CORRECTIVE SERVICES AMENDMENT BILL 2003

EXPLANATORY NOTES

General Outline

Short Title of Bill

Corrective Services Amendment Bill 2003

Objectives of the Legislation

This Bill amends the *Corrective Services Act 2000* (the Act) to address current operational problems, to improve the clarity and certainty of the legislation and to reduce operational risks. In addition to these enhancements, other amendments within the Bill seek to bolster community protection from the risks posed by prisoners released on conditional release or on post-prison community based release.

How will policy objectives be achieved by the Bill

The majority of the legislative provisions in the Act commenced effect upon 1 July 2001. In practical terms, the Act has now been in operation for over 18 months. This period has been sufficient to expose operational issues and technical weaknesses in the Act. Generally, the amendments sought are changes within the existing legislative framework and will result in the clarification of current powers.

Administrative Cost to Government of Implementation

There are no significant cost increases to Government anticipated as a consequence of the implementation of this Bill.

Fundamental Legislative Principles

The *Legislative Standards Act 1992* requires that legislation, amongst other things, has sufficient regard to the rights and liberties of individuals. Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation—

(a) makes rights and liberties, or obligations, dependant on administrative power only if the power is sufficiently defined and subject to appropriate review; and

(b) is consistent with the principles of natural justice.

Given that generally the amendments sought are changes within the existing legislative framework to clarify the scope of current powers and that the Explanatory Notes to the *Corrective Services Bill 2000* dealt extensively with issues of fundamental legislative principle, it is not proposed to repeat those matters in these notes. However, fundamental legislative principle issues regarding clauses 10, 20 and 21 will be specifically mentioned here.

Clause 10 replaces section 80 of the Act and sets out, in detail, the process for the suspension or cancellation of a conditional release order. If the chief executive forms a reasonable belief that a prisoner has contravened the release order or has been charged with the commission of an offence, the chief executive will have the discretion to amend, suspend or cancel the order.

Under the new subsection 80(5) of the Act, the chief executive must give an information notice to a prisoner whose order has been suspended or cancelled, on their return to prison. The information notice must outline the reason for the decision. The prisoner then has 21 days to make submissions as to why the chief executive should change their decision. If, after further consideration, the chief executive changes their decision, the suspension or cancellation will be repealed and the prisoner will be released back into the community on their original conditional release order.

Clause 20 amends section 149 and clarifies the chief executive's power to suspend a post-prison community based release order in circumstances where a prisoner has been charged with committing an offence, or is reasonably believed to pose an unacceptable risk of committing an offence or preparing to leave Queensland, other than under a written order granting the prisoner leave to travel interstate or overseas.

If the chief executive receives cogent intelligence information that a prisoner on a post-prison community based release order poses an unacceptable risk of committing an offence or taking flight from the State, the chief executive must be able to protect the community by suspending the order and returning the prisoner to custody. It should be remembered that offenders on post-prison community based release are still prisoners serving a period of imprisonment.

In weighing the competing interests of the community's need to be protected from unacceptable risks and an administrative grant allowing a prisoner to serve part of their period of imprisonment in the community, the community's need should always prevail if unacceptable risks emerge. Where cogent intelligence information exists, it would not be appropriate to afford a prisoner procedural fairness before suspension because it would increase the risk of the prisoner taking flight. However, a suspension by the chief executive can only operate for a period of 28 days.

Clause 21 amends section 150 of the Act and clarifies that a corrections board may amend, suspend or cancel a post-prison community based release order if the board reasonably believes the prisoner subject to the order poses an unacceptable risk of committing an offence or is preparing to leave Queensland other than under a written order granting the prisoner leave to travel interstate or overseas. It further provides that a corrections board may amend or suspend a post-prison community based release order if the prisoner subject to the order is charged with committing an offence.

Under section 150 of the Act, a corrections board must give an information notice to a prisoner whose order has been suspended or cancelled, on their return to prison. The information notice must outline the reason for the decision but should not disclose any details that would, for example, enable an informant to be identified. The prisoner then has 21 days to make submissions as to why the board should change its decision. If, after further consideration, the Corrections Board decides that information is insufficient to maintain the suspension or cancellation of the order, the decision will be repealed and the prisoner will be released back into the community on their original administrative grant. It is not anticipated that all suspensions of orders will inevitably lead to cancellation, although this may often be the outcome.

There is some overlap between the role of a court considering whether to grant bail on the new charge/charges and a decision-maker's role in considering whether to suspend an order after a prisoner has been charged with fresh offences. However, it should be noted that the supervision of prisoners in the community on post-prison community based release is the

statutory responsibility of the chief executive and the boards, not the courts. Accordingly, it is appropriate that the weighing of the elevated risks that may be indicated by fresh charges is undertaken by the chief executive (under section 149 for suspension only) and corrections boards irrespective of a court's approach to bail on the fresh charge/charges.

It is considered that the amendments to sections 80, 149 and 150 have sufficient regard to fundamental legislative principles. A prisoner who feels aggrieved by a suspension or cancellation decision is allowed an opportunity to make a submission to have the decision reconsidered providing a sensible approach to procedural fairness in this context. If the prisoner still feels aggrieved, the prisoner may seek to have the order reviewed under the *Judicial Review Act 1991*.

Consultation

Comprehensive consultation regarding most of the issues in this Bill occurred during the preparation of the *Corrective Services Bill 2000*. As the amendments contained within this Bill are generally clarifications of powers within the existing legislative framework, it is not considered appropriate to have further broad consultation. Key Government agencies, including agencies in the criminal justice system, have been consulted.

The purpose and intended operation of each clause

Clause 1 This clause set out the short title of the Act.

Clause 2 This clause provides that this Act commences on a day to be fixed by proclamation.

Clause 3 This clause provides that this Act amends the Corrective Services Act 2000.

Clause 4 This clause changes a reference in subsection 6(3)(d) from the Mental Health Act 1974 to the Mental Health Act 2000.

Clause 5 While maintaining the previous presumption that remand prisoners should be classified as high security, this clause amends subsection 12(1) to allow the chief executive the discretion to classify a remand prisoner as maximum security, if considered necessary after considering all relevant factors. This change will allow the chief executive to make an order that a prisoner be accommodated in a maximum security facility under section 47 of the Act if the prisoner meets the relevant statutory criteria.

This clause also clarifies that a prisoner who is already serving a period of imprisonment and is charged with committing another offence is not a prisoner on remand for the purposes of subsection 12(1). This means that a prisoner who is already serving a period of imprisonment and has already been assigned a security classification, who is then remanded on another charge is not automatically reclassified as high security or maximum security. However, under subsection 12(3)(d) whether the prisoner has any outstanding charges and the nature of the charges remains a mandatory factor for the chief executive to consider in deciding a prisoner's classification.

Clause 6 This clause amends section 33 and clarifies the circumstances in which a prisoner is deemed to have given a positive test sample. An outright refusal by a prisoner to give a test sample will lead to a deemed positive test sample. A failure to supply a test sample within a reasonable time, unless the prisoner has a reasonable excuse, will also lead to the deeming of a positive test sample. An example of a reasonable excuse is given within the Bill

Clause 7 This clause replaces subsection 53(8), making the terminology consistent with the Mental Health Act 2000.

Clause 8 This clause amends section 76 of the Act, and provides that a prisoner who is detained on remand for another offence (other than the current period of imprisonment being served) is not eligible for conditional release. This amendment requires the deferral of a conditional release consideration until the court proceedings for the outstanding charges have been resolved or until the prisoner is granted bail on the outstanding charges.

Clause 9 This clause amends section 77 of the Act. It is intended that only relevant sentencing remarks and reports must be considered for the purpose of deciding whether a prisoner's discharge or release poses an unacceptable risk to the community. A long-term prisoner may have many sets of sentencing remarks or reports in their records. A decision- maker need only consider the remarks and records relevant to the risk assessment. This usually includes the sentencing remarks of the most serious offences in the prisoner's criminal history and the most recent and comprehensive reports. Remarks for minor sentences long ago, which pale in significance to later, more serious offences or a medical report relating, for example, to a prisoner's appendix removal, are not likely to be relevant considerations for a decision-maker assessing risk to the community.

Clause 10 This clause replaces section 80 of the Act and sets out, in detail, the process for amending, suspending or cancelling a conditional

release order. It should be noted that conditional release is not a form of supervised release like post-prison community based release. Where prisoners serving short-sentences are granted conditional release, the remaining time to be served in the community (usually a few weeks or months) is not long enough to achieve an effective supervision relationship.

If the chief executive forms a reasonable belief that a prisoner has contravened the release order or has been charged with the commission of an offence, the chief executive will have the discretion to amend, suspend or cancel the order.

Clause 11 This new clause inserts a new section 80A and clarifies when a conditional release order expires.

Clause 12 This clause clarifies that police officers as well as corrective services officers may, as provided for in section 85, arrest a prisoner who is unlawfully at large without warrant or apply in writing to an authorised person for the issue of a warrant for the prisoner's arrest. The clause also allows for a warrant to be directed to police officers as well as to corrective services officers and to be executed by any of them.

Clause 13 This clause inserts a new section 94A and provides that a person must not aid, abet, employ, harbour or maintain someone that the person knows or ought reasonably know, is a prisoner who is unlawfully at large.

Clause 14 This clause amends section 103 of the Act. It clarifies that a person who fails to comply with an official's requirement to leave the vicinity of the prisoner or place of detention, without reasonable excuse can be removed or detained using reasonable and necessary force. However, the person must not be detained for longer than 4 hours.

*Clause 15 T*his clause amends section 104 of the Act. It clarifies that an officer may, using reasonable and necessary force, detain a person until that person may be handed over to the police if a corrective services officer finds a person committing a security offence or finds a person in circumstances that lead or has information that leads, the officer to reasonably suspect that person has committed a security offence.

Clause 16 This clause amends section 112 of the Act. It provides that a corrective services officer may use the force, other than lethal force, that is reasonably necessary to restrain a prisoner who is attempting or preparing to harm himself or herself or is harming himself or herself. The clause also provides that an officer, in relation to a prisoner who is attempting or preparing to harm himself or herself or is harming himself or herself does not have to give a clear warning of the intention to use force if the act or

omission does not stop or give sufficient time for the warning to be observed if doing so would create a risk of injury to that prisoner. This is because issuing such warnings and allowing time for the warning to be observed, may in some circumstances consume precious seconds of time, when immediate action may be necessary to prevent the death or serious injury of a prisoner.

Clause 17 This clause amends section 125 of the Act by inserting some mandatory factors for the consideration of the person in charge in deciding whether the personal visitor poses a risk to the security or good order of the facility. The new subsection 125(6) of the Act will provide that if a person has been refused access to a corrective services facility, the chief executive may order that the person is refused access to (a) another corrective services facility, in stated circumstances; or (b) all corrective services facilities. An example of "stated circumstances" is provided in the Act.

Clause 18 This clause amends section 128 and clarifies the operation of a visitor suspension in circumstances where the visitor has been charged with an offence allegedly committed in a corrective services facility and allows for a suspension to be imposed until the end of the proceedings for the offence.

The clause will also insert new subsection 128(6). It will provide that if a person has been suspended from entering a corrective services facility, the chief executive may order that the person is also suspended from entering (a) another corrective services facility, in stated circumstances; or (b) all corrective services facilities. An example of "stated circumstances" is provided in the Act.

Clause 19 This clause amends section 130 of the Act, deleting a reference to a member of the advisory council.

Clause 20 This clause amends section 144 of the Act and clarifies that the section applies to exceptional circumstances parole orders as well as ordinary parole orders.

Clause 21 This clause amends section 149 and clarifies the chief executive's power to suspend a post-prison community based release order in circumstances where a prisoner is reasonably believed to pose an unacceptable risk of committing an offence, or is reasonably believed to be preparing to leave Queensland, without lawful authority.

The clause also amends subsection 149(3) by providing that warrants may be issued to all corrective services officers and police officers and may be executed by any of them.

See also the discussion under the heading "Fundamental Legislative Principles".

Clause 22 This clause amends section 150 of the Act and clarifies that a corrections board may amend, suspend or cancel a post-prison community based release order if the board reasonably believes the prisoner subject to the order poses an unacceptable risk of committing an offence or is preparing to leave Queensland without lawful authority.

The clause also provides that a corrections board may amend or suspend a post-prison community based release order if the prisoner subject to the order is charged with committing an offence.

The clause also amends subsection 150(3) by providing that warrants may be issued to all corrective services officers and police officers and may be executed by any of them.

See also the discussion under the heading "Fundamental Legislative Principles".

Clause 23 This clause amends section 151 of the Act and ensures that any type of post-prison community based release order (not only a parole order) is automatically cancelled if the prisoner is sentenced to another term of imprisonment for an offence committed, in Queensland or elsewhere, during the term of the order.

The clause also amends subsection 151(5) of the Act by providing that warrants may be issued to all corrective services officers and police officers and may be executed by any of them.

Clause 24 Similarly to the changes to section 150, this clause amends section 152 by ensuring that the effects of a cancellation are prescribed for all forms of post-prison community based release orders and not just for parole orders.

Clause 25 This clause amends section 154 to ensure consistent expiry for all forms of post-prison community based release.

Clause 26 This clause will amend the disqualification criteria for appointment to the Queensland Community Corrections Board in section 159 of the Act to make the provision more consistent with the disqualification criteria for the regional corrections boards.

Clause 27 This clause clarifies that the chief executive, who has the powers of a person in charge mentioned in subsection 188(2)(b) may exercise those powers in a place other than in a corrective services facility. The chief executive may delegate the powers of the person in charge to

another person even if the person is not a person in charge of a particular facility and the powers will be exercised in a place other than a corrective services facility.

Clause 28 This clause inserts a new subsection (5) into section 219 of the Act. It provides that 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. This change ensures that resources will not be wasted by unnecessary duplication of investigations. The term "law enforcement agency" is defined in Schedule 3.

Clause 29 This clause omits Chapter 6, part 10 from the Act, removing the concept of a Corrective Services Advisory Council.

Clause 30 This clause amends section 243 of the Act. It clarifies that the release of confidential information, under subsection 243(3)(d), with the consent of a person, is limited to the release of information about the person's private details rather than any other confidential information that the chief executive may hold.

The clause also clarifies that an informed person may inform someone of the corrective services facility in which a prisoner is being held in custody, without further authorisation. Prisoners' lawyers, families and friends will readily need to know the location at which a prisoner is accommodated to arrange to visit the prisoner. The clause also places the definition for "confidential information" into section 243 and provides a definition of the term "private details".

Clause 31 This clause inserts a new section 244A into the Act. It ensures that the chief executive may obtain a report from the transport chief executive about an offender's traffic history. The detail of the new provision is similar to section 244.

Clause 32 This clause inserts a new subsection (1A) into section 245 of the Act and provides that a pre-sentence report may, for example, state the person's criminal or traffic history obtained under section 244 or 244A.

Clause 33 This clause amends subsection 251(3)(f). The amended clause allows the chief executive to certify for evidentiary purposes, that a stated document is a copy of a document made under the Act, the *Corrective Services Act 1988*, the *Corrective Services (Administration) Act 1988* or the *Prisons Act 1958.*

Clause 34 This clause extinguishes any expectation that a prisoner, prior to the commencement of this section, may have had of being considered for conditional release despite being detained on remand for another offence.

In relation to conditional release order cancellations, this clause ensures a consistent approach to determining the "time served". The clause also validates any conditions imposed on an exceptional circumstances parole orders prior to the commencement of the section. Additionally, it inserts transitional provisions into the Act in relation to the enactment of the *Mental Health Act 2000* and its relationship with prisoners.

Clause 35 This clause omits the definitions of "advisory council" and "appointed member" (where first mentioned) from the Act. The clause inserts a definition for the expression "authorised mental health service" and indicates that the definition of "confidential information" is now to be found in section 243 of the Act. This clause also narrows the definition of "incident" to ensure inspectors are not automatically appointed to investigate matters in the community that are not appropriate for investigation by inspectors because the event occurred outside of the direct personal supervision of a corrective services officer.

*Clause 36 T*his clause provides that this part amends the *Police Powers and Responsibilities Act 2000.*

Clause 37 This clause amends section 198 of the *Police Powers and Responsibilities Act 2000* and provides, in effect, that police may arrest a person reasonably suspected of committing an offence against sections 103(3) or 104 of the *Corrective Services Act 2000* without warrant.