and if so, how.

‘(8) If the chief executive changes the chief executive’s decision, the changed decision has effect.

‘(9) A CRO is automatically cancelled if the prisoner, during the term of the CRO, is convicted of an offence for which the prisoner is sentenced to a term of imprisonment that is not wholly suspended.

‘(10) The time for which a prisoner was released under a CRO before the CRO was cancelled counts as time served for the prisoner’s period of imprisonment.

‘(11) In this section—

“**information notice**” means a notice—

- (a) stating that the chief executive has decided to amend, suspend or cancel the CRO; and
- (b) outlining the reason for the decision; and
- (c) inviting the prisoner to show cause, by written submissions given to the chief executive within 21 days after the notice is given, why the chief executive should change the chief executive’s decision.

“**suspend**” means suspend for a fixed or indeterminate period.’.

11 Insertion of new s 80A

After section 80—

insert—

‘80A Expiry of conditional release order

‘A prisoner is taken to have served the prisoner’s period of imprisonment if the prisoner’s conditional release order is not cancelled under section 80 before the date stated in the order for the order’s expiry.’.

12 Amendment of s 85 (Arresting prisoners unlawfully at large)

(1) Section 85(1), after ‘corrective services officer’—

insert—

‘or police officer’.

(2) Section 85(3), after ‘corrective services officers’—

insert—

‘and police officers’.

13 Insertion of new s 94A

Chapter 3, part 3, before section 95—

insert—

‘94A Helping prisoner at large

‘(1) A person must not aid someone that the person knows, or ought reasonably know, is a prisoner who is unlawfully at large.

Maximum penalty—100 penalty units or 2 years imprisonment.

‘(2) In this section—

“aid” includes abet, employ, harbour and maintain.’.

14 Amendment of s 103 (Persons near prisoners)

(1) Section 103(4)—

renumber as section 103(6).

(2) Section 103—

insert—

‘(4) If the person fails to comply with the requirement, the official, using reasonable and necessary force, may—

- (a) remove the person from the vicinity of the prisoner or place of detention; or
- (b) detain the person until the person may be handed over to a police officer.

‘(5) However, the person must not be detained under subsection (4)(b) for longer than 4 hours.’.

15 Amendment of s 104 (Temporary detention for security offences)

Section 104(3), after ‘The officer may’—

insert—

‘, using reasonable and necessary force.’.

16 Amendment of s 112 (Authority to use reasonable force)

(1) Section 112(1)—

insert—

‘(e) restrain a prisoner who is—

- (i) attempting or preparing to harm himself or herself; or
- (ii) harming himself or herself.’.

(2) Section 112(3)—

insert—

‘(c) a prisoner who is—

- (i) attempting or preparing to harm himself or herself; or
- (ii) harming himself or herself.’.

17 Amendment of s 125 (Requirements before visit)

(1) Section 125(3), (4) and (5)—

renumber as section 125(4), (5) and (7).

(2) Section 125—

insert—

‘**(3)** In deciding whether the personal visitor poses a risk to the security or good order of the facility, the person in charge must consider at least the following—

- (a) whether the personal visitor has, as an adult, been convicted of escaping, or attempting to escape, from lawful custody in Queensland or elsewhere;
- (b) whether the personal visitor has been convicted of committing, or attempting to commit, an offence while visiting a prisoner in lawful custody in Queensland or elsewhere;
- (c) whether the personal visitor has been convicted of helping, or attempting to help, a prisoner to escape from lawful custody;
- (d) whether the personal visitor has been refused access to, or been suspended from entering, a corrective services facility.’.

(3) Section 125—

insert—

‘**(6)** If a person has been refused access to a corrective services facility, the chief executive may order that the person is also refused access to—

- (a) another corrective services facility, in stated circumstances; or

Example of stated circumstances—

A person may be refused access to any corrective services facility in which a former accomplice of the person is being detained.

- (b) all corrective services facilities.’.

18 Amendment of s 128 (Suspending visits)

- (1) Section 128(1), ‘for a period of up to 3 months’—

omit.

- (2) Section 128(2)—

renumber as section 128(3).

- (3) Section 128—

insert—

- ‘(2) The suspension may be—

- (a) for a period of up to 3 months; or
(b) if the visitor is charged with an offence allegedly committed in a corrective services facility—until the end of the proceedings for the offence.’.

- (4) Section 128—

insert—

‘(4) If a visitor has been suspended from entering a corrective services facility, the chief executive may order that the visitor is also suspended from entering—

- (a) another corrective services facility, in stated circumstances; or

Example of stated circumstances—

Because of disorderly behaviour, the wife of a prisoner is suspended from visiting the corrective services facility where her husband is, and any corrective services facility to which he is transferred during the period of the suspension.

- (b) all corrective services facilities.’.

19 Amendment of s 130 (Accredited visitors)

(1) Section 130(2)(g)—

omit.

(2) Section 130(2)(h) to (l)—

renumber as section 130(2)(g) to (k).

20 Amendment of s 144 (Conditions for parole orders)

(1) Section 144, heading, ‘orders’—

omit.

(2) Section 144, before subsection (1)—

insert—

‘(1A) This section applies to a prisoner who is released on parole under—

(a) an exceptional circumstances parole order; or

(b) a parole order.’.

(3) Section 144(1), ‘A parole’—

omit, insert—

‘The’.

(4) Section 144(5) and (6), ‘a parole’—

omit, insert—

‘the’.

21 Amendment of s 149 (Suspension of order by chief executive)

(1) Section 149(1)(b)—

omit, insert—

‘(b) poses a serious and immediate risk of harm either to himself or herself, or someone else; or

(c) poses an unacceptable risk of committing an offence; or

(d) is preparing to leave Queensland, other than under a written order granting the prisoner leave to travel interstate or overseas.’.

(2) Section 149(3), after ‘corrective services officers’—
insert—
‘and police officers’.

22 Amendment of s 150 (Amendment, suspension or cancellation of order by corrections board)

(1) Section 150(1)(a)(ii)—
omit, insert—

- ‘(ii) poses a serious risk of harm either to himself or herself, or someone else; or
- (iii) poses an unacceptable risk of committing an offence; or
- (iv) is preparing to leave Queensland, other than under a written order granting the prisoner leave to travel interstate or overseas; or’.

(2) Section 150(1)—
insert—

‘(c) amend or suspend a post-prison community based release order if the prisoner subject to the order is charged with committing an offence.’.

(3) Section 150(3), after ‘corrective services officers’—
insert—
‘and police officers’.

23 Amendment of s 151 (Cancellation of parole order by further imprisonment)

(1) Section 151, heading, ‘**parole**’—
omit.

(2) Section 151(1), ‘parole’—
omit, insert—

‘post-prison community based release’.

(3) Section 151(1) and (2), ‘parole period’—

omit, insert—

‘term of the order’.

(4) Section 151(2), (3) and (4), ‘prisoner’s parole’—

omit.

(5) Section 151(5), after ‘corrective services officers’—

insert—

‘and police officers’.

(6) Section 151(7), definition “**corrections board**”, ‘on parole’—

omit.

24 Amendment of s 152 (Effect of cancellation of parole order)

(1) Section 152, heading, ‘**parole**’—

omit.

(2) Section 152(1), ‘parole’—

omit, insert—

‘post-prison community based release’.

(3) Section 152(1)(a), ‘parole’—

omit.

(4) Section 152(1)(d), ‘parole period’—

omit, insert—

‘term of the order’.

(5) Section 152(1)(c) and (d)—

renumber as section 152(1)(e) and (f).

(6) Section 152(1)(b)—

omit, insert—

(b) under section 150(1)(a)(ii) because the prisoner posed a serious risk of harm either to himself or herself, or someone else; or

(c) under section 150(1)(a)(iii) because the prisoner posed an unacceptable risk of committing an offence; or

- (d) under section 150(1)(a)(iv) because the prisoner was preparing to leave Queensland, other than under a written order granting the prisoner leave to travel interstate or overseas; or’.

(7) Section 152(2)—

omit, insert—

‘**(2)** The time for which the prisoner was released under the order before 1 of the following events happens counts as time served for the prisoner’s period of imprisonment—

- (a) the prisoner contravened the condition mentioned in subsection (1)(a); or
- (b) the order was cancelled for the reason mentioned in subsection (1)(b), (c), (d) or (e); or
- (c) the prisoner committed the offence mentioned in subsection (1)(f).’.

(8) Section 152(4), ‘on parole’—

omit.

25 Replacement of s 154 (Discharge after parole)

Section 154—

omit, insert—

‘154 Expiry of post-prison community based release order

‘A prisoner is taken to have served the prisoner’s period of imprisonment if the prisoner’s post-prison community based release order has expired without the order being cancelled—

- (a) by a corrections board; or
- (b) under section 151.’.

26 Amendment of s 159 (Disqualification from membership of Queensland board)

Section 159(c) and (d)—

omit, insert—

- (c) a person appointed or employed under the *Police Service Administration Act 1990*, *Crime and Misconduct Act 2001* or *Director of Public Prosecutions Act 1984*;
- (d) an engaged service provider or the provider's employees.'.

27 Amendment of s 188 (Functions and powers of chief executive)

Section 188—

insert—

'(3) To remove any doubt, it is declared that the chief executive may exercise a power mentioned in subsection (2)(b) in a place other than a corrective services facility.

Example—

The chief executive has the power to order a corrective services officer to search a prisoner who is in a vehicle being used to transport offenders.'.

28 Amendment of s 219 (Appointing inspectors)

Section 219—

insert—

'(5) However, the chief executive need not appoint inspectors to investigate an incident if the incident is being investigated by an officer of a law enforcement agency.'.

29 Omission of ch 6, pt 10 (Corrective services advisory council)

Chapter 6, part 10—

omit.

30 Amendment of s 243 (Confidential information)

(1) Section 243(3)(d)—

omit, insert—

- (d) for confidential information that consists of a person's private details—if authorised by the person to whom the information relates; or'.

(2) Section 243(3)—

insert—

‘(f) if the information merely informs someone of the corrective services facility in which a prisoner is being held in custody.’.

(3) Section 243—

insert—

‘(4) In this section—

“confidential information”—

(a) includes information—

- (i) about a person’s private details; or
- (ii) that could reasonably be expected to pose a risk to the security or good order of a corrective services facility; or
- (iii) that could reasonably be expected to endanger anyone’s life or health, including psychological health; or
- (iv) that could reasonably be expected to prejudice the effectiveness of a test or audit; or
- (v) that could reasonably be expected to divulge the identity of an informant or a confidential source of information; or
- (vi) that could reasonably be expected to disclose an expert’s advice or recommendation about an offender; or
- (vii) that could reasonably be expected to prejudice a law enforcement agency’s investigation; or
- (viii) that could have a serious adverse effect on the commercial interests, or reveal commercial-in-confidence interests, of an engaged service provider; but

(b) does not include—

- (i) information already disclosed to the general public, unless further disclosure of the information is prohibited by law; or
- (ii) statistical or other information that could not reasonably be expected to result in the identification of the person to whom the information relates.

“private details” of a person includes the person’s identity, private residential address or contact details.’.

31 Insertion of new s 244A

After section 244—

insert—

‘244A Traffic history

‘(1) The chief executive may ask the transport chief executive to give the chief executive a report about an offender’s traffic history for use under this Act and the *Penalties and Sentences Act 1992*.

‘(2) The transport chief executive must give the chief executive a written report about the traffic history that—

- (a) is in the transport chief executive’s possession; or
- (b) the transport chief executive can access through arrangements with a government department of another State.

‘(3) The chief executive may give information in the report to—

- (a) the person in charge of an institution (including in another State) to which a prisoner is, or is to be, transferred under this Act or another Act; or
- (b) a designated authority under the *Parole Orders (Transfer) Act 1984*, section 7(1)(e);¹ or
- (c) a proper authority under the *Penalties and Sentences Act 1992*, section 136(2)(b);² or
- (d) a corrections board.

‘(4) The information in the report may include a reference to, or a disclosure of, a conviction referred to in the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 6.³

‘(5) In this section—

“traffic history” of an offender means the offender’s traffic history under the *Transport Operations (Road Use Management) Act 1995*.

1 *Parole Orders (Transfer) Act 1984*, section 7 (Documents to accompany requests)

2 *Penalties and Sentences Act 1992*, section 136 (Notifications following making of order)

3 *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 6 (Non-disclosure of convictions upon expiration of rehabilitation period)

“**transport chief executive**” means the chief executive of the department in which the *Transport Operations (Road Use Management) Act 1995* is administered.’.

32 Amendment of s 245 (Pre-sentence reports)

Section 245—

insert—

‘(1A) A pre-sentence report may, for example, state the person’s criminal or traffic history obtained under section 244 or 244A.⁴’.

33 Amendment of s 251 (Evidentiary aids)

Section 251(3)(f), after ‘under this Act’—

insert—

‘, the *Corrective Services Act 1988*, the *Corrective Services (Administration) Act 1988* or the *Prisons Act 1958*’.

34 Amendment of ch 7 (Transitional provisions)

Chapter 7—

insert—

‘PART 3—CORRECTIVE SERVICES AMENDMENT ACT 2003

‘274B Conditional release orders

‘(1) If a prisoner, immediately before the commencement of this section, was serving a period of imprisonment and expected to be able to be released on conditional release, but was also being detained on remand for another offence, the expectation is extinguished.

‘(2) For section 80(1), the time before the commencement of this section for which a prisoner was released under a conditional release order before the order was cancelled counts as time served for the prisoner’s period of imprisonment.

4 Section 244 (Commissioner to provide criminal history) or 244A (Traffic history)

‘(3) Section 80(10) applies to a prisoner if the conditional release order is cancelled because of a conviction for an offence regardless of whether the offence was committed before or after the commencement of this section.

‘274C Exceptional circumstances parole conditions

‘(1) This section applies if, before the commencement of this section, a condition was imposed on an exceptional circumstances parole order that, after the commencement, could be imposed on the order.

‘(2) The condition is valid, and is taken always to have been valid.

‘274D Prisoner in custody of administrator of authorised mental health service

‘(1) This section applies if a prisoner was transferred to an authorised mental health service during the period starting on 28 February 2002 and ending on the commencement of this section.

‘(2) While at the authorised mental health service, the prisoner is taken to have been in the custody of the service’s administrator.

‘274E Classified patient taken to be prisoner

‘A person is taken to have been a prisoner for chapter 5, part 1⁵ if, during the period starting on 28 February 2002 and ending on the commencement of this section, the person was—

- (a) a classified patient being detained in an authorised mental health service under the *Mental Health Act 2000*; and
- (b) serving a period of imprisonment.’.

35 Amendment of sch 3 (Dictionary)

(1) Schedule 3, definitions “**advisory council**”, “**appointed member**” (first mention) and “**confidential information**”—

omit.

(2) Schedule 3—

insert—

‘ **“authorised mental health service”** means a mental health service declared under the *Mental Health Act 2000*, section 495, to be an authorised mental health service.

“confidential information” see section 243.’.

(3) Schedule 3, definition **“incident”**, paragraph (a)(ii), (b) and (c)—

omit, insert—

‘(ii) subject to a community based order or post-prison community based release order and under the direct personal supervision of a corrective services officer; and

Example—

A prisoner is one of a group of prisoners repairing a hall as part of community service performed under the direct personal supervision of a corrective services officer. If the prisoner cuts off a finger with a chainsaw, the injury is an incident even though the officer was helping another prisoner at the time of the incident.

However, if a prisoner cuts off a finger with a chainsaw while doing home renovations during home detention, and a corrective services officer is not at the home at the time, the injury is not an incident.

(b) an escape or attempted escape from secure custody; or

(c) a riot or mutiny; or’.

(4) Schedule 3, definition **“prisoner”**—

omit, insert—

‘ **“prisoner”** means—

(a) for chapter 5, part 1—a classified patient being detained in an authorised mental health service under the *Mental Health Act 2000* who is serving a period of imprisonment; or

(b) otherwise—a person who is in the chief executive’s custody, including a person who is subject to a post-prison community based release order.’.

PART 3—AMENDMENT OF POLICE POWERS AND RESPONSIBILITIES ACT 2000

36 Act amended in pt 3

This part amends the *Police Powers and Responsibilities Act 2000*.

37 Amendment of s 198 (Arrest without warrant)

Section 198(1)—

insert—

‘(l) because the offence is—

- (i) an offence against the *Corrective Services Act 2000*, section 103(3);⁶ or
- (ii) an offence to which the *Corrective Services Act 2000*, section 104 applies.⁷.

6 *Corrective Services Act 2000*, section 103 (Persons near prisoners)

7 *Corrective Services Act 2000*, section 104 (Temporary detention for security offences)