Corrective Services Bill 2006

Explanatory Notes

General Outline

Introduction

The Corrective Services Bill 2006 (the Bill) has been drafted in accordance with current legislative drafting practice and written in plain English. Consequently, particular clauses and sub-clauses require little or no specific explanation. As a result, certain clauses and sub-clauses have been repeated or summarised in general terms only.

Title of the Bill

The short title of the Bill is the *Corrective Services Bill 2006*

Policy Objectives of the Bill

The Bill will repeal the *Corrective Services Act 2000* (the Act). The primary objective of corrective services is community safety and crime prevention through the humane containment, supervision and rehabilitation of offenders.

Therefore, the major policy objectives of the legislation are to—

- ensure that the sentence imposed by a court operates upon a prisoner for the whole of the period of imprisonment;
- ensure that prisoners are managed in a safe and secure environment according to their risk;
- clarify that certain human entitlements are necessarily diminished as a result of imprisonment;
- ensure that rehabilitation services are provided to offenders to minimise the risk of further offending; and
- recognise victims.

The Bill also takes into account the special needs of some offenders such as age, sex, disability and any specific cultural needs. Furthermore, the Bill provides for the recognition and safeguarding of an offender's basic human

entitlements, while taking into account that there are some necessarily diminished as a result of imprisonment or another court order.

The Bill ensures that the safety of staff, prisoners and the community as well as the security and good order of corrective services facilities are fundamental criteria for decisions relating to the management of prisoners.

Reasons why the proposed legislation is necessary

The Act was enacted after a review of the Queensland Corrective Services Commission in 1999 found that the framework of legislation, subordinate legislation and corrective services rules then in place needed urgent and comprehensive revision. The Act, which commenced on 1 July 2001, replaced the *Corrective Services (Administration) Act 1988* and the *Corrective Services Act 1988*.

The Act included a provision (section 252) requiring a review of its efficacy and efficiency within five years of its commencement to ensure that legislation governing corrective services in Queensland continued to reflect contemporary correctional practice, community expectations and government priorities.

The review of the Act commenced in July 2004. Extensive community consultation occurred during the review that, along with consideration of research and correctional practice in other jurisdictions, led to the development of legislative reforms which reflect community expectations and contemporary correctional practice.

Reasons for the objectives and how they will be achieved

The sentence imposed by a court will operate upon a prisoner for the whole of the period of imprisonment.

This objective will be achieved by the abolition of remission and conditional release and the introduction of a new parole system.

Remission

Remission is a legacy of the nineteenth century penal practice of administratively granting early release from prison, ostensibly as a reward for good behaviour, without further supervision. This type of release contrasts with the modern approach of supervising prisoners in the community upon release from prison, which accords with views frequently expressed in the community that a person sentenced to imprisonment, should be subject to control and restriction of liberty for the full duration of their sentence.

Remission as a means of ensuring good institutional conduct has become redundant as more sophisticated tools have been developed for managing prisoner behaviour. In any event, institutional conduct is a poor predictor of a prisoner's conduct after release. For some categories of prisoners, notably sex offenders, good conduct in prison does not strongly correlate to a low risk of re-offending. The Act's requirement to consider a prisoner's risk to the community when determining suitability for remission was introduced to address this issue and enhance community safety. Modern correctional practice has an emphasis on rehabilitation and prisoners are encouraged to participate in vocational education and training courses, education programs and industries.

A grant of remission administratively overrides the decision of the sentencing court by reducing the length of a sentence of imprisonment that has been imposed. Once a prisoner is granted remission, there is no opportunity to monitor their behaviour in the community or return them to custody if he or she is subsequently assessed as being a risk to the community. Remission is therefore inconsistent with the modern principle that the point at which a prisoner is released should be determined by either the sentencing court for short term prisoners or an independent parole board for prisoners serving lengthy sentences.

The Government's preferred policy of supervised release was partially implemented in the Act by the abolition of remission for future prisoners sentenced to imprisonment for offences committed after 1 July 2001. Access to remission was also greatly restricted for those prisoners who retained an eligibility to be considered for a grant of remission under the Act. The introduction of an assessment of a prisoner's risk to the community in addition to the requirement that a prisoner had to have been of good conduct to be granted remission resulted in many prisoners being refused remission because of the unacceptable risk they posed to the community.

The Bill explicitly removes any expectation of remission in order to give full effect to a consistent scheme of supervised early release that will apply to all prisoners and enhance community safety. This will result in all current and future prisoners, including prisoners who are currently eligible to be considered for remission, to be subject to control and restriction of liberty for the full duration of their sentence, either in custody or under supervision in the community.

These prisoners, although no longer eligible for a grant of remission will be able to apply to a parole board for release to parole whereby a prisoner is supervised in the community until the completion of their sentence.

Conditional release

Conditional release was introduced by the Act as a form of early release for prisoners serving short sentences of two years or less, who upon commencement of the Act, became ineligible for parole. Prisoners released before the end of their sentences on conditional release are not legislatively required to be supervised and therefore conditional release will be abolished in favour of supervised release on parole.

The Bill explicitly provides that conditional release will no longer be available as a means of early release for prisoners sentenced after its commencement. The abolition will not, however operate retrospectively and those prisoners who are currently eligible for conditional release and are not eligible for parole will remain eligible for conditional release. Thus, conditional release will phase out as such prisoners are released. This process has been estimated to take some 16 months following the commencement of the new legislation.

Supervised release on parole

The Bill establishes parole as the only form of early release from custody, replacing remission, conditional release and the existing post-prison community based release orders. Prisoners on parole will be supervised in the community for the duration of their sentence of imprisonment and returned to custody if necessary to protect the community. Parole orders will be able to include strict conditions in relation to employment, program attendance and place of residence.

The Bill provides that either a court or a parole board will determine when a prisoner is suitable for release on parole, dependant upon the length of a prisoner's imprisonment.

The Bill provides that prisoners, serving short sentences of imprisonment of three years or less who are not serious violent offenders or sex offenders, will be released to parole at the time fixed by the sentencing court. This will provide greater certainty for courts, victims and the community by requiring a sentencing court to order the length of time that a prisoner, serving imprisonment of three years or less who is not a serious violent offender or sex offender, must spend in custody before being released to parole.

Consequential amendments will be made to the *Penalties and Sentences Act 1992* to enable courts to fix the timing of the release to parole of prisoners serving three years or less. However, it should be noted that prisoners who are convicted of offences whilst in custody will not be released at the parole date set by the court.

The Bill focuses the jurisdiction of the parole boards on higher risk offenders and prisoners serving longer periods of imprisonment. All sex offenders, serious violent offenders and prisoners serving periods of imprisonment of more than three years may only be considered for parole at the time recommended by a sentencing court or after serving a fixed percentage of their imprisonment. Sex offenders, who are not declared to be serious violent offenders, will be eligible for consideration of parole by a parole board at 50 per cent of their period of imprisonment or as recommended by a court and serious violent offenders will only be eligible for parole after serving 80 per cent of their sentence of imprisonment in accordance with the *Penalties and Sentences Act 1992*. A parole board will then only release a prisoner to parole if the prisoner is considered suitable for supervised release into the community.

The Bill also retains existing eligibility restrictions in relation to the supervised early release for prisoners who are serving life sentences and who are detained at Her Majesty's pleasure under the *Criminal Law Amendment Act 1945*.

Furthermore, the Bill provides that any prisoner who breaches a condition of a parole order may have their parole order amended or suspended pending a parole board's determination of their suitability to continue on parole.

Combined with proposed changes to remission and conditional release, community safety will be enhanced as all prisoners sentenced after the commencement of the Bill will be supervised in the community if they are granted early release. This will mean that prisoners will be carefully monitored upon their return into the community and returned to custody if necessary.

Parole Boards

Renaming the community corrections boards as parole boards will clearly identify the function of the boards and complement the proposal to rename community corrections as the probation and parole service.

As a consequence of the abolition of post-prison community based release and the introduction of parole as the only form of early release, there will be a reduction in the number of applications to be considered by Parole Boards. As a result it is proposed that there will be three Parole Boards, the Queensland Parole Board and two regional boards. The Central and North Queensland Parole Board and South Queensland Parole Board will hear parole applications for all prisoners serving between three and eight years

as well as applications for parole from sex offenders and serious violent offenders serving three years or less.

The Bill provides that the Queensland Parole Board will retain its current membership of eight and will operate as a specialist board to ensure consistency and expertise in dealing with the most serious offenders. Importantly, the three boards will have one President to facilitate consistent decision making and practice across the State. In recognition of the over representation of Aboriginal and Torres Strait Islander prisoners in the correctional system the requirement to have an indigenous member on each parole board will be retained.

In addition to having responsibility for determining parole for the most serious offenders, the Queensland Parole Board will also have responsibility for determining resettlement leave of absence. This will mean that the reintegration into the community of prisoners serving lengthy periods of imprisonment will be planned and determined by the one authority. Resettlement leave allows low security prisoners to spend short periods of time in the community with a sponsor or family member and is usually a precursor to parole.

Prisoners serving less than eight years will no longer have access to resettlement leave of absence. This is because historically very few prisoners serving less than eight years have applied for or have been granted resettlement leave of absence. The Bill specifically provides for the extinguishment of the expectation of a prisoner (serving less than eight years) of access to resettlement leave of absence.

Resettlement leave of absence remains in the Bill in order, only to assist prisoners serving lengthy periods of imprisonment to refamiliarise themselves with their family and surroundings before being released into the community. Low security prisoners serving less than eight years who are transferred to work camps will be eligible to participate in reintegration leave.

The introduction of videoconferencing as the preferred method for prisoner appearances before a parole board will ensure consistency in practice. Many community corrections boards already use videoconferencing exclusively. This is for security reasons because it does not require prisoners to be escorted to appear before a board. The boards will however, retain discretion to allow prisoners with special needs to make personal appearances. As all corrective services facilities possess videoconferencing equipment, no additional investment in this technology will be required.

Prisoners are managed in a safe and secure environment according to the risk they pose.

This objective will be achieved through the introduction of a new classification system and a new separation order to ensure the safety of staff and prisoners. The Bill also contains new provisions to enhance the security of corrective services facilities.

Classification of prisoners

A security classification system ensures that the level of security and supervision that a prisoner has is commensurate to the risk they pose. Security classifications have long been a feature of the correctional environment.

The Bill introduces a new security classification system, with fewer security levels to clearly guide the appropriate placement of prisoners including prisoners on remand. In addition the introduction of a clearer, risk focussed set of criteria for determining security classifications will aid the assessment of a prisoner's security risk. The corrective services facility in which a prisoner is placed will be guided by whether the prisoner is classified as maximum, high or low security.

The Bill provides for the review of prisoner security classifications. Prisoners who are classified as maximum security will be reviewed every six months and high security prisoners will be subject to an annual review. Low security prisoners will not have mandatory reviews and are likely to only have a review following an incident.

The Bill explicitly provides for the exemption of classification decisions from judicial review and makes provision for a merits review. The fundamental legislative principle implications of this are considered later on in these notes.

Maximum Security orders

The ability to make maximum security orders remains in the Bill as a response to the risk posed by highly dangerous prisoners. However, there are enhanced requirements for independent scrutiny of an order by allowing a prisoner subject to the order to request a review of the order by an official visitor and requiring a maximum security order to be subject to review by an official visitor at intervals of no more than three months. Provision has also been made for prisoners on maximum security orders to be reintegrated into the mainstream prison population within the period of the order, where appropriate.

Safety orders

The separation of a prisoner from the mainstream prison population is a serious matter, particularly for prisoners who are separated involuntarily. Although the ability to separate certain types of prisoners has always been a feature of correctional management, the power to separate prisoners has been subject to more stringent tests and accountability mechanisms since the 1988 *Commission of Review into Corrective Services in Queensland* (Kennedy Review).

In the case of Aboriginal and Torres Strait Islander prisoners, it is particularly important that methods for separating prisoners are used appropriately and with appropriate opportunities for independent scrutiny. As a key participant in the implementation of the *2000 Queensland Aboriginal and Torres Strait Islander Justice Agreement*, the Department of Corrective Services is committed to ensuring the safety and security of Aboriginal and Torres Strait Islander prisoners in custody. The separation of prisoners was also raised by the 1991 *Royal Commission into Aboriginal Deaths in Custody*, which emphasised the need for effective measures to prevent incidents of self-harm in custody, along with more open and accountable decision-making processes.

The Bill introduces a clearer and more accountable scheme for separating prisoners from the mainstream prison population. Special treatment and crisis support orders will be replaced by a single safety order. The safety order allows for the separation of a prisoner for up to one month to ensure the safety of other prisoners and the good order and security of a corrective services facility.

The period of up to one month will reduce the duration of initial orders that can be made for prisoners at risk of self-harm or those who pose a risk to someone else due to a mental illness or psychiatric condition. The Bill also provides for mandatory reviews by official visitors in addition to prisoner requests for review.

Additional reviews by medical practitioners or psychologists are also required when a safety order is made on the advice of a medical practitioner or psychologist. A medical examination will be required as soon as possible after the making of the order and thereafter at regular intervals. A review of the order will be required by a medical practitioner or psychologist, other than the doctor or psychologist on whose advice the order was made, as soon as possible after the making of the order. Following a review by a medical practitioner or psychologist, a recommendation must be made as to whether the order should continue or

be cancelled. The recommendation must be taken into account when determining whether the order must be confirmed or cancelled.

To allow for circumstances in which a doctor or psychologist may not be available, there is a provision for a temporary safety order to be made for up to five days, if a corrective services officer or nurse assesses a prisoner as being at risk of self-harm. There is a requirement that the order be reviewed by a doctor or psychologist within the period of the temporary order.

If a prisoner is assessed to be at risk of harm to themselves, others or from other prisoners, or poses a risk to the security or good order of a corrective services facility, a safety order may be made for up to one month, with provision for reintegration into the mainstream prison population within the period of the order, and provision for extension of the safety order (a consecutive order) on the approval of the chief executive. If the medical practitioner assesses that the prisoner is at risk of self-harm, then he or she will be able to recommend that the order be reviewed by a doctor or psychologist at intervals of no more than seven days.

Searches

Searches are necessary within the corrective services system to ensure that corrective services facilities are safe and secure environments for staff, visitors and prisoners. Searches are necessary to prevent the entry of contraband, weapons and any other item that could facilitate an escape.

The Bill clarifies the searches that can be conducted on prisoners, visitors, children accommodated with female prisoners and corrective services staff. In addition, the Bill clarifies the ability for searches to be conducted in any part of a corrective services facility and of vehicles entering or leaving a corrective services facility.

The types of searches that prisoners can be subjected to, have been directly translated from the Act. These searches were considered by the Scrutiny of Legislation Committee during its consideration of the Corrective Services Bill 2000.

The Bill in fact includes additional provisions to assist in the preservation of a prisoner's dignity during a search requiring the removal of clothing. The Bill makes it clear that prisoners should be allowed to remain partially clothed at all times and the search should be carried out as quickly as possible.

The ability to search persons entering a corrective services facility has also been clarified in the Bill and the types of searches that a visitor can be

subjected to have been translated from the Act. The clear intent of the Bill is that visitors, staff and children accommodated with female prisoners will not be subject to a search requiring removal of clothing, a personal search or body search under this Bill. The Bill defines the types of searches that may be undertaken on visitors and staff as scanning searches and general searches. A scanning search includes both an ion scan machine through which a person may be required to pass and a portable machine that requires a person's skin to be swabbed. Passive alert detection dogs also perform scanning searches. A general search is a search to reveal the contents of outer garments and hand luggage. Neither search requires a person to be touched by the person performing the search.

The Bill has incorporated the ability to direct a visitor who refuses to submit to a general or scanning search to leave a facility. The Bill has clarified that a staff member who refuses to submit to a search may also be directed to leave the facility.

Use of force

The powers of a corrective services officer to use force have been translated from the Act. The Bill clearly defines the circumstances in which authorised correctional officers may use force, including the use of lethal force. Lethal force is only authorised to prevent a prisoner from escaping from a secure facility and there is a requirement that a sign warns visitors at the entrance of the ability of corrective services staff to use lethal force against a visitor if the visitor helps or attempts to help a prisoner to escape.

There are also strict circumstances under which lethal force may be used, such as if a corrective services officer reasonably believes that an escaping prisoner is likely to cause grievous bodily harm to, or the death of an innocent person. There are a number of safeguards in the legislation including the requirement that an officer be appropriately trained, the necessity for a warning to be given and the requirement to record and report the use of lethal force.

The provisions require a corrective services officer to have formed a reasonable belief rather than reasonable suspicion. The Scrutiny of Legislation Committee in considering the Corrective Services Bill 2000 observed that the former term requires a higher standard than the latter term.

Substance testing of offenders

The Bill translates the ability for prisoners to be tested for drug use at anytime and to test persons subject to a court order or who are on parole. It is important that authorities have the power to detect drug use amongst

offenders because of the correlation between substance abuse and offending.

If a prisoner is found to have tested positive a range of consequences may follow including a requirement to undertake a therapeutic programme or breach or offence proceedings.

Any prisoner who refuses to provide a test sample or tampers with a test sample will be deemed to have tested positive and may be breached.

Mail and phone calls

The provisions providing for correctional authorities to open, search and censor a prisoner's ordinary mail have been translated from the Act. These searches are necessary to prevent security breaches and the introduction of contraband into correctional centres. These searches are also necessary to prevent inappropriate contact between prisoners and their victims or witnesses.

The power to seize prisoner mail may only be exercised by a corrective services officer if the mail poses a risk to the security or good order of the facility, could be intended for the commission of an offence, reveals information about the commission of an offence, to prevent threatening or inappropriate correspondence from leaving the facility, a prohibited thing from entering or leaving a corrective services facility or a prisoner from purchasing goods or services without approval.

Provisions relating to the monitoring of phone calls have been translated from the Act. The Bill also provides for the monitoring of videolink communication which may be used to facilitate family visits between prisoners and their families in remote areas.

Searching privileged mail

Currently, the Act enables the person in charge of a corrective services facility to open, search and censor a prisoner's mail, other than privileged mail.

The Act also allows the person in charge to open and search a prisoner's privileged mail, in the prisoner's presence, if the person in charge reasonably suspects the mail contains a prohibited thing, or that it may contain something that may physically harm the person to whom it is addressed. "Privileged mail" is defined in the Act to mean mail sent to, or by, a person who is prescribed under a regulation. Prisoners may, under the Act, communicate, by use of the privileged mail system with persons who are prescribed by the Act and the *Corrective Services Regulation 2001* (the Regulation) as being the senders and receivers of "privileged mail". These

persons include for example, a Minister, the chief executive, or the ombudsman.

As privileged mail is not subject to standard searches, there has always been the risk that the privileged mail system could be misused to send items or correspondence in and out of a corrective services facility in order to avoid scrutiny.

It is currently an offence under section 18 of the Regulation for persons and prisoners to use the privileged mail system to introduce prohibited items such as a passport, cash or credit card. In addition, it is an offence for prisoners to use the privileged mail system to send something which may physically harm the recipient of that mail.

Privileged mail is usually sealed by a prisoner out of sight of a corrective services officer and recorded and signed for in an appropriate register. Where it is suspected that "privileged mail" may contain something that may harm the person to whom it is addressed, or contain a prohibited thing, the privileged mail can be examined by the person in charge in the prisoner's presence. However, the person in charge cannot read the privileged mail without the prisoner's consent. It is rare for a prisoner to allow the person in charge to read his or her privileged mail. Even though mail that is not to or from a prescribed person is not privileged mail despite being marked "privileged", it has been very difficult to establish the misuse of privileged mail without the accompanying ability to open and identify the source or intended recipient of the mail. Mail that is marked "privileged" but is not actually "privileged mail" poses a security threat to the corrections environment as it escapes the scrutiny afforded to the general mail system.

The Bill makes clear that privileged mail must be treated differently from ordinary mail. The Bill provides that a prisoner's privileged mail can only be opened and searched by a corrective services officer authorised by the chief executive if an authorised officer has a reasonable suspicion that the mail contains something that physically harm the intended recipient or contains a prohibited thing. The Bill also provides that privileged mail may be opened or searched in the presence of the prisoner where it is suspected that the mail marked as privileged is not in fact privileged.

The Bill has been drafted to protect the integrity of the privileged mail system by enabling the chief executive to identify the source of mail or intended recipient on reasonable suspicion that the mail is not privileged. It has not been drafted to allow privileged mail to be routinely opened and read. If the chief executive establishes the source of the mail or intended

recipient is not a prescribed person the mail is not privileged and will be subject to the usual scrutiny of regular mail.

These searches may only occur in the presence of the prisoner and any search of privileged mail must be recorded in a register. The contents of a prisoner's privileged mail may only be seized if something may harm the person to whom it is addressed or it is a prohibited thing. The contents of any privileged mail cannot be disclosed and a penalty applies to any person who discloses the contents.

Visits

Visits provide an opportunity for prisoners to maintain contact with family and friends. Visits with family members provide a mechanism for prisoners to maintain family relationships, particularly between incarcerated parents and children.

The Bill translates the minimum entitlement of one personal non-contact visit each week and allows for additional visits to be approved to assist family relationships. The Bill also places no restriction on the ability of a prisoner to receive legal visits, which must occur out of hearing but not out of sight of a corrective services officer.

The Bill provides clarification on the types of visitors who visit corrective services facilities and types of access approvals and security checks that apply to different types of visitors to ensure the security of corrective services facilities.

The Bill translates the provision from the Act which provides that unaccompanied children may only visit corrective services facilities if it is in their best interests. The consideration of whether a visit is in the child's bests interests will also apply to children who apply to visit a prisoner with an adult. The majority of adult visitors who bring children with them to visit a parent or relative in prison have the child's best interests in mind. Unfortunately, there have been some occasions when this principle has not been observed by accompanying adult visitors.

The Bill protects children by providing that all applications to visit prisoners, made by or on behalf of children under the age of 18 years should be approved by the chief executive. Approval will be granted only if the visit is assessed as being in the child's best interests. In considering the best interests of a prospective child visitor, the chief executive must consider such factors as the child's relationship to the prisoner; the child's age; any current court orders precluding the child from seeing the prisoner; any urgent circumstances relating to the child or prisoner; the child's reason for the visit; whether the child was the complainant or a witness in

the offence leading to the prisoner's imprisonment; and, where the child is in the custody or guardianship of the chief executive of the Department of Child Safety, whether consultation has occurred with that department and any other relevant parties.

It is not proposed that the new provisions restrict prisoners' contact with their own children. The Bill ensures, however, that every child who enters a corrective services facility in Queensland is adequately protected from harm and their best interests are taken into account with respect to visiting prisoners.

The Bill translates the searches applicable to visitors from the Act and clarifies that visitors, children who are accommodated with their mothers in corrective services facilities and staff may only be subjected to general and scanning searches.

Chief Inspector

The Bill provides for the appointment of a chief inspector responsible for coordinating the inspectorate functions under the Act and the official visitor scheme.

The chief inspector provides an important accountability mechanism under the Bill.

Inspections and reviews of the operations of corrective services facilities and probation and parole offices have been introduced in the Bill. These inspectorate powers are in addition to the power to conduct an inspection following an incident.

In addition to performing inspections and reviews, the chief inspector will coordinate the official visitor scheme to ensure that regular visits to hear prisoner complaints and the statutory reviews of maximum security orders and safety orders are occurring as required.

Certain entitlements are necessarily diminished as a result of imprisonment

This objective will be achieved by the introduction of new provisions. The Bill however also provides that prisoners are entitled to receive a personal visit each week and are entitled to receive visits from a lawyer. It is widely acknowledged and accepted that imprisonment necessarily diminishes many other entitlements which may be freely enjoyed in the community. With respect to the following issues, consideration regarding fundamental legislative principles will be addressed later in these notes.

Assisted reproductive technology

In Queensland, the entitlement of prisoners to receive conjugal visits was considered and rejected by the 1988 Kennedy Review and sexual activity during contact visits is clearly prohibited under the Act.

Advances in medical technology for the treatment of infertile couples, has led to an increase in requests by prisoners in custody to participate in assisted reproductive technology. Whether access to assisted reproductive technology is a right or a privilege is still undecided amongst the general population, let alone the prison population. In the community, decisions about whether access to assisted reproductive technologies is granted require the consideration of whether a couple is medically infertile. Prisoner requests for assisted reproductive technology do not usually relate to medical infertility and as the majority of the prison population in Queensland is male, artificial insemination is the form of assisted reproductive technology most frequently requested by prisoners.

The Bill provides that prisoners in custody will not be entitled to access assisted reproductive technology. This prohibition ensures equity in decision making between prisoners and does not require correctional authorities to make value judgments as to whether individual prisoners should be allowed to procreate while they are in prison.

Prisoners carrying on businesses

The regulation of prisoner business activities is not currently provided for in Act. The *Public Trustee Act 1978* contains provisions related to prisoner commercial activity by charging the public trustee with administering the estate of certain prisoners, including those whose sentence is three years or longer. This effectively prohibits financial transactions being entered into by prisoners whose estates are being managed by the public trustee, without the consent of the public trustee.

Existing provisions under the Act for approving and monitoring visits, censoring mail, monitoring telephone calls, preventing access to the internet, and prohibiting the possession of credit cards and cheque books limits the opportunity for prisoners to conduct business activity.

The operation of a business by a prisoner from custody can cause a risk to the security and good order of a corrective services facility if a prisoner has access to a cheque book and credit cards during visits. Any prisoner who is perceived as having access to funds by other prisoners can be placed at risk of harm or stood over by other prisoners. Prisoner business activities can also be offensive to victims particularly to those victims who may have lost

their livelihood or suffered a significant financial loss as a result of the offence.

Other correctional jurisdictions in Australia and overseas, have sought to restrict or prohibit prisoners from operating businesses from custody. The Bill prohibits sentenced prisoners from operating businesses and carrying on business activities from within corrective services facilities. A maximum penalty of 100 penalty units applies if a prisoner is found to be carrying on a business in custody.

A transitional period will allow existing prisoners to make arrangements in respect of businesses so as not to be in breach of the prohibition. Thereafter, sentenced prisoners will be allowed a period following sentencing to enable them to make arrangements to enable any legal business they are currently operating to continue to operate in their absence. This will minimise the impact of a prisoner's imprisonment on the operation of a family business.

Change of name

Under the Act, a person in the chief executive's custody is required to notify the chief executive in writing before changing his or her name. This is to enable the chief executive to supervise offenders on parole; ensure accurate information is maintained on the concerned persons' register; and ensure accurate information is held in relation to any prisoner under the supervision of the probation and parole service.

The Bill requires that any person in the chief executive's custody who desires to change his or her name under the *Births Deaths and Marriages Registration Act 2003* must seek the prior approval of the chief executive. In determining whether to grant approval to a person in the chief executive's custody seeking to change their name, consideration must be given to any threat to the security of the corrective services facility, to the safety of the person and other persons, whether the proposed name change could be considered offensive to a victim of crime and whether the name change could be used to further an unlawful activity or purpose. Other correctional jurisdictions in Australia have taken similar action.

The Bill ensures that requests of persons in the chief executive's custody to change their names are properly scrutinised. This will avoid offenders changing their name for improper purposes, to avoid the consequences of their offences or to cause offence to a victim.

Rehabilitation services are provided to offenders to minimise the risk of further offending

This objective will be achieved by providing that the chief executive must establish services or programs to help—

- rehabilitate offenders;
- help prisoners reintegrate into the community after their release from custody;
- acquire skills;
- the religious welfare of prisoners;
- to initiate, keep and improve relationships between offenders and their families.

The Bill specifically provides that the services and programs must take into account the age, sex, cultural background or any disability of an offender.

The recognition of victims

This objective will be achieved through the creation of a new eligible persons register and by considering the views of victims in decision making.

Eligible persons' register

The Bill enhances the provisions relating to victims of crime by providing clear guidance as to who may be eligible to register with the eligible persons' register, and providing the chief executive with the ability to grant registration to persons who may not meet the statutory definition of 'victim' but may have safety concerns.

The Bill provides that the victim of an offence of violence or a sexual offence may apply to register with the eligible persons' register. An immediate family member of a deceased victim will also be eligible for registration under the Bill. There is provision in the Bill for a person who is eligible to register to nominate another person or agency for registration to receive information on his or her behalf.

Persons registered with the eligible persons' register will have the statutory ability to provide the Parole Board with a submission prior to the Board's consideration of an offender's application for parole.

The Register is an information service that provides timely and accurate information about a prisoner's progression through the correctional system to registered persons.

There is currently no ability for the chief executive to register a person who may not fit the statutory definition of 'victim', however who may be assessed as otherwise eligible to receive information, for example if their life or physical safety is endangered. Such persons must independently contact the Department for updates on a prisoner. This means that these people may remain unaware of a prisoner's eligibility dates or actual release date, if these dates change.

The Bill ensures that the chief executive has the power to register a person who, while not meeting the statutory definition of 'victim', would be approved to receive information about an offender. For example—

- A witness to an offence for which a prisoner has been convicted, who has received threats in relation to his or her testimony.
- A person who has been subject to threats or violence from a prisoner, however who is not the victim of the offence for which a prisoner has been sentenced.
- A victim of domestic violence who is not the actual victim of the offence.

Submissions to Parole Boards

The Bill provides for notifying registered victims that a prisoner has applied for parole. The relevant parole board is required to request a check of the eligible persons' register for any relevant victims registered when a prisoner makes an application for parole, and provide that any registered victims have 21 days to make a written submission to the board. This will enable victims to provide information to the board that the board may find useful when considering what terms and conditions should be placed on a parole order or to consider new information that was not before a sentencing court. It is not the function of the board to replicate the role of the sentencing court, and consider the impact of the offence on the victim at the time. However, information that was not before the sentencing court such as threats to victims or information relevant to parole conditions will assist the board in making determinations.

The Bill stipulates that a prisoner may lodge an application for parole no more than 120 days prior to his or her eligibility date. The eligible persons' register will be contacted when an application is lodged. This time frame will enable the board to notify the eligible persons' register, for a check to be conducted of the register and for victims to be notified and make a submission.

If a board has been notified that there are victims registered, the board must not consider an application for parole until the expiry of the 21 day period. The 21 day period should be adequate for a victim to send a submission, as victims will be made aware from their initial contact with the eligible persons' register of a prisoner's parole eligibility date, and the fact that they will have the opportunity to make a submission. If a prisoner chooses to lodge an application less than one month prior to his or her eligibility date, that prisoner's application may not be able to be considered until after his or her eligibility date.

Consequential Amendments Flowing from the Bill

To achieve the objectives, the Bill also amends the *Penalties and Sentences Act 1992; Prisoners (Interstate Transfer) Act 1982; Births, Deaths and Marriages Registration Act 2003; Child Protection (Offender Reporting) Act 2004* and the *Police Powers and Responsibilities Act 2000.*

Estimated Cost of Implementation for Government

All costs associated with the implementation of the new Act have been anticipated by the Department.

Consistency with Fundamental Legislative Principles

The Bill has been drafted with due regard to the Fundamental Legislative Principles (FLPs) as outlined in the *Legislative Standards Act 1992* (the LSA).

Section 4(2) of the LSA requires that legislation has sufficient regard to the rights and liberties of individuals. In particular section 4(3) (g) of the LSA provides that "the legislation does not adversely affect rights and liberties, or impose obligations, retrospectively."

At the outset, it can generally be stated that the constraints of the correctional environment, the need to protect the safety and security of the correctional system and the persons therein, together with the need to protect the wider community, justifies the need for the Bill being drafted in this way. In this regard, it is widely recognised that the correctional environment is one where the operation of many rights and liberties enjoyed in the general community cannot be reasonably expected to be enjoyed by the prison population (for example, EARC 1993 Report on the Preservation and Enhancement of Individuals' Rights and Freedoms, PSMC 1993 Review of the Queensland Corrective Services Commission and Kennedy 1988 Commission of Review into Corrective Services in Queensland (Final Report)).

The Scrutiny of Legislation Committee in Alert Digest Issue No 10 of 2000 clearly stated that the committee proceeds from the position that prisoners have rights but those rights are not the same as those of a free citizen. Prisoner rights must necessarily take a significantly attenuated form, given the status of prisoners and the imperative necessarily associated with the conduct of corrective institutions. These imperatives include the need to maintain order and security, to prevent violence and to prevent escapes. In addition, while the focus of incarceration has moved substantially towards rehabilitation, it rightly retains a punitive and deterrent element. On that basis, it is inevitable that a prison environment will afford prisoners fewer facilities and personal freedoms than those enjoyed by the general public.

There are a number of clauses in the Bill which have been translated from the Act, that are possible breaches of fundamental principles. These provisions are outlined below, in addition to a number of new clauses in the Bill that may be considered to be in breach of fundamental legislative principles.

Use of force

The powers translated into the Bill are clearly defined with the provision of safeguards and were developed in consideration of provisions under the Criminal Code, the *Police Powers and Responsibilities Act 2000* and the legislation of other Australian correctional jurisdictions.

The use of reasonable force is not new in the Queensland correctional environment and has been legislated for under the Act. It is not unreasonable for corrective services officers to have the power to use reasonable force. For example, when dealing with an uncooperative prisoner it is essential that an officer have the necessary power to be able to enforce any direction that he or she may be statutorily permitted to make.

Correctional personnel working in corrective services facilities receive extensive training in all aspects of prisoner management and the use of reasonable force is an element of such training.

The Bill clearly defines the circumstances in which reasonable force may be used in addition to clearly specifying the type of restraint devices that may be used.

The Bill, in relation to the use of lethal force against escaping prisoners in certain circumstances, is a departure from the fundamental legislative principle requiring legislation to have sufficient regard to the rights and liberties of individuals. However, with the armed assaults that occurred on the Sir David Longland Correctional Centre in November 1997 and the Borallon Correctional Centre in February 1998, for the purpose of assisting

several high security prisoners to escape from lawful custody, the need for the matter to be clarified in legislation was demonstrated.

Safeguards have been incorporated into the Bill with respect to any exercise of the power. Firstly, the chief executive is required to ensure that a corrective services officer authorised to use lethal force has been trained to deploy lethal force in such a manner so as to cause the least possible risk of injury to any innocent party.

Secondly, lethal force can only be deployed in prescribed circumstances such as to stop a prisoner from escaping or attempting to escape from secure custody, if the officer reasonably suspects that the prisoner is likely to cause grievous bodily harm to, or the death of, someone other than the prisoner in the escape or attempted escape. There is also a provision which refers to an "immediate response" and this is to provide for a situation where a prisoner, who is using force likely to cause grievous bodily harm or death, has escaped from secure custody and is pursued by an officer on to land adjoining the place of secure custody (a "hot pursuit" situation).

The protection of the community from escaping prisoners who, in the commission of that offence, pose a danger to public safety is the motivation for the provision. The provision only permits the use of lethal force if a pursued escapee from secure custody offered dangerous or life threatening resistance.

The Bill provides that lethal force must not be used if there is a foreseeable risk that the lethal force will cause grievous bodily harm to, or the death of, someone other than the prisoner or person assisting the prisoner to escape.

Where the use of lethal force is contemplated, a corrective services officer must reasonably believe that the act or omission can not be stopped in any other way; give a clear warning of the intention to use lethal force if the act or omission does not stop; give sufficient time for the warning to be observed; and, attempt to use the force in a way that causes the least injury to anyone. A safeguard has been provided so that these steps are taken unless the taking of any of the steps would create a risk of injury to the officer using the force or to another person, other than the prisoner or a person aiding the prisoner.

It is important to note that the term "secure custody" when used in respect to the use of lethal force has been defined in the Dictionary to mean a prison having a perimeter designed to prevent escape, a corrective services transport vehicle or a court facility. This will preclude the power from being exercised at a low security prison farm, a work camp, or a community corrections centre.

In terms of accountability, the Bill provides that the chief executive is required to keep a record of any incident involving the use of lethal force or the discharge of a firearm and report to the Minister any instance of the use of lethal force or the discharge of a firearm other than for training purposes. The chief executive is also obliged to comply with relevant provisions of the *Weapons Act 1990*.

Body searches

The Bill translates the existing provision that the chief executive may authorise a doctor to conduct a body search of a prisoner in certain prescribed circumstances. The Bill's dictionary defines the term "body search" to mean a search of a prisoner by a doctor that may include an examination, in accordance with medical protocols, of any orifice or cavity of the prisoner's body.

A fundamental legislative principle is that the exercise of administrative power should be subject to appropriate review. The Bill does not specifically provide for a review of a decision to authorise the body search of a prisoner by a doctor.

However, there is considered to be sufficient justification for this provision. In the first instance, it would not be practicable for such decisions to be subject to review given the often emergency circumstances regarding body searches, for example, when there is a reasonable belief that a prisoner is carrying a parcel of an illicit and life threatening drug in a body cavity. Secondly, the power proposed is carefully defined to specify the occasions for which it may be used. In this regard, the chief executive is to be empowered to authorise a doctor to conduct the search if the chief executive reasonably believes that a prisoner has ingested something that may jeopardise the prisoner's health or well being; a prisoner has a prohibited thing concealed within his or her person that may potentially be used in a way that may jeopardise the security and good order of a facility; or the search may reveal evidence of the commission of an offence or breach of discipline by the prisoner.

Thirdly, dignity and accountability issues are addressed by providing that the doctor is assisted by a nurse and that, if the doctor is not of the same gender as the prisoner, the nurse assisting the doctor must be of the same gender as the prisoner. The exception to this would be an emergency situation when the doctor would be able to call on someone irrespective of gender for assistance.

Finally, provision is made for the chief executive to maintain a register recording the details of each body search. The register is to record the

names of all persons present during such searches and the details of any article, substance or thing discovered. This requirement will open the process to the scrutiny of official visitors and the Crime and Misconduct Commission.

Medical examination or treatment

The Bill has translated the provision that a prisoner in a corrective services facility must submit to a medical examination or treatment by a doctor if the doctor considers the prisoner requires medical attention. It is possible that this may amount to a possible breach of the fundamental principle in that the provision does not have sufficient regard to the rights and liberties of individuals to refuse or review the exercise of the power.

However a right to refuse medical treatment or allow for the appropriate review of the exercise of the power must be balanced against the department's duty of care owed to a person being held in custody and the need to ensure the person's immediate health requirement are being met.

Substance testing

The Bill translates the provisions that authorise the taking of test samples from prisoners and deem that a prisoner is taken to have given a positive test sample if the prisoner refuses to supply a test sample within a reasonable time; attempts to disguise the results of a test sample; or tampers with a test sample. The Bill's Dictionary defines "positive test sample" to mean a test sample that shows a prisoner has used a substance that is a prohibited thing. The proposal is a departure from the fundamental legislative principle that legislation should give sufficient regard to the rights and liberties of individuals. However, while the proposal reverses the onus of proof there is considered to be adequate justification for the provisions.

Despite the efforts of correctional authorities, illicit drug use by prisoners can still occur. Near fatal and fatal overdoses can happen with distressing consequences for prisoners, staff and families. Illicit drug use in prisons not only brings high risks to the health and safety of prisoners but the security and good order of corrective services facilities are also jeopardised.

Assisted reproductive technology

The Bill provides a clear legislative prohibition on prisoners in custody accessing assisted reproductive technology. Although the Act is silent on whether prisoners in custody are entitled to access assisted reproductive technology, it can be implied from the prohibition on sexual activity during visits that it was never intended that prisoners should be able to conceive

children whilst in custody. The 1988 Kennedy review also rejected the notion of conjugal visits in prison.

This possible breach of fundamental legislative principle must be balanced against a plethora of complicated social and financial issues which would arise if both male and female prisoners were entitled to access artificial reproductive technology while in custody**.** It is not yet settled that persons in the general community have a right to access assisted reproductive technology and as has been recognised by the Scrutiny of Legislation Committee, prisoner's rights are not the same as free citizens.

As a result of the clear statement of intent in the Bill, prisoner access to assisted reproductive technology is prohibited. A clear prohibition ensures equity in decision making between prisoners and does not require correctional authorities to make value judgments as to whether individual prisoners should be allowed to procreate while in prison and are suitable to parent and provide for a child.

Change of name

Although imprisonment necessarily restricts the liberties and entitlements of prisoners, the Act merely required a person in the chief executive's custody to notify the chief executive prior to changing their name. This requirement was in addition to the restrictions placed on any applicant by the *Births, Deaths and Marriages Registration Act 2003.*

The requirement for a person in the chief executive's custody to seek the permission of the chief executive prior to submitting an application to change their name may affect the rights and liberties of such persons. However, the possible breach of fundamental legislative principles must be balanced against the need to ensure the safety of the community by enabling the chief executive to supervise offenders on parole, keep accurate information for victims on the eligible persons' register and ensure that correct information is held in relation to any prisoner in custody or under supervision in the community.

It is important that the chief executive has the ability to restrict the ability of offenders in this manner to ensure that a change of name does not jeopardise a prisoner's safe custody and welfare, is not offensive to a victim of crime or an appreciable section of the community or that a name change is not used to further an unlawful activity or purpose or to avoid the consequences of offending behaviour.

Prisoners carrying on a business

The ability to freely engage in any calling or to carry on any business while a person is imprisoned is obviously inconsistent with the very fact of imprisonment.

While the statutory prohibition to prevent sentenced prisoners from operating businesses and carrying on business activities from within corrective services facilities may be a breach of fundamental legislative principles, the right to carry on business is not an inalienable fundamental human right of the type sought to be protected by international covenants and other instruments. It is a right though, that exists at common law and a legislative provision of the kind proposed, can expressly abrogate the common law by express authorisation.

The possible breach of a fundamental legislative principle must be balanced against the need to ensure the safety and security of prisoners particularly those who may have access to business generated funds. Furthermore, the possible breach of fundamental legislative principles due to the prohibition on the operation of a prisoner's business from the custodial environment must be balanced against the needs and sensitivities of victims of crime. Victims have expressed serious concerns about prisoners who purport to carry on business while in prison particularly when a victim has been so adversely affected by a prisoner's criminal activity that he or she is unable to carry on his or her own business activities.

This prohibition only applies to sentenced prisoners, who are granted a 21 day period in which to transfer responsibility for the business to a person not in a corrective services facility. This is intended to limit the impact such a provision may have on the prisoner's family and/or employees.

Prisoners' phone calls

The translated provisions in relation to the recording and monitoring of prisoners' phone calls are a departure from the fundamental legislative principle that sufficient regard be given to the rights and liberties of individuals. The Scrutiny of Legislation Committee considered this provision in considering the Corrective Services Bill 2000.

In a correctional environment it is necessary for authorities to have appropriate power to ensure the security and good order of corrective services facilities and to protect the safety of persons either within a facility or in the general community. It is considered essential that correctional authorities be empowered to detect telephonically arranged activities which

could compromise the security of a corrective services facility or threatens someone's life or well being.

The scope of the provision is clearly defined and subject to the chief executive's authorisation. The recording and monitoring of prisoner phone calls will not extend to calls or communication, for example by facsimile, with a prisoner's lawyer, an officer of a law enforcement agency or the ombudsman.

Additionally, parties to a phone call will be informed, prior to connection that their conversation will be recorded and may be monitored.

Searching prisoner's mail

The provisions relating to the search of a prisoner's mail have been translated into the Bill. It is recognised that searching an individual's mail in the community is something which may adversely affect the person's rights; however, given the correctional environment there is a need for correctional authorities to have appropriate power to ensure the security and good order of corrective services facilities and to protect the safety of the persons both within the facility and in the general community.

The use of mail by prisoners is recognised as a means to maintain family and community ties. For the protection of the public, staff members and prisoners, mail other than privileged mail can be opened, searched and censored. This is necessary for the security of corrective services facilities to prevent escapes and the entry of contraband such as drugs. It is also necessary to ensure that inappropriate contact or threats are not made to victims or witnesses.

Searching privileged mail

It is essential that correctional authorities are empowered to detect activities which could compromise the security and good order of corrective services facilities. The Bill's provisions enabling privileged mail, in certain circumstances, to be opened and examined to establish that it is being used for the means of privileged matters will ensure that this form of mail will not be misused by prisoners for the purpose of evading scrutiny and ensure that the integrity of the privileged mail system is maintained.

While a possible breach of fundamental legislative principles is acknowledged, it is considered that the provision of checks and balances (as performed in many jurisdictions) will protect privileged mail as well as provide the recipient and sender of the mail with some assurance that the power to open privileged mail is not being exercised capriciously.

It is recognised that searching an individual's mail in the community is something which may adversely affect the person's rights; however, given the correctional environment there is a need for correctional authorities to have appropriate power to ensure the security or good order of corrective services facilities and to protect the safety of the persons both within the facility and in the community.

As a safeguard, if mail reasonably suspected as not being privileged is opened and it is established that the source or intended recipient is a prescribed person, the chief executive must keep the contents of the mail confidential. The privileged mail is to be examined only to the extent necessary to establish the veracity of a recipient's or sender's claim that the mail is the subject of privilege.

In addition, a register of privileged mail is to be maintained to record the details of the reason for the forming of a reasonable suspicion which resulted in the searching of the privileged mail. The register must be made available for official visitors to inspect in the event of them receiving a complaint from a prisoner. Any person who is found to have unlawfully disclosed the contents of a prisoner's privileged mail will be liable to two years imprisonment or 100 penalty units.

Maximum Security orders

The Bill makes provision for a prisoner to be involuntarily placed on a "maximum security order". In respect to the proposal regarding maximum security orders, it is not considered that it offends against any fundamental legislative principle.

The chief executive is responsible for the security and management of prisons and the safe custody and welfare of prisoners. However, within the custodial environment there are prisoners who have killed, or have caused serious injury to staff or other prisoners, or who have previously escaped or attempted to escape from high security facilities. Therefore, the chief executive must have the power to protect the general prison population from harm posed by such prisoners.

Nevertheless, the power to place prisoners on maximum security orders with a corresponding restriction to the liberty, privileges and other aspects of prison life are clearly defined and are subject to appropriate review both with the assistance of an official visitor or by the process of judicial review. The proposals do not affect or remove any right or liberty already expressly provided for in the Act.

Safety orders

The Bill also makes provision for a prisoner to be involuntarily placed on a "safety order". In relation to safety orders, the proposal impacts on the rights and liberties of a prisoner through the provision of involuntary separation without the prisoner's consent. However, there is considered to be sufficient justification for the proposed provisions.

It should be noted that a prisoner must not be placed on a safety order as a means of punishment. The proposal is necessary to protect the health and safety of prisoners or the security and good order of a corrective services facility. A safety order will allow for the provision of medical treatment for a prisoner who is considered to be at risk of self-harm and in need of separation by a medical practitioner or a psychologist. Safety orders may also be made by the chief executive for the protection of a prisoner at risk of harm from others or for a prisoner who poses a risk to others. In addition a safety order may be made for the good order or security of a corrective services facility.

Safety orders are also subject to compulsory reviews by a doctor or psychologist if a doctor or psychologist recommended the prisoner be placed on the order, and are also subject to review by an official visitor at the request of the prisoner, or, if the order is for longer than one month, automatically by an official visitor. Provision is also made for the compulsory medical examination of a prisoner on a safety order. These review mechanisms require the decision maker to receive and consider the recommendation of the reviewing doctor or psychologist, and the recommendations of the official visitor.

Finally, the Bill requires that records be maintained in respect of a prisoner who is placed on a safety order. This will open the process up to the scrutiny of official visitors and provide the same level of natural justice for a prisoner placed on a safety order as was accorded to a prisoner placed on a crisis support order under the Act.

Accommodation of children in custody

The Bill provides that only female prisoners may have their children stay with them in custody under prescribed conditions. While the arrangement appears to discriminate against male prisoners, it should be noted that this limitation is for the protection of children.

The threat of abuse in male prisons is such that even young male prisoners (under 18 years) are required to be separately accommodated from adult male prisoners for their safety. In light of this provision and in view of the high risk associated with male prisoners, the placement of children with

male prisoners is not appropriate. The nature of male facilities and the system of offender management in male facilities is such that it would not be in the best interests of a child to reside in a male prison. Consequently, there is currently no suitable accommodation facilities within male facilities that would allow children to be accommodated in the same fashion as children may be accommodated with a female prisoner.

Additionally, the placement of children with their mothers is regarded as a welfare measure under the *Anti-Discrimination Act 1991 (Qld)*, section 104, and is consistent with the Convention on the Rights of the Child.

There are also issues surrounding breastfeeding, which is now recommended by the World Health Organisation to continue until a baby is two years old. Similarly, in the report 'Mothers in Prison: Coping with Separation from Children', E Stanley and S Byrne, University of South Australia, October 2000, at page 2, it has been suggested that in infancy and early childhood significant disruption of the attachment bond between mother and child can have negative affects, particularly between the ages of 6 months and 4 years.

The Bill allows the chief executive to approve the accommodation, or the continued accommodation, of a child with a female prisoner only where it is in the child's best interests. The Bill removes the right of a female prisoner to seek an internal review of a decision of the chief executive to refuse the prisoners application to have a child accommodated with them in a facility, or to remove a child being accommodated with the prisoner from the facility.

In practice, situations arise that do not lend themselves to the time limits imposed by review mechanisms such as are in the Act. Where, for example, a female prisoner is at risk of self harm or of harming others it may not be in the best interests of the child to remain with that prisoner. The child may have to be removed as quickly as possible. The female prisoner would in that example, be able to make a fresh application for the child to reside with her once the crisis had passed.

For the protection of children accommodated with their mothers, accommodation with child security fences and cells designed to accommodate cots has been purpose built. Where there is simply not the infrastructure to support a child's appropriate accommodation, the decision to refuse should not be subject to review.

Despite this removal of an internal review right, the official visitors' scheme has been retained and enhanced in the Bill and provides, for

example, that an official visitor may attend to a range of matters, including responding to prisoners complaints in relation to treatment and conditions.

The Bill also supports additional measures for the maintenance of parent-child relationships by providing for extended visits for parents in corrective services facilities and by providing for additional compassionate leaves of absence for prisoners who are the primary care givers of a child under 18 years.

Interest received on personal moneys held in trust

The Bill translates the provision that the chief executive may invest money held in prisoners' trust accounts with a financial institution and that the chief executive must apply any interest earned on the investment for the general benefit of prisoners.

The provision could be regarded as departing from the fundamental legislative principle that compulsory acquisition of property be only undertaken with fair compensation because it deprives a prisoner of his or her entitlement to interest and does not compensate them for such deprivation. However, the provision, which has been standard practice in Queensland, is similar to the way in which solicitors' trust funds operate.

Safeguards have been provided with respect to the provision. For instance, the Bill provides that prisoners' trust account interest is to be used for the general benefit of prisoners. The chief executive will have the discretion to use the interest earnings to meet the sporting, educational or cultural needs of prisoners. Furthermore, the provision requires the chief executive to report annually to the Minister on the manner in which trust fund interest has been used.

Disposal of property of escaped prisoner

The Bill provides that escapees are deemed to have abandoned their personal property left in the corrective services facility from where they escaped and that such property is subsequently forfeited to the State.

This has implications in terms of the fundamental legislative principle which requires that compulsory acquisition of property be only undertaken with fair compensation. However, in view of the circumstances, there is considered to be sufficient justification for this. It would be unreasonable to expect the chief executive to continue recognising the property rights of an escaped prisoner. A major issue in this regard is the continued storage of the escapee's property and is compounded by the uncertainty of when the prisoner will be apprehended and returned to lawful custody.

In this regard some escapees are known to have been unlawfully at large for several years. Nevertheless, safeguards have been provided in relation to the provision.

The Bill provides a range of options that may be taken, as considered appropriate by the chief executive, in relation to the forfeiture of property. These options include retaining the property and applying it for the benefit of prisoners generally, donating the property to a registered charity or, if the property is inherently unsafe, destroying it.

The Bill also provides time frames for the dealing with property, for example, within 28 days after the property is seized or if, within the 28 days, an application has been made under the *Justices Act 1886*, section 39 (power of court to order delivery of certain property) until the application, and any appeal against the application, has been decided.

Abolition of remission

The abolition of remission may be seen as a possible breach of the fundamental legislative principles as outlined in the LSA.

The abolition of remission for current and future prisoners sentenced for an offence committed before 1 July 2001 is an extension of the Government's preference for supervised release which is currently reflected in the Act.

While an entitlement to be considered for remission still exists for a small group of prisoners, remission was abolished for all prisoners who committed an offence after the introduction of the current Act. Remission for certain categories of prisoners had already been abolished by the 1 July 1997 amendments to the *Penalties and Sentences Act 1992*.

However, the Act did not apply retrospectively to prisoners sentenced for offences committed before 1 July 2001. Instead, the consideration of 'community risk' was introduced in addition to good behaviour when considering whether to grant remission.

Although the Act does not establish any "right" to be granted remission, eligible prisoners may expect that they will be considered for remission once their point of eligibility has been reached. If an eligible prisoner has been of good conduct and industry and is assessed as not posing an unacceptable risk to the community, remission is granted.

While an entitlement to be considered for remission remains for only a small group of prisoners, the argument for the preservation of remission must be balanced against the desirability of having a consistent scheme of supervised early release and the benefit to community safety by ensuring that prisoners being released early from custody are monitored.

It is not in the public interest for prisoners to be administratively released from their sentence earlier than expected by the court without supervision and with no further restrictions on their movement being imposed. Overriding fundamental legislative principles in this matter is necessary for the protection and safety of the community. In addition, the community expects that prisoners will serve their entire sentence either in custody or under supervision.

It is not proposed to retrospectively alter grants of remission that have already been made and all prisoners who are eligible to be considered for remission prior to the commencement of the Bill will still be considered.

Review rights

To ensure that decisions affecting offenders are made fairly and reasonably, offenders in Queensland have access to a range of external review mechanisms such as the Queensland Ombudsman, the *Judicial Review Act 1991* and the *Freedom of Information Act 1992.* Also offenders have the ability to refer complaints about corrective services officers' alleged misconduct to the Crime and Misconduct Commission.

However, not all decisions under the Bill will be subject to judicial review, in particular the ability to review classification and transfer decisions will be exempted from the *Judicial Review Act 1991*. The rationale for this being, that decisions relating to the supervision, security and placement of prisoners are fundamental to the operation of a safe and secure correctional environment and prisoners should not be able to challenge or influence security requirements.

The removal of a prisoner's ability to have a security classification decision, or transfer decision reviewed under the *Judicial Review Act 1991* may involve a breach of a fundamental legislative principles.

Arguably the removal of this avenue of review will adversely affect the rights and liberties of prisoners. However it is widely accepted that the rights and liberties normally enjoyed in the community must be significantly curtailed in the prison environment (see Scrutiny of Legislation Committee Alert Digest No 10 of 2000). Any possible breaches must be balanced against the safety of the community and staff and the security and good order of corrective services facilities. In order to protect the safety of the community and properly implement the sentencing court's order of imprisonment, it is necessary for correctional authorities to be able to determine the type of accommodation and supervision that is necessary for each prisoner.

Classification decisions are determined by an assessment of a prisoner's risk to the security of corrective services facilities, risk to the community if the prisoner escapes and risk to staff and other prisoners. It is not appropriate for prisoners to attempt to influence their placement within the correctional system and the level of supervision that they are subject to by challenging security classification or transfer decisions. In the absence of judicial review the Bill provides for an internal mechanism for the merits review of security classification and transfer decisions. In addition a prisoner may raise a grievance relating to his or her security classification or transfer with an official visitor for investigation.

The courts have recognised for some time that certain prison management decisions are so integral to the nature of imprisonment that the correctional system would become unworkable if these decisions were made reviewable. In the case of powers relating to the accommodation and supervision of prisoners, the purpose of such powers is to give proper effect to the original decision of the court to restrict an offender's liberty by imprisonment.

There are also a number of provisions in the Act, which have been translated into the Bill without accompanying internal review provisions. They are—

- a review of a decision to not allow a child to reside with a female prisoner in a correctional facility or for a child to be removed from a corrective services facility; and
- a review of a decision to seize mail or property from a prisoner's cell within 28 days of the seizure.

These decisions are made under enactment which will entitle the prisoner aggrieved by a decision to consider taking action under the *Judicial Review Act 1991.*

The Bill does however, provide for additional external review mechanisms to ensure that administrative and management decisions, which may affect the rights of offenders or other persons, are not undertaken capriciously or arbitrarily. For example, the Bill provides that an official visitor may attend to a range of matters, including reviewing maximum security orders and responding to prisoners complaints in relation to treatment and conditions, property and remuneration, rehabilitation programs and communications. In addition, the placement of a prisoner on a maximum security order or a safety order must be reviewed by an official visitor and doctor/psychologist, respectively.

The appointment of a chief inspector under the Bill to oversee the inspection of all corrective services facilities and probation and parole offices will also enhance the accountability of the corrective services system. In addition, the ombudsman will continue to provide independent scrutiny of decisions affecting prisoners.

Inspector's power to require information

The power to compel a person to answer a question which may incriminate the person is considered a breach of fundamental legislative principles. In lieu of these powers, the Bill provides that it is an offence, punishable by 100 penalty points or two years imprisonment, for a person to give false or misleading information to an official visitor, inspector or corrective services officer. The intent is that a person may remain silent but cannot lie.

Parole Boards - Resettlement leave of absence

The Bill provides that an expectation to apply for resettlement leave of absence is no longer available for prisoners serving less than 8 years imprisonment.

While this arguably adversely affects the rights and liberties of relevant prisoners retrospectively, the possible breach of fundamental legislative principles must be considered in light of the fact that these particular prisoners rarely apply for resettlement leave of absence. In practice, where eligible, prisoners serving less than eight years will obtain reintegration leave to assist their entry back into the community whilst accommodated at work camps. A work order may be granted to a prisoner who is assessed as eligible and suitable for placement at a work camp to undertake community service and, when approved, engage in a program of leave designed to assist the prisoner's re-integration into the community.

Under the new arrangements, the Queensland Parole Board will be responsible for providing a structured and graduated process of community reintegration for serious offenders serving imprisonment of eight years or more including making decisions on applications by these prisoners for resettlement leave of absence.

Submissions from victims

The Bill provides that within 7 days after receiving a prisoner's application for parole, a parole board must give notice to the chief executive of the application. The chief executive must give an eligible person (such as a victim or victim's nominated representative) notice that the prisoner has applied for a parole order so that the eligible person may make a submission about the prisoner's parole application.

There may be a possible breach of the fundamental legislative principles of natural justice if the prisoner is not afforded the opportunity to respond to the victim's submission. This is particularly so if the parole board is considering not granting the prisoner parole and the victim's submission is relevant to that decision. The possible breach must be balanced against the concern for the safety and well-being of the prisoner's victim.

Parole Board not bound by sentencing court's recommendation

The Bill provides that when deciding whether to grant a parole order, a parole board is not bound by the recommendation of the court that sentenced the prisoner if the board receives information about the prisoner that was not before the court at the time of sentencing and after considering the information, considers that the prisoner is not suitable for parole at the time recommended by the court. Arguably the ability of a parole Board to depart from a recommendation of a court adversely affects the rights and liberties of prisoners.

This possible breach must be balanced against the overriding need to protect the community. The parole boards only hear applications from prisoners serving lengthy periods of imprisonment and as a result new information can become available between the time a prisoner is sentenced and when a prisoner becomes eligible to apply for parole that is relevant to assessing whether a prisoner is suitable for release into the community. There is an added protection in the Bill that a parole board may only depart from a sentencing court's recommendation from parole upon reliance on information not before the court at the time of sentence.

Amendment or suspension of a parole order by the chief executive

The chief executive may by written order, amend a parole order for up to 28 days if the chief executive reasonably believes the prisoner has contravened a parole order or poses an immediate risk of harm to him or herself. The Bill also provides that the chief executive may suspend a parole order for up to a period of 28 days where the chief executive reasonably believes the prisoner has failed to comply with the order or poses a serious and immediate risk of harm to someone else or poses an unacceptable risk of committing an offence or is preparing to leave Queensland, other than with the permission of the parole board.

Prior to a parole order being suspended or amended by the chief executive as outlined above, there is no opportunity in the Bill for the prisoner to make submissions which the chief executive must consider before making the decision to suspend or amend a parole order. This possible breach of the fundamental legislative principle of natural justice must be balanced

against the need for the chief executive to make decisions to ensure the immediate safety of the prisoner the subject of the parole order or the immediate safety of the community.

Protection of officials from civil liability

The Bill provides that an official does not incur civil liability for an act done, or omission made, in certain instances. For the purpose of this clause the term "official" is proposed to mean the Minister, the chief executive, a person appointed under the legislation and a volunteer. The Bill also provides similar protections to members of a parole board for an act done, or omission made honestly with or without negligence.

One fundamental legislative principle requires legislation to not confer immunity from proceeding or prosecution without adequate justification. While the proposal confers immunity on officials in certain circumstances there is considered to be adequate justification for the proposal. The 1999 Queensland Corrective Services Review considered that the *Corrective Services (Administration) Act 1988* (section 65) did not offer staff sufficient protection and stated that the provision should be considered with respect to the Cabinet guidelines on the matter.

It may reasonably be argued that the protection of officers, who have acted honestly and without negligence in the performance of their duties and parole board members who have acted honestly with or without negligence, is justified to prevent unnecessary anxiety for an honest, diligent and conscientious officer or parole board member who has been served with a claim.

Power to require name and address

The Bill provides that corrective services officers have the power to require that a person state their name and address if there is reasonable suspicion that the person has committed an offence against the legislation. The Bill provides that a person must comply with an officer's requirements in this regard unless they have a reasonable excuse not to comply. The Bill provides a safeguard by providing that, in the event a person does not comply with an officer's requirement to state his or her name and address, and it is not proved that the person has committed any offence, the person has not committed an offence by declining to state his or her name and address.

It is considered necessary to provide for these matters in order to ensure the security and good order of corrective services facilities. The community will also benefit from the enhancement of security of corrective services

facilities as there will be a reduced likelihood of escapes with or without outside assistance.

Auditing the records of an engaged service provider

The Bill provides that the chief executive may appoint an appropriately qualified person to review the performance of the authorised functions of an engaged service provider, by allowing the person unlimited access to the records relating to the performance of these functions. This may lead to a breach of a fundamental legislative principle as the records may contain information about a prisoner which is confidential and in normal circumstances would not be subject to disclosure.

This possible breach of the rights and liberties of a prisoner's right to confidentiality must be balanced against the need to ensure that the service providers engaged to fulfil the Department's authorised obligations must do so accordance with the required legislative, legal and government standards applicable to the Department's operations.

It should be noted that any personal information obtained during the review will be subject to the confidential information provisions in the Bill.

Criminal history

The Bill ensures that the chief executive has the ability to access all the relevant information required to assess a person's suitability to be, or continue to be, employed in the corrective services environment or to gain access to corrective services facilities. However, access to this information needs to be balanced against an individual's right to privacy and for this reason the proposed provisions may breach fundamental legislative principles of the LSA.

It is necessary to establish powers in the Bill for the chief executive to obtain comprehensive criminal history information including charges because of the importance of maintaining public confidence in the integrity of corrective services and the safety and security of the Queensland community. However, it is also necessary to incorporate safeguards to ensure that the new powers are balanced with the need for fair treatment and rehabilitation of Queensland public service employees and prospective employees who have committed certain offences.

To minimise the impact of the new powers on individuals, the information provided under the relevant provision of the Bill may only be used for the purpose of determining a person's suitability for continued or prospective employment in the correctional system and in accessing corrective services facilities. The Bill provides for the making of guidelines on the use of

information. The purpose of the guidelines is to ensure that natural justice is afforded to the persons about whom the information is obtained; and that decisions about the suitability of persons, based on the information, are made consistently.

In addition, the Bill imposes specific confidentiality requirements on a person who obtains knowledge of another person's criminal history. Any person who is found to have unlawfully disclosed the contents will be liable to two years imprisonment or 100 penalty units.

Recognition of Aboriginal tradition and Torres Strait Islander custom

The Bill provides for the recognition of Aboriginal tradition and Torres Strait Islander custom. Clause 150 provides that, when establishing new facilities, the chief executive must ensure provisions are made for a meeting place for Aboriginal and Torres Strait Islander prisoners. In addition, elders, respected persons or spiritual healers who are relevant to prisoners must be notified of a prisoner's illness or death.

Moreover, culturally specific needs are to be especially considered when considering whether to grant compassionate leave, whether to grant extra visits to prisoners and when designating recreation areas within prisons (prison amenities).

Consultation

Community

The community has participated in the review of the Act in a variety of ways. Given the complexity and profile of correctional issues, an extended consultation process was undertaken to ensure appropriate opportunities for community input and discussion with key community stakeholders and government agencies. Thirteen consultation papers were publicly released between October 2004 and January 2005, followed by a number of feedback sessions with key stakeholders and government agencies. The consultation phase of the review concluded on 31 March 2005.

The consultation papers were downloaded from the Department's website 26,807 times and 127 individuals and organisations made submissions to the review.

As well as being available electronically, hard copies of the consultation papers were distributed to 120 key stakeholders. Additionally, 25 community stakeholders attended consultation sessions facilitated by Dr Dominic Katter in Cairns, Brisbane city and Goodna to provide feedback on the consultation paper topics.

To allow prisoners the opportunity to contribute to the review, all consultation papers were placed in prison libraries and prisoners were advised that submissions could be made confidentially using the privileged mail system. Two submissions were received from prisoners.

Dr Katter prepared a report for the Minister summarising the results of consultation that was released on 3 August 2005. This report provides a summary of the range of views put forward in submissions from stakeholders and by feedback session participants.

Government

The Department has worked closely throughout the review with other relevant agencies delivering services which intersect with the correctional system. An inter-departmental working party comprising senior officers from the Department of Premier and Cabinet, Queensland Treasury, Department of Justice and Attorney-General and the Queensland Police Service was established to support the review process and has met regularly since September 2004.

The role of the inter-departmental working party has been to examine the linkages between the Act and other criminal justice and administrative legislation with a view to ensuring a consistent and integrated legislative framework.

Regard for Aboriginal and Torres Straight Islander custom

The Bill contains no provisions that will adversely affect Aboriginal or Torres Strait Islander custom.

Chapter 1 Preliminary

Short title

Clause 1 provides that the short title of the Bill is the *Corrective Services Act 2006*.

Commencement

Clause 2 provides for the Bill to commence on a day to be fixed by proclamation. This delayed commencement will allow sufficient time for

the accompanying Corrective Services Regulation to be made and for implementation.

Chapter 7, Part 8 will commence on the date of assent.

Purpose

Clause 3 states the purpose of corrective services is community safety and crime prevention through the humane containment, supervision and rehabilitation of offenders.

The Bill recognises that every member of society has certain basic human entitlements, and that, for this reason, an offender's entitlements, other than those that are necessarily diminished because of imprisonment or another court sentence, should be safeguarded.

The Bill also recognises the need to respect an offender's dignity and the special needs of some offenders by taking into account an offender's age, sex or cultural background and any disability an offender has.

A deliberate reference in the "Purpose" statement has been made to "cultural background." The previous "Purpose" statement in the Act had made reference to "the culturally specific needs of Aboriginal and Torres Strait Islander offenders". The inclusion in the Bill of a more culturally encompassing phrase is inclusive of both Aboriginal and Torres Strait Islanders and other cultures and reflects the diversity of the prisoner population.

The dictionary defines "special need" as a need the offender has, compared to the general prisoner population, because of the offender's age or disability or sex or cultural background. The definition provides as an example of a need - the culturally specific needs of Aboriginal and Torres Strait Islander prisoners.

Clause 266(2) of the Bill also reflects the "special needs" principle in relation to the provision of programs and services and through the example provided how the sex of an offender may be considered such that wherever possible, female doctors must be appointed to prisons for female prisoners.

While the issue of "prisoners' rights" was not specifically considered during the review of the Act it is an issue which has been well ventilated throughout the various reviews undertaken in Queensland of correctional services.

There was no recommendation by Kennedy to adopt "*legally defined rights*" in the 1988 Commission of Review into Corrective Services in

Queensland (Final Report 1988, p.190) on the basis that it would result in an overly legalistic environment for the resolution of grievances.

The Public Sector Management Commission's (PSMC) review of the Queensland Corrective Services Commission in 1993 also considered the issue and noted that "prisoners would not derive any greater protection from a codification of rights than exists under current legislation as any rights would have to be heavily qualified to enable proper administration of offenders and meet the requirements of order and discipline" (PSMC 1993, p. 234)

The Bill like the Act takes account of this history and undertakes to safeguard certain "basic human entitlements". Examples of those entitlements include: adequate accommodation, health and medical care, the ability to maintain family ties, fair treatment by public officials and appropriate recognition of an offender's special needs. The Bill clearly seeks to provide for these matters (refer, for example to clauses 18 and 21).

In addition, correctional authorities have a legal duty to provide for the necessities of life for those undergoing detention by virtue of section 285 of the Criminal Code.

Definitions

Clause 4 provides for a dictionary under schedule 4 to define particular words used in the Bill.

References to prisoner and corrective services facility

Clause 5 clarifies how references made in provisions of the Act concerning prisoners and corrective services facilities are to be read.

Chapter 2 Prisoners

Part 1 Custody And Admission Of Prisoners

Where a person is to be detained

Clause 6 sets out the circumstances in which a person must be detained in a corrective services facility. The clause provides that if the period of imprisonment or detention is for 21 days or less then the person may be detained in a police watch-house for all or part of that period.

Even where the period of imprisonment may be for more than 21 days, the person may be detained in a police watch-house until it is convenient to take the person to a corrective services facility.

Example—

1. A prisoner from a remote or regional community who is sentenced to a term of imprisonment of less than 21 days may serve the sentence in the local watch-house in order to keep the prisoner in the community.

2. A prisoner may be required to make further appearances in a regional court and it may be more convenient for the court for the prisoner to remain in the local watch-house until the court matters have been resolved.

Clause 6 is subject to provisions in the Bill allowing a prisoner to be lawfully outside a corrective services facility, and other statutes such as the Criminal Code and the *Juvenile Justice Act 1992*.

Example—

A prisoner may be lawfully outside of a corrective services facility when undertaking a leave of absence.

When a person is taken to be in the chief executive's custody

Clause 7 sets out the circumstances in which a person is considered to be in the chief executive's custody and provides examples of the situations where a person outside of a corrective services facility is considered to be in the chief executive's custody. It clarifies that a reference to the "keeper or

officer in charge of a facility" is a reference to the chief executive. The chief executive is taken to have custody of a person even if the person is in the physical custody of, or being supervised by, an engaged service provider. Chapter 6 of the Bill provides for engaged service providers.

The "chief executive", refers to the chief executive of the Department that administers the Corrective Services Act (section 33 *Acts Interpretation Act 1954*).

Example—

A prisoner accommodated in a prison managed under contract to the chief executive is still in the legal custody of the chief executive.

When a person is taken to be in the commissioner's custody

Clause 8(1) describes the circumstances in which a person sentenced to a term of imprisonment or required by law to be detained in custody for a period is taken to be in the police commissioner's custody. A person admitted to a watch house is considered to be in the commissioner's custody even if the person is lawfully outside a watch house.

Examples—

1. A person would be considered to be lawfully outside a watch house if a person being detained in a local police watch-house was summoned before a court to appear as a witness in a matter involving another person.

2. A person detained in police custody will be in the Commissioner's custody despite a warrant committing the person into the custody of someone else, such as the chief executive.

Authority for admission to corrective services facility

Clause 9 provides that prior to admitting and detaining a person in a corrective services facility, the corrective services officer responsible for admitting prisoners must be given a document authorising the detention of the person. The document may consist of a warrant for the person's detention or a verdict and judgement record under the Criminal Practice Rules 1999 or an order under the *Penalties and Sentences Act 1992*. The clause preserves the chief executive's authority to specify the corrective services facility to which a person may be taken and detained notwithstanding a warrant committing the person to a particular corrective services facility or to a police watch-house.

Example —

A warrant may be addressed to the general manager of a particular prison to which a person was intended to be sent by the sentencing court. Irrespective of the warrant's address details, the person may lawfully be admitted to another corrective services facility.

Record of prisoner's details

Clause 10 provides for the chief executive to establish a record containing each prisoner's details. To obtain a prisoner's details a corrective services officer is authorised to photograph the prisoner, and take the prisoner's fingerprints, palm prints, footprints, toe prints, eye prints or voiceprints.

This clause establishes the circumstances in which the photographs and prints may be destroyed. If a prisoner is found not guilty of an offence for which the prisoner was remanded in custody other than unsoundness of mind, or if the charges against the prisoner are discontinued or dismissed, the photographs and prints must be destroyed.

However the photographs and prints of a prisoner must not be destroyed if the prisoner is being detained in respect of another conviction or charge.

Example—

A person is admitted to a corrective services facility having been charged with an offence and remanded in custody for trial. The person is photographed on admission. Subsequently, but before the trial, the person is convicted of another offence and sentenced to imprisonment. The photograph must not be destroyed even if the person is later acquitted of the first offence.

For this clause "prisoner" is particularly defined to include a person subject to a community based order (that is a community service, a fine option, an intensive correction, or a probation order).

Prisoner to be informed of entitlements and duties

Clause 11 prescribes the information the chief executive must provide to a prisoner upon admission to a corrective services facility. Prisoners must be informed of their entitlements and duties under the Act and of the administrative directions and procedures that relate to the prisoner's entitlements and duties. The chief executive must take reasonable steps to ensure that an illiterate or non-English speaking prisoner understands the information given to the prisoner.

This clause also provides that copies of the Act must be provided to prisoners and a copy of other legislation may also be provided. Generally prisoners would have access to copies of the Act in the respective corrective services facility libraries.

Prisoner security classification

Clause 12 provides that the chief executive must classify a prisoner into one of three classifications upon admission to a corrective services facility. The three classification levels are maximum, high and low.

All prisoners including remand prisoners will undergo a security assessment upon admission to a corrective services facility and will be assigned a security classification that reflects the level of security and supervision the prisoner requires.

To assist the chief executive in determining the appropriate classification for a prisoner regard must be had to each of the following criteria, the:

(a) nature of the offence for which the prisoner has been charged or convicted.

(b) risk of the prisoner escaping, or attempting to escape, from custody;

(c) risk of the prisoner committing a further offence and the impact the commission of the further offence is likely to have on the community;

(d) risk the prisoner poses to himself or herself, and other prisoners, staff members and the security of the corrective services facility;

The security classification of a prisoner will guide the appropriate security, supervision and placement of a prisoner.

Example—

A prisoner who is assessed as low security may be accommodated in a low security facility dependant on whether suitable accommodation exists for the prisoner.

Reviewing prisoner's security classification

Clause 13 provides for the review of a prisoner's security classification. Prisoners who are classified as maximum security are required to have a classification review every six months and prisoners who are classified as high security must have a classification review at least every twelve months. Low security prisoners will not have a regular security classification review because they have reached the lowest security level.

The chief executive has discretion to review a low security prisoner's security classification. This would generally happen following an incident.

Example—

A prisoner who is classified as low security is involved in a fight with another prisoner and is charged with assaulting the other prisoner. The chief executive reviews the prisoner's classification and determines that the prisoner should be classified as high security.

Changing prisoner's security classification

Clause 14 provides that the chief executive may change a prisoner's security classification after reviewing it under clause 13.

Notice of decision about prisoner's security classification following review

Clause 15 provides that the chief executive must advise a prisoner who has their security classification increased following a review, that if the prisoner is dissatisfied with the decision, the prisoner may ask the chief executive to reconsider the decision within 7 days of being advised of the decision.

Reconsidering decision to change prisoner's security classification

Clause 16 provides for a merits review of a decision by the chief executive to increase a prisoner's security classification, if the prisoner is dissatisfied with that decision. The prisoner is able to seek a reconsideration of his or her classification within 7 days of receiving notice of the decision. After reconsidering the decision, the chief executive must advise the prisoner if the decision has been confirmed, amended or cancelled.

Application of *Judicial Review Act 1991* to decisions about prisoner security classification

Clause 17 provides that parts 3 (statutory orders of review), 4 (reasons for decision) and 5 of the *Judicial Review Act 1991* do not apply to decisions made by the chief executive in relation to security classification under clauses 12 ,13, 14 and 16.

A classification decision is a prison management decision about the appropriate security and supervision requirements of the prisoner. Decision

is defined as meaning a decision affected by jurisdictional error. The *Judicial Review Act 1991*, parts 3, 4 and 5 other than section 41(1) do not apply to a decision made, or purportedly made, under this section about the security classification of a prisoner.

This clause ousts the application of Parts 3, 4 and 5 of the *Judicial Review Act 1991* so that classification decisions are not reviewable by the Supreme Court and prisoners cannot request a statement of reasons in relation to the decision. A prisoner is only able to request a merits review of a security classification decision under clause 16.

Accommodation

Clause 18 requires that wherever it is practicable, given the available accommodation of a particular corrective services facility, each prisoner must be accommodated in their own individual cell or room. As a safety measure, prisoners under the age of 18 years are required to be accommodated apart from adult prisoners. However, this does not apply where it is in the best interests of a prisoner under the age of 18 not to be separated from the adult prison population.

Examples—

1. A young Aboriginal prisoner may be accommodated with older prisoners to allow the young prisoner to be with a family member.

2. A young prisoner may be accommodated with older prisoners at a work camp.

3. A young prisoner may be accommodated with an older prisoner if the young prisoner is at risk of self-harm.

Part 2 Management of Prisoners

Division 1 Management of prisoners generally

Effect of prisoner's security classification

Clause 19 provides that different arrangements can be made for the management of prisoners with different security classifications.

Directions to prisoner

Clause 20 provides the circumstances under which a corrective services officer may give a prisoner a direction to do or to cease doing something within the corrective service facility. This includes where the officer reasonably believes the direction is necessary for the welfare or safe custody of the prisoner or other prisoners, or is necessary for the good order or security of the facility and to ensure an offence is not committed against this Bill, another Act or a breach of discipline. Directions may be given either in writing or orally.

Examples—

1. A group of high security prisoners gathered together have commenced to act in a disorderly manner. An officer may give an oral direction to the prisoners to disperse to avoid the escalation of the situation.

2. An officer may give an oral direction to prisoners who are assaulting one another to desist.

Medical examination or treatment

Clause 21 requires a prisoner to submit to a medical examination or treatment by a doctor if the doctor considers the prisoner requires medical attention. If it is practicable, a doctor must tell a prisoner why the prisoner needs medical treatment and what the treatment will involve, before carrying out the treatment.

Examples—

1. If a prisoner is suffering from a virus and requires treatment a doctor should tell the prisoner why the prisoner needs treatment and what the doctor is going to do to the prisoner before giving the prisoner an injection.

2. If a prisoner has been assaulted and is unconscious it would not be practicable for a doctor to inform the prisoner why they require treatment and what the treatment involves.

A prisoner must submit to an examination by a doctor or a psychologist for classification purposes, transfer purposes, suitability to participate in an approved activity, course or program, or to decide the prisoner's suitability for leave of absence or release. A prisoner must also submit to examinations by psychiatrists as required under the *Dangerous Prisoners (Sexual Offenders) Act 2003* and *Criminal Law Amendment Act 1945*.

The term "psychologist" is defined in the dictionary to have the meaning given by the *Psychologists Registration Act 2001*.

Examples—

1. A prisoner may suffer from a latent psychological disorder which manifests itself during the term of the prisoner's imprisonment. This may necessitate the prisoner being transferred to another corrective services facility.

2. A psychological assessment may be required to ascertain the risk the prisoner poses of re-offending to determine a prisoner's security classification.

A doctor may take a sample of a prisoner's blood or another bodily substance or order a prisoner to provide a sample of the prisoner's urine or another bodily substance.

A doctor may also authorise another suitably qualified person to examine or treat a prisoner.

Example—

A doctor appointed to a prison may refer a pregnant prisoner to a gynaecologist.

If a prisoner refuses to submit to an examination or treatment, the doctor and anyone acting at the doctor's direction may use the force that is reasonably necessary to carry out the examination or treatment.

Private medical examination or treatment

Clause 22 provides that a prisoner may apply for approval to be examined or treated by a doctor or psychologist of the prisoner's choice.

Example—

A prisoner with a pre-existing medical condition may apply to the chief executive to be permitted to continue receiving treatment from his or her own doctor.

The provision makes it clear that the right to procreate does not survive imprisonment and that a prisoner in a corrective services facility can not apply for approval to participate in assisted reproductive technology or participate in assisted reproductive technology.

The chief executive may approve an examination or treatment other than assisted reproductive technology if the prisoner is able to pay the

associated costs and the nominated doctor or psychologist agrees to perform the examination or treatment.

Any report or recommendation made by the nominated doctor or psychologist must be considered, but is not binding.

Example—

A nominated psychologist may report that a high risk prisoner is suffering from claustrophobia and recommends that the prisoner be sent to a low security facility where there are open spaces. The chief executive would not be bound to send the prisoner to a low security facility.

Dangerously ill prisoner

Clause 23 requires that if the chief executive, or a doctor appointed for a corrective services facility, considers a prisoner to be dangerously ill or seriously injured, the chief executive must immediately notify the prisoner's nominated contact person, a religious visitor and, for an Aboriginal or Torres Strait Islander prisoner, an Aboriginal or Torres Strait Islander legal service that represents the area in which the facility is located and, if practicable, a relevant elder, respected person or indigenous spiritual healer.

Death of prisoner

Clause 24 requires that in the event of the death of a prisoner, the chief executive must notify a doctor appointed for a prison, the police officer in charge of the police station nearest to the place where the prisoner died, the prisoner's nominated contact person, a religious visitor and, for an Aboriginal or Torres Strait Islander prisoner, an Aboriginal or Torres Strait Islander legal service that represents the area in which the prisoner died and, if practicable, a relevant elder, respected person or indigenous spiritual healer. The chief executive is to keep a record of the death of any prisoner.

It is anticipated that the regulation will require the following details of any death to be recorded, the:

(a) prisoner’s name and identification number;

(b) time, date and place of death;

(c) times and dates on which the persons required under clause 24 (1) of the Bill were notified;

(d) names and date of appointment of inspectors to investigate the death of the prisoner; and

(e) cause of death as recorded on the death certificate.

Registration of birth

Clause 25 provides that a birth certificate for a child must not state or contain any information that would infer that either parent is a prisoner at the time of the birth. If an address is required by the *Births, Deaths and Marriages Registration Act 2003* the address must be a city or town and not a corrective services facility.

Marriage

Clause 26 requires that a person in the chief executive's custody must notify the chief executive, in writing, before lodging a notice of intention to marry under the *Marriages Act 1961* (Commonwealth). The clause prescribes a maximum penalty of 20 penalty units for a failure to comply. Action in this regard is appropriate when considering the chief executive's statutory responsibility under clause 10(1) of the Bill to keep records of the details of prisoners. This is particularly relevant for a female prisoner who may change her surname upon marriage.

The chief executive may allow a prisoner to be married in a corrective services facility.

Example—

To ensure the safety and security of a corrective services facility, the chief executive may require that a marriage ceremony be held at a particular place and time within a corrective services facility and may specify the number of people who may be invited to the ceremony.

Change of name

Clause 27 requires a person in the chief executive's custody to obtain the chief executive's permission, in writing, before changing his or her name under the *Births Deaths and Marriages Act 2003*. In deciding whether a person is granted permission to change their name, the chief executive must consider:

(a) whether the change of name poses a threat to the security of a corrective services facility. For example, the name could be inflammatory to a particular group of prisoners;

(b) whether the change could impact on the safety of a person or persons;

(c) whether the name could be used to further an unlawful activity or purpose;

(d) whether the name could be offensive to a victim of crime or an immediate family member of a deceased victim of crime.

In view of the chief executive's statutory responsibility under clause 10(1) of the Bill, it is necessary that the chief executive, at all times, be informed of any identification changes in order for the appropriate records to be updated. Up to date prisoner records are required to enable the department to:

(a) effectively supervise prisoners released on parole orders;

(b) provide accurate information concerning certain prisoners to persons registered in the eligible persons register;

(c) effectively discharge obligations to the prisoner under the Bill for example, the giving of incoming mail bearing a prisoner's changed name, will be hampered by a change of name where the department has no prior knowledge of that change.

The clause prescribes a maximum penalty of 20 penalty units or 6 months imprisonment for a failure to comply with this condition.

Carrying on a business

Clause 28 expressly prohibits a sentenced prisoner from carrying on or participating in a business while the prisoner is in custody in a corrective services facility. The prohibition on carrying on or participating in a business applies to both prisoners sentenced before and after the commencement of the Bill.

Any prisoner who is carrying on or participating in a business before commencement will have 21 days to stop participating in or carrying on a business. Any prisoner sentenced after commencement will have 21 days from being sentenced to stop participating in or carrying on a business from custody. The provisions are not intended to apply to parolees.

This clause will prevent a prisoner from profiting from a business enterprise while incarcerated.

Example—

A prisoner or a corporation in whose management the prisoner participates will be prohibited from selling artwork on the internet or from giving artwork to a third party to sell on behalf of the prisoner or corporation.

Division 2 Children accommodated with female prisoners

Application for accommodation of child with female prisoner

Clause 29 applies to a female prisoner who gives birth to a child during her period of imprisonment or who has custody of a child, whether or not the prisoner is the child's mother.

A female prisoner, upon admission to a corrective services facility, must be informed that she may apply to the chief executive to have the child accommodated with her. Furthermore, that if she does apply and her application is successful, she will have primary responsibility for the child's care and safety, including all costs associated with that care. The costs associated with the care of the child include the costs of nappies and baby goods for the child, but not food or drink for the child.

However, in the event the female prisoner became unable to care for the child, for example due to illness, the most likely scenario would be that the department would ensure the child's care and safety needs were met while simultaneously taking steps to find a suitable alternative placement for the child.

The prisoner or the chief executive of the department in which the *Child Protection Act 1999* is administered, may apply to the chief executive to have the child accommodated with a prisoner. This department is currently the Department of Child Safety.

Example—

Where a female prisoner's young child is the subject of a protection order made by the Department of Child Safety and the foster-family with whom the child is placed is leaving the State for a short period and alternative accommodation is required for the child.

Deciding application

Clause 30 defines the circumstances under which the chief executive may grant an application by a female prisoner to have a child accommodated with her inside a corrective services facility. These considerations include what would be in the best interests of the child, and whether or not there is suitable accommodation within the facility for the female prisoner and the child. Other considerations are whether the child has been fully immunised, whether the child is subject to a court order requiring the child

to live with someone else, and, if the child is under the care of the Department of Child Safety, whether the chief executive of that Department has consented.

The Bill distinguishes between babies and young children who have not yet started primary school and older children who have commenced school. Children who are not yet eligible to commence primary school may be accommodated with a female prisoner in a corrective services facility. Older children may only be accommodated on a weekend or during school holidays in a low security community corrections centre. Primary school is defined in the dictionary to include a full-time preparatory year of education.

Clause 30 also provides the types of matters that the chief executive may consider in determining what is in the best interests of a child. These are, the child's age and sex, cultural background and mental and physical health as well as the emotional ties between the child and his or her parents, the child's established living pattern and the child's wishes.

Removing child from corrective services facility

Clause 31 allows the chief executive to remove a child being accommodated with a female prisoner from a corrective services facility, and provides the circumstances under which such a removal may take place. These circumstances are where:

(a) a court makes a residency order in favour of another person; or

(b) it is in the child's best interests; or

(c) the female prisoner requests it; or

(d) the child becomes eligible to start primary school; or

(e) the female prisoner is transferred to a corrective services facility that cannot provide appropriate accommodation; or

Example—

Where a female prisoner is returned from a community corrections centre to a high security facility following further charges, and where there is no suitable accommodation the child may be removed until suitable accommodation becomes available.

(f) it is in the interests of the good order and management of the corrective services facility.

The clause provides guidance to the chief executive when making such a decision, and includes that when deciding if the decision is in the best interests of the child the chief executive may consider anything that is relevant, but must consider the child's age, sex, mental and physical health.

This clause also makes it clear that separating a child from a female prisoner is not to be used as a punishment or to discipline a prisoner.

Search of accommodated child

Clause 32 outlines the circumstances under which a child accommodated with a female prisoner may be searched, and makes clear that such a child may only be required to undergo either a general search or a scanning search before entering the facility. These searches are the same searches that a visitor to a corrective services facility may be subjected to. A child accommodated with a female prisoner must not be submitted to a personal search, or a search requiring the removal of clothing.

The term "scanning search" is defined in the dictionary to mean a search of a person by electronic or other means that does not require a person to remove his or her general clothes or to be touched by another person. The dictionary gives as examples of a scanning search, a portable electronic apparatus that can be passed over the person, an electronic apparatus through which the person is required to pass or a dog trained to detect the scent of prohibited substances.

The term "general search" is defined in the dictionary to mean the search of a person:

(a) to reveal the contents of the person's outer garments, general clothes or hand luggage without touching the person or the luggage; or

(b) in which the person may be required to open his or her hands or mouth for visual inspection or to shake his or her hair vigorously.

As a safeguard in relation to the searching of children accommodated with a female prisoner, appropriate training of corrective service officers likely to carry out such searches will be implemented along with strict Department procedures to ensure such searches are carried out in an appropriate manner.

Division 3 Search of prisoners

Power to search

Clause 33 provides that the chief executive may order a corrective services officer to conduct a scanning search, general search or personal search of a prisoner or to search a prisoner's room or prisoner facilities.

The term "scanning search" is defined in the dictionary to mean a search of a person by electronic or other means that does not require a person to remove his or her general clothes or to be touched by another person. The dictionary gives as examples of a scanning search, a portable electronic apparatus that can be passed over the person, an electronic apparatus through which the person is required to pass or a dog trained to detect the scent of prohibited substances.

The term "general search" is defined in the dictionary to mean the search of a person:

(a) to reveal the contents of the person's outer garments, general clothes or hand luggage without touching the person or the luggage; or

(b) in which the person may be required to open his or her hands or mouth for visual inspection or to shake his or her hair vigorously.

The term "personal search" is defined in the dictionary to mean a search in which light pressure is momentarily applied to the prisoner over his or her general clothes without direct contact being made with the prisoner's genital or anal areas or, for a female prisoner, the prisoner's breasts.

Examples —

1. Most prisons conduct commercial and non-commercial industrial activities on the prison premises, for example, metal works, woodworking or a bakery. Prisoners who work in these industries have access to implements that may be used to facilitate an escape or cause injury to another person in the facility. The clause safeguards against this eventuality by providing a power to search such prisoners.

2. Certain prisoners are permitted leave of absence from a corrective services facility to perform community service or attend medical appointments. Such prisoners may, on their return to the facility, attempt to smuggle into the facility dangerous drugs or things prohibited by regulation. The clause provides the power to search for such items.

3. A prisoner may have secreted in his or her cell an implement to be used to facilitate an escape. The clause provides the power to search the prisoner's cell in order to locate that implement.

The clause also provides that if there is a reasonable suspicion that a prisoner may possesses something that may pose a risk to the safety and security of a corrective services facility or to the safety of persons in the facility, a corrective services officer may conduct a general, personal or scanning search of the prisoner.

Examples—

1. Information received by a prison's intelligence unit indicates that dangerous drugs are to be thrown over the prison fence by a member of the public and a prisoner, acting in collusion with that member of the public, will collect the drugs. An officer acting on the information received would search the prisoner.

2. An officer working in a prison accommodation unit that houses several prisoners may reasonably believe that a prisoner who is responsible for meal preparation has taken a knife as that prisoner was working in the area at the time the knife went missing. On these grounds, the officer is empowered to search the prisoner.

3. Where a prisoner has, when passing through an electronic scanning device, given a positive indication that the prisoner has on his or her person a metallic object, the officer is empowered by the provision to proceed with further searches e.g., general or personal searches to locate toe item.

The clause contemplates a particular search being carried out or a combination of searches depending on the circumstances.

Examples—

1. A prisoner may have a dangerous drug hidden in a matchbox held by the prisoner. The provision enables the officer to search the matchbox.

2. A prisoner may have a knife hidden in the spine or interior of a book that the prisoner is carrying. The provision empowers the officer to search the book.

The power to search a prisoner includes a power to search anything in the prisoner's possession and may be exercised on the day on which the prisoner is discharged or released.

Example—

A prisoner, due for discharge or release on leave of absence, attempts to take out of the corrective services facility a letter from another prisoner containing threats to a victim. The search would locate this letter and stop it leaving the facility.

Personal search of prisoners leaving particular part of corrective services facility

Clause 34 provides that the chief executive may order that each prisoner entering or leaving a part of a corrective services facility submits to a personal search.

Example—

A group of prisoners have been participating in vocational training in a workshop area using tools to make wooden furniture. The chief executive may order that these prisoners are subjected to a personal search whenever they leave the workshop area.

The clause contains safeguards to a prisoner's dignity by providing that a personal search of a prisoner may only be carried out by an officer of the same gender as the prisoner being searched.

Search requiring the removal of clothing of prisoners on chief executive's direction

Clause 35 provides for the chief executive to give a written direction to carry out a search requiring the removal of clothing of prisoners as stated in the direction. The direction may state the time at which the search is to be carried out, or that the search is to be preceded by a less intrusive search.

The term "search requiring the removal of clothing" is defined in the dictionary to mean a search in which the prisoner removes all garments during the course of the search, but in which direct contact is not made with the prisoner.

It is considered that search powers requiring the removal of clothing are warranted in a correctional environment to ensure the security and good order of corrective services facilities and the safety of the persons therein. This is particularly relevant with respect to the issue of illegal drug use in corrective services facilities.

The need to prevent illicit substances gaining entry to correctional facilities is also recognised in other quarters. In *R v Zwarczy* [1998] SASC 6781 (20

July 1998) the court made reference to the issue of drugs in prison and commented that the supply of heroin is especially serious if the proposed recipient is a prisoner in gaol and that it is important to the integrity of the correctional system that gaols be kept as free of drugs as possible.

In the 1991 Royal Commission into Aboriginal Deaths in Custody: Report of the Inquiry into the death of Kingsley Richard Dixon; 7.1.8 Observations as to drugs in gaol, Muirhead said that the use of drugs is a threat to prison discipline, a threat to the security and efficiency of prison staff and a threat to the true well-being, health and security of prisoners.

The commission found that persons in custody, under the influence, are likely to act unpredictably and recklessly with possible loss of life. Trading and exchange of drugs within prison walls is likely to cause division amongst prisoners and may contribute to cliques and standover tactics. Prison procedures, practices and facilities (including medical facilities) should ideally be designed to minimise the introduction of drugs and of equal importance to cope with such use, with any eye on the well-being of prisoners as well as general administration and consideration of staff. The commission noted that, in this area, prison authorities are in a dilemma. On the one hand it is recognised that a common source of introduction (contract visits) should not be abolished but there is a necessity to stem the flow. The commission further recommended that it was important to adequately fund resources to find ways and means of minimising the introduction of drugs in Australian penal institutions, for example, not only scientific detection methods, but medical surveillance such as random urine testing.

If the chief executive considers it is unnecessary to carry out the search on a particular prisoner due to the prisoner's exceptional circumstances the search does not need to be carried out.

Example—

A direction requires a search requiring the removal of clothing of a prisoner to be carried out when a prisoner enters a corrective services facility. A pregnant prisoner returns to a corrective services facility from an escorted antenatal visit and the corrective services officer who escorted the prisoner advises that the prisoner had no likely opportunity to obtain a prohibited thing while on the visit. The chief executive may consider it unnecessary for the search to be carried out on the prisoner.

Search requiring the removal of clothing of prisoners on chief executive's order – generally

Clause 36 allows for the chief executive to make orders to carry out a search requiring the removal of clothing of one or more prisoners if satisfied that it is necessary for the good order of the corrective services facility and/or the safe custody and welfare of prisoners at the facility.

Example—

A knife is missing from the kitchen of a corrective services facility. The chief executive may be satisfied that a search requiring the removal of clothing of each prisoner who worked in the kitchen that day is necessary for the security or good order of the facility or for the safe custody and welfare of prisoners at the facility.

The clause also allows for a less intrusive search to be carried out prior to a search requiring the removal of clothing.

Example—

A knife is missing from the kitchen of a corrective services facility. The officers perform a personal search of each prisoner before requiring a search requiring the removal of clothing of each prisoner who worked in the kitchen that day is necessary for the security or good order of the facility or for the safe custody and welfare of prisoners at the facility.

Search requiring the removal of clothing on reasonable suspicion

Clause 37 provides that the chief executive may require a prisoner to be searched requiring the removal of clothing if there is a reasonable suspicion that the prisoner has a prohibited thing concealed on the prisoner's person.

The clause also allows for a less intrusive search to be carried out prior to a search requiring the removal of clothing.

Example—

A corrective services officer observes something being passed between a prisoner and a visitor during a personal contact visit and has a reasonable suspicion that dangerous drugs have been passed to the prisoner. The provision allows a delegated officer to require a prisoner to submit to a general search revealing the content of their pockets before proceeding to order the prisoner to remove their clothing for the purposes of a strip search.

Requirements for search requiring the removal of clothing

A number of safeguards have been built into the provisions to ensure the powers regarding searches requiring the removal of clothing are not misused and that officers exercising such powers remain accountable. It should be noted that visitors and children accommodated with their mothers are not subject to the provisions of the Bill relating to searches requiring the removal of clothing.

Clause 38 sets out the requirements for carrying out a search of a prisoner that requires the removal of clothing, and includes such safeguards as the number of officers of the same sex as the prisoner required to carry out the search, the information a prisoner must be given about the search and why it is necessary, and includes requirements in relation to protecting the dignity of the prisoner being searched.

The clause recognises the intrusive and potentially embarrassing nature of a search requiring the removal of a prisoner's clothing and provides that the search must be carried out as quickly as reasonably practicable and that where possible a prisoner must be allowed to remain partly clothed during the search and that where an item of a prisoner's clothing is seized during a search suitable replacement clothing is provided to the prisoner.

Example—

A female prisoner entering a corrective services facility is advised that a search requiring the removal of clothing is to be performed because of the risk of prohibited items being brought into the facility and that the prisoner will be required to remove the clothing on the lower part of her body, then dress, and then remove the clothing on the upper part of her body and then dress.

Body search of particular prisoner

Clause 39 outlines the circumstances under which the chief executive may authorise a doctor to conduct a body search of a prisoner. These circumstances exist where the chief executive reasonably believes that the prisoner has ingested something that may jeopardise their health or well-being, or has a prohibited thing concealed inside them that may be able to be used in a way to pose a threat to the security or good order of the facility, or where the search may reveal evidence of an offence or breach of discipline.

Safeguards are provided for the conducting of a body search, including that a nurse or person assisting with the search be of the same sex as the

prisoner if the doctor carrying out the search is not the same sex as the prisoner.

The clause also identifies the circumstances under which a doctor is permitted to seize a thing discovered during the body search. Those circumstances are that seizing the thing would not be likely to cause grievous bodily harm to the prisoner and that the doctor believes the thing may be evidence of the commission of an offence or breach of discipline by the prisoner. The doctor must give a seized thing, as soon as practicable, to a corrective services officer.

The term "body search" is defined in the dictionary to mean a search of a prisoner's body and includes an examination of an orifice or cavity of the prisoner's body, while the term "nurse" is defined in the dictionary to mean a registered nurse under the *Nursing Act 1992*.

Register of searches

Clause 40 requires the chief executive to establish a register that records the details of all searches requiring the removal of clothing, or body searches performed within a facility, including the reasons for the search, the names of the persons present and any items seized from the prisoner. As an extra safeguard, the register is open to official scrutiny, and must be made available for inspection by an official visitor.

Who may be required to give test sample

Clause 41 provides that the chief executive may require a prisoner to give a test sample of blood, breath, hair, saliva or urine. An offender may also be required to provide a test sample if it is a condition of a conditional release order, parole order or court order.

A parolee may also be requested to provide a test sample if the chief executive reasonable believes the offender poses a serious and immediate risk of harm to himself or herself.

The chief executive must give the person the results of any tests conducted on the test sample as soon as practicable after the chief executive receives a final result regarding the test sample.

Example—

An offender provides a test sample on 1 April and the chief executive receives the final result on 15 April after sending the sample for a confirmatory test. The chief executive must provide the result to the offender as soon as practicable after 15 April.

Giving test sample

Clause 42 authorises the chief executive, a doctor or a nurse to give a prisoner directions about the way the prisoner must give a test sample. However, the clause clarifies that only a doctor or a nurse may take a blood sample, and also authorises the use of reasonably necessary force by the doctor or nurse, or anyone assisting them and acting in good faith, to enable a doctor or nurse to take the sample.

Example—

A prisoner refuses to comply with the request by a doctor or nurse to submit to a blood test and becomes violent. A corrective services officer, acting at the direction of the doctor or nurse, may restrain the prisoner to the extent necessary to enable the doctor or nurse to obtain the required sample.

There is provision in the clause for the making of a regulation to provide for the number of corrective service officers that must be present when a test sample is being taken for a prisoner and how a test sample, other than a sample of blood, must be taken.

Consequences of positive test sample

Clause 43 describes the possible consequences flowing from a prisoner providing a positive test sample, which is described in the dictionary as a test sample that shows a prisoner has used a substance that is a prohibited thing. A positive test sample may be considered, along with the individual circumstances and needs of the prisoner, when assessing a prisoner's security classification and may result in the prisoner being required to undertake a behavioural or medical treatment program. Such considerations are possible in addition to the prisoner being dealt with for the commission of the offence or breach of discipline flowing from using a prohibited substance. The term 'prohibited substance' is defined in the dictionary.

Example of when no action may be taken regarding a positive test sample—

A prisoner having returned from leave of absence provides a urine sample which tests positive to low grade use of marijuana. The prisoner has no previous history of drug taking and claims that the positive result may have been caused by passive smoking. The general manager of the facility may decide not to breach the prisoner.

A prisoner is taken to have given a positive test sample when the prisoner:

- refuses to supply a test sample; or
- refuses to supply a test sample within a reasonable time; or
- alters or invalidates the results of a test sample; or
- attempts to alter or invalidate the results of a test sample; or
- tampers, or attempts to tamper, with a test sample.

This provision is necessary in view of the ongoing need by correctional authorities to confront the use of illegal drugs by prisoners in corrective services facilities, particularly in view of the security and safety risks presented by such use. (Refer to previous comments regarding the search requiring the removal of clothing provisions of the Bill). In this regard it is particularly necessary in consideration of the specific statutory responsibilities imposed on correctional authorities under clauses 3, 263 and 266 of the Bill.

The deeming of certain prisoner conduct to be taken as having given a test sample is required in order to prevent a prisoner avoiding detection of the consumption or use of an illegal or prohibited substance by any of the above means. A prisoner would be informed of this provision when admitted to a corrective services facility, pursuant to clause 11 of the Bill.

Division 4 Mail, phone calls and other communications

Subdivision 1 Mail

Note: The provisions under this division are considered further under the section of the Explanatory Notes relating to fundamental legislative principles.

Prisoner's ordinary mail at prisoner's own expense

Clause 44 provides that expenses related to ordinary mail needs to be borne by a prisoner unless, in limited circumstances, the chief executive agrees to meet those costs. The chief executive may pay for a prisoner's postage where the prisoner does not have sufficient funds; however, the prisoner is limited under these circumstances to posting no more than two letters a week.

Prisoners who use the blue envelope system to post privileged mail are not required to meet the cost of postage.

Example—

A prisoner is undertaking an approved educational program and is required to submit assignments by post. The postage costs will be met by the chief executive.

Opening, searching and censoring mail

Opening, searching and censoring a person's mail is not something that would be undertaken lightly in the general community. It presents a possible breach of fundamental legislative principles and is discussed in more detail in the section dealing with possible breaches of fundamental legislative principles.

Clause 45 provides that an authorised corrective services officer may open, search and censor a prisoner's ordinary incoming or outgoing mail. The dictionary defines the term "ordinary mail" to mean mail other than privileged mail. The dictionary also defines the term "privileged mail" to mean mail sent to, or by, a person who is prescribed under a regulation. It is anticipated that the regulation will provide that mail to or from the following persons will be privileged mail for the purpose of this clause—

(a) a Minister;

(b) the chief executive or someone authorised by the chief executive;

(c) the chief inspector;

(d) an official visitor

(e) the ombudsman;

(f) the Commonwealth ombudsman;

(g) the Information Commissioner under the *Freedom of Information Act 1992;*

(h) the Attorney-General of the Commonwealth;

(i) the Anti-Discrimination Commissioner under the *Anti-Discrimination Act 1991;*

(j) the President of the Human Rights and Equal Opportunity Commissioner;

(k) the Health Rights Commissioner

(l) the Director of Public Prosecutions;

(m) a registrar or clerk of a court;

(n) the secretary of a Parole Board;

(o) an officer of a law enforcement agency;

(p) a prisoner's lawyer.

A corrective services officer authorised by the chief executive may only open and search a prisoner's privileged mail or mail purporting to be privileged, when the officer reasonably suspects the mail contains something that may physically harm the person to whom it is addressed, contains a prohibited thing or is not privileged mail.

If the authorised officer reasonably suspects that mail is not privileged, the officer must not read the read the prisoner's privileged mail other than to establish its bona fides. The officer must not disclose the contents to anyone else, and the officer must not read any more of the privileged mail than is necessary to establish the mail is privileged.

If it is established that the mail is not privileged because it has been sent by a person who is not prescribed by regulation, the mail is ordinary mail and may be searched and censored accordingly.

Example—

A prisoner receives a letter with "privileged" handwritten on the envelope. The envelope says the sender is a law firm but the law society has no record of the existence of this firm. An authorised corrective services officer reasonably suspects the letter is not "privileged' and opens the letter in the prisoner's presence. The letter is handwritten so the officer goes to the sign off and establishes the letter is from the prisoner's girlfriend, who is not a lawyer. The letter may be treated as ordinary mail and searched and censored. The officer must record the search in a register.

Once a prisoner's privileged mail is confirmed as being privileged mail, it is to be either delivered to the prisoner or placed in the external mail for the prison, whichever is appropriate to deliver the mail.

A maximum penalty of 100 penalty units or two years imprisonment will apply to an authorised corrective services office who discloses the contents of privileged mail to any person without lawful excuse..

Seizing and otherwise dealing with mail containing information about the commission of an offence

Clause 46 provides that the chief executive may seize a prisoner's privileged mail, and a corrective services officer may seize a prisoner's ordinary mail where a search of that mail has revealed information about the commission of an offence, other than for privileged mail which discusses the offence for which the prisoner is being detained. Information regarding the commission of an offence is required to be passed to the relevant law enforcement agency to deal with such an offence.

Example—

A prisoner makes certain confessional statements in a letter posted to an associate of the prisoner. A corrective services officer may seize the mail and the chief executive must forward the mail to the relevant law enforcement agency.

Seizing harmful or prohibited things contained in privileged mail

Clause 47 authorises the chief executive to seize something from a prisoner's privileged mail if the thing could physically harm the person to whom it is addressed or is a prohibited thing.

Seizing ordinary mail and things contained in it

Clause 48 authorises a corrective services officer to seize a prisoner's ordinary mail or anything in it, to stop anything that poses a risk to the security or good order of the facility, or is a prohibited thing or appears to be intended for the commission of an offence, or a breach of a court order entering or leaving the facility.

A corrective officer may also seize a prisoner's ordinary mail to prevent threatening or otherwise inappropriate correspondence leaving the facility, or the prisoner purchasing goods or services without the chief executive's written approval.

Example —

A prisoner who has been convicted of a sexual offence against a child sends a birthday card addressed to a child with whom the prisoner had no relationship before being imprisoned.

Register of privileged mail searches

Clause 49 provides a safeguard in relation to searches of privileged mail, by requiring the chief executive to establish a register for each corrective services facility that records all searches of privileged mail, including the reasons for the search (including the basis of the chief executive's reasonable suspicion about the mail) and, without disclosing the contents of the privileged mail, the result of the search.

As an accountability measure the chief executive is required to make the register available for inspection by an official visitor.

Subdivision 2 Phone calls

Phone calls

Clause 50 outlines the circumstances under which a prisoner may make a phone call from a corrective services facility, and provides that on admission to a facility a prisoner may make one phone call at the chief executive's expense.

Example—

A prisoner may, upon being received into a corrective services facility, telephone a family member or friend to advise their location.

A prisoner may phone approved persons at approved numbers at their own expense. Approved numbers are numbers approved by the chief executive. If there is sufficient reason for doing so, the chief executive may pay for a prisoner's phone call.

Example—

An impecunious prisoner may have to make a telephone call to a relative about another family member who is dangerously ill. The chief executive may permit the prisoner to make the call. In this case, the chief executive will bear the cost.

A prisoner is not able to receive a phone call from outside a corrective services facility unless it is approved in the event of a family or other personal emergency.

Example—

A prisoner may be permitted to receive a phone call in the event of a family crisis.

It is an offence for a prisoner to call an approved number knowing the call will be conference called or diverted, allowing the prisoner to call a person who has not been approved. Neither can a prisoner intentionally continue a call if the prisoner knows the call is being diverted. An exception is where the prisoner is approved to participate in a conference call with an interpreter.

Example—

A prisoner may have a telephone number approved. A bookmaker's number or telephone betting number will not be an approved number. It is also an offence for a prisoner to call an approved number knowing it will diverted to a telephone betting number.

The chief executive may decide the length and frequency of the phone call and the prisoner's involvement in a conference call.

Subdivision 3 Other communications

Personal video conferences for approved prisoners

Videoconferencing equipment is located in most corrective services facilities. Videoconferencing equipment is used for prisoner court appearances, parole board appearances as well as legal visits and family visits.

Clause 51 provides that the chief executive may approve a prisoner to participate in a video conference with an approved person using video conferencing technology if it is available for prisoner use at a corrective services facility. The chief executive may decide the length and frequency of the video conference, and has discretion as to whether to pay for the video conference.

It is an offence under this clause for a prisoner to intentionally contact a person not approved by the chief executive using video conferencing. The offence carries a penalty of six months imprisonment.

Example —

A prisoner is approved to have a video conference with his mother. It is an offence for the prisoner to speak to the prisoner's co-accused during the video-conference.

Subdivision 4 Recording or monitoring prisoner communications

Recording or monitoring prisoner communication

Clause 52 authorises the chief executive to monitor, record or end a telephone call or electronic communication to or from a prisoner and requires the parties to the communication to be advised that the communication is being recorded or monitored.

Prisoner communication is defined as meaning a phone call, an electronic communication, or a video link communication made to or from a prisoner.

However, the chief executive is not authorised to monitor or record communications between a prisoner and any of the following—

(a) their lawyer;

(b) an officer of a law enforcement agency;

(c) a parole board; or

(d) the ombudsman.

Under this clause, the chief executive must give any information about the commission of an offence gained from such monitoring to the appropriate law enforcement agency.

Division 5 Safety orders

Safety order

Clause 53 provides the circumstances under which the chief executive may make a safety order for a prisoner. A safety order can be made on the advice of a doctor or psychologist who reasonably believes there is a risk the prisoner may harm themselves or someone else.

Example—

A prisoner with a history of suicide attempts is admitted to prison and is observed as being withdrawn and states he or she is going to suicide. A doctor attends the prisoner and advises the chief executive that the prisoner should be placed on a safety order.

A safety order may also be made if the chief executive reasonably believes there is a risk the prisoner may harm someone else, be harmed by someone else, or for the good order and security of the facility.

Example—

A prisoner may be placed on a safety order because of threats that have been made against the prisoner.

A safety order must be for no longer than one month, and must have conditions attached, prescribed under a regulation, that apply to the prisoner's treatment while they are under the order.

A prisoner may be accommodated separately from other prisoners while under a safety order and may be reintegrated back into the mainstream prisoner population during the order at the chief executive's discretion.

Example—

A prisoner who is placed on a safety order on the advice of a doctor may be accommodated in a health centre within the facility for the duration of the order. Before the end of the safety order the prisoner may recommence mixing with other prisoners.

A health centre is defined to mean a part of a corrective services facility where prisoners are treated and medication is dispensed.

Consecutive safety orders

Clause 54 provides that the chief executive may make a consecutive safety order. If the safety was made on the advice of a doctor or psychologist, then a consecutive safety order may only be made on the advice of a doctor or psychologist.

The clause also provides for procedural fairness before the making of a consecutive safety order to an existing safety order. Not more than fourteen days prior to the expiration of the existing safety order, the chief executive is required to give the prisoner written notice advising that a consecutive order may be made and that the prisoner has seven days to make a submission in relation to that. The chief executive is required to consider any submissions the prisoner may make.

The clause provides that 2 or more safety orders running consecutively are taken to be one safety order.

Example—

A safety order is made for one month. After two weeks the prisoner is advised that the chief executive is considering making a further safety order. The prisoner responds within 7 days. Following consideration of the prisoner's response, the chief executive makes a consecutive safety order for one month. The safety order is taken to be for a period of two months.

Review of safety order – doctor or psychologist

Clause 55 requires that where the chief executive made a safety order on the advice of a doctor or psychologist, the safety order must be referred by the chief executive to another doctor or psychologist for a review as soon as possible and no later than seven days after being made. The review must recommend to the chief executive that the order be confirmed or cancelled, and although not bound by any recommendation, the chief executive must consider them when making a decision.

Review of safety order – official visitor

Clause 56 provides for a safeguard in relation to safety orders by allowing a prisoner subject to a safety order to ask an official visitor to review the order. Once requested to do so, the official visitor must review the order as soon as practicable. However, if a prisoner does not request a review and the safety order is for more than one month, an official visitor must review the order after the end of the month and thereafter at intervals of one month for the duration of the order.

Example—

A prisoner is placed on a safety order for one month because he is at risk of harm from other prisoners. A consecutive safety order is made for one month. The safety order is for a period of two months. The prisoner has not requested a review of the order and therefore an official visitor must review the order as soon as practicable after the first month.

The chief executive must consider an official visitor's recommendation regarding the review of the order but is not bound by the official visitor's recommendation.

Medical examination

Clause 57 provides that a doctor must examine a prisoner subject to a safety order as soon as practicable after the order is made; and subsequently, at intervals that are, to the greatest practicable extent, of not

more than 7 days. The provision ensures that a prisoner's medical needs are not neglected or overlooked during the period he or she is on a safety order.

Temporary safety order

Clause 58 provides that the chief executive may make a temporary safety order if a doctor or psychologist is not available to advise the chief executive about the risk of the prisoner harming himself, herself or someone else and a corrective services officer or nurse advises the chief executive that the officer or nurse reasonably believes the prisoner may harm himself, herself or someone else. The order must not be for more than 5 days and must be reviewed by a doctor or psychologist within that period, who must then make a recommendation to the chief executive. On receiving the recommendation, the chief executive must consider the recommendation and either cancel the temporary order or make a safety order.

Example—

A prisoner is admitted to prison and is observed as being withdrawn and states to a corrective services officer that he or she is going to suicide. A doctor or psychologist is not available to attend at the corrective services facility. The prisoner is placed on a temporary safety order for five days. A doctor reviews the order after 4 days and advises the chief executive that the temporary safety order should cancelled. The prisoner is placed in the general prisoner population with a buddy and to be kept under observation.

Record

Clause 59 requires the chief executive to record the details of each prisoner subject to a safety order or temporary safety order for each corrective services facility and provides the details which must be included in such records. This provision is designed to open the process to scrutiny by official visitors, the chief inspector and the ombudsman.

Division 6 Maximum security orders

Maximum security order

Clause 60 empowers the chief executive to make a maximum security order that a prisoner is accommodated in a maximum security unit, and provides

the circumstances under which such an order may be made. A maximum security order must not be for a period longer than six months.

The term "maximum security unit" is defined in the dictionary to mean a facility for the accommodation of prisoners at a prison that is designed and constructed so that prisoners accommodated in the facility are totally separated from all other prisoners at the prison; and some or all of the prisoners accommodated in the facility can, when necessary, be totally separated from all other prisoners accommodated in the facility.

A prisoner placed on a maximum security order may be accommodated in a maximum security unit either at the prisoner's current corrective services facility or at another corrective services facility. Maximum security units will invariably be located within high security facilities.

A maximum security order may only be made for a prisoner who has been classified as maximum security if the chief executive reasonably believes that the prisoner is one or more of the following;

(a) a high risk of escaping or attempting to escape;

(b) a high risk of killing or seriously injuring other prisoners or other persons that the prisoner may come into contact with;

(c) the prisoner is generally a substantial threat to the security or good order of the corrective services facility.

Example of when an order may be made–

A prisoner accommodated at a prison has killed another prisoner and there is a high risk that the prisoner may kill again if permitted to remain in the general prisoner population.

Consecutive maximum security orders

Clause 61 authorises the chief executive to make a further maximum security order for a prisoner to take effect at the end of an existing order but not more than 14 days before the end of the existing order.

The clause also provides for procedural fairness before the making of a consecutive maximum security order at the end of an existing maximum security order. Not more than twenty-eight days prior to the expiration of the existing safety order, the chief executive is required to give the prisoner written notice advising that a consecutive order may be made and that the prisoner has fourteen days to make a submission in relation to that. The chief executive is required to consider any submissions the prisoner may make.

Example of when a consecutive order may be made–

A prisoner placed in a maximum security facility because of the high risk he poses to the safety of others does not respond positively to programs designed to correct his behaviour and continues to exhibit dangerous and threatening conduct.

Other matters about maximum security order

Clause 62 requires a maximum security order for a prisoner to include, to the extent it is practicable, directions about the extent to which the prisoner is to be segregated from other prisoners accommodated in the maximum security facility and the privileges that a prisoner is to receive.

The privileges the prisoner may receive while under the maximum security order must be limited to privileges that can be enjoyed within the maximum security facility, and the enjoyment of which, in the circumstances of the order, may reasonably be expected not to pose a risk to the security or good order of the facility.

Examples of privileges that may not be available in a maximum security facility–

1. A prisoner accommodated in a maximum security facility may not be able to participate in team sports on the prison oval.

2. A contact visit with a personal visitor.

The order may include directions about the prisoner's access, within the maximum security facility, to programs and services, including training and counselling and the chief executive may provide for the prisoner's reintegration into the mainstream prisoner population before the period of the maximum security order ends.

Review of maximum security order

Clause 63 provides for a safeguard in relation to maximum security orders by allowing a prisoner subject to a safety order to ask an official visitor to review the order.

A prisoner is allowed to request a review of a maximum security order by an official visitor once every three months. A prisoner is allowed to request an additional review by an official visitor if the maximum security order is amended. However, if a prisoner does not request a review, an official visitor must review the order after three months and thereafter at least every three months for the duration of the order.

After conducting a review, an official visitor must make a recommendation to the chief executive as to whether the order is confirmed, amended or cancelled. The chief executive must consider the recommendation and either confirm, amend or cancel the order, but is not bound to follow the official visitor's recommendation.

Note that for this clause two or more maximum security orders running consecutively are taken to be one maximum security order.

Medical examination

Clause 64 requires that a doctor must examine a prisoner accommodated in a maximum security facility under a maximum security order as soon as practicable after the order takes effect and thereafter at intervals that are, to the greatest practicable extent, of not more than 28 days, and as soon as practicable after the order ceases to have effect.

This provision is designed to ensure that the medical needs of a prisoner accommodated in a maximum security facility are not neglected or overlooked.

Record

Clause 65 requires the chief executive to record the details of all prisoners who are subject to a maximum security order, and specifies the details that must be contained in the record. This provision is designed to open the process to official scrutiny, for example, by official visitors, the chief inspector and the ombudsman.

Division 7 Transfer and removal of prisoners

Background

The Western Outreach Camps Program was established at the time of the Charleville floods in 1990 when selected low and open security classified prisoners were used, under supervision, to assist with the clean up of the Charleville area. The program was renamed the Work Outreach Camps (WORC) Program in 1992 to better reflect the fact that prisoners participating in the program were not exclusively based in western Queensland.

In response to the 1993 Women's Policy Review, the Women's Community Custody (WCC) Program was established in 1995 as a low security WORC type placement option for low security women prisoners.

A major feature of participation in both the WORC and WCC Program is reparation to the community through community service work. In recognition of this these low security facilities that are located in rural areas of Queensland have been renamed work camps.

The November 2005 Work Outreach Camps Community Engagement Report made recommendations, some of which have necessitated changes to the legislation in relation to the effectiveness and efficiency of the WORC Program. In particular a recommendation was made to remove the current Schedule 1 in the Act. The report recommended that offenders who had been convicted of a sex offence or have a history of repetitive violent offences not be eligible to be transferred to a work camp. A new Schedule 1 has been included in the Bill, which is a list of sex offences that render a prisoner ineligible from being transferred to a work camp.

Subdivision 1 Transfer to a work camp

Work order

Clause 66 outlines the process for a prisoner to be transferred by a work order to a work camp in order to perform community service as directed by the chief executive. The work order may include conditions to assist the prisoner to reintegrate into the community, secure good conduct or prevent the prisoner from committing an offence. A copy of the order must be provided to the prisoner and carried by them at all times.

A transfer of a prisoner to a work camp is a prison management decision about the appropriate placement of the prisoner. Decision is defined as meaning a decision affected by jurisdictional error. The *Judicial Review Act 1991*, parts 3, 4 and 5 other than section 41(1) do not apply to a decision made, or purportedly made, under this section about transferring a prisoner.

The *Judicial Review Act 1991*, part 3 deals with statutory orders of review, part 4 deals with reasons for decisions and part 5 deals with prerogative orders and injunctions.

Restriction on eligibility for transfer to work camp

Clause 67 outlines the circumstances under which a prisoner is not eligible to be considered for transfer to a work camp, and provides the things that must be considered by the chief executive when deciding whether to make such a transfer.

The provision relating to the non-participation of prisoners in a work camp who have been convicted of sexual offences reflects the views of communities in western Queensland as reported in the November 2005, Work Outreach Camps Community Engagement Report.

A prisoner is not eligible to transferred to a work camp if—

(a) the prisoner has been charged with an offence that has not been dealt with; or

(b) there is an unexecuted warrant for the prisoner; or

(c) a deportation or extradition order has been made against the prisoner; or

(d) an appeal made to a court against the prisoner's sentence is undecided; or

(e) the prisoner has been convicted of a sexual offence.

A sexual offence is defined to mean an offence mentioned in schedule 1. Schedule 1 of the Bill contains a list of sexual offences.

If a prisoner is eligible to be considered for transfer to a work camp, the chief executive must consider all the recommendations of the sentencing court and the risk the prisoner may pose to the community, in deciding whether to transfer the prisoner.

In considering whether a prisoner is a risk to the community the chief executive must consider the risk of the prisoner escaping or attempting to escape, the risk of physical or psychological harm to the community and the prisoner's security classification.

Example of a prisoner who may be transferred to a work camp—

A prisoner who is eligible to be considered for transfer to a work camp who is serving 12 months imprisonment for fraud and is classified as low security.

Subdivision 2 Other transfer and removal of prisoners

Transfer to another corrective services facility or a health institution

Clause 68 authorises the chief executive to make a written order transferring a prisoner from a corrective services facility to another facility, or a place for medical or psychological examination or treatment or treatment for substance dependency, and may include such conditions as are reasonably necessary to affect the transfer. The clause outlines how a prisoner can be transferred, for how long, and who is responsible for the prisoner if they are transferred to an authorised mental health institution under the *Mental Health Act 2000*.

The *Judicial Review Act 1991*, parts 3 and 4 and 5, other than section 41(1), do not apply to a decision made under this section about the transfer of a prisoner.

This clause ousts the application of Parts 3, 4 and 5, other than section 41(1), of the *Judicial Review Act 1991* so that decisions to transfer prisoners are not reviewable by the Supreme Court and prisoners cannot request a statement of reasons in relation to the decision. A prisoner is only able to request a merits review of a transfer decision under clause 71.

Transfer to court

Clause 69 provides that a prisoner must be produced at the time and place and for the purpose stated in a court order or an attendance authority, and that this must be authorised by order of the chief executive.

The necessity to transfer prisoners to court is diminishing over time as many court appearances take place using video technology between courts and corrective services facilities.

Costs associated with the prisoner attending a civil proceeding must be paid to the chief executive.

Examples—

1. The chief executive must authorise the issuing of an order to facilitate the transfer of a prisoner from a prison to a court in compliance with a remand warrant.

2. The chief executive must authorise the issuing of an order to facilitate the transfer of a prisoner from a prison to a court in compliance with a writ or subpoena.

The terms “attendance authority”, "civil proceeding" and "court" are defined for the clause. Attendance authority means a summons under the *Justices Act 1886* or a notice to appear under the *Police Powers and Responsibilities Act 1992*. Civil proceeding does not include a criminal proceeding or a proceeding relating to official misconduct alleged against a staff member. A court includes a tribunal or person with power to compel persons to attend it, him or her.

Removal of prisoner for law enforcement purposes

Clause 70 provides for the circumstances under which a person may apply to the chief executive to have a prisoner removed from a corrective services facility to assist a law enforcement agency discharge its functions, or to enable the law enforcement agency to question the prisoner about indictable offences alleged to have been committed by the prisoner.

Examples—

1. A prisoner may be able to assist the Australian Federal Police in an investigation into importation of dangerous drugs into Australia. The prisoner may leave the facility to take officers to a place where the dangerous drugs have been hidden.

2 A prisoner may confess to an unsolved murder and wish to assist the Queensland Police Service by showing the police the location of the body.

The prisoner must be removed by a police or corrective services officer and is in the custody of the chief executive of the law enforcement agency while absent from the corrective services facility.

Example—

Where a prisoner is removed by an officer of the Queensland Police Service the prisoner is taken to be in the custody of the commissioner of the Police Service.

A safeguard against the removal of the prisoner is that it may only be authorised if the prisoner agrees in writing in the presence of an official visitor to the removal.

Subdivision 3 Reconsidering transfer decision

Reconsidering decision

Clause 71 provides that a prisoner may apply to the chief executive for a review of a decision to be transferred under clause 66 or 68 within seven days of being given notice of that decision, and that the chief executive may confirm, amend or cancel the decision.

The *Judicial Review Act 1991*, parts 3, 4 and 5, other than section 41(1), do not apply to a decision made under this section about the transfer of a prisoner.

The *Judicial Review Act 1991*, part 3 deals with statutory orders of review, part 4 deals with reasons for decisions and part 5 deals with prerogative orders and injunctions.

This clause ousts the application of Parts 3, 4 and 5 of the *Judicial Review Act 1991* so that decisions to transfer prisoners are not reviewable by the Supreme Court and prisoners cannot request a statement of reasons in relation to the decision.

Division 8 Leave of absence

Subdivision 1 Chief executive's powers

Power to grant leave

Clause 72 outlines the different types of leave the chief executive may, by written order, grant a prisoner—

(a) community service leave;

(b) compassionate leave;

(c) educational leave;

(d) health leave;

(e) reintegration leave;

(f) resettlement leave;

(g) leave for another purpose;.

Subclause (2) allows the chief executive to grant the leave on reasonable conditions.

Subclause (3) allows for the chief executive to require the prisoner to remain in the physical custody of, or to be supervised by, a corrective services officer during the leave.

Subclause (4) provides that the ability to grant leave of absence is subject to specific provisions relating to compassionate leave and resettlement leave. Notably a resettlement leave order may only be granted if a parole board has approved a resettlement leave program for a prisoner.

Compassionate leave

Clause 73 provides the circumstances under which the chief executive may grant compassionate leave to a prisoner—

(a) to visit a relative who is seriously ill; or

(b) to attend a relative's funeral; or

(c) for a female prisoner who is the mother of a young child, to establish the child with a primary caregiver; or

(d) for a prisoner who was the primary care giver of a child, to maintain the relationship with the child.

Subclause (2) requires that the prisoner prove the need for the compassionate leave to the chief executive's satisfaction.

Subclause (3) provides that the chief executive must take culturally specific needs into consideration when making a decision under this clause.

Resettlement leave

Clause 74 requires that the chief executive may only, and must, grant a prisoner resettlement leave if there is an approved resettlement leave program for the prisoner.

The Bill provides that only prisoners serving eight years or over are eligible for a program of resettlement leave of absence. The Queensland Parole Board has the jurisdiction to determine an application from a prisoner serving eight years or more for a program of resettlement leave of absence to occur over a period of time. If the program is granted the chief executive must grant resettlement leave to a prisoner to participate in a program of resettlement leave of absence approved by the Queensland Parole Board. The chief executive has no other power to grant resettlement leave other

than in accordance with the program of resettlement leave approved by the Queensland Parole Board.

Subclause (2) provides that conditions on resettlement leave approved by the chief executive must be consistent with the conditions imposed by the Queensland Parole Board.

Subclause (3) provides that the chief executive can only refuse to grant resettlement leave where information is forthcoming that was unknown to the Queensland Parole Board at the time of approving the program which may result in the Queensland Parole Board refusing the leave. The chief executive must immediately provide any such information to the Queensland Parole Board.

Subdivision 2 Parole board powers

Application for approval of resettlement leave program

Clause 75 authorises prisoners serving a period of imprisonment of eight years or more to apply for approval by the Queensland Parole Board of a program of resettlement leave.

Subclause (2) provides the time at which serious violent offenders and non-serious violent offenders may apply for approval.

Prisoners who are serving a life sentence or are serious violent offenders are not eligible to apply for a program of resettlement leave until they have reached their parole eligibility date. Other prisoners serving eight years or over are eligible to apply for a program of resettlement leave 12 months before their parole eligibility date.

Subclause (3) provides that a default period of imprisonment for the non-payment of a fine or restitution, that is ordered to be served cumulatively with another period of imprisonment, is not to be taken into account in determining a prisoner's period of imprisonment.

Example—

A prisoner is serving a period of imprisonment of 7 years 6 months and elects to serve as default imprisonment 12 months of fines. The prisoner's period of imprisonment for the purpose of determining eligibility for a program of resettlement leave of absence is 7 years 6 months even though the prisoner's actual period of imprisonment to serve is now 8 years 6 months. The prisoner is therefore not eligible to apply for a program of resettlement leave of absence.

Power to approve resettlement leave program for particular prisoners

Clause 76 provides that the Queensland Parole Board may, by written order, approve a program of resettlement leave, for a prisoner other than a serious violent offender or life sentenced prisoner before or after the prisoner becomes eligible for parole provided that the prisoner is serving a period of imprisonment of 8 years or more, and has addressed any recommendations of the court that sentenced them to imprisonment. The order can not start before a prisoner reaches their resettlement leave eligibility time.

Subclause (3) provides that a default period of imprisonment for the non-payment of a fine or restitution, that is ordered to be served cumulatively with another period of imprisonment, is not to be taken into account for this clause.

Subclause (4) defines resettlement leave eligibility date to mean the date that is less than one year before the prisoner's parole eligibility date.

Power to approve resettlement leave program for prisoner serving a life sentence, or serious violent offender

Clause 77 authorises the Queensland Parole Board to approve a resettlement leave program, for a prisoner who is serving a life sentence or is a serious violent offender serving eight years or more, where the prisoner meets the following criteria—

(a) the prisoner is serving a period of imprisonment of eight years or more; and

(b) has addressed the recommendations of the sentencing court to the best of the prisoner's ability; and

if the court ordered that the prisoner serve a stated period before being granted leave, that the prisoner has serve that period. The order cannot start before a prisoner reaches their resettlement leave eligibility time.

Subclause (5) provides that a default period of imprisonment for the non-payment of a fine or restitution, that is ordered to be served cumulatively with another period of imprisonment, is not to be taken into account for this clause.

Start of approved resettlement leave program

Clause 78 provides when a resettlement leave program may start for a prisoner who is not a serious violent offender, a prisoner who is a serious violent offender or a prisoner who is serving a life sentence.

Amending, suspending or cancelling approval

Clause 79 provides that the Queensland Parole Board may, by written order, amend, suspend or cancel an approval of a resettlement leave program for a prisoner if the Board reasonably believes the prisoner—

(a) has failed to comply with an order for resettlement leave made by the chief executive in accordance with the program approved by the board; or

(b) poses a serious risk of harm to someone else; or

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

(d) is preparing to leave Queensland without approval.

Subclause (2) provides that the Queensland Parole Board must give the chief executive written notice of a decision made by the board under this clause.

Reconsidering parole board decision

Clause 80 requires that if the Queensland Parole Board amends, suspends or cancels approval for a resettlement leave program, it must give an information notice to the affected prisoner immediately after amending it, or on the prisoner's return to prison after suspending or cancelling it.

Subclause (2) provides that a prisoner has 21 days to make submissions to the board about the amendment, suspension or cancellation, and the board must notify the prisoner if it changes its decision on the basis of those submissions, with the changed decision taking effect.

This provision allows for the reconsideration of a decision to amend, suspend or cancel a program of resettlement leave.

Subdivision 3 Restrictions on granting particular leave

Leave for prisoner serving a life sentence, or serious violent offender

Clause 81 applies to a grant of community service leave and educational leave to a prisoner who is serving a life sentence or has been convicted of a serious violent offence, and provides the conditions under which the chief executive may grant the leave, and the considerations the chief executive must undertake prior to granting the leave.

The provision reflects the seriousness with which society views the nature of the offences committed by this category of offender but is not intended to limit the ability of these types offenders to be transferred to a work camp and perform community service if they meet the eligibility criteria for work camps and are considered suitable for transfer.

Leave for other particular prisoners

Clause 82 provides that the following types of prisoners may only be granted compassionate leave or health leave—

(a) a remand prisoner;

(b) an immigration detainee;

(c) a prisoner serving an indefinite sentence

(d) a prisoner detained under the *Criminal Law Amendment Act 1945*, part 3.

These prisoners may not be granted any other leave of absence.

Subclause (2) provides that such prisoners must remain in the physical custody of a corrective services officer for the duration of the leave because these types of prisoners are considered to present a risk of escape or re-offending if not in the custody of a corrective services officer.

Subdivision 4 Other provisions about leave of absence

Prisoner's expenses while on leave

Clause 83 provides that the chief executive may authorise a prisoner who has been granted leave of absence to be given money or something else that the chief executive considers necessary to meet the prisoner's requirements while on the leave, and that the prisoner must return any unused portion of such monies to the chief executive.

Examples—

1. The chief executive may give the prisoner monies deducted from the prisoner's trust account so that the prisoner may purchase necessities whilst on leave of absence.
2. The chief executive may provide a prisoner with an appropriate voucher to enable the prisoner to travel to their leave of absence destination.

Prisoner's duties while on leave

Clause 84 requires the chief executive to give a copy of an order granting leave of absence to the prisoner who has been granted the leave, and requires the prisoner to keep a copy of the order in their possession so as to be able to produce it if requested by a police officer or a corrective services officer while they are on the leave.

Subclause (3) provides that a prisoner is liable to 6 months imprisonment if the prisoner fails to comply with the conditions of the order without reasonable excuse. This is considered to be an appropriate penalty to ensure that prisoners behave appropriately during their leave of absence.

Suspending or cancelling order for leave of absence

Clause 85 authorises the chief executive to suspend the operation of an order for a prisoner's leave of absence and require the prisoner to return to a corrective services facility if the chief executive reasonably believes the prisoner has—

(a) failed to comply with the order; or

(b) poses a serious and immediate risk of harm to someone else; or

(c) poses an unacceptable risk of committing an offence.

Subclause(2) provides that if the Queensland Parole Board suspends or cancels a resettlement leave program, the chief executive must cancel the resettlement leave granted in accordance with the resettlement program.

Subclause(3) provides that if the chief executive believes that the prisoner poses a serious and immediate risk of harm to someone else, they need not notify the prisoner of the suspension or cancellation of the order.

Notice to Queensland board about suspension of order for resettlement leave

Clause 86 requires the chief executive to give written notice of the grounds of a suspension of resettlement leave of absence to the secretary of the Queensland Parole Board immediately such leave order has been suspended and to give the board any further information about the suspension that the board requires.

Leave of absence is part of period of imprisonment

Clause 87 provides that the time spent by a prisoner on leave of absence counts as time served under the prisoner's period of imprisonment.

It should be noted, however, that the Bill provides that the period during which a prisoner is an escapee or is unlawfully at large does not count as part of that prisoner's period of imprisonment.

When leave of absence is not required

Clause 88 provides that leave of absence is not required to authorise the transfer of a prisoner from a corrective services facility to another part of the facility or to another corrective services facility, if the prisoner does not go anywhere else on the way to the facility.

Examples—

1. A prisoner is transferred from one part of a facility to another part of the same facility. No leave order is required, for example, to move a prisoner from their cell to a prison industry workshop within the facility.

2. A prisoner is transferred from one corrective services facility to another and is not taken anywhere else en route. No leave order is required, for example, to transfer a prisoner directly from Townsville Correctional Centre to a work camp.

Division 9 Interstate leave of absence

Background

In 1994 the Corrective Services Administrators' Conference considered a proposal from Victoria to recommend to the Corrective Services Ministers' Conference that a national approach to interstate leave of absence be adopted. The proposal gained unanimous support from the States' Ministers. For the purposes of implementing this decision, States were required to enact identical legislative provisions. Once a State implemented this legislation they became a "participating State" for the purposes of facilitating the interstate leave of absence of prisoners. The respective Governors in Council would publish in the Government Gazette the names of States that had enacted identical legislation to fall within the category of being a "participating State".

The policy objectives of the following provisions are to incorporate the national approach to interstate travel for prisoners for compassionate purposes.

Subdivision 1 Interstate leave permit

Interstate leave permit

Clause 89 authorises the chief executive to grant a leave of absence, with conditions attached, to a prisoner to travel interstate for a period of not more than seven days and only for the specific purposes prescribed by regulation. This type of leave can only be granted for travel to a State where corresponding laws are in force (a "participating State").

The term "participating State" is defined in the dictionary to mean a State in which a corresponding law is in force.

Examples—

1. A prisoner may be approved to travel to a participating State to visit the prisoner's mother or other close relative who is seriously ill.
2. A prisoner may be approved to travel to a participating State to attend the funeral of the prisoner's spouse.

Subclause (2) provides that an interstate leave permit may be subject to conditions.

Examples—

A condition of the permit may be that the prisoner, whilst remaining in a participating State must reside at a certain address.

A condition of the permit may be that the prisoner had to pay for the cost of the travel to and from the participating state and if accompanied by an escorting officer, that officer's travel an associated costs.

Subclause (3) provides that a prisoner must comply with the conditions of an interstate leave permit, unless the prisoner has a reasonable excuse. The maximum penalty for non-compliance is 6 months imprisonment.

This is considered to be an appropriate penalty to ensure that prisoners behave appropriately during their interstate leave. It is also consistent with the provisions of corresponding interstate leave arrangements in the Australian Capital Territory, New South Wales and Victoria. It reflects the seriousness with which a breach of a condition of this type of order should be viewed.

Effect of interstate leave permit

Clause 90 clarifies the effect of an interstate leave permit. The provision provides that a permit is the authority for a prisoner to be absent from a corrective services facility, whether escorted by a corrective services officer or unescorted, for the purpose and the period stated in the permit.

Subclause (2) clarifies the authority of an escorting officer nominated in the permit to escort the prisoner to and within a participating State and to return the prisoner back to the corrective services facility and authorises the officer to escort the prisoner across another State in order to arrive at a participating State.

Subclause (3) provides that the prisoner, whilst on the leave, continues to remain in the custody of the chief executive. This ensures that laws applicable to Queensland prisoners apply to a prisoner, who is granted an interstate leave permit, while travelling to or from or remaining in the participating State. Additionally, it ensures that the responsibility for the prisoner's behaviour is not attributed to the corresponding chief executive in a participating State.

Subclause (4) confirms that the period of the permit when the prisoner is absent from the corrective services facility counts as time spent on the prisoner's sentence provided always that the prisoner complies with all conditions of that permit.

Amending or revoking permit

Clause 91 authorises the chief executive by signed instrument to amend or cancel an interstate leave permit and provides that such an amendment or cancellation takes effect immediately the chief executive signs the instrument.

Notice to participating State

Clause 92 requires the chief executive to give written notice of the issue, and period, of an interstate leave permit to the corresponding chief executive and chief officer of police of the participating State and the chief officer of police of any other State through which the prisoner is to travel to reach the participating State.

Subclause (2) defines the term "corresponding chief executive" to mean "the officer responsible for the administration of corrective services in that State".

Liability for damage

Clause 93 provides that the State of Queensland is liable for any damage or loss sustained by anyone in a participating State that is caused by the act or omission of a Queensland prisoner or the escorting officer while in the participating State under an interstate leave permit.

Subclause (2) clarifies that the clause does not affect any right of action the State of Queensland may have against a prisoner or corrective services officer for the damage or loss concerned.

Subdivision 2 Corresponding interstate leave permit

Effect of corresponding interstate leave permit

Clause 94 applies to a person who is authorised to escort a prisoner under a corresponding interstate leave permit (an "interstate escort") to Queensland, and authorises that person to escort the prisoner on the terms and conditions and for the purposes contained in the permit.

The term "corresponding interstate leave permit" is defined in the dictionary to mean "a permit corresponding to an interstate leave permit issued under this Bill that is issued under a corresponding law".

Escape of interstate prisoner

Clause 95 authorises a prisoner who is in Queensland under a corresponding interstate leave permit and who escapes or attempts to escape to be arrested and brought before a magistrate who may order by warrant that the prisoner to be returned to the participating State and delivered to an interstate escort.

Subclause (6) provides that the prisoner may also be detained as a prisoner of the State of Queensland for 14 days after the warrant is issued, or until the prisoner is delivered into the custody of an interstate escort, if that happens before the end of the 14 days.

Subclause (7) provides that if the prisoner is not delivered into the custody of an interstate escort within 14 days after the warrant is issued, the warrant ceases to have effect.

The provision imposes a strict obligation on the participating State that granted the permit to collect the prisoner forthwith. The provision is in similar terms to section 31, *Prisoners (Interstate Transfer) Act 1982* (Queensland).

Subdivision 3 Corresponding law

Corresponding law

Clause 96 provides that the Governor in Council may, by regulation, declare a law of another State to be a corresponding law for the purposes of this division, if satisfied the law substantially corresponds to the provisions of this division.

Division 10 Conditional release

Subdivision 1 Eligibility for conditional release

Eligibility

Clause 97 outlines the conditions, under which prisoners are either eligible or not eligible for conditional release.

Only prisoners who were sentenced before the commencement of this clause to a term of imprisonment for an offence committed after 1 July 2001 resulting in the prisoner's period of imprisonment being 2 years or less and who have served two-thirds of the period of imprisonment are eligible for conditional release.

It is intended that conditional release will be phased out under the Bill as all prisoners who are sentenced to a term of imprisonment after commencement will have either a parole release date or a parole eligibility date. Only those prisoners who were eligible for conditional release under the Act and who do not have a parole release date or are not eligible for parole will remain eligible for conditional release.

It is possible that some prisoners may continue to be eligible for conditional release on one term of imprisonment and parole on another.

Example:-

A prisoner is sentenced to twelve months imprisonment for a pre -1 July 2001 offence and to a cumulative sentence of 12 months imprisonment post -1 July 2001. The prisoner will be considered for both conditional release and parole.

Subclause (2) also sets out the circumstances in which a prisoner is not eligible for conditional release—

(a) the prisoner has been convicted of an offence committed during the period of imprisonment; or

(b) the prisoner is being detained on remand for another offence; or

(c) the prisoner is eligible for a parole order under chapter 5, part 1, division 1, subdivision 2; or

(d) the prisoner must be released on parole under a court ordered parole order.

"Court ordered parole order" is defined in the dictionary to mean an order issued by the chief executive under section 199 in accordance with a court order under the *Penalties and Sentences Act 1992*, part 9, division 3, for the release of a prisoner.

Subclause (3) provides that in determining whether a prisoner is eligible for conditional release, a default period of imprisonment for the non-payment of a fine or restitution, that is ordered to be served cumulatively with another period of imprisonment, is not to be taken into account.

This provision is provided for clarification purposes to ensure that a prisoner serving a term of 2 years imprisonment, for example, does not

become ineligible for conditional release merely because of the non-payment of a fine that operates cumulatively on the current term.

Subdivision 2 Conditional release order

Making order

Clause 98 provides the circumstances under which the chief executive may make a written order, containing the conditions that the chief executive considers reasonably necessary to give effect to the order, granting a prisoner conditional release. The chief executive is required to give a copy of the order to the prisoner.

The chief executive may make an order (a ***conditional release order***) granting a prisoner conditional release if satisfied that the prisoner's release does not pose an unacceptable risk to the community and that the prisoner has been of good conduct and industry.

Subclause (2) provides that the order may contain a condition that the chief executive considers reasonably necessary to—

(a) help the prisoner reintegrate into the community; or

(b) secure the prisoner's good conduct; or

(c) stop the prisoner committing an offence.

Subclause (3) provides that the chief executive must give a copy of the order to the prisoner on or before the day on which the prisoner is released.

Risk to community

Clause 99 provides a non-exhaustive list of issues that may be considered by the chief executive when deciding whether or not a prisoner's release poses an unacceptable risk to the community including—

(a) the possibility of the prisoner committing a further offence;

(b) the risk of physical or psychological harm to a member of the community and the degree of risk;

(c) the prisoner's past offences and any pattern of offending;

(d) whether the circumstances of the offence or offences for which the prisoner was convicted were exceptional when compared with the majority of offences of that kind;

(e) whether there are any circumstances that may increase the risk to the community when compared with the risk posed by an offender committing offences of that kind;

(f) any relevant remarks made by the sentencing court;

(g) any relevant medical or psychological report relating to the prisoner;

(h) any relevant behavioural report relating to the prisoner.

Good conduct and industry

Clause 100 provides a list of considerations the chief executive must take into account when deciding whether a prisoner is of good conduct and industry. They relate to the institutional conduct of a prisoner and are—

(a) whether the prisoner has complied with all relevant requirements;

(b) whether the prisoner has undergone separate confinement for a major breach of at least 7 days on 3 or more occasions;

(c) whether the prisoner has participated in approved activities and programs to the best of the prisoner's ability.

Subsection (1) does not limit the matters the chief executive may consider in deciding whether the prisoner has been of good conduct and industry.

Refusing conditional release

Clause 101 provides procedural fairness to a prisoner where the chief executive is considering refusing to make a conditional release order by requiring the chief executive to give a notice to the prisoner stating that the chief executive is considering refusing to make the order and the reasons for this consideration. The prisoner must be invited to show cause in writing within 21 days as to why the order should not be refused and the chief executive must consider the prisoner's submission in making the decision.

Subdivision 3 Amending, suspending or cancelling order

Definition for subdivision 3

Clause 102 provides that of the purposes of subdivision 3 "suspend" means suspend for a fixed or indeterminate time.

Amendment, suspension or cancellation

Clause 103 provides that the chief executive may, by written order, amend, suspend or cancel a conditional release order if the chief executive reasonably believes the prisoner subject to the order has contravened the order or has been charged with committing an offence.

Warrant for prisoner's arrest

Clause 104 provides that if the chief executive suspends or cancels the conditional release order, the chief executive may issue a warrant for the prisoner's arrest which may be issued to all police officers and may be executed by any of them.

Subclause (3) provides that a prisoner arrested under this clause must be taken to a prison and if the order was suspended for a period—to be kept there for the suspension period or if the order was cancelled—to serve the unexpired portion of the period of imprisonment to which the prisoner was sentenced.

Information notice and changing chief executive's decision

Clause 105 requires the chief executive to give the prisoner an information notice on the prisoner's return to prison inviting the prisoner to show cause, by written submission given to the chief executive within 21 days after the day the notice is given, why the chief executive should change the decision.

The chief executive must inform the prisoner by written notice whether the decision has been changed. If the decision is changed the new decision has effect.

Automatic cancellation

Clause 106 provides the circumstances under which a conditional release order is automatically cancelled during the period of the order or after its expiry. The order is automatically cancelled if a prisoner is convicted of committing an offence during the order for which the offender is sentenced to a term of imprisonment that is not wholly suspended.

Subclause (3) provides that the time the prisoner was released under a conditional release order (street time) before the prisoner committed the offence counts as time served for the prisoner's period of imprisonment.

Example—

A prisoner serving a period of imprisonment of two years which commences on 1 March 2006 is released on a conditional release order on 30 June 2007 after serving 16 months. The conditional release order will expire on 28 February 2008. On 15 February 2008 the prisoner is convicted of an offence committed on 1 February 2008 and sentenced to 4 months imprisonment to be served concurrently. The prisoner's conditional release is automatically cancelled from 1 February 2008 The period the prisoner spent on the order before committing an offence is counted as time served towards the two years sentence. The 14 days the prisoner was on bail before being sentenced does not count as time served on the period of imprisonment. The prisoner's new discharge date is 14 June 2008.

Subdivision 4 Expiry of order

Expiry

Clause 107 provides that a prisoner is taken to have served the prisoner's period of imprisonment if the prisoner's conditional release order expires without being cancelled. It is possible for a conditional release order to be automatically cancelled after the order has expired.

Division 11 Discharge or release

Discharge or release

Clause 108 describes how a prisoner is to be released on their release day or the day before their release day if their release day falls on a public holiday in Queensland or the place where they are in custody, or a Saturday or Sunday.

Subclause (4) provides that the chief executive may give a prisoner help when the prisoner is discharged or released.

Example—

Help with bus or train fares.

Subclause (5) defines the term "release day" as used in this clause to include the day on which a prisoner is to be—

(a) released on conditional release; or

(b) released on parole; or

(c) discharged.

Effect of remission on discharge day for cumulative sentence

Clause 109 explains the effect of remission on a prisoner's discharge day when the prisoner is serving a cumulative sentence. Although remission is no longer available to prisoners under the Bill, there are prisoners serving periods of imprisonment made up of cumulative terms of imprisonment and who have been granted remission on earlier terms of imprisonment. The abolition of remission is not intended to alter any prevision grants of remission that have been made.

Clause 109(1) provides that this clause applies if a prisoner is serving a term of imprisonment (the ***second term***) cumulatively with another term of imprisonment (the ***first term***).

Subclause (2) provides that for working out the prisoner's discharge day, the second term starts at the end of the first term, taking into account any remission granted in relation to the first term.

Example—

A prisoner is sentenced to a term of imprisonment of six years on 1 January 2001. The prisoner is subsequently sentenced to another term of imprisonment of three years on 1 January 2004 to be served cumulatively on the first term. The prisoner was granted two-thirds remission on 31 December 2004 and began serving the term of three years imprisonment. The prisoner's discharge date is 31 December 2007.

Discharge within 7 days before discharge day

Clause 110 allows the chief executive to discharge a prisoner or a person who has been sentenced to a term of imprisonment and is in the commissioner's custody within seven days immediately before the day on which the prisoner would otherwise be discharged where the prisoner or sentenced person has served at least half of their period of imprisonment.

This is to allow for the situation where a prisoner's or sentenced person's discharge day falls on a day when a prisoner or sentenced person is not able to obtain transport to return to their community. The prisoner or sentenced person may be discharged prior to the discharge date if it will enable them to return to their community.

Example—

A prisoner's discharge day falls on a Friday but transport to the prisoner's community is only available on a Wednesday. The prisoner may be discharged on the Wednesday before the discharge date.

Remaining in corrective services facility after discharge day

Clause 111 provides that a prisoner may make written application to the chief executive for permission to remain in a corrective services facility after the prisoner's discharge day, and outlines the conditions with which such a prisoner must comply if the chief executive grants such permission and the powers of the chief executive in relation to that prisoner after their discharge day.

Subclause (2) states that the chief executive may grant or refuse the application.

Subclause (3) provides that if the chief executive grants the application, the prisoner—

(a) is taken to have completed the prisoner's term of imprisonment on the prisoner's discharge day; and

(b) must be discharged within 4 days after the discharge day.

Example—

A prisoner may seek to stay within a corrective services facility past the prisoner's discharge date where the prisoner is awaiting the arrival of a friend or relative to collect the prisoner. That friend or relative may have to travel a considerable distance to achieve this aim and the prisoner has no alternative accommodation to reside at whilst awaiting the arrival of the friend or relative.

Subclause (4) provides that while a person who was a prisoner remains in a corrective services facility after the person's discharge day, a corrective services may give the person a direction that the corrective services officer reasonably considers necessary for the security or good order of the facility or the person's safety.

Subclause (5) provides that the person must comply with a direction given unless they have a reasonable excuse. The subclause also provides a maximum penalty of 40 penalty units for failure to comply.

Subclause (6) provides that if the person fails to comply with a direction the person may be directed by the chief executive to leave the facility and

reasonable and necessary force may be used to remove the person from the facility.

Subclause (7) provides that subclause (6) applies whether or not a person is charged with an offence against subsection (5).

Division 12 Arrest of prisoners

Arresting prisoner unlawfully at large

Clause 112 provides the authority for a corrective services officer to arrest a prisoner who is unlawfully at large, including applying for a warrant for their arrest, and the considerations to be undertaken by the authorised person issuing the warrant and who the warrant may be issued to.

Subclause (4) also provides that the period during which a prisoner is unlawfully at large does not count as part of the prisoner's term of imprisonment.

Subclause (5) defines "authorised person" to mean a parole board if a prisoner is unlawfully at large after a parole order is suspended or cancelled or the chief executive or a magistrate in any other case. "Unlawfully at large" is defined in the dictionary but has an extended meaning for the purpose of this clause to include when a prisoner has been mistakenly discharged or when a prisoner has escaped from lawful custody.

Chapter 3 Breaches Of Discipline And Offences

Part 1 Breaches Of Discipline By Prisoners

Breaches of discipline generally

Clause 113 provides that a regulation may prescribe an act or omission that constitutes a breach of discipline. It is proposed that a regulation will

provide that a prisoner is alleged to have committed a breach of discipline for the purposes of clause 113 if the prisoner—

(a) disobeys a lawful direction of a corrective services officer; or

(b) if a corrective services officer lawfully directs the prisoner to do something—wilfully does it in a careless or negligent way; or

(c) makes something that has not been expressly or impliedly approved by the person in charge as being something the prisoner may make; or

(d) possesses or conceals something that has not been expressly or impliedly approved by the chief executive as being something the prisoner may possess; or

(e) knowingly consumes something that has not been expressly or impliedly approved by the chief executive as being something the prisoner may consume; or

(f) uses abusive, indecent, insulting, obscene, offensive or threatening language in another person's presence; or

(g) acts in an indecent or offensive way in another person's presence; or

(h) acts in a way that is contrary to the security or good order of a corrective services facility; or

(i) makes a complaint, other than a complaint to an official visitor, about an act or omission of another prisoner, or a corrective services officer, that is frivolous or vexatious; or

(j) organises or takes part in gambling; or

(k) wilfully consumes or inhales anything that is likely to induce an intoxicated state, other than medication taken as prescribed by a doctor; or

(l) without a corrective services officer's approval, alters the prisoner's appearance, or another prisoner's appearance, so that it significantly differs from the prisoner's appearance described in the record kept under clause 10 of the Bill; or

(m) without the approval of a corrective services officer, doctor or nurse—

(i) possesses or takes medication; or

(ii) gives or administers medication to another prisoner; or

(n) wilfully damages, destroys, removes or otherwise interferes with a device that monitors an offender's location; or

(o) wilfully damages or destroys clothing issued to the prisoner or another prisoner;

(p) obtains another prisoner's property, other than in circumstances expressly approved by the chief executive; or

(q) pretends that mail sent by the prisoner that is not privileged mail is privileged mail; or

(r) gives a positive test sample; or

(s) refuses to supply a test sample when directed by a corrective services officer; or

(t) attempts to do anything mentioned in paragraphs (a) to (s).

Clause 113 outlines the course of action a corrective services may take when deciding whether to start proceedings against a prisoner. A corrective services officer must make a number of decisions when considering whether or not to start proceedings for a breach of discipline.

Whether or not to start breach of discipline proceedings

Sub clause (2) provides a corrective services officer with complete discretion when deciding whether or not to start breach of discipline proceedings. When making this decision the officer must have regard to:

(a) the trivial nature of the breach; or

(b) the circumstances surrounding the commission of the breach; or

(c) the prisoner's previous conduct.

Example—

A corrective services officer is aware that prisoner "M" has received a distressing phone call about a death in his family. The corrective services officer directs prisoner "M" and a number of other prisoners to return to their cells and prisoner "M" initially refuses to move and also verbally abuses the officer.

The corrective services officer is also aware that prisoner "M" has not received any breaches of discipline to date. In all the circumstances the officer decides not to start proceedings for a minor breach of discipline.

Where an alleged act or omission may be a breach of discipline and an offence

Under sub clause (3) a corrective services officer does not have discretion about whether to start breach of discipline proceedings if the prisoner's act or omission was referred to the commissioner under section 114(2)(b) for consideration by the commissioner for offence proceedings. The corrective services officer may only start proceedings for breach of discipline proceedings where the commissioner has advised the chief executive that the matter is not to be prosecuted as an offence.

Where no offence action is taken by the commissioner

Sub clause (5) provides that in this circumstance the corrective services officer may exercise discretion to only decide whether a major breach of discipline proceedings should be started having regard to the matters in sub clause (2)(a), (b) or (c). This clause makes it clear that an officer does not have an ability to consider whether an act or omission (which the commissioner has decided not to proceed with as an offence) should be started as a minor breach of discipline proceedings.

In practice, the corrective services officer will consider whether to start proceedings for a major breach of discipline or take no further action and the prisoner will be informed of the outcome.

Example of a breach of discipline which may also be an offence–

Prisoner "M" makes an alleged indecent gesture directed towards a female program facilitator. The act or omission may be dealt with as a breach of discipline – acts in an indecent and offensive way in another person's presence under the proposed regulation or an offence– Indecent Acts under section 227 of the *Criminal Code*.

The corrective service officer must refer the incident to the commissioner under clause 114(2) (b) of the Bill.

Dealing with a breach of discipline which is not an offence and has not been referred to the commissioner

Where an act or omission is not referred to the commissioner under section 114(2)(b), a corrective services officer may exercise the discretion in sub clause (2) to start breach of discipline proceedings. The officer must then decide pursuant to sub clause (4), having regard to the matters mentioned in sub clause (2)(a) or (b) or (c) whether the prisoner should be proceeded against for a major breach of discipline or a minor breach of discipline.

The meaning of "start proceedings"

The meaning of "start proceedings" in sub clause (3) and (4) is not defined in the Act. However in practice, a breach of discipline proceeding would be considered to have started once an officer has formed a view that the act or omission does not constitute an offence and the officer has exercised the discretion in sub clause (2) that the prisoner should be proceeded against for a breach of discipline. The officer then decides under sub clause (4) whether the alleged breach will be heard as a major breach of discipline or a minor breach of discipline.

Example—

Prisoner "M" initially refuses to obey the directions of a corrective services officer to move away from the officer's command area, after being directed several times by the officer, prisoner "M" reluctantly complies.

The officer may decide, for example, whether or not due to the trivial nature of the act or omission prisoner "M" should be proceeded against for a breach of discipline. The officer decides that because prisoner "M" had to be directed several times before complying with the direction and had taken an aggressive attitude towards the officer, the officer initiates proceedings.

The officer would then have regard to the circumstances surrounding the act or omission and must decide whether to initiate major or minor breach of discipline proceedings. The officer decides that the circumstances of the case warrant the alleged breach being dealt with as a major breach of discipline. The reasons being, that prisoner "M" had refused to obey the officer's direction in front of several other prisoners and prisoner "M's" aggressive attitude agitated several other prisoners to call out in support of prisoner "M's" actions. Prisoner "M" has also been previously dealt with for a number of breaches of discipline for the same type of behaviour. The officer decides that the breach of discipline will be dealt with as a major breach of discipline and will be referred to a senior officer for determination.

The definition of "major breach of discipline" and "minor breach of discipline"

The terms have been distinguished from each other by reference to the way a hearing may be conducted into the alleged minor breach of discipline and a hearing may be conducted into the alleged major breach of discipline.

The dictionary provides as follows:

"Minor breach of discipline" means a breach of discipline decided under section 113 to be proceeded with as a major breach.

"Major breach of discipline" means a breach of discipline decided under section 113 to be proceeded with as a "major breach of discipline"

Breach of discipline constituting an offence

Clause 114 requires a corrective services officer, on observing or obtaining knowledge of a prisoner's act or omission that could be dealt with as an offence or a breach of discipline, to immediately inform the chief executive of the act or omission.

The clause requires the chief executive within 24 hours of receiving the information to tell the prisoner that the matter is to be referred to the commissioner of police, and within 48 hours after telling the prisoner, refer the matter to the commissioner of police.

Prisoner not to be punished twice for same act or omission

Clause 115 prevents a double jeopardy situation arising by providing that a prisoner must not be punished for an act or omission as a breach of discipline if the prisoner has been convicted or acquitted of an offence that is constituted by the same act or omission.

Also it is provided that a prisoner must not be charged with an offence if the prisoner has been punished for the act or omission that constitutes the offence as a breach of discipline.

Considering whether breach of discipline committed

Clause 116 provides that if a prisoner is alleged to have committed a breach of discipline, a deciding officer must decide whether the breach was committed within the timeframe provided for in the clause:

1. If the matter was referred to the commissioner and the commissioner advised the chief executive that the matter is not to be prosecuted as an offence – as soon as practicable but within 14 days, after the chief executive receives the advice;

2. For a minor breach of discipline – within 24 hours after the act or omission (the subject of the breach proceedings) was alleged to have happened.

3. For a major breach of discipline – as soon as practicable, but within 14 days after the deciding officer becomes aware of the alleged breach.

Definition of "deciding officer"

The dictionary provides that the "deciding officer" means:

— for a minor breach of discipline – a corrective services officer, whether or not the officer is the same officer who decided under section 113 to start proceedings for the breach.

— for a major breach of discipline – a corrective services officer who holds a more senior position than the corrective services officer who decided under section 113 to start proceedings for the breach

Under section 34 of the *Acts Interpretation Act 1954* a reference to a particular officer, or to the holder of a particular office, includes a reference to the person for the time being occupying or acting in the office concerned. Therefore the deciding officer could include an officer acting in the more senior officer's position due to the senior officer being away on leave or because the position is being filled by another senior officer as required by shift work which is undertaken for the management and operation of the corrective services facility.

The time within which the decision must be made

Minor breach of discipline

The time allowed for deciding a minor breach of discipline means that the act or omission must be heard strictly within a 24 hour limit of the alleged act or omission occurring. This is because minor breaches of discipline should be dealt with expediently in order to establish that particular prisoner behaviour is not acceptable – for instance where a prisoner refuses to comply with a direction. By dealing with the breach expediently, prisoners will be able to recognise that the type of behaviour complained of is not acceptable.

The immediacy and consistency when dealing with alleged minor breach action will operate as a deterrent to other prisoners who have observed the behaviour complained of, and the prisoners will recognise that similar behaviour will be dealt with in the same way.

Major breach of discipline

There only time frame the Bill provides for hearing major breaches of discipline is related to when a deciding officer "becomes aware of the alleged breach." The Act does not provide a definition for "becomes aware of the alleged breach". In practice a deciding officer will become aware of an alleged breach through an administrative reporting process which will keep both the prisoner and the deciding officer informed of the circumstances surrounding the alleged breach of discipline.

Where a corrective services officer decides to start proceedings for a major breach of discipline under subclause (4) or subclause (5), the officer should advise the senior officer who is the deciding officer as soon as practicable. Once advised, the deciding officer will then have 14 days within which to decide the matter. The Disciplinary Breach Register in clause 120 will contain a record of these administrative steps and reveal whether or not major breaches of discipline are being dealt with as expediently as possible.

Due to some major breaches of discipline being heard after the matter has been referred back from the commissioner in subclause (5) there will necessarily be a delay between when a corrective services officer obtained knowledge of the alleged act or omission or observed the act or omission and the alleged breach being heard by a deciding officer. For example, there may be instances where an alleged act or omission has come to the knowledge of a more senior officer through information contained in a routine shift report prepared by the corrective services officer working in a unit of the corrective services facility.

Procedural fairness

The process set out in clause 116 is designed to afford procedural fairness to a prisoner who is alleged to have committed a breach of discipline by not allowing legal representation for either the corrective services officer alleging the breach, or the prisoner, however, the prisoner may be helped by someone from the corrective services facility if the prisoner is disadvantaged by language barriers or impaired mental capacity.

Similarly, the rules of evidence do not apply to the process and this is intended to strike a balance between a quick, fair process and an overly legalistic process, to protect the safety and security of prisons and prisoners.

Further provisions about considering major breach of discipline

Clause 117 requires that the consideration of a major breach of discipline must be videotaped and that if it is decided it is appropriate in the circumstances, the deciding officer may declare the breach to be a minor breach of discipline and continue the proceedings against the prisoner for the minor breach of discipline.

Consequences of breach of discipline

Clause 118 outlines the consequences for a prisoner where the deciding officer has decided that a breach of discipline has occurred, and outlines the actions the deciding officer may take against the prisoner.

The deciding officer is required to tell the prisoner of the decision immediately after making it and also advise the prisoner of their review rights.

The deciding officer's decision is stayed if the prisoner wishes to invoke their review rights until the review is finished.

The term "privileges" is defined in the dictionary to mean privileges prescribed under a regulation. It is anticipated that the regulation will provide that any of the following privileges may be forfeited for a breach of discipline:

(a) participating in any hobby, sport or leisure activity;

(b) making or receiving any telephone call except a telephone call to a legal representative;

(c) associating with any person or group of people;

(d) use of or access to television, radio, audio cassette or compact disc players or computers, whether for personal use or for use as a member of a group;

(e) use of or access to musical instruments, whether for personal use or for use as a member of a group;

(f) use of or access to library facilities;

(g) purchasing goods other than essential toiletries or writing materials;

(h) use of or access to the prisoner's private property;

(i) receiving a contact personal visit;

(j) being granted leave of absence other than for compassionate reasons or medical, dental or optical treatment.

The consequence for a minor breach is identical to that currently provided for under the Act.

Subclause (3) provides that separate confinement may be ordered for a minor breach of discipline only if the prisoner habitually committed minor breaches of discipline and, on the occasion of the last breach, was warned that the next breach could result in the prisoner being separately confined.

This provision is designed to address the situation where a prisoner may habitually incur numerous minor breaches, thereby demonstrating a failure to address their offending institutional behaviour.

Subclause (4) provides that immediately after making the decision, the deciding officer must advise the prisoner of the decision, that the prisoner may have the decision reviewed and the process the prisoner must follow to have the decision reviewed.

Subclause (5) provides that if the prisoner wants to have the decision reviewed, the prisoner must notify the deciding officer immediately after being advised of the decision.

Subclause (6) provides that if the prisoner tells the deciding officer that the prisoner wants to have the decision reviewed, the deciding officer's decision is stayed until the determination of the review.

Review of decision

Clause 119 provides how a review of a decision of a deciding officer must be carried out, and the responsibilities of the reviewing officer in carrying out the review.

The aim of the clause is to ensure that the review is carried out in a way that is prompt and non-adversarial, with the exclusion of legal representation for either party to the review, and the allowing of assistance for the prisoner by someone from the corrective services facility if the prisoner is disadvantaged by language barriers or impaired mental capacity.

Subclause (6) provides that the review of a major breach of discipline must be videotaped. This requirement will also assist opening the decision making process to official scrutiny (for example, by official visitors, the chief inspector, or the ombudsman).

Subclause (7) provides that the reviewing officer may:

(a) confirm the decision; or

(b) vary the decision; or

(c) set the decision aside or substitute another decision for it; or

(d) for a major breach of discipline – declare the breach to be a minor breach, or set the decision aside and substitute another decision for it.

Subclause (8) provides that immediately after making the decision, the reviewing officer must advise the prisoner of the decision.

Subclause (9) provides that the decision of the reviewing officer is not subject to appeal or further review under this Bill. This provision is necessary to ensure that a facility is not administratively paralysed by continuing reviews into the same matter.

Disciplinary breach register

Clause 120 aids official scrutiny of the disciplinary breach process by requiring the chief executive to keep a disciplinary breach register in each corrective services facility, to record details of each decision to deal with a prisoner for a breach of discipline; each decision that a prisoner has committed a breach of discipline; and each review of a decision that a prisoner has committed a breach of discipline.

This provision is intended to aid official scrutiny of the process, for example by official visitors, the chief inspector or the ombudsman.

Separate confinement

Clause 121 provides that an order for a prisoner to undergo separate confinement must take account of any special needs of the prisoner and must contain directions about the extent to which the prisoner is to receive privileges. This is to ensure that any special needs of a prisoner are not overlooked or neglected while undergoing separate confinement.

The term "separate confinement" is defined in the dictionary to mean the segregation of the prisoner from other prisoners.

The term "special need" is defined in the dictionary to mean "a need the offender has, compared to the general offender population, because of the offender's:

(a) age; or

(b) disability; or

(c) sex; or

(d) cultural background.

Example of a special need–

The culturally specific needs of Aboriginal and Torres Strait Islander offenders.

This provision is designed to ensure that any special needs of a prisoner are not overlooked or neglected while undergoing separate confinement.

Furthermore, it is anticipated that the regulation will provide that any or all of the following privileges may be forfeited by a prisoner placed on separate confinement:

(a) participating in any hobby, sport or leisure activity;

(b) making or receiving any telephone call except a telephone call to a legal representative;

(c) use of or access to television, radio, audio cassette or compact disc players or computers, whether for personal use or for use as a member of a group;

(d) use of or access to musical instruments, whether for personal use or for use as a member of a group;

(e) use of or access to library facilities;

(f) purchasing goods other than essential toiletries or writing materials;

(g) use of or access to the prisoner's private property;

(h) receiving a contact personal visit;

(i) being granted leave of absence other than for compassionate reasons or medical, dental or optical treatment.

Subclause (2) provides that the period of separate confinement must not be longer than 7 days.

Subclause (3) requires that a doctor must examine a prisoner separately confined as soon as practicable after the order:

(a) takes effect; and

(b) ceases to have effect.

This provision is designed to ensure that a prisoner's medical needs are not neglected or overlooked as a result of the prisoner being placed on separate confinement.

Part 2 Offences by Prisoners

Unlawful assembly, riot and mutiny

Clause 122 requires that a prisoner must not take part in an unlawful assembly, riot or mutiny, and lists the penalties attached for doing so. The penalties provided in this regard reflect the seriousness which the community would view the commission of such offences within a correctional environment and are unchanged from those provided for under the Act.

The clause also makes it clear that to do so is considered a crime, and gives definitions of the offences of mutiny, riot and unlawful assembly and examples of each.

Clause 122(1) requires that a prisoner must not take part in an unlawful assembly. The maximum penalty for doing so is 3 years imprisonment.

Subclause (2) requires that a prisoner must not take part in a riot or mutiny. The maximum penalty for doing so is:

(a) if during the riot or mutiny the prisoner wilfully and unlawfully damages or destroys, or attempts to damage or destroy, property that is part of a corrective services facility and the security of the facility is endangered by it - life imprisonment; or

(b) if during the riot or mutiny the prisoner demands something be done or not done with threats of injury or detriment to any person or property - 14 years imprisonment; or

(c) if during the riot or mutiny the prisoner escapes or attempts to escape from lawful custody, or aids another prisoner in escaping or attempting to escape from lawful custody - 14 years imprisonment; or

(d) if during the riot or mutiny the prisoner wilfully and unlawfully damages or destroys, or attempts to damage or destroy any property - 10 years imprisonment; or

(e) otherwise - 6 years imprisonment.

The penalties provided in this regard reflect the seriousness which the community would view the commission of such offences within a correctional environment and are unchanged from those provided for under the Act.

Subclause (3) provides that an offence against this clause is a crime. Under section 3 of the Criminal Code crimes are indictable offences; that is, an offender cannot, unless otherwise expressly stated, be prosecuted or convicted except upon indictment. The Code defines the term "indictment" to mean "a written charge preferred against an accused person in order to the person's trial before some court other than justices exercising summary jurisdiction".

Subclause (4) defines the terms “mutiny”, “prisoner”, “riot” and "unlawful assembly" as used in this clause.

Examples of a mutiny–

1. A mutiny may occur when 3 or more prisoners formulate a plan to take over a facility or any part of the facility and thereby seek to wrest control from the lawful established authority. A mutiny may or may not be conducted tumultuously.
2. If, during the course of the mutiny, property is destroyed which endangers the security of the facility a prisoner is liable to life imprisonment.
3. If, during the course of the mutiny, a demand is made under threat of injury to a person a prisoner is liable to 14 years imprisonment.
4. If, during the course of the mutiny, an escape or an attempt to escape occurs a prisoner is liable to 14 years imprisonment.
5. If, during the course of the mutiny, unlawful damage to property occurs a prisoner is liable to 10 years imprisonment.
6. A prisoner participating only in a mutiny is liable to 6 years imprisonment.

Examples of riot–

1. A riot may occur when an unlawful assembly of prisoners act tumultuously.
2. If, during the course of the riot, property is destroyed which endangers the security of the facility a prisoner is liable to life imprisonment.
3. If, during the course of the riot, a demand is made under threat of injury to a person a prisoner is liable to 14 years imprisonment.
4. If, during the course of the riot, an escape or an attempt to escape occurs a prisoner is liable to 14 years imprisonment.

5. If, during the course of the riot, unlawful damage to property occurs a prisoner is liable to 10 years imprisonment.

6. A prisoner participating only in a riot is liable to 6 years imprisonment.

While the definitions for "unlawful assembly" and "riot" reflect those provided under the *Corrective Services Act 1988*, the definition for "mutiny" is derived from that drawn in *R v Aston* (No 3) [1991] 1 Qd R 443.

Examples of unlawful assembly–

1. An unlawful assembly occurs when 3 prisoners assemble and call upon other prisoners to disrupt the normal operation of a corrective services facility.

2. A prisoner convicted of taking part in such an unlawful assembly may be sentenced to 3 years imprisonment.

Dealing with prohibited thing

Clause 123 prohibits a prisoner from dealing, or attempting to deal with, or having in their possession a thing which has been prescribed a prohibited thing under a regulation, except where doing so is done with the approval of the chief executive.

Clause 123(1) states that a regulation may prescribe a thing to be a prohibited thing.

It is anticipated that the Regulation will provide for the following things and substances to be "prohibited things" for the purposes of the Bill:

(a) a weapon, replica of a weapon, or replica under *the Weapons Act 1990*;

(b) an explosive or ammunition under the *Explosives Act 1999*;

(c) a flammable substance;

(d) anything capable of being used to scale a fence, wall, door or gate, including, for example, a grappling hook, ladder or rope;

(e) anything capable of cutting or spreading metal bars;

(f) anything capable of damaging or destroying a fitting or fixture designed to detain prisoners;

(g) a key, card, or other device capable of opening a mechanical or electronic lock;.

(h) money

Subclause (2) provides that a prisoner must not deal, or attempt to deal with:

(a) a prohibited thing; or

(b) something intended to be used by a prisoner to make a prohibited thing.

The maximum penalty in this regard is 2 years imprisonment. This penalty is unchanged from that provided for under the Act.

Subclause (3) states that subclause (2) does not apply if the prisoner has the chief executive's consent to make or possess the thing.

Example of consent –

A prisoner on leave of absence may be provided with financial assistance by the chief executive to enable them to travel to their destination.

Subclause (4) provides that a prohibited thing found in a prisoner's room, or on a prisoner, is evidence that the thing was in the prisoner's possession when it was found.

This provision is provided to clarify the intent of subclause (2).

Subclause (5) provides the definition of "deal with" for the clause.

Other offences

Clause 124 specifies a number of specific offences that a prisoner must not commit while in a corrective services facility and provides a maximum penalty of 2 years imprisonment. These offences are the same as those offences which were consolidated in the *Corrective Services Act 2000* from the *Corrective Services Act 1988*. Escape from lawful custody has not been repeated in this Bill because the Criminal Code specifically provides for such matters.

Part 3 General Offences

Definition for part 3

Clause 125 provides that in this part – "person" does not include a prisoner other than a prisoner who is released on parole or a supervised dangerous prisoner (sexual offender).

Helping prisoner at large

Clause 126 provides that a person must not aid someone that the person knows, or ought reasonably know, is a prisoner who is unlawfully at large, and defines what it means to aid for the purpose of this clause. This clause carries a penalty of 100 penalty units or two years imprisonment.

Obstructing staff member or proper officer of court

Clause 127 prohibits the obstruction of a staff member, a proper officer of a court or a corrective services dog when they are performing a function, exercising a power or performing duties under this Bill without a reasonable excuse.

The maximum penalty for this offence is 40 penalty units or 1 year imprisonment.

The term "proper officer of a court" is defined in the dictionary.

A person who obstructs a corrective services dog under the control of a corrective services dog handler performing duties as a corrective services officer is taken to obstruct a corrective services officer.

Example—

A visitor may not co-operate with a corrective services officer who is using a corrective services dog to undertake a scanning search to detect the scent of prohibited substances.

Subclause (4) defines the term "obstruct" to include hinder, resist and attempt to obstruct.

Taking prohibited thing into corrective services facility or giving prohibited thing to prisoner

Clause 128 prohibits the taking, or attempting to take a prohibited thing into a corrective services facility, and the giving or attempting to give a prohibited thing to a prisoner or prisoner of a court. It also prohibits the causing or attempting to cause a prohibited thing being given to a prisoner or a prisoner of a court, or taken into a corrective services facility. An offence is not committed if the person has the approval of the appropriate authority as provided in the clause.

Removing things from corrective services facility

Clause 129 provides that a person must not, without the chief executive's approval remove, or attempt to remove, anything from a corrective services facility; or cause, or attempt to cause, anything to be removed from a corrective services facility; or take, or attempt to take, anything from a prisoner, whether inside or outside a corrective services facility, except where this is done by a corrective services officer in the course of their duties.

The maximum penalty is 40 penalty units.

Example—

A prisoner may request a visitor to take an uncensored letter from the facility to avoid scrutiny as provided for under the Bill.

Unlawful entry

Clause 130 provides that a person must not enter, or attempt to enter, a corrective services facility, without the chief executive's approval, or assume a false identity for the purposes of entering a corrective services facility.

The maximum penalty is 100 penalty units or 2 years imprisonment.

Killing or injuring corrective services dog

Clause 131 prohibits the killing or injuring of a corrective services dog without the chief executive's approval. The maximum penalty is 100 penalty units or 2 years imprisonment. This provision reflects that currently provided for under the Act.

A person convicted of killing or injuring a corrective services dog may in addition be ordered to pay for the costs of veterinary treatment or retraining for the dog, or acquiring and training a replacement dog.

Interviewing and photographing prisoner etc.

Clause 132 prohibits a person interviewing, getting a written record or recorded statement from, or photographing a prisoner. A prisoner for this section is defined to include a parolee.

It also makes an offence the act of photographing or attempting to photograph a prisoner inside a corrective services facility or a part of a corrective services facility. The clause lists the exceptions to this

prohibition such as where the person is the prisoner's lawyer or an employee of a law enforcement agency or the ombudsman, or a person who has the chief executive's written approval to carry out the activity mentioned in the clause.

Example—

A journalist visits a prisoner claiming to be a friend of the prisoner and, without the chief executive's approval, conducts an interview.

Subclause (2) states that subclause (1) does not apply to:

(a) the prisoner's lawyer; or

(b) an employee of a law enforcement agency; or

(c) the Ombudsman; or

(d) a person who has the chief executive's approval.

Subclause (3) defines the terms "photograph" for the purposes of this clause.

The clause is a translation of section 100 of the Act. This type of clause has been incorporated into correctional services legislation in Queensland for more than 80 years. The prohibition against unauthorised publications is not new to Queensland legislation or to a court's inherent jurisdiction with respect to contempt matters. For example, section 82 of the *Domestic Violence (Family Protection) Act 1989,* s.12 *Bail Act 1980,* s71B *Justices Act 1886,* s.39J *Evidence Act 1977,* s229J *Criminal Code* and s.121 *Family Law Act 1975 (Commonwealth).*

The penalty

The maximum penalty is 100 penalty units or 2 years imprisonment. This provision reflects the same penalty which was provided for under the *Corrective Services Act 2000.*

Dealing with competing public interests

The Bill does not provide prisoners with an express entitlement to have free association with any person. The Bill provides through clause 153 minimum entitlements of a personal visit each week and visits from a legal visitor. Clause 132 provides that a person without a familial or social relationship with the prisoner, must seek the authority of the chief executive before interviewing or photographing a prisoner.

It is not the intent of the clause to unduly restrict access to prisoners from journalists seeking to conduct interviews for *bona fide* purposes. However, it is intended that the clause will operate so that if a journalist wishes to publish an unsolicited letter from a prisoner, the journalist must first seek permission of the chief executive prior to publishing it. The Department's media unit will facilitate requests from journalists who seek information or wish to conduct interviews.

The intent of clause 132 is to provide the chief executive with discretion, when dealing with a sensitive and volatile correctional environment, to balance the competing interests of freedom of expression and the safety and security of persons within the correctional environment.

The chief executive in making a decision under this clause will also have regard to obligations to act responsibly towards victims of crime and their families, and take into consideration the likely impact the publication of an interview with a prisoner may have upon a victim, the victim's family and other community members. Other considerations include a responsibility to the community to ensure that the publication of an interview does not jeopardise the integrity of an investigation or the security of a corrective services facility and there is a clear responsibility to secure the safety custody and welfare of both staff and prisoners.

Interfering with records

Clause 133 makes it an offence to take or destroy, or attempt to take or destroy, information from a record kept under this Bill, or to make or attempt to make a false entry in a record under this Bill. The penalty is 100 penalty units or 2 years imprisonment.

False or misleading information

Clause 134 sets out the circumstances under which it is an offence to knowingly provide false or misleading information, including a document, to an official. The term official is defined in the clause.

The maximum penalty in this regard for a prisoner is 2 years imprisonment and for other persons the penalty is 100 penalty units or 2 years imprisonment.

Example—

A visitor may give false information regarding the details of their identity on a visitor application form.

Subclause (2) provides that subclause (1) does not apply to a person giving a document, if the person when giving the document:

(a) informs the official, to the best of the person's ability, how it is false or misleading; and

(b) if the person has, or can reasonably obtain, the correct information - gives the correct information.

Subclause (3) provides that it is enough for a complaint against a person for an offence against subclause (1) to state that the information was, without specifying which, false or misleading.

Subclause (4) defines the term "official" for the purposes of this clause.

Person near prisoner

Clause 135 sets out the circumstances under which an official with control of a prisoner may require a person to leave the vicinity of the prisoner under their control or a place of detention, and the processes to be followed to achieve that outcome.

The clause also authorises the use of reasonable force if necessary and allows the person being requested to leave to be detained until handed over to the police.

Example—

A corrective services officer escorting a prisoner to a hospital for treatment notices a person approaching and recognises the person as a criminal associate of the prisoner. The officer may form the belief that the security of the prisoner is at risk.

Subclause (2) empowers the official to require the person posing a risk to the security of the prisoner, or the security or good order of the place in which the prisoner is detained, to leave the vicinity of the prisoner or place of detention.

Example—

The officer in the previous example may tell the person to move away.

Subclause (3) requires the official to warn the person that it is an offence not to comply with the requirement, unless the person has a reasonable excuse, and that failure to comply may lead to the person being removed using reasonable force or the person being handed over to a police officer.

Subclause (4) provides that the person must comply with the requirement, unless the person has a reasonable excuse. A maximum penalty of 40 penalty units or imprisonment for 1 year is applicable.

Subclause (5) provides that if the person fails to comply with the requirement, the official, using reasonable and necessary force, may remove the person from the vicinity of the prisoner or place of detention; or detain the person until the person can be handed over to a police officer.

Subclause (6) provides that the person must not be detained under subclause (5) for longer than 4 hours.

Subclause (7) defines the term "prisoner", as used in this clause, to include a prisoner of a court, and “official” is defined as a corrective services officer, police officer or the proper officer of the court.

Temporary detention for security offence

Clause 136 provides the actions that can be taken by a corrective services officer to temporarily detain a person who, in a corrective services facility, is found to be committing an offence, or is found in circumstances or with information that leads the officer to reasonably suspect the person has just committed a security offence.

Example—

Acting on information that a visitor to a prisoner may attempt to bring a cutting implement into a facility, a corrective services officer may search the visitor's motor vehicle and may restrain the person from trying to prevent the officer from searching the vehicle.

Subclause (3) provides that the corrective services officer, acting under subclause (1), may detain the person until the person may be handed over to a police officer.

Example—

If, in the example given above, the chief executive locates a cutting implement which could be used by a prisoner to affect an escape, the chief executive may detain the person until police arrive to investigate the matter.

Subclause (4) provides that a person detained under subclause (3) must not be detained for longer than 4 hours.

Example—

A person detained by a corrective services officer under this clause must be released from such detention if a police officer has not arrived within 4 hours to take custody of the person.

Subclause (5) defines the term "security offence" for the purposes of the clause.

Power to require name and address

Clause 137 provides the circumstances, in which a corrective services officer is empowered to require a person to provide their name and address, and proof of their name and address. The officer must warn the person it is an offence not to comply with the requirement unless they have a reasonable excuse.

Failure to comply carries a penalty of 40 penalty units or 6 months imprisonment, unless the person is not proved to have committed the offence that led the officer to make the request.

Subclause (2) provides that the officer, acting under subclause (1), may require the person to state the person's name and address.

Example—

In the first example given under the preceding clause the officer may require the person to give his or her name and address.

Subclause (3) provides that when making the requirement under subclause (2) the officer must warn the person it is an offence for the person not to state the person's name or address, unless the person has a reasonable excuse.

Subclause (4) empowers the officer to require the person to give evidence of the correctness of the stated name or address if the officer reasonably suspects the stated name or address is false.

Example—

The officer may ask the person to produce a driver's licence, or some other current identification, in support of the person's claim relating to their name and address.

Subclause (5) provides that a person must comply with a requirement under subclause (2) or (4), unless the person has a reasonable excuse. The maximum penalty is 40 penalty units or 6 months imprisonment.

Subclause (6) provides that a person does not commit an offence against subclause (5) if:

(a) the person was required to state the person's name and address by the officer who suspected the person had committed an offence against the Bill; and

(b) the person is not proved to have committed the offence.

Part 4 Seizing Property

Seizing property

Clause 138 provides the circumstances under which a corrective services officer may seize a thing found in a corrective services facility, whether or not in a person's possession, that the officer reasonably considers jeopardises or is likely to jeopardise the security or good order of the facility; or the safety of persons in the facility, other than a document to which legal professional privilege attaches.

Receipt for seized property

Clause 139 outlines when a corrective services officer is required to give a receipt to a person from whom a thing has been seized under clauses 46, 47, 48 or 138, and outlines the information to be contained in the receipt.

Subclause (2) requires that a receipt must generally describe the thing seized and include any other information required under a regulation.

Subclause (3) provides that this clause does not apply to a thing if it would be impracticable or unreasonable to expect the chief executive to account for the thing given its condition, nature or value.

Forfeiting seized thing

Clause 140 provides the circumstances under which a thing seized under clause 46, 47, 48 or 138 of this Bill are taken to be forfeited to the State, and the steps to be taken prior to such forfeiture in relation to contacting the things owner, and allowing the owner of the thing to appeal its forfeiture under section 39 of the *Justices Act 1886*.

Examples—

1. A paper back novel is found in an area of a corrective services facility that is frequented by prisoners. Correctional authorities attempt to locate the owner of the item but are unsuccessful. In view of the likely minimal value of the item it is forfeited to the State.
2. An audio cassette player is found in a prisoner's cell after the prisoner is discharged. Correctional authorities attempt to

contact the prisoner at the address given by the prisoner upon admission. After finding that the prisoner has left that address without leaving a forwarding address, the cassette player is forfeited to the State.

Returning seized thing

Clause 141 provides the circumstances under which a thing seized under clause 140 and forfeited to the State may be returned to its owner.

The clause provides as an exception that there are some things which the chief executive may retain if the chief executive reasonably considers its return is inappropriate.

Example—

A letter written by the prisoner to a victim of the prisoner.

Power of court in relation to seized thing

Clause 142 declares that to remove any doubt the *Justices Act 1886*, section 39 (power of court to order delivery of certain property) applies, in addition to this part, to a seized thing and that when applying the *Justices Act 1886*, section 39, the thing is taken not to have become the property of the State.

Part 5 Use Of Force

Division 1 Use of reasonable force

Note: The provisions regarding use of reasonable force are considered further under the section of the Explanatory Notes dealing with fundamental legislative principles.

Authority to use reasonable force

Clause 143 provides the circumstances under which a corrective services officer may use force other than lethal force, and what can be used to assist in the use of force, for example, a gas gun, a corrective services dog or riot control equipment.

The term "lethal force" is defined in the dictionary.

Examples—

1. A prisoner is given a direction by an officer to vacate his cell but refuses to do so. The officer may take hold of the prisoner and remove him from the cell.

2. A visitor to a corrective services facility is advised that they are not permitted to enter the facility and is asked to leave. The visitor refuses to leave. An officer may take hold of the visitor and remove him/her from the facility.

Subclause (2) provides that a corrective services officer may use the force, only if the officer:

(a) reasonably believes the act or omission permitting the use of force cannot be stopped in another way; and

(b) gives a clear warning of the intention to use force if the act or omission does not stop; and

(c) gives sufficient time for the warning to be observed; and

(d) attempts to use the force in a way that is unlikely to cause death or grievous bodily harm.

Subclause (3) provides that a corrective services officer need not comply with subclause (2) (b) or (c) if doing so would create a risk of injury to:

(a) the officer using the force; or

(b) someone other than the person who is committing the act or omission; or

(c) a prisoner who is attempting or preparing to harm themselves or is actually harming themselves

Subclause (4) provides that the use of force may involve the use of only the following:

(a) a gas guns;

(b) a chemical agent;

(c) riot control equipment;

(d) a restraining device; or

(e) a corrective services dog under the control of a corrective services officer.

It is anticipated that the regulation will provide other supplementary detail in relation to such matters.

Division 2 Use of lethal force

Note: The provisions regarding use of lethal force are considered further under the section of the Explanatory Notes dealing with fundamental legislative principles.

Training for use of lethal force

Clause 144 requires the chief executive to ensure that a corrective services officer authorised to use lethal force has been trained to use lethal force in a way that causes the least possible risk of injury to anyone other than the person against whom lethal force is being used.

The term "lethal force" is defined in the dictionary to mean force that is likely to cause death or grievous bodily harm. The term "grievous bodily harm" should be understood to have the meaning corresponding to the definition provided under the Criminal Code:

(a) the loss of a distinct part or an organ of the body; or

(b) serious disfigurement; or

(c) any bodily injury of such a nature that, if left untreated, would endanger or be likely to endanger life, or cause or be likely to cause permanent injury to health; whether or not treatment is or could have been available".

The provision is designed to ensure that only appropriately trained corrective services officers are authorised to use lethal force.

Issue, handling and storage of weapons

Clause 145 provides that the chief executive may authorise an appropriately trained corrective services officer to be issued with, carry, use and store weapons if it is reasonably necessary for the officer to do so to perform functions under this Bill and that such authorisation may be the subject of certain conditions.

Implicit in this provision is the recognition that the chief executive has certain responsibilities under section 60 of the *Weapons Act 1990* (Qld) (secure storage of weapons) and the *Weapons Regulation 1996* (Qld) relative to the safe handling and storage of weapons.

Use of lethal force

Clause 146 provides the circumstances under which lethal force may be used, and requires that lethal force must not be used if there is a foreseeable risk that the lethal force will cause grievous bodily harm to, or the death of, someone other than the person at whom the lethal force may be directed. The use of lethal force may involve the use of weapons, including firearms, or a corrective services dog under the control of a corrective services officer.

Lethal force may be used in the following situations—

(a) to stop a prisoner from escaping or attempting to escape from secure custody if the officer reasonably suspects the prisoner is likely to cause grievous bodily harm to, or the death of, someone other than the prisoner in the escape or attempted escape; or

Example—

A prisoner, in the course of escaping from secure custody, carries a knife and is about to attack an officer who has called upon the prisoner to halt. Subject to clause 147, an authorised corrective services officer may fire on that prisoner. The term 'secure custody' is defined in the dictionary to mean, respectively, a secure facility or a vehicle being used to transport prisoners, and a prison with a perimeter fence that is designed to prevent the escape of a prisoner.

(b) to stop a person from helping, or attempting to help a prisoner, to escape from secure custody, if the officer reasonably suspects the person is likely to cause grievous bodily harm to, or the death of, someone other than the person or prisoner in helping or attempting to help the prisoner escape; or

Example—

A prisoner who is attempting to escape from secure custody has an armed accomplice outside the perimeter of the prison. The accomplice fires on officers attempting to prevent the prisoner's escape. Subject to clause 147, an authorised corrective services officer may fire on the accomplice.

(c) to stop a prisoner from assaulting or attempting to assault another person, if the officer reasonably suspects the prisoner is likely to cause grievous bodily harm to, or the death of, the other person; or

Example—

A prisoner being transported in a corrective services transport vehicle breaks out of the vehicle and flees. The armed prisoner boards a bus and orders the driver to move off or be killed. Subject to clause 147, an authorised corrective services officer may fire on the prisoner.

(d) in an immediate response to a prisoner who has escaped from secure custody, but only if the officer reasonably suspects the prisoner is likely to cause grievous bodily harm to, or the death of, someone other than the prisoner in the course of the immediate response.

The expression "immediate response" in (d) is to be understood as meaning 'temporal proximity' or within close geographical location to the site of an escape from secure custody. It is to provide for a situation where a prisoner has escaped from secure custody and is pursued by an officer on to land adjoining the place of secure custody (a "hot pursuit" situation). Subject to clause 147, an authorised officer may fire upon the prisoner.

Subclause (2) provides that lethal force must not be used if there is a foreseeable risk that the lethal force will cause grievous bodily harm to, or the death of, someone other than person at whom the lethal force may be directed.

Subclause (3) states that the use of lethal force may involve the use of:

(a) weapons, including firearms; or

(b) a corrective services dog under the control of a corrective services dog handler.

Requirements for use of lethal force

Clause 147 states that a corrective services officer may use lethal force only in particular circumstances. They are, where the officer reasonably believes the act or omission permitting the use of lethal force can not be stopped in another way, and the officer gives a clear warning of the intention to use lethal force if the act or omission does not stop. The officer must give sufficient time for the warning to be observed and attempt to use the force in a way that causes the least injury to anyone.

The officer need not comply with the circumstances if it would create a risk of injury to the officer or someone other than the person against whom the lethal force is directed.

Reporting use of lethal force

Clause 148 requires the chief executive to keep a record of the incident where lethal force was used. The chief executive must immediately advise the Minister of, any incident in which a corrective services officer uses lethal force; or anyone discharges a firearm, other than for training.

This provision ensures that any exercise of lethal force is open to official scrutiny, for example by official visitors, the chief inspector and the Crime and Misconduct Commission

Chapter 4 Corrective Services Facilities

Part 1 Establishing Corrective Services Facilities

Prisons

Clause 149 provides that a regulation may declare a place to be a prison or assign a name to the prison and defines 'place' to include premises and part of premises.

Under the provisions of the *Acts Interpretation Act 1954* the power in this respect would include the power to alter assigned names and to define prison boundaries.

Prison amenities

Clause 150 outlines those amenities for which the chief executive must make provision when establishing a new prison, and ensures consideration of prisoners cultural and personal needs, such as those specific to Aboriginal or Torres Strait Islander prisoners, female prisoners with young children or older prisoners and prisoners with disabilities. Provision must also be made for video conferencing technology to maintain family relationships and to appear before courts and parole boards.

Examples—

1. A meeting place for Aboriginal or Torres Strait Islander prisoners to promote communication and endorses indigenous cultural heritage.
2. Facilities for the care of a young child living in a prison with his or her mother.
3. Visiting facilities for children visiting a mother or father in a prison.
4. Medical facilities.
5. Access requirements for older and disabled prisoners.

Other corrective services facilities

Clause 151 provides the Minister may, by notice in the Government Gazette, declare a place to be, or assign a name to, a community corrections centre or a work camp. 'Community corrections centre', 'work camp' and 'place' are defined for the clause.

The term "place" is defined to include premises, part of premises and a vehicle. It allows, for example, a caravan or similar vehicle to be declared a work camp.

Part 2 Visiting Corrective Services Facilities

Division 1 General

Warnings to visitors

Clause 152 requires the chief executive to ensure signage is displayed at the entrance to a secure facility warning visitors that lethal force may be used against them if they help, or attempt to help, a prisoner to escape.

The term "secure facility" is defined in the dictionary to mean "a prison with a perimeter fence that is designed to prevent the escape of a prisoner". Only appropriately trained and authorised corrective service officers as required under the Bill would be able to exercise any use of lethal force. This provision is simply designed to ensure that visitors to secure facilities

are given prior notice of the possible consequences of their actions if they help, or attempt to help, a prisoner to escape.

Clause 152 also provides the chief executive with discretion to erect a sign at the entrance to each corrective services facility warning visitors of the things that are prohibited things under the Bill, and the consequences for a visitor if the visitor brings or attempts to bring a prohibited thing into a facility without lawful excuse.

Prisoner's entitlements to visits

Clause 153 provides that a prisoner at a corrective services facility is only entitled to receive a visit from a personal visitor once a week, and visits from a legal visitor.

"Personal visitor" and "legal visitor" are defined in the dictionary.

The clause gives the chief executive discretion to allow a prisoner to have extra visits. For example, for a prisoner who was the primary care giver of a child – a visit from the child to maintain the relationship.

The chief executive may allow more than one personal visitor to visit the prisoner at the same time if it is within the facility's operational limits.

The chief executive may allow a prisoner to visit a prisoner at another corrective services facility, subject to any conditions the chief executive reasonably considers appropriate.

Example—

A female prisoner may be allowed to visit her husband, a prisoner at another facility, on a monthly non-contact basis.

Contact during personal visit

Clause 154 provides that a personal visit must be a non-contact visit unless the chief executive approves the visit to be a contact visit.

The clause provides for the circumstances to be considered by the chief executive when deciding whether or not to approve a visit to a prisoner as a contact visit, and also provides rules to be observed during a contact visit and the consequences for breaking those rules, including being directed to leave the facility.

The term "contact visit" is defined in the dictionary to mean a personal visit during which there is direct contact between the prisoner and visitor.

Division 2 Procedure for visits

Subdivision 1 Before visit

Access approval required for visitor other than accredited visitor or staff member

Clause 155 provides that before visiting a prisoner at a corrective services facility for the first time, a personal visitor, other than an accredited visitor or staff member, must apply to the chief executive in the approved form for approval to access the facility known as "access approval".

Deciding application for access approval

Clause 156 provides that the chief executive may grant an access approval with or without conditions attached, if satisfied the visitor seeking the approval does not pose a risk to the security or good order of the corrective services facility. If the approval is for a religious or legal visitor, the chief executive may grant the approval for more than one corrective services facility.

The clause also sets out the matters in sub clause (2) the chief executive must consider when making that decision. The chief executive is not limited to the matters set out in sub clause (2) when making a decision about the visitor's risk to the corrective services facility. In addition the Bill provides that the chief executive may obtain a report from the commissioner about a visitor's criminal history (including charges) under clause 334 of the Bill.

The chief executive may also refuse access approval for a visitor to more than one facility simultaneously. A visitor who is refused access approval may in writing ask the chief executive to reconsider the decision.

The chief executive does not have to consider under sub clause (2) whether an employee of the Department of Child Safety or an employee of the police service may be a risk to the security or good order of a corrective services facility. This is because of the rigorous checking that employees from those Departments are subjected to as part of their employment.

Suspending access approval

Clause 157 provides the circumstances under which the chief executive may suspend a visitor's access approval to a corrective services facility.

The clause provides that the chief executive may suspend a visitor for a period of up to 3 months and if the visitor's conduct has been severe or repetitive – 1 year. The clause sets out what the chief executive must consider prior to making the suspension, and requires the chief executive to record the reasons for a suspension if it is made for the maximum period allowed.

The chief executive may also attach conditions to the suspension in relation to the visitor visiting other corrective services facilities.

A visitor may ask the chief executive in writing to reconsider the suspension.

Monitoring personal visit

Clause 158 authorises the chief executive to monitor and make audiovisual or visual recordings of a personal visit.

As such recordings are confidential information under clause 341 of the Bill it is an offence for a person to give anyone a recording or a copy of such a recording other than for the purposes of an Act or if required to do so by a court order.

Search of visitor

Clause 159 provides that the chief executive may require an accredited visitor to submit to a scanning search before entering a corrective services facility. The chief executive may require any other visitor to a corrective services facility to submit to a general search or scanning search before entering the facility.

If a visitor refuses to undergo a scanning search or general search the chief executive may revoke the visitor's access approval or the visitor's approval for the visit to be a contact visit.

In this section "visitor" does not include a staff member. Clause 173 of the Bill provides for the searching of staff members.

Subdivision 2 During visit

Identification of visitor

Clause 160 provides that all visitors to a corrective services facility must prove their identity as prescribed by regulation, sign the visitor's book and wear their visitor's pass while visiting a corrective services facility.

It is anticipated that a regulation will provide that a visitor may prove his or her identity by—

(a) any 3 of the following—

(i) a current debit card, credit card or bankbook with the person's name and signature;

(ii) a current pension card or other social security card;

(iii) a current medicare card;

(iv) a birth certificate;

(v) a statutory declaration signed by a justice of the peace or commissioner for declarations that identifies the person by name and signature; or

(b) a current driver's licence; or

(c) a letter signed by a member of an Aboriginal or Torres Strait Islander organisation that identifies the person by name; or

(d) an identification card, containing the person's photo, issued by—

(i) the chief executive; or

(ii) a law enforcement agency; or

(iii) the Supreme Court; or

(iv) a State government entity; or

(v) an educational facility; or

(e) a current passport; or

(f) for an unaccompanied child—the answering of questions about the prisoner, or the child, to sufficiently identify the child.

A staff member who works at the facility is not required to sign the visitor's book and a child may be signed in by an accompanying adult.

Visitor may be directed to leave corrective services facility

Clause 161 provides that a visitor who fails to comply with a requirement of clause 160 may be directed to leave the facility and that reasonable force may be used by a corrective services officer to remove them.

The visitor may also be charged with an offence under clause 163 for failing to comply with the direction of a corrective services officer for which the maximum penalty is 40 penalty units. There is no imprisonment penalty in relation to this offence.

Proof of identity

Clause 162 empowers the chief executive to keep a fingerprint, palm print, footprint, toe print, eye print or voiceprint offered by a visitor in support of proof of their identity, and may also destroy such prints if they are no longer required. This provision protects the privacy interests of visitors and ensures that any print offered and taken is not misused.

Direction to visitor

Clause 163 makes it an offence for a visitor to a corrective services facility not to comply with a direction given by a corrective services officer that the officer considers reasonably necessary for the security or good order of the facility or a person's safety, unless the visitor has a reasonable excuse.

The maximum penalty in this regard is 40 penalty units. The same penalty is currently provided for under the Act for the same offence.

Division 3 Further provisions about particular visitors

Accredited or government visitors

Clause 164 provides that an accredited or government visitor, as defined in the clause, may visit a prisoner or any part of a corrective services facility for carrying out the functions or exercising the powers of the visitor's office or position.

An “accredited visitor” is defined in the dictionary as –

— a Minister; or

— a member of the Legislative Assembly; or

— a judicial officer; or

— a member of a parole board; or

— the ombudsman; or

— an inspector, including the chief inspector

— an official visitor

A "government visitor" means a person, other than a staff member, who is an employee of a department.

Examples of government visitor–

An employee of the Department of Communities or the Department of Child Safety.

Casual site visitor

Clause 165 authorises a casual site visitor as defined in the clause to access only certain defined areas of a corrective services facility such as, visitors' car parks and roadways.

Example—

A bus or taxi driver and a person collecting a discharged or released prisoner from a corrective services facility.

Children

Clause 166 provides the circumstances under which a child, whether related or unrelated to the prisoner, and whether accompanied or unaccompanied, may visit a prisoner. If the child is not related to the prisoner the chief executive must be satisfied that the child is a personal visitor of the prisoner.

Example of an unaccompanied child—

A child may be granted an unaccompanied visit to his or her parent who is a prisoner if there is no other adult able to accompany the child.

The dictionary defines "personal visitor" to mean a visitor of the prisoner who is a relative of the prisoner or a person who the chief executive is satisfied has a personal relationship with the prisoner. The chief executive must also consider whether a visit to a prisoner is in the child's best interests, even if the child was a complainant in the offence that lead to the prisoner's imprisonment and the child is unaccompanied.

For a child in care, the chief executive must consult with the chief executive of the department in which the *Child Protection Act 1999* is administered to determine what is in the best interests of the child.

Examples of when the chief executive has to consider whether a visit is in the child's best interests to visit—

1. A 17 year old child's parents may both be prisoners and it is must be decided whether to allow the child to make separate, unaccompanied visits.

2. A child may wish to visit his or her parent who is a prisoner but does not want the other parent who obtained a domestic violence order in relation to the prisoner to be aware of the visit.

The Bill does not provide a definition for "best interests". In practice the chief executive will consider all the relevant factors including for example, the following:

(a) the child's relationship to the prisoner;

(b) the child's sex and age;

(c) any urgent circumstances relating to the child or prisoner;

(d) the child's reason for the visit.

The *Child Protection Act 1999* also provides guidance in this regard, including consideration of the child's –

(a) need to be protected from harm;

(b) right to maintain relationships within his or her family; and

(c) sex, age and maturity.

Child applicants or parents and guardians of child applicant's may be advised on alternative forms of contact, for example, video conferencing, which may be less traumatic for a child. Where a child is a complainant in the offence leading to the prisoner's imprisonment applicants may be advised to consider mediated contact with the prisoner.

When making a decision about a child visitor, the chief executive will also consider any current court orders about the child in relation to the prisoner, for example a child protection or domestic violence order or whether the child does not have the consent of the child's legal guardian to visit the prisoner.

Law enforcement visitor

Clause 167 provides that where an employee of a law enforcement agency wants to visit a prisoner the prisoner may refuse to see the employee or agree to see the employee, but refuse to answer any of the employee's questions.

Should the prisoner agree to see the employee, the employee must be allowed to interview the prisoner out of the hearing, but not out of the sight, of a corrective services officer.

The dictionary defines "law enforcement agency" to mean:

- the Crime and Misconduct Commission; or
- a commission of inquiry under the *Commissions of Inquiry Act 1950;* or
- the police service; or
- the Australian Federal Police or the Australian Crime Commission; or
- a police force or service of another State; or
- another entity declared under a regulation to be a law enforcement agency.

Personal visitor

Clause 168 provides that a personal visitor must arrange the time and length of the visit with the chief executive.

Prior arrangements must be made by a personal visitor with the chief executive before visiting a facility. Generally, and depending on the corrective services facility concerned, 24 hours prior notice of an intended visit is required. This time is to ensure that necessary operational requirements (such as sufficient staff being rostered on duty in the visits area) can be arranged. In practice, visits are arranged by visitors phoning the corrective services facility they are intending to visit.

The dictionary provides a definition for a "personal visitor" to mean a visitor of the prisoner who is a relative of the prisoner or a person who the chief executive is satisfied has a personal relationship with the prisoner.

Professional visitor

Clause 169 provides that a professional visitor, as defined in the clause, may only visit the prisoner the subject of the visitor's access approval; or

access the part of the facility allowed under the visitor's access approval during the time approved by the chief executive.

Examples—

A legal visitor, doctor, teacher, a program facilitator, a religious visitor.

The clause also provides that where the visitor is a prisoner's legal visitor, they must be allowed to interview the prisoner out of the hearing, but not out of the sight, of a corrective services officer.

Commercial visitor

Clause 170 provides that a commercial visitor, as defined in the clause may only access the part of the facility allowed under their access approval and that access may only be carried out at the time and on the day approved by the chief executive.

Examples—

A sales representative or a tradesperson.

Other visitors

Clause 171 provides a visitor to a corrective services facility who is not mentioned in sections 164 to 170 may only visit the prisoner the subject of the visitor's access approval, or access the part of the facility allowed under the visitor's access approval on the day and during the time approved by the chief executive.

Examples of a person mentioned in section 164 to 170—

A volunteer, a research student, a representative of another corrective services agency or another jurisdiction.

Part 3 Staff Members

Staff member interacting with prisoner, etc.

Clause 172 provides that a staff member at a corrective services facility may interact with any prisoner at the facility; and access any part of the facility, to the extent it is necessary for carrying out the staff member's duties.

"Staff member" is defined in the dictionary to mean an employee of the department or an engaged service provider or a corrective services officer.

Search of staff member

Clause 173 authorises the chief executive to require a staff member to submit to a scanning search or general search before entering the facility and provides that if the staff member does not submit to a general search when required to do so, the chief executive may direct the person to leave the facility.

"Staff member" is defined in the dictionary to mean an employee of the department or an engaged service provider or a corrective services officer.

A "scanning search" is defined in the dictionary.

Examples of a scanning search –

1. Using a portable electronic apparatus or another portable apparatus that can be passed over the person.

2. Using an electronic apparatus through which the person is required to pass.

A "general search" of a person is defined in the dictionary to mean a search to reveal the contents of the person's outer garments, general clothes or hand luggage without touching the person or the luggage or in which the person may be required to open his or her hands or mouth for visual inspection or shake his or her hair vigorously.

Part 4 Searching Corrective Services Facilities And Vehicles

Power to search corrective services facility

Clause 174 enables the chief executive to conduct a search of areas of a corrective services facility that are not part of the "prisoner facilities". The chief executive may direct one or more corrective services officers to be present during the search.

Clause 33 deals with the search of a prisoner's room. The dictionary defines "prisoner facilities" to mean the common areas provided in the corrective services facility for access by the prisoner.

Power to search vehicle

Clause 175 provides that the chief executive may conduct a search of a vehicle, including, for example, a delivery vehicle, before it enters or leaves a corrective services facility.

Chapter 5 Parole

Part 1 Parole Orders

Division 1 Application for parole order

Subdivision 1 Exceptional circumstances parole order

Applying for exceptional circumstances parole order

Clause 176 provides that a prisoner may apply at any time, in the approved form and to the parole board that may, under clause 187, hear and decide the application, for an exceptional circumstances parole order.

For instance, irrespective of the prisoner's period of imprisonment, a prisoner who develops a terminal illness with a short life expectancy or who is the sole carer of a spouse who contracts a chronic disease requiring constant attention may be granted an exceptional circumstances parole order.

The Bill does not seek to limit the reasons for which a prisoner may apply for exceptional circumstances parole. The board considering the application has absolute discretion to determine whether the circumstances of the application warrant the prisoner being released at a time earlier than he or she is eligible for release on parole.

When exceptional circumstances parole order may start

Clause 177 provides that an exceptional circumstances parole order may start at any time.

Example—

A parole board may grant an exceptional circumstances parole order to a prisoner to commence at any time before the prisoner is eligible to be released on a parole order.

Subdivision 2 Other parole order

Definition for subdivision 2

Clause 178 provides a definition for a 'parole order' for subdivision 2.

"Parole order" means a parole order other than –

(a) an exceptional circumstances parole order; and

(b) a court ordered parole order

The parole orders mentioned in subdivision 2 are those where an eligible prisoner must make an application to the appropriate parole board.

Clause 187 provides which parole board may hear and decide a prisoner's application.

Application of subdivision 2

Clause 179 sets out which prisoners may apply for a parole order.

Examples—

1. A prisoner sentenced to imprisonment of any length for an offence committed before 1 July 2001 before the commencement of the Bill may apply for parole either when the prisoner has served one-half of the imprisonment or at the time recommended by the court when sentencing the prisoner.

2. A prisoner sentenced to imprisonment to a period of more than 2 years for an offence committed on or after 1 July 2001 before the commencement of the Bill is eligible to apply for parole either when the prisoner has served one-half of the imprisonment or at the time recommended by the court when sentencing the prisoner.

3. After the commencement of the Bill a prisoner who has been sentenced to a period of imprisonment of more than 3 years for an offence whenever committed.

4. After the commencement of the Bill a prisoner who has been sentenced to period of imprisonment of not more than 3 years if the period includes a term of imprisonment for a serious violent offence or a sexual offence after the commencement of the Bill.

5. A prisoner who is the subject of a court ordered parole order that has been cancelled under section 205(2) (a) or section 209.

Part 5 of the *Acts Interpretation Act 1954* provides for the commencement of Acts. Section 15 of the *Acts Interpretation Act 1954* provides that where an Act or provision commences on a day, it commences at the beginning of the day. Therefore the reference in example 3 to prisoners who are affected after commencement of the Bill will include prisoners who have been sentenced to a period of imprisonment of more than 3 years for an offence whenever committed on the commencement day.

The clause also sets out the matters which assist in determining a prisoner's eligibility to apply for parole as well as those matters which exclude an otherwise eligible prisoner from applying for parole.

A prisoner on remand can not apply for a parole order.

Examples—

1. A prisoner may not apply for parole if the prisoner is detained in custody solely as a result of a court ordering that the prisoner is remanded in custody in relation to an offence.

2. A prisoner may not apply for parole if the prisoner is serving a period of imprisonment and is eligible to be granted a parole order and a court has ordered that the prisoner be remanded in custody in relation to another offence.

3. A prisoner is serving a period of imprisonment and is eligible to be granted parole and a court has granted the prisoner bail in relation to an offence, whether or not the prisoner has entered into bail, a board may grant a parole order.

Prisoners who have been imprisoned for indefinite periods either for contempt or under the *Penalties and Sentences Act 1992*, part 10 can not apply for a parole order.

Example—

Part 10 of the *Penalties and Sentences Act 1992* provides that a court may impose upon an offender, convicted of an offence involving the fact of or attempt to use or counselling or procuring to use violence against the person or an offence of sodomy, carnal knowledge of a girl under 16, abuse

of an intellectually impaired person, sexual assault or rape for which the offender may be sentenced to life imprisonment, an indefinite sentence instead of a definite sentence.

Applying for parole order etc

Clause 180 provides for further exemptions where prisoners who have previously applied for parole must wait until the end of the period decided by the parole board that refused the previous application or unless the board consents.

Also, if an appeal has been made to a court against the conviction or sentence to which the relevant period of imprisonment relates a prisoner can not apply for parole if the appeal is undecided.

Otherwise, a prisoner can not apply more than 120 days before the parole order may start under complementary provisions of the Bill, such as clause 181, 182,183,184,185.

Example—

A prisoner may lodge an appeal against the severity of his or her sentence or the Attorney-General may lodge an appeal against the inadequacy of the prisoner's sentence.

Under sub clause (1)(b) a prisoner who has reached the prisoner's parole eligibility date may apply for a parole order.

The dictionary defines "parole eligibility date" for a prisoner to mean the parole eligibility date fixed for the prisoner under the *Penalties and Sentences Act 1992*, part 9, division 3 or the parole eligibility date mentioned in either of clauses 181 to 185.

Sub clause (4) provides that a parole order for a prisoner may start on or after the prisoner's parole eligibility date.

Parole eligibility date for prisoners serving period of imprisonment for life.

Clause 181 provides that the parole eligibility date for a prisoner serving a period of life imprisonment to whom the Criminal Code, section 305(2) applies – is the day after the day on which the prisoner has served a period of 20 years; and for a prisoner serving a period of life imprisonment to whom the Criminal Code, section 305(2) does not apply – the day after the day on which the prisoner has served a period of 15 years.

Example—

1. If a person is convicted on more than 1 count of murder at the same time is convicted of murder and another offence of murder is taken into account or had previously been convicted of murder the person must be sentenced to life imprisonment. When sentencing the person the court may order that the person must not be released on parole until the person has served 20 years or more imprisonment. If the court does not make such an order the person is eligible to be released on parole when the person has served 20 years imprisonment.

2. A person convicted on a single count of murder is eligible to be released on parole when the person has served 15 years imprisonment.

Parole eligibility date for serious violent offender

Clause 182 provides that, subject to clause 185 and the *Penalties and Sentences Act 1992*, part 9, division 3, the parole eligibility date for a prisoner serving a term of imprisonment for a serious violent offence is the day after the day on which the prisoner has served 80% of the term, or 15 years, whichever is less.

Example—

1. A person convicted of an offence mentioned in the schedule to the *Penalties and Sentences Act 1992,* for example rape, and sentenced to 10 years imprisonment must not be released on parole until the person has served 8 years imprisonment.

2. A person convicted of an offence mentioned in the schedule to the *Penalties and Sentences Act 1992*, for example rape, and sentenced to 20 years imprisonment must not be released on parole until the person has served 15 years imprisonment.

Parole eligibility date for prisoner detained for a period directed by a judge under *Criminal Law Amendment Act 1945*, pt 3

Clause 183 provides that the parole eligibility date for a prisoner being detained in an institution for a period as directed by a judge under the *Criminal Law Amendment Act 1945*, part 3 is the day after the day on which the prisoner has been detained for half the fixed period.

Example—

A person convicted of a sexual offence committed upon or in relation to a child under the age of 16 years may be found by the court to require care,

supervision and control in an institution either in their own interests or for the protection of others. The court may direct that the person be detained for a fixed period or during her Majesty's pleasure. If the person is ordered to be detained for a fixed period the person must not be released on parole until the person has served one-half of the fixed period.

Parole eligibility date for other prisoners

Clause 184 provides that, subject to clause 185 and the *Penalties and Sentences Act 1992*, part 9, division 3, a prisoner not mentioned in clauses 181 to 183 and who—

(a) was sentenced before the commencement of the Bill to a period of imprisonment of more than 2 years; or

(b) serving or is sentenced to a period of imprisonment of any length if the offence was committed before 1 July 2001; or

(c) is sentenced to a period of imprisonment of not more than 3 years, if the period includes a term of imprisonment for a sexual offence; or

(d) is sentenced to a period of imprisonment of more than three years.

then the prisoner's parole eligibility date is the day after the day on which the prisoner has served one-half of the period of imprisonment to which the prisoner was sentenced, despite any grant of remission.

Example—

A prisoner is sentenced to three years imprisonment on 1 January 2004 and subsequently sentenced to a further cumulative term of imprisonment on 1 January 2005 of three years imprisonment. The prisoner is granted remission at two-thirds of the first sentence so that the cumulative term of imprisonment commences on 31 December 2005. The prisoner's parole eligibility date is still 50% of the prisoner's period of imprisonment of six years so that the prisoner is eligible to apply for parole on 1 January 2007.

This clause is subject to the provisions of the *Penalties and Sentences Act 1992*, part 9, division 3 which enables a court to fix a parole eligibility date.

Parole eligibility date for prisoner serving terms of imprisonment in particular circumstances

Clause 185 seeks to resolve some of the problems which can be encountered when seeking to calculate a prisoner's eligibility date where two or more terms of imprisonment are involved and different parole eligibility criteria apply to the different terms.

Example—

A prisoner is serving a number of terms concurrently, and one of the terms is 10 years for a serious violent offence, the other term is 5 years for a non-serious violent offence. A prisoner with a serious violent offence must serve at least 80% or more of the sentence before being eligible for a parole order (see clause 182). A prisoner may start parole, once the prisoner has served the period of 8 years being 80% of the 10 year sentence, and longer than the period that is one-half of 5 years.

Clause 185 also provides by way of example how a sentence is to be calculated where there is more than one term of imprisonment with different parole eligibility applying to each term.

Example—

A prisoner is serving cumulative terms of imprisonment that total a period of 15 years of imprisonment, comprising a term of 10 years imprisonment for a serious violent offence and a term of five years imprisonment for an offence that is not a serious violent offence. The prisoner's parole eligibility date is the day after the day the prisoner has served 10 years and six months. This is calculated by adding 80% of 10 years and 50% of 5 years.

The clause provides rules to calculate the parole eligibility dates of complex sentences and reflects existing practise. The difficulties in calculating parole eligibility dates was highlighted in the Court of Appeal decision of R v Eveleigh [2002] QCA 246.

Division 2 Hearing and deciding application for parole order

Subdivision 1 Preliminary

Definition for division 2

Clause 186 provides that in this division "parole order" does not include a court ordered parole order.

A "court ordered parole order" is defined in the Schedule to mean an order issued by the chief executive under section 199 in accordance with a court order under the *Penalties and Sentences Act 1992*, part 9, division 3, for the release of a prisoner.

Subdivision 2 Procedure

Which parole board may hear and decide application

Clause 187 provides which prisoners may apply to have an application for a parole order heard by the Queensland Parole Board or a regional parole board.

A prisoner who was sentenced before or after the commencement to a period of imprisonment of 8 years or more; or is an existing reportable offender within the meaning of the *Child Protection (Offender Reporting) Act 2004*; or is accommodated at, or lawfully outside, a corrective services facility in an area of the State for which a regional board is not established may apply to have an application for a parole order heard by the Queensland board.

A prisoner who is accommodated at, or lawfully outside, a corrective services facility in the area of the State for which the regional board is established may apply to have an application for a parole order heard by a regional board.

Example—

A prisoner, serving 5 years imprisonment, accommodated at Townsville Correctional Centre is granted leave of absence to undergo medical treatment at the Princess Alexandra Hospital in Brisbane. An application submitted by the prisoner for parole must be considered by the Central and North Queensland Parole Board.

For the purposes of this clause a default period of imprisonment for the non-payment of a fine or restitution, that is ordered to be served cumulatively with another period of imprisonment, is not to be taken into account in relation to a prisoner who was sentenced before or after the commencement to a period of imprisonment of 8 years or more.

Examples—

1. A prisoner is sentenced to a period of imprisonment for 7 years 11 months. While serving this sentence a warrant of commitment with a default period of 2 months cumulative is executed on the prisoner. The prisoner's period of imprisonment is now 8 years and 1 month. This clause provides that any application by the prisoner for parole must be dealt with by the relevant regional parole board.

2. A prisoner is sentenced to a period of imprisonment for 2 years and 11 months. The period of the imprisonment does not include a term of

imprisonment for a sexual offence. While serving this sentence a warrant of commitment with a default period of 2 months cumulative is executed on the prisoner. The prisoner's period of imprisonment is now 3 years and 1 month. This clause provides that the prisoner is to be released in accordance with the parole release date fixed by the court and does not apply to a parole board for release on parole.

Submission from eligible person

Clause 188 provides that a parole board must notify the chief executive in writing that a prisoner has made an application for parole and allows the chief executive seven days in which to notify in writing each eligible person in relation to the prisoner that the prisoner has made an application for parole.

This notice must advise the eligible persons that the prisoner has applied for parole and that the parole board is about to consider whether an order for parole should be made.

The notice should also advise that the eligible person may make a written submission to the parole board within 21 days about anything that is relevant to the decision about making a parole order, and that was not before the court at the time of sentencing.

Example—

An eligible person may have been the victim of the prisoner applying for parole, or the family member of a deceased or young victim. A victim or the family member of the deceased or young victim who wishes to make a written submission could provide information to the board that the board may find useful when determining what conditions to place on a parole order, if granted.

A board may have regard to any submissions it receives. In considering information that may not already be available to it, the victim may provide information such as:

1. Whether the victim may have received threatening mail from a prisoner in custody.

2. A victim may request the board place a condition on a parole order that the prisoner have no contact with the victim or the victim's family.

3. A victim may inform the board of his or her current location and concerns that he or she may have about the prisoner being released into the same area.

Submissions received from a victim or the victim's family member will be retained by the board and it will be unnecessary to make subsequent submissions should a prisoner's initial application for parole be unsuccessful, unless there is additional information to be provided to the board.

Appearing before parole board

Clause 189 establishes how a prisoner's agent may appear to make representations in support of a prisoner's application for a parole order that may be heard and decided by the Queensland Parole Board.

The Queensland Parole Board may require a regional parole board to hear a prisoner's or prisoner's agent's representations in support of the prisoner's application for a parole order that may be heard and decided by the Queensland Parole Board and to make a recommendation to the Queensland Parole Board on the prisoner's suitability for parole.

Example—

The Queensland Parole Board may consider it necessary for a prisoner who is located in the far north of the State and has special needs to appear in person before a regional parole board as it is not economically reasonable to have the prisoner escorted to Brisbane, nor the Queensland board to travel to the prisoner's location. The Queensland board would require the regional board located in the north to grant leave for the prisoner to appear before the regional board. The regional board would, after hearing the prisoner, provide a report to the Queensland board on the prisoner's appearance and include a recommendation on what action should be taken in relation to the prisoner's application.

The clause also establishes how a prisoner or prisoner's agent, may, with a regional board's leave, appear before the regional board to make representations in support of the prisoner's application.

The clause provides that the chairperson of the meeting may require a corrective services officer present at a meeting to leave and remain out of the hearing of the meeting for the time the chairperson directs.

Example—

The parole board may consider that the prisoner will more readily respond to questions in the absence of the officer escorting the prisoner.

This clause also provides a meaning for "*appear, before a parole board*" which means that a prisoner or prisoner's agent may appear before the board by using contemporaneous communication link between the board and the prisoner or the prisoner's agent.

Example—

A prisoner may appear before a board using video conferencing facilities that are available at the corrective services facility. A prisoner's agent may appear before a board by using video conferencing facilities at a Probation and Parole office in the community, where available.

A prisoner with "special needs" may appear in person before the board.

Applying for leave to appear before parole board

Clause 190 provides that an application for leave to appear before a parole board must be made in the approved form to the board and that the secretary of the board must give the prisoner written notice of the board's decision on the application. If the board grants leave, the notice should advise the time and place at which the prisoner or the prisoner's agent may appear before the board.

When application for parole order lapses

Clause 191 provides that an application for a parole order lapses if, between the times the application is made and the application is decided by a board, the prisoner is sentenced to a further term of imprisonment.

Parole board not bound by sentencing court's recommendation or parole eligibility date

Clause 192 provides that a parole board is not bound by a recommendation of the court that sentenced a prisoner or the parole eligibility date of the court fixed under the *Penalties and Sentences Act 1992*, part 9, division 3, if the board receives information that was not before the court at the time of sentencing and, if after considering the information, the board considers that the prisoner is not suitable for release at the time recommended or fixed by the court.

Examples—

1. The board may receive advice that the prisoner has failed to undertake a program aimed at addressing the prisoner's offending behaviour.

2. The board may receive advice that the prisoner's release plan is unacceptable, for instance a prisoner convicted of a sexual offence against a child may have nominated as the proposed residence on release, a home in which children live.

3. The board may obtain a psychologist's report that was given during the prisoner's period of imprisonment.

Decision of parole board

Clause 193 provides that when a parole board considers a prisoner's application for parole it must, within 120 days, either grant or refuse the application. If a board has not decided a prisoner's application within 120 days of the board receiving it, the application is taken to have been refused by the board.

The parole board may also defer making a decision to enable it to consider any additional information it considers necessary to make the decision.

Example—

A board may consider it necessary to have the prisoner psychiatrically examined or to consider a further report on the prisoner's institutional performance.

The clause also provides that where a prisoner has been released on parole in relation to a period of imprisonment and the order is subsequently cancelled; the prisoner may again apply for, and be granted, parole in relation to the same period of imprisonment.

Where a board refuses to grant an application for parole the board must give the prisoner written reasons for the refusal and if the application is for a parole order other than an exceptional circumstances parole order, decide a period of time, of not more than 6 months after the refusal, within which a further application for a parole order (other than an exceptional circumstances parole order) must not be made by the prisoner without the board's consent.

Section 27B of the *Acts Interpretation Act 1954* applies to the written reasons to be given by the board; the instrument giving the reasons must also set out the findings of the material questions of fact and refer to the evidence or other material on which those findings were based.

Example—

If a board refuses an application by a prisoner for parole the board must advise the prisoner, in writing, that the board will not consider a further

application for a stated period of up to 6 months. The reasons must be given in accordance with the provisions of section 27B of the *Acts Interpretation Act 1954*

Types of parole orders granted by parole board

Clause 194 provides that a parole board may by a parole order release an eligible prisoner on parole. Eligible prisoners are those prisoners eligible under clauses 176, 179,181, 182, 183, 184 or 185.

Where a prisoner experiencing exceptional circumstances is granted a parole order the board is required to note on the parole order that it is an exceptional circumstances parole order.

The board must give a copy of a parole order to the prisoner and the prisoner is required to keep a copy in their possession while released on parole and produce the copy for inspection by a police officer or corrective services officer if asked by a police officer or corrective services officer to do so.

Subdivision 3 Review of regional board's refusal

Application of subdivision 3

Clause 195 provides that subdivision 3 applies to a prisoner who has, on three or more occasions, applied to a regional board for parole in relation to the same period of imprisonment and the applications have been refused. An application made before the commencement of this clause for a post-prison community based release order under the Act is to be counted for this clause.

Example—

If a regional parole board refuses a prisoner's application for parole three times, the Queensland board can set aside a decision of a regional board to refuse a prisoner's application for parole and grant the prisoner parole.

Prisoner may apply for review

Clause 196 provides that a prisoner mentioned in clause 196 may apply, in the approved form, to the Queensland Parole Board for a review of a regional board's last refusal. The time limit for the secretary of the

Queensland Parole Board to receive the application is within 7 days of the prisoner receiving the regional parole board's written notice of refusal.

Material to be given to the Queensland board

Clause 197 prescribes the documents which the secretary of the regional parole board must send to the secretary of the Queensland Parole Board with the prisoner's application for review.

Queensland board's powers

Clause 198 provides that upon considering the material given to it under clause 197, the Queensland Parole Board may either confirm the decision to refuse the application, or set aside the decision and make any order the regional parole board could have made. However, if the President of the Queensland Parole Board took part in the regional board meeting at which the application was refused, the president must not take part in the review.

This is to make sure that the President is not reviewing his own decision. In this situation the Deputy President of the Queensland Parole Board would chair the meeting during the hearing of the review.

Division 3 Court ordered parole order

Court ordered parole order

Clause 199 requires the chief executive to issue a court ordered parole order for a prisoner in accordance with the parole release date fixed by the court for the prisoner under the *Penalties and Sentences Act 199*2, part 9, division 3.

Court ordered parole is granted by the court under the *Penalties and Sentences Act 1992.* The *Penalties and Sentences Act 1992* provides the court with the ability to determine how much time a prisoner who is sentenced to a period of imprisonment of 3 years and under (which does not include a term for a sexual offence or serious violent offence) is to spend in custody and how much time a prisoner is to be released on supervision.

Once the court has granted the order, the chief executive is required to give a copy of a court ordered parole order to the prisoner who is the subject of the order, and the prisoner must keep the copy of the order in the prisoner's

possession while released on parole; and if asked by a police officer or corrective services officer, to produce the copy for the officer's inspection.

The chief executive can not issue a prisoner with court ordered parole if the prisoner is being detained on remand for another offence, unless the prisoner is granted bail in relation to the offence under the *Bail Act 1980* or the charge for the offence is withdrawn.

Example—

A prisoner is sentenced to two years imprisonment on 1 July 2006 and the court orders that the prisoner is to be released to parole on 1 July 2007. On 1 June 2007 the prisoner is charged with an offence and remanded in custody. On 1 August 2007 the prisoner is granted bail. The prisoner is to be immediately released on court ordered parole.

Division 4 Conditions of parole

Conditions of parole

Clause 200 requires all prisoners subject to a parole order to be subject to certain conditions upon release from custody. These conditions are—

(a) to be under the chief executive's supervision until the end of the prisoner's period of imprisonment; and

(b) to carry out the chief executive's lawful instructions;

(c) to give a test sample if required to do so by the chief executive under section 41 of the Bill;

(d) to report, and receive visits as directed by the chief executive;

(e) to notify the chief executive within 48 hours of any change in the prisoner's address or employment during the parole period; and

(f) not commit an offence.

Under this clause a board may place additional conditions on a parole order aimed at ensuring the prisoner is of good conduct and preventing the prisoner from committing a further offence.

Example—

That the prisoner—

1. Must attend courses, programs, meetings, counselling, and any other activities at such places and at such times as directed by a corrective services officer.
2. Must not change their place of the residence, without prior approval of a corrective services office.
3. Must undertake employment or participation in a program.
4. Must comply with a stated curfew.

Division 5 Amending, suspending or cancelling parole order

Subdivision 1 Chief executive's powers

Amendment or suspension

Clause 201 empowers the chief executive to, amend a parole order if the chief executive believes on reasonable grounds that a prisoner has contravened the order or poses a serious and immediate risk of self harm.

Example—

1. A prisoner might have been performing well on the conditions of the parole order and have no record of drug related offending. A drug test reveals that the prisoner has tested positive to low levels of marijuana. Instead of suspending the order, the chief executive may amend to the order to require the prisoner to undertake counselling with a drug rehabilitation service.
2. A corrective services officer supervising a prisoner on parole notices that the prisoner is becoming increasingly depressed and despondent and concludes that the prisoner may be at risk of self-harm. The chief executive may amend the parole order to include a condition that the prisoner must undertake counselling as an outpatient of a forensic health facility.

The clause also authorises the chief executive to, suspend a parole order if the chief executive believes on reasonable grounds that a prisoner has

contravened the order, poses a serious and immediate risk of harm to another person, poses an unacceptable risk of committing an offence or is preparing to leave Queensland other than under a written order granting leave to travel.

Example—

The wife of a prisoner on parole may report that the prisoner has made threats that he intends to kill her. The chief executive may suspend the prisoner's parole order pending an investigation into the threats.

The written order amending or suspending the parole order has effect for the period of not more than 28 days, starting on the day the written order is given to the prisoner.

Warrant for a prisoner's arrest

Clause 202 allows the chief executive, when an order has been suspended under clause 201 to issue a warrant for the prisoner's arrest, and provides that the warrant may be directed to all police officers.

Note – See the *Police Powers and Responsibilities Act 2000*, section 149

A prisoner arrested on a warrant issued under this clause must be returned to prison to be kept for the period of the suspension.

Example—

Following the receipt by the parole board of the chief executive's advice in relation to the suspension of the parole order of the prisoner referred to in the third example under clause 201, the board requests that advice be sought from the police on the circumstances of the allegations. Police advice indicates that the couple are separated and the allegations are baseless and an attempt by the prisoner's wife to have him returned to custody because she is concerned about her children having contact with their father. The board may decide to cancel the order suspending the prisoner's parole. The prisoner would then be released to resume parole supervision.

Cancelling amendment or suspension order and withdrawing warrant

Clause 203 requires that, when the chief executive makes a written order amending or suspending a parole order, the chief executive must immediately notify the secretary of the parole board which granted the order of the grounds of the suspension.

The chief executive should also provide such further reports in relation to the circumstances of the suspension of the prisoner's parole as the board requires.

The parole board may cancel a suspension order made by the chief executive at any time before it expires. The chief executive may also cancel the order to amend or suspend. If the board cancels the chief executive's order and a warrant issued by the chief executive for the prisoners arrest is still current but has not been executed the board must require the chief executive to immediately withdraw the warrant.

Example—

A prisoner on parole tests positive to amphetamines and the chief executive suspends the parole order and returns the parolee to custody. The parole board is notified of the suspension but before the board considers the suspension the chief executive is advised that the confirmatory drug test has returned as being a false positive. The chief executive is able to cancel the order to suspend the prisoner's parole and release the prisoner to parole.

Subdivision 2 Parole board powers

Definitions for subdivision 2

Clause 204 defines the terms "parole board", "parole order" and "suspend" for the purposes of subdivision 2.

Amendment, suspension or cancellation

Clause 205 provides the circumstances, under which a parole board may, by written order, amend, suspend or cancel a prisoner's parole order.

Example—

1. A prisoner serving a period of imprisonment for an offence of rape, having been granted parole, is charged with a further offence of rape alleged to have been committed after the prisoner was released on parole. Police have advised that the evidence against the prisoner is overwhelming but the prisoner is granted bail by a court. A parole board may form the view that the need to protect the community overrides the prisoner's presumption of innocence and that the prisoner's parole should be suspended. The board may suspend the parole order until such time as the charge of rape has been dealt with.

2. A prisoner, having been granted parole, is awaiting release and commits a prisoner offence by assaulting another prisoner. A board may cancel the parole order.

Procedural fairness is provided for through sub clause (3) which provides that a parole board must, before amending a prisoner's parole order, give the prisoner an information notice and a reasonable opportunity to be heard on the proposed amendment.

Warrant for prisoner's arrest

Clause 206 provides that if a parole board suspends or cancels a prisoner's parole order the board may issue a warrant, signed by a member or the secretary of the board, for the prisoner's arrest. Similarly, a magistrate, on the application of the board or a member of the board, may issue a warrant for the prisoner's arrest. Such a warrant may be directed to all police officers and may be executed by any of them.

Example—

A warrant issued by the Magistrate is necessary for extradition of a Queensland prisoner, whose parole order has been suspended or cancelled, who is located in another State. A warrant issued by a board can not be used for this purpose.

When arrested as a result of a warrant being issued under this clause, a prisoner must be taken to a prison to be kept there for the suspension period, or to serve the unexpired portion of the prisoner's period of imprisonment depending on whether the order was suspended or cancelled.

Application for grant of parole after court ordered parole order cancelled

Clause 207 provides that if a parole board cancels a prisoner's court ordered parole order, any application for a subsequent grant of parole during the prisoner's same period of imprisonment must be to a regional parole board.

Reconsidering decision to suspend or cancel parole order

Clause 208 provides that if a parole board suspends or cancels a prisoner's parole order, the board must give the prisoner an information notice.

The information notice should include the reasons for the decision and invite the prisoner to show cause, by written submissions given to the board

within 21 days after the notice is given, why the board should change its decision.

An information notice given under this clause must be given on the prisoner's return to prison.

The board must, as soon as practicable, consider all written submissions given to the board by the prisoner within the 21 days mentioned in the information notice and inform the prisoner, by written notice, whether the board has changed its decision, and if so, how. Note that where the board changes its decision, the changed decision has effect.

Subdivision 3 Automatic cancellation

Automatic cancellation of order by further imprisonment

Clause 209 requires a prisoner's parole to be automatically cancelled if the prisoner is convicted of an offence and sentenced to a period of imprisonment while the prisoner is on parole, whether or not the period of the parole order has expired.

However, the clause provides that where the period of imprisonment is to be served in default of paying a fine or another amount required to be paid under a court order or making restitution required to be made under a court order the parole order is not cancelled automatically.

Similarly, the parole order is not automatically cancelled where the period of imprisonment is required to be served under an intensive correction order or is wholly suspended under the *Penalties and Sentences Act 1992*, part 8.

Examples –

1. Imprisonment in default of payment of a fine or failure to make restitution.
2. A term of imprisonment ordered to be served by way of an intensive correction order.
3. A wholly suspended period of imprisonment.

Warrant for prisoner's arrest

Clause 210 provides that if a prisoner's parole order is cancelled under clause 209, a parole board (as defined in the clause) may issue a warrant,

signed by a member or the secretary of the board, for the prisoner's arrest; or a magistrate, on the application of a parole board or a member of the board, may issue a warrant for the prisoner's arrest.

Example—

A warrant issued by the Magistrate is necessary for extradition of a Queensland prisoner, whose parole order has been suspended or cancelled, who is located in another State. A warrant issued by a board can not be used for this purpose.

The warrant may be directed to all police officers and when arrested the prisoner must be taken to a prison to serve the unexpired portion of the prisoner's period of imprisonment.

Subdivision 4 Effect of cancellation

Effect of cancellation

Clause 211 operates where a prisoner's parole order has been cancelled in the circumstances provided for under clause 205(2) or clause 209 of the Bill.

Subclause (2) of the Bill also provides the circumstances where the time for which the prisoner was released under parole counts as time served for the prisoner's period of imprisonment.

Example—

A prisoner is sentenced to 6 years imprisonment to commence on 15 June 2006 which will expire on 14 June 2012. The prisoner is released on parole on 15 June 2009. On 30 June 2011 the prisoner is convicted of an offence committed on 15 June 2010 and sentenced to imprisonment.

The 4 year period from 15 June 2006 (the day the sentence commenced) to 14 June 2010 (the day before the commission of the new offence) is taken to be time served in relation to the 6 years imprisonment. This 4 year period incorporates 3 years in custody and 1 year on parole. The 1 year parole period from 15 June 2005 to 14 June 2006 is commonly referred to as "street time".

The 380 day period from 15 June 2010 (the day the offence was committed) to 29 June 2011 (the day before the prisoner was returned to prison) is not counted as time served in relation to the 6 years

imprisonment. Effectively the prisoner has served 4 years imprisonment and now has to serve the remaining 2 years imprisonment.

The prisoner's period of imprisonment will now expire on 30 June 2013.

The clause also provides that despite the effect of clause 206(3) (b) the Queensland Parole Board may, by written order, direct that the prisoner serve only a part of the unexpired period of imprisonment rather than the entire unexpired portion of their period of imprisonment. Only the Queensland Parole Board may make such an order.

Example—

Clause 206(3) (b) provides for the arrest of a prisoner, and if the order was cancelled, the prisoner is to serve the unexpired portion of the prisoner's period of imprisonment.

However, referring to the example given for subclause (2) the Queensland board may order that the prisoner serve 18 months of the remaining 2 years imprisonment. The prisoner's period of imprisonment would then expire on 30 December 2012.

Division 6 Other provisions about parole orders

Travelling intestate while released on parole

Clause 212 authorises the chief executive to grant a prisoner on parole leave to travel interstate for not more than seven days.

Example—

To enable the prisoner to attend an immediate family function. All costs associated with the prisoner's travel are borne by the prisoner.

The chief executive may grant a prisoner with court ordered parole permission to travel interstate for up to or more than seven days.

A parole board may also grant a prisoner leave to travel interstate for more than seven days, provided the parole board granting the leave is the board which released the prisoner on parole.

Example—

To enable the prisoner to provide assistance to a family member undergoing temporary hardship. All costs associated with the prisoner's travel are borne by the prisoner.

The entity who granted the interstate leave may impose the conditions on the leave they see fit.

The *Parole Orders (Transfer) Act 1984* provides for a prisoner's parole order to be registered in another State if the prisoner has been permitted to reside permanently in that State.

Travelling interstate while released on parole

Clause 213 provides the circumstances under which the Queensland Parole Board may, by written order, grant a prisoner who is released on parole, leave to travel overseas for a stated period.

Example—

To attend the funeral of an immediate family member. All costs associated with the prisoner's travel are borne by the prisoner.

A regional board can not grant leave for a prisoner to travel overseas even if the regional parole board released the prisoner on parole.

The Queensland Parole Board is authorised to attach conditions to the grant of leave. A regional parole board may not grant a prisoner leave to travel overseas.

Examples—

1. That the prisoner resides at a particular address.
2. That the prisoner report to his supervising officer within 24 hours of returning to Queensland.
3. That the prisoner be permitted to be absent for 14 days.
4. That, while absent in another State. The prisoner reports to the Probation and Parole office nearest to the prisoner's residence in that State.

Prisoner released on parole taken to be still serving sentence

Clause 214 provides that, notwithstanding that a prisoner has been released on parole, the prisoner remains a prisoner serving the sentence imposed on them.

Expiry of parole order

Clause 215 provides that when a prisoner is released on parole and the parole period has expired, without either a parole board cancelling the

order or the order being cancelled under clause 209, the prisoner is taken to have served the period of imprisonment imposed by the court and can no longer be held in custody or supervised in relation to it.

Part 2 Parole Boards

Division 1 Queensland board

Establishment

Clause 216 establishes the Queensland Parole Board.

Functions

Clause 217 establishes the functions of the Queensland Parole Board, including the power to decide applications for parole orders, other than court ordered parole orders and programs of resettlement leave and to perform other functions given to it under this Bill.

Examples –

1. To decide prisoners' applications for parole.

2. To approve resettlement leave programs.

Membership

Clause 218 provides the qualifications for the president, deputy president and other appointed members of the Queensland board, and provides that the Governor in Council may, without giving reasons, end a board member's appointment.

Example—

The Queensland board consists of the president and deputy president, 5 other members at least 1 of whom must be an Aborigine or Torres Strait Islander, at least 2 of whom must be women and at least 1 of whom must be a registered medical practitioner or psychologist, known as "appointed members", appointed by the Governor in Council, and a public service officer employed in the department and nominated by the chief executive.

Disqualification from membership

Clause 219 prohibits certain persons and classes of person from being appointed as members of the Queensland board.

Example—

A person who is a part-time member of a board or tribunal established under another Act may be appointed as a member of the Queensland board.

Term of member's appointment

Clause 220 provides the terms of appointment for a member of the Queensland board, including terms relating to reappointment.

Remuneration of members

Clause 221 provides for an appointed member of the Queensland Parole Board to be paid fees, allowances and expenses decided by the Governor in Council.

Example—

Members of the Queensland board, other than the public service officer nominated by the chief executive, are paid a fee for attendance at a meeting of the board and may be paid a special assignment fee for undertaking other duties associated with their membership according to the scale of fees set by the Department of Industrial Relations for Government Boards. Members may also be paid travelling allowance, mileage, etc.

Vacation of member's office

Clause 222 provides that an appointed member's office becomes vacant if the member resigns, is no longer qualified to be a member or the Governor in Council ends the members appointment.

Example—

The Governor in Council may end the appointment of an appointed member at any time for any reason.

Secretary

Clause 223 provides for the appointment by the chief executive of a public service officer to be the secretary of the Queensland Parole Board. In the absence of the secretary, a person may act as secretary of the board as provided for in the *Acts Interpretation Act 1954*, section 25.

Meetings

Clause 224 requires the Queensland Parole Board to meet as often as necessary to exercise its powers and discharge its functions.

The clause provides that the president, or in the president's absence, the deputy president may convene a meeting of the board at any time. In the absence of the president or deputy president of the Queensland Parole board, the secretary may convene a meeting of the Queensland Parole board to consider whether the Queensland Parole board should meet to exercise its powers in relation to the amendment, suspension or cancellation of a parole order.

Example—

If, when neither the president nor deputy president of the board is available, a report is received by the secretary advising that a prisoner on parole has threatened to kill his wife and, in the view of the corrective services officer supervising the prisoner, the threat is serious, the secretary may convene a meeting by contacting at least 4 members of the board. The members contacted may decide that a meeting should be held to consider the report. The meeting may be held by telephone conference or by the secretary contacting members individually to consider the matter.

The clause also provides details as to how members may attend board meetings, how prisoners may attend board meetings, what constitutes a quorum for board meetings, and other issues surrounding the conduct of board meetings.

Attendance of staff member at meetings

Clause 225 provides for the attendance of a staff member at a meeting of the Queensland Parole Board at the request of the secretary of that board, to give advice or information to the Queensland Parole Board in relation to any matter relating to the granting or supervision of a parole order. Attendance may be in person or by contemporaneous communication link.

Examples—

1. The Queensland board may be considering calling upon a prisoner to show cause why the prisoner's parole order should not be cancelled and requires advice from the corrective services officer who supervises the prisoner in relation to the prisoner's response to parole supervision.

2. The Queensland board, when considering a prisoner's application for parole, may require that a psychologist who has counselled the prisoner to attend the board meeting to discuss the prisoner's case.

Attendance of board member at regional board meetings

Clause 226 provides that the Queensland Parole Board may nominate one of its members, other than the president, to attend and participate, but not vote, at a meeting of a regional board. The president cannot be nominated for the reason that the president is the president of both the Queensland and the regional boards. The president is entitled to vote at both meetings other than if the Queensland Parole Board is reviewing a decision that the President made as a member of a regional parole board.

Guidelines

Clause 227 enables the Minister to make guidelines for the Queensland Parole Board in relation to the policy to be followed by the board, and for the Queensland Parole Board, in consultation with the chief executive, to make policy and administrative guidelines to be followed by the regional boards.

The guidelines made by the Queensland Parole board must be consistent with the guidelines made by the Minister under subsection (1).

Example—

The guidelines issued to the regional boards would normally closely follow the relevant guidelines made by the Minister to the Queensland Parole board. However, they could include a guideline in relation to the content of a regional board's annual report or the manner in which a regional board should exercise its discretion in deciding whether to grant leave to a prisoner to appear before it. Consultation with the chief executive is to ensure that a guideline does not conflict with operational matters at a corrective services facility.

Annual report

Clause 228 requires the Queensland Parole Board to provide the Minister with an annual report regarding parole orders and its activities for each financial year. The report must include details of the regional boards' activities for the same period and the effectiveness of each regional board and be given to the Minister on or before the next 30 September after the end of the financial year to which the report relates.

Special report

Clause 229 provides that when requested by the Minister the Queensland Parole Board must provide a report on any matter relating to the operation of the Bill with respect to parole orders or the functions of the Queensland Parole Board or regional boards.

Division 2 Regional boards

Establishment

Clause 230 provides that a regulation may establish or abolish and name a regional parole board in a particular area of the State of Queensland.

Functions

Clause 231 provides the functions of a regional board.

Example—

To decide prisoners' applications for parole other than court ordered parole orders.

Membership

Clause 232 provides the qualifications required for the president and deputy president of a regional board and qualifications and other requirements of the other appointed members of a regional board, including the number and makeup of the members, and provides that the Governor in Council may, without giving reasons, end a board member's appointment.

Example—

The board consists of the president of the regional board who is also the president of the Queensland board, and a deputy president, a public service officer employed in the department and nominated by the chief executive. The Minister may determine the required number of members for the board. The other required members of the board must consist of at least 1 Aboriginal or Torres Strait Islander person, at least 2 women and a least 1 registered medical practitioner or psychologist.

Disqualification from membership

Clause 233 prohibits certain persons and classes of person from being appointed as members of a regional board.

Term of member's appointment

Clause 234 provides the terms of appointment for a member of a regional board, including terms relating to reappointment.

Remuneration of members

Clause 235 provides for members of a regional board to be paid fees, allowances and expenses determined by the Governor in Council.

Example—

Members of the board are paid a fee for attendance at a meeting of the board according to the scale of fees set by the Department of Industrial Relations for government boards. Members may also be paid travelling allowance, mileage etc.

Vacation of member's office

Clause 236 provides that a regional board member's office becomes vacant if the member resigns, is no longer qualified to be a member or the Governor in Council ends the member's appointment.

Secretary

Clause 237 provides for the appointment by the chief executive of a public service officer to be the secretary of a regional board. In the absence of the secretary, a person may act as secretary of the board as provided for in the *Acts Interpretation Act 1954*, section 25.

Meetings

Clause 238 requires a regional board to meet as often as necessary to exercise its powers and discharge its functions.

The clause provides that the president, or in the president's absence, the deputy president may convene a meeting of the board at any time. In the absence of the president or deputy president of a regional board, the secretary of the regional board may convene a meeting to consider whether

the regional board should meet to exercise its powers in relation to the amendment, suspension or cancellation of a parole order.

Example—

If, when neither the president nor deputy president of the board is available, a report is received by the secretary advising that a prisoner on parole has threatened to kill his wife and, in the view of the corrective services officer supervising the prisoner, the threat is serious, the secretary may convene the meeting by contacting at least 4 members of the board. The members contacted may decide that a meeting should be held to consider the report. The meeting may be held by telephone conference or by the secretary contacting members individually to consider the matter.

The clause also provides details as to how members may attend regional board meetings, how prisoners may attend regional board meetings, what constitutes a quorum for regional board meetings, and other issues surrounding the conduct of regional board meetings.

During a meeting the clause provides that the chairperson must identify and decide all questions of law that need to be decided at a meeting.

Example—

The chairperson may determine a finding of fact in relation to the preparation of a statement of reasons for purposes of the *Judicial Review Act 1991*. If a question of law arises at a meeting called by the secretary the matter giving rise to the question must be deferred until the president of deputy president is present at a meeting as chairperson.

Attendance of staff member at meetings

Clause 239 provides a staff member must attend at a meeting of a regional board at the request of the secretary of the regional board, to give advice or information to the board in relation to any matter relating to a parole order. Attendance is compulsory and may be in person or by contemporaneous communication link.

Examples –

1. The board may be considering calling upon a prisoner to show cause why the prisoner's parole order should not be cancelled and requires advice from the corrective services officer who supervises the prisoner in relation to the prisoner's response to parole supervision.

2. The board, when considering a prisoner's application for parole, may require that a psychologist who counselled the prisoner to attend the board meeting to discuss the prisoner's case.

Annual report

Clause 240 provides that a regional board must submit an annual report to the Queensland Parole Board containing matters required under the guidelines made by the Queensland Parole Board as mentioned in clause 227 within 14 days after the end of each financial year.

The clause also provides that where the Queensland Parole Board is required to give a report to the Minister under clause 229, a regional board must provide any information requested by the Queensland Parole Board necessary for the preparation of the report.

Division 3 Parole board powers

General powers

Clause 241 provides a parole board with the powers necessary to perform its functions.

Power to require attendance

Clause 242 gives a parole board certain powers in relation to requiring the attendance of a person at a board meeting so as to give the board relevant information, as defined in the clause, or to produce a stated document containing relevant information. The board may inspect and copy such documents.

The clause also outlines the responsibilities of a person who is required to attend a parole board meeting, including how they may attend the meeting, and what they must do when they attend the meeting.

However, a person required to attend a meeting under this clause is not required to give the relevant information required, or produce a specified document if it would tend to incriminate the person.

A person who is required to attend a parole meeting must be paid reasonable costs incurred by their attendance.

Example—

Public transport costs

A person required to attend a parole board meeting may attend the meeting by using a contemporaneous communication link between the person and the board.

Example—

The person may attend a parole board meeting using video conferencing facilities.

Part 3 General

Legal proceedings

Clause 243 provides that a legal proceeding based on an act, omission or decision of a parole board, must be commenced against the members of the board under the name of the board.

Corrective services officer subject to direction of parole board

Clause 244 provides that in enforcing a parole order, other than a court ordered parole order, a corrective services officer is subject to the directions of the parole board that made the order.

Example—

A corrective services officer must provide a report to the board in relation to the prisoner's progress on parole when requested by the board.

Chief executive must prepare and give report to parole board

Clause 245 provides that if asked to do so by a board, the chief executive must prepare and give to the board any report on, and information about a prisoner's application for a parole order, approval of a resettlement leave program, a prisoner, a parole order or an approved resettlement leave program.

Example—

Aboard may request any information it considers is relevant to its consideration of a prisoner's application for parole. For instance, a report in relation to the circumstances of the family with whom the prisoner intends

to reside if granted parole or a report in relation to the persons with whom the prisoner is associating while on parole. The chief executive must comply with the board's request.

Invalidity of parole board's acts, proceedings or decisions

Clause 246 provides that an act, proceeding or decision of a parole board is not invalid or prejudiced in any way due to a vacancy in the membership of the board at the time of that act, proceeding or decision.

Example—

If the board makes a decision to release a prisoner on parole and it is subsequently discovered that 1 of the members present was not qualified to be a member at the time the decision was made the parole order remains valid.

Authentication of document

Clause 247 provides that a document issued by a parole board under a provision of the Bill is authentic if it is made or signed by the president of the board or the secretary of the board, acting at the president's direction.

Example—

The signature of the president or secretary of a board on a parole order is sufficient to authenticate the parole order.

Chapter 6 Administration

Part 1 Grant Of Financial Assistance

Division 1 Application for grant

Application

Clause 248 provides that an entity that is not a public sector entity may apply to the chief executive in writing for a grant of financial assistance to provide a service or program to assist prisoners or their families.

No entitlement to financial assistance

Clause 249 provides that there is no requirement for the chief executive to approve a grant of financial assistance to an entity.

The clause clarifies that while an entity's proposed service can assist prisoner welfare or help former prisoners, the chief executive has complete discretion about whether funding is to be granted for the service.

Approval of grant

Clause 250 provides that the chief executive may approve a grant of financial assistance if satisfied that the programs and services being funded will promote prisoner welfare or help former prisoners reintegrate into the community.

When deciding whether to approve the grant, the matters the chief executive may consider include; whether the services and programs are currently provided for, and whether the entity is already receiving financial assistance from another source to provide the programs or services, and if so, the extent of the assistance.

Who may receive approval for one-off financial assistance

Clause 251 enables the chief executive to approve a grant of one-off financial assistance for an entity.

Division 2 Conditions of grant

Subdivision 1 Agreement

No financial assistance without agreement

Clause 252 requires that a written agreement be entered into by the chief executive and the entity if financial assistance is to be provided. This agreement is known as a *financial assistance agreement*.

The chief executive may give financial assistance before a written agreement has been entered into if the chief executive believes that the financial assistance is urgent or it has not been practicable to enter into the agreement before assistance is given. If this is to be the case, the entity must agree in writing to enter into an agreement within a stated time. If the

entity fails to enter into an agreement within the stated time, recurrent financial assistance must stop.

What financial assistance agreement is to contain

Clause 253 provides that a financial assistance agreement must include certain information that the chief executive considers relevant to the grant, and any other information considered relevant by the chief executive.

Unless a grantee has a reasonable excuse, a financial assistance agreement must also state that it is a condition of the agreement that the grantee give the chief executive written notice within 30 days after becoming aware of a change in the grantee's address.

The clause also provides that the grantee must give notice to the chief executive where the grantee is a non-profit corporation and the grantee is under external administration under the Corporations Act or a similar law of a foreign jurisdiction or a matter prescribed under a regulation.

Chief executive's powers not limited by agreement

Clause 254 provides that the chief executive's powers under this part are not limited by the inclusion of a matter in an agreement under clause 253.

Subdivision 2 Insurance and prescribed requirements

Insurance

Clause 255 requires that an entity that is granted financial assistance must ensure that there is adequate insurance cover to manage any risks, and that the insurance complies with any requirements under another law or the agreement entered into with the chief executive.

Prescribed requirements

Clause 256 provides that a regulation may prescribe requirements relating to the provision of programs or services by recipients of a grant and provides examples of such requirements.

Without limiting the ability to make a regulation, a regulation may prescribe a requirement about:

(a) how a grantee conducts its operations while providing a program or service for which it is has received financial assistance under this part of the Bill;

(b) how a grantee delivers the programs or services;

(c) a requirement may include provision about preparing, maintaining, publishing or implementing a policy.

Grantee must comply with prescribed requirements

Clause 257 provides that the grantee must not contravene a prescribed requirement in relation to the program or service the grantee has been given financial assistance for.

Note—

A grantee may be given a compliance notice under clause 262 requiring the grantee to remedy a contravention of a prescribed requirement.

The extent to which a grantee does or does not comply with a prescribed requirement may be a relevant matter for the chief executive to consider when deciding the further assistance, if any, to give to the grantee.

A financial assistance agreement may include a provision about the consequences of a contravention of a prescribed requirement.

Subdivision 3 Monitoring compliance with conditions

Chief executive's examination of records

Clause 258 enables the chief executive to ask for any records kept by a grantee in relation to any amounts received under the grant. The chief executive may examine and make copies of the records relating to the receipt and spending of the amounts.

Subdivision 4 Noncompliance with conditions and prescribed requirements

Chief executive's powers if suspicion that condition not complied with

Clause 259 enables the chief executive to exercise 1 or more powers under clauses 260 or 261 if the chief executive suspects that a condition of a grant of financial assistance is not being or has not been complied with.

Chief executive may ask grantee to provide explanation

Clause 260 provides that the chief executive may, in writing, ask the grantee to explain why further payments under the grant should be made and why amounts paid under the grant should not be refunded. Such a request should allow the grantee 21 days after the day of its receipt to provide the explanation.

Chief executive may suspend further payments

Clause 261 provides that further payments under the grant may be suspended if the grantee fails to provide an explanation to the chief executive within the period stated, or fails to satisfy the chief executive that the conditions of the grant are being or have been complied with.

Compliance notice

Clause 262 enables the chief executive to give a grantee a *compliance notice* if the chief executive believes that the grantee is contravening a requirement prescribed in a regulation, or has contravened a prescribed requirement in circumstances that make it likely the contravention will continue or be repeated.

As well as containing details in relation to the nature of the contravention, the compliance notice may include steps that the chief executive considers necessary for the contravention to be remedied.

If the grantee does not comply with the compliance notice, the chief executive is not required to give further financial assistance to the grantee.

Part 2 Chief Executive

Functions and powers

Clause 263 directs that, subject to any direction of the Minister, the chief executive is responsible for:

(a) the security and management of all corrective services facilities; and

(b) the safe custody and welfare of all prisoners; and

(c) the supervision of offenders in the community.

Examples—

The chief executive is responsible for all corrective services facilities defined in the dictionary which includes all prisons, work camps and community corrections centres.

The chief executive is responsible for ensuring that the security of a prison is maintained and that the conditions of prisoners meets appropriate standards and that relevant rehabilitation programs are provided.

The chief executive is responsible for ensuring that sufficient resources are provided for the management of offenders undergoing court imposed community supervision.

The chief executive has the power to fulfil the role of the chief executive as provided for under this Bill and any other Act, for example the *Penalties and Sentences Act 1992* and the *Public Service Act 1996*.

The chief executive also has the powers of a corrective services officer and an inspector, including the chief inspector. The chief executive may exercise these powers in a place other than a corrective services facility.

Administrative directions

Clause 264 authorises the chief executive to make written administrative directions to facilitate the effective and efficient management of corrective services facilities. Each person to whom the direction applies must comply with it.

Example—

A direction to ensure that mobile telephones are not brought into a corrective services facility, must be complied with by staff members who are visiting corrective services facilities.

Also, a staff member who works at a corrective services facility must ensure that a visitor to a corrective services facility complies with the direction.

Administrative procedures

Clause 265 requires the chief executive to make administrative procedures to facilitate the effective and efficient management of corrective services that take into account the special needs of offenders.

Example—

A procedure for dealing with conditional release decisions.

Administrative procedures made under this clause must be published on the department's internet site, unless the procedure contains information relating to security matters or matters to do with the maintenance of good order of a facility.

Example—

A procedure to be followed in the event of an escape from a facility should not be available for general inspection.

Programs and services to help offenders

Clause 266 provides that the chief executive must establish programs or services to assist prisoners.

Examples—

(a) for the medical or religious welfare of prisoners; and

(b) to help prisoners reintegrate into the community after their release from custody, including by acquiring skills; and

(c) to initiate, keep and improve relationships between offenders and members of their families and the community; and

(d) to help rehabilitate offenders.

Monitoring devices

Clause 267 enables the chief executive to require that an offender wear a device that monitors the offender's location.

Example—

The chief executive may require an offender who is released on parole or is on resettlement leave of absence to wear a monitoring device.

Declaration of an emergency

Clause 268 enables the chief executive to declare that an emergency exists at a prison, if the chief executive believes that there is a situation that threatens, or is likely to threaten, the security or good order of the prison, or the safety of any person.

Example—

Where a riot at a prison has caused substantial damage to the structure of the prison and fears are held that a mass escape could occur.

Such a declaration must be for a specified period that does not exceed 3 days. During an emergency, the chief executive may restrict any activity in, or access to, the prison, order that prisoners' privileges be withheld, or authorise police officers to perform a function or exercise a power of a corrective services officer, under the direction of the senior police officer present.

Examples—

1. Entry to the prison may be restricted to essential services and all work undertaken by prisoners in workshops may be stopped.

2. A prisoner's visits, access to a telephone or sporting activities may be withheld.

3. The chief executive may call upon the commissioner of police to provide police officers who can be authorised to perform the functions or exercise the powers of a corrective services officer under the direction of the senior police officer present.

A "prison" in this clause also includes part of a prison, allowing a declaration of an emergency to be confined to a particular part of a prison, for example the maximum security unit.

Commissioner to provide police to help chief executive

Clause 269 provides that the commissioner of police must comply with a request by the chief executive to provide police to help the chief executive.

Example—

In the event of industrial action by custodial staff at a corrective services facility.

Community service

Clause 270 empowers the chief executive to declare an activity to be community service for the purposes of this Bill or the *Penalties and Sentences Act 1992.*

Example—

1. A project undertaken by prisoners transferred to a workcamp.
2. Work beautifying an area undertaken by an offender ordered to perform community service by a court.

The chief executive may appoint a person to be a community service supervisor to supervise offenders. A community service supervisor ceases to be appointed at the end of the term stated in the instrument of appointment and may resign by signed notice given to the chief executive.

Examples –

1. At the end of the supervisor's term of appointment.
2. If the supervisor resigns.

Delegation of functions of chief executive

Clause 271 enables the chief executive to delegate the chief executive's functions or powers to an appropriately qualified person. Under this clause "function" includes a power.

Example—

The chief executive may delegate power in section 33(1) to order a corrective service officer to search a prisoner's room to the general manager of a prison.

"An appropriately qualified person" includes, an employee of the department; an engaged service provider or an employee of an engaged service provider; or a corrective services officer.

The delegation may permit the delegate to subdelegate the delegated functions to an appropriately qualified person.

Example—

The general manager may delegate the power in section 33(1) to order a corrective services officer to search a prisoner's room to the accommodation manager of a corrective services facility.

Part 3 Engaged Service Providers

Engaging service provider

Clause 272 provides that the chief executive may authorise an entity, known as an *engaged service provider* to perform the functions of an office holder. An office holder means the chief executive, a corrective services officer or a doctor appointed to a prison. The clause sets out the requirements associated with the performance of functions by an engaged service provider.

The clause also provides that the chief executive may give authority to an engaged service provider subject to conditions.

The clause also makes clear that the authorisation of an engaged service provider to perform an authorised function does not relieve the chief executive of the chief executive's responsibility to ensure that the function is properly performed.

The clause also provides that laws apply to the engaged service provider as if the engaged service provider was the office holder.

Acts applying to engaged service provider

Clause 273 describes the Acts that apply to engaged service providers. These Acts are the *Freedom of Information Act 1992*, the *Crime and Misconduct Act 2000,* the *Judicial Review Act 1991* and the *Ombudsman Act 2001*.

Review of engaged service provider's performance

Clause 274 enables the chief executive to appoint an appropriately qualified person to review an engaged service provider's performance of authorised functions.

A person appointed to undertake such a review must be allowed unlimited access by the engaged service provider to relevant records, service

providers and corrective services facilities if necessary, and must prepare a report on the review for the chief executive.

Part 4 Corrective Service Officers

Appointing corrective services officers

Clause 275 empowers the chief executive to appoint an appropriately qualified public service officer, or another appropriately qualified person, as a corrective services officer.

Examples –

1. A person may be appointed as a corrective services officer to undertake custodial duties at a corrective services facility.
2. An officer of a law enforcement agency may be required to be appointed on a temporary basis as a corrective services officer in order to escort a prisoner to a place for the purpose of clause 70 (Removal of prisoner for law enforcement purposes).
3. A community person may be appointed on a temporary basis as a corrective services officer while he or she is supervising a prisoner who is undertaking community service under clause 72(1)(a) (community service leave of absence)

Powers of corrective services officers

Clause 276 provides that the powers of a corrective services officer are as given under the Bill or another Act, for example the *Penalties and Sentences Act 1992*. The exercise of such power is subject to the direction of the chief executive.

The powers of a corrective services officer may be limited by a regulation, a condition of the officer's appointment or by a written notice to the officer from the chief executive.

Issue of Identity card

Clause 277 requires that the chief executive must issue each corrective services officer with an identity card that identifies the corrective services officer as a corrective services officer and contains a recent photograph of the officer, the officer’s signature, and an expiry date.

This clause does not prevent the giving of a single identity card to a person for the purposes of this Bill or another Act.

Example—

An identity card issued by the chief executive may allow the holder access to the Brisbane Magistrates Court.

Production or display of identity card

Clause 278 provides that a corrective services officer must produce their identity card when exercising a power under this Bill in relation to a person before exercising the power, or ensure that their identity card is visible during the exercise of the power.

However, a corrective services officer does not have to show their identity card if it is not practicable in the circumstances, to comply with the clause.

Example—

The Executive Director, Offender Assessment and Services as a delegate of the chief executive decides under clause 12(1) of the Bill that a prisoner at a corrective services facility should be classified as high security. The Executive Director will not be able to show the prisoner their identity card when making the decision.

Corrective services dog

Clause 279 empowers the chief executive to certify in the approved form a dog as a corrective services dog.

Use of corrective services dog

Clause 280 provides for the situations in which a corrective services dog may be used.

Examples—

1. Searching for drugs.
2. Searching for an escaped prisoner.
3. Restraining a prisoner involved in a confrontation with corrective services officers.

Some of the uses of a corrective services dog are subject to the requirements in relation to the use of force.

Corrective services dog may accompany corrective services officer

Clause 281 provides that when a corrective services dog is under the control of a corrective services officer performing duties under this Bill, the dog and the officer may enter a place that the officer may lawfully enter or remain on.

Example—

This provision could be used to allow a corrective services dog, when searching for an escaped prisoner, to enter a public building.

Application of local laws

Clause 282 provides that a corrective services dog or corrective service officer handling a corrective services dog when discharging official duties are exempt from any local law made by, for instance, a city or shire council.

Example—

Under local law a dog is required to be on a leash when in a public place. It may be necessary for a corrective services dog to be released in a public place in pursuit of an escaping prisoner.

Part 5 Doctors

Appointment of doctor

Clause 283 provides for the appointment and remuneration of doctors to prisons.

Doctor's functions

Clause 284 describes the functions that a doctor must perform, and provides that a doctor must perform the following functions—

(a) examine and treat prisoners at the prison the doctor is appointed to; and

(b) establish a record of examinations carried out and treatment given by the doctor; and

(c) report and make recommendation to the chief executive about a prisoner's medical condition when required; and

(d) perform any function required by the chief executive if the doctor is qualified to perform the function.

Examples—

1. A doctor may be requested to provide a medical report on a prisoner, seeking exceptional circumstances parole, who claims that the corrective services facility is unable to provide adequate medical treatment.

2. Conducting a body search of a prisoner when authorised under clause 39 of the Bill.

Part 6 Official Visitors

Appointing official visitor

Clause 285 provides that the chief executive may appoint an appropriately qualified person, who is not an employee of a public sector entity or an employee of an engaged service provider, as an official visitor to a corrective services facility.

The power to appoint an official visitor to a corrective services facility is discretionary. A person appointed as an official visitor may only be reappointed once, for a period of up to 3 years. A limitation on the recurring appointment of official visitors will ensure that the official visitor function is accountable and will prevent a perception of over-familiarity with management or prisoners.

Assigning official visitor to corrective services facility

Clause 286 provides direction in relation to assigning official visitors to corrective services facilities. The clause also sets out the frequency at which an official visitor is required to visit the corrective services facility to which the official visitor has been assigned.

The clause provides that if two or more official visitors are assigned to visit a corrective services facility, then one of the official visitors must be a lawyer. If a significant proportion of prisoners at a corrective services facility are Aboriginal or Torres Strait Islander, at least one of the official visitors must be an Aboriginal or Torres Strait Islander. At least one of the official visitors assigned to visit a corrective services facility for female prisoners must be a woman.

Subclause (2) provides that an official visitor must visit the corrective services facility to which the official visitor has been assigned at least once a month or when asked to do so by the chief executive.

Remuneration, allowances and expenses

Clause 287 provides for an official visitor to receive remuneration, allowances and expenses approved by the chief executive.

Terminating appointment

Clause 288 provides the following circumstances in which an official visitor may be dismissed by the chief executive—

(a) If the official visitor is convicted of an indictable offence.

(b) If the official visitor fails to perform their functions under the Bill.

(c) If the official visitor solicits business or acts improperly in a matter in which the official visitor's personal interest conflicts with the public interest.

(d) If the official visitor does anything which the chief executive considers warrants their dismissal.

The clause also states that an official visitor may resign by signed notice given to the chief executive.

Prisoner's request to see official visitor

Clause 289 provides what steps must be taken by a corrective services officer when a prisoner requests to see an official visitor.

A corrective services officer must not ask a prisoner why the prisoner wants to see an official visitor, and there is no requirement for the prisoner to tell a corrective services officer why the prisoner wants to see an official visitor.

Official visitor's function

Clause 290 provides the circumstances in which an official visitor must investigate a prisoner's complaint.

Examples –

1. An official visitor must investigate a complaint relating to an act or omission by the chief executive, a delegate of the chief executive or a

corrective services officer appointed to the facility by a prisoner at the facility to which the official visitor is appointed.

2. A prisoner may lodge a complaint about the accuracy of the prisoner's private property record. The official visitor may investigate to determine whether there is any substance to the prisoner's complaint.

The clause also outlines the following circumstances where an official visitor must not investigate a prisoner's complaint—

(a) An official visitor must not investigate a complaint by a prisoner at a corrective services facility other than a facility to which the visitor is appointed.

(b) An official visitor must not investigate a complaint by a prisoner relating to the decision of a parole board.

(c) An official visitor must not investigate a complaint by a prisoner with whom the official visitor has had a prior professional or person relationship.

(d) An official visitor must not investigate a complaint by a prisoner which the official visitor reasonably suspects involves official misconduct, unless the complaint has been referred to the Crime and Misconduct Commission and the Crime and Misconduct Commission's chair person has advised that the CMC does not intend to investigate the complaint.

(e) An official visitor must not investigate a complaint by a prisoner relating to a matter currently before a court or tribunal.

(f) An official visitor must not investigate a complaint by a prisoner that can be more appropriately dealt with by another person or agency.

(g) An official visitor must not investigate a complaint by a prisoner if the official visitor's personal interest in the prisoner conflicts with the public interest.

An official visitor must not investigate a complaint by a prisoner that the official visitor believes to be frivolous or vexatious.

The clause also provides circumstances where an official visitor may request that another official visitor investigate a complaint, and the action to be taken by an official visitor when an investigation into a complaint is completed.

It is made clear in this clause that the chief executive is not bound by a recommendation made by an official visitor and that an official visitor can not overrule a decision about a complaint that has been made.

Official visitor powers

Clause 291 details the following powers that an official visitor who has been appointed to a corrective services facility has—

(a) to enter a facility at any time except when a declaration of emergency is in force; and

(b) to have access to a place to interview prisoners out of hearing of other persons; and

(c) to inspect and copy any document relating to a complaint other than a document to which legal professional privilege attaches.

The chief executive must give an official visitor reasonable help to exercise the official visitors powers under this Bill.

Example—

Assistance must be provided to an official visitor in locating a file, a document on a file or information stored in a computer.

Official visitor reports

Clause 292 provides for the frequency at which an official visitor must provide reports to the chief executive in relation to an investigation or in relation to the number and types of complaints investigated. An official visitor must provide a report at least every three months summarising the number and types of complaints investigated.

Part 7 Elders, Respected Persons And Spiritual Healers

Appointing elders, respected persons and spiritual healer

Clause 293 empowers the chief executive to appoint an Aboriginal or Torres Strait Islander elder, respected person or indigenous spiritual healer for a corrective services facility.

Part 8 Inspectors

Division 1 Appointment

Appointing inspectors generally

Clause 294 provides that the chief executive may appoint an appropriately qualified person as an inspector and describes the functions of an inspector.

The functions of an inspector include investigating an incident, inspection of corrective services facilities or probation and parole office and the review of operations at a corrective service facility or probation and parole office and the review of the services offered at a corrective service facility or probation and parole office.

The term "incident" is defined in the dictionary.

Examples –

1. The death of a prisoner at a corrective services facility.
2. The escape of a prisoner.
3. To complete an announced inspection of a corrective services facility or a probation and parole office.

Appointing inspectors for an incident

Clause 295 provides for the appointment of inspectors following an incident.

The clause provides that at least 2 inspectors must be appointed to investigate each incident. If the incident involves an Aboriginal or Torres Strait Islander prisoner, 1 of the inspectors must be an Aboriginal or Torres Strait Islander person.

Example—

One inspector may be a corrective services officer and the other an appropriately knowledgeable independent person.

Appointing chief inspector

Clause 296 enables the chief executive to appoint an inspector who is a public service officer to be the chief inspector.

The clause also provides that in addition to the functions of inspection the chief inspector has the function to coordinate the official visitor scheme established under this Bill and inspections and reviews mentioned in clause 294.

Appointment conditions and limit on powers

Clause 297 provides that an inspector holds office on any conditions stated in the inspector's instrument of appointment, or a signed notice given to the inspector, or a regulation.

The clause also provides that an inspector, who is not a public service officer, is entitled to remuneration, allowances and expenses approved by the chief executive.

Issue of identity card

Clause 298 requires that the chief executive must issue each inspector with an identity card that identifies the inspector as an inspector and contains a recent photograph of the inspector, the inspector's signature, and an expiry date.

Production or display of identity card

Clause 299 describes when an inspector must produce or display their identity card.

When inspector ceases to hold office

Clause 300 provides for the circumstances in which an inspector ceases to hold office.

Examples –

1. At the end of the inspector's term of appointment.
2. If the inspector's appointment is subject to his/her holding a particular office and he/she ceases to hold that office.
3. The inspector resigns.

Resignation

Clause 301 provides that an inspector may resign by signed notice given to the chief executive.

Return of identity card

Clause 302 provides a requirement for the return of an inspector's identity card upon cessation of the inspector's appointment.

Division 2 Powers

Inspector's powers generally

Clause 303 describes what powers an inspector has when performing their functions under clause 294(2). The powers are;

(a) to enter a corrective services facility at any time except when a declaration of emergency is in force; or

(b) to enter a probation and parole office at any time; or

(c) interview any prisoner or staff member; or

(d) have access to a place to interview prisoners or staff members out of hearing of other persons; or

(e) inspect and copy any document other than a document to which legal professional privilege applies.

A corrective service officer must give an inspector reasonable help to exercise the inspector's power under this Bill.

Example—

Assistance must be provided to an inspector in locating a file, a document on a file or information stored in a computer.

Inspector's power to require information

Clause 304 provides that a person performing a function under this Bill must give information to an inspector investigating an incident, if the inspector believes that person may be able to give information about the incident.

The inspector must warn the person that it is an offence not to give the information.

The maximum penalty is 6 months imprisonment. It is reasonable to refuse to give information if giving the information might tend to incriminate the individual.

Inspector's reports

Clause 305 provides the circumstances in which an inspector must provide a report to the chief executive. Inspectors appointed to investigate an incident must give a written report to the chief executive with the findings and any recommendations. An inspector carrying out a review or inspection must provide a written report stating the findings and any recommendations.

Part 9 Volunteers

Authorising volunteers

Clause 306 empowers the chief executive to authorise a person to perform unpaid volunteer work for the welfare of prisoners or unpaid supervision of offenders undergoing community based orders requiring supervision.

Examples—

1. A social work student, as practical experience, may be authorised to provide supervised counselling services to prisoners.
2. Where an offender, ordered by a court to perform community service lives in a remote area with no probation and parole office nearby, the chief executive may authorise a resident of the area, eg. a police officer, to be a volunteer to supervise the offender while they perform the community service.

The clause requires that a volunteer complies with certain conditions, and provides that the chief executive may approve the volunteer's expenses.

Example—

Meal and mileage allowance.

Part 10 Prisoners Of A Court

Prisoner in proper officer of the court's custody

Clause 307 provides that a person who is required to surrender into the custody of a court must surrender into the custody of the proper officer of the court.

The clause also provides that a person is in the custody of the proper officer of the court until released on bail, discharged from lawful custody or otherwise dealt with as the court directs.

Powers of proper officer of the court

Clause 308 provides that the proper officer of the court has in relation to a prisoner in a court cell all of the powers of the chief executive under this Bill that are necessary to carry out the proper officer's functions.

Example—

A proper officer may give a prisoner a direction and the prisoner must comply with the direction.

To help the proper officer of the court the clause provides that the proper officer may ask the chief executive or the police commissioner to provide corrective services officers or police officers.

Example—

Corrective services officers are employed to supervise prisoners in the cells attached to the Supreme and District Courts Complex in Brisbane.

The chief executive and the commissioner must comply with a request by a proper officer of the court.

Sub clause (4) makes clear which powers from the Bill, a corrective services officer may use when helping the proper officer of the court. The referencing of specific powers that a corrective services officer may use in sub clause (4) does not limit the help the corrective services officer may give to the proper officer of the court to perform the proper officer's functions.

Delegation of powers of proper officer of a court

Clause 309 provides a proper officer with the power of delegation. Any exercise of the power of delegation would need to be in accordance with section 27A of the *Acts Interpretation Act 1954*.

Court cells

Clause 310 describes when a person, who is not a prisoner of a court, may be detained in a court cell in the custody of the proper officer of the court. Such a person is considered to be in the custody of the proper officer of the court where the court cell is located.

The clause provides that the proper officer of the court is responsible for the management, security and good order of the court cell, despite anything in the *State Buildings Protective Security Act 1983*.

In this clause, a court cell means a place attached to or near a court that is not a corrective services facility and is used for detaining prisoners of the court and other persons.

Part 11 Property

Division 1 Prisoner's money

Prisoners' trust fund

Clause 311 provides for the keeping of prisoners' trust funds by the chief executive. The clause requires that all money received for a prisoner by the chief executive must be paid into the prisoner's account in the prisoners' trust fund.

Example—

Money forwarded to a prisoner by family or friends to be used to purchase toiletry items etc., remuneration earned by the prisoner for work performed at the corrective services facility eg. in the prison laundry.

If the public trustee is managing the prisoner's estate and the public trustee asks for the payment, the chief executive must pay the amount in the prisoner's account to the public trustee.

Example—

The Public Trustee can administer the estate of a prisoner serving life imprisonment, an indefinite sentence or 3 years or more imprisonment.

A prisoner may, with the approval of the chief executive, spend an amount that is in the prisoner's account.

Examples –

1. Purchase of items from the canteen – toiletries, underclothing, coffee etc.

2. A prisoner may send money, surplus to their needs, to assist a family member.

However the chief executive may limit the amount a prisoner may spend. This is to minimise possible criminal activity and to ensure a prisoner has sufficient funds to meet their immediate needs on discharge or release.

The chief executive must pay the prisoner the amount in the prisoner's account when the prisoner is discharged or released.

Trust account records

Clause 312 requires a record of a prisoner's money to be kept by the chief executive.

Payments to prisoner's account

Clause 313 describes purposes for which the chief executive may pay an amount into a prisoner's account, for example to enable a prisoner to purchase essential toiletry items for personal use, or as prescribed by regulation.

Deductions from prisoner's account

Clause 314 describes purposes for which the chief executive may deduct an amount from a prisoner's account or as prescribed by regulation.

Examples –

1. Tuition fees for a prisoner who wishes to participate in course offered by a higher educational institution.

2. Payment to cover damage to a building or equipment caused by a prisoner.

It is anticipated that the regulation will provide the chief executive with the ability to make deductions from a prisoner's account with the trust fund for the following purposes, subject to the availability of funds in the account:

(a) the cost of phone calls and postage;

(b) purchases made by the prisoner through corrective services facility canteen or other process in place for the regular purchase by prisoners of items including toiletries and food stuffs;

(c) prisoner television hire;

(d) for the purpose or repairing or replacing an item that the prisoner has damaged.

Investment of prisoners' trust fund

Clause 315 allows the chief executive to invest amounts held in the prisoner's trust fund in a financial institution and to use the interest earned for the general benefit of prisoners.

Example—

Purchase of sporting equipment, educational and reading materials.

Remuneration for prisoner

Clause 316 provides that the chief executive may remunerate prisoners for certain activities or programs.

The chief executive sets the rate for remuneration, and must review the rates at least once every year.

The clause provides circumstances where the chief executive may withhold remuneration.

Division 2 Other property of prisoner

Bringing property into corrective services facility

Clause 317 enables the chief executive to allow property to be bought into a corrective services facility for a prisoner.

The clause also provides for the management of a prisoner's property.

The clause provides that a regulation may be made about the property a prisoner may keep. It is anticipated that the regulation will provide a limit on the value and the volume of a prisoner's property permitted to enter a corrective services facility, excluding consumable items, legal documents and approved educational material and equipment to not exceed .25 cubic metres.

It is anticipated that the regulation will provide that the value of the property a prisoner may bring into a corrective services facility will be $500 worth of combined property and a prisoner may apply to the chief executive for approval to bring property valued at more than $500 into a corrective services facility.

Where the value of the property is not apparent, the chief executive may determine the value of the property.

By placing a value on the property that a prisoner can bring into a corrective services facility it will be made clear for both the prisoner and the department the limit of the liability should any property become damaged, lost or misplaced while in the custody of the department.

Dealing with property if prisoner escapes

Clause 318 provides what action may be taken in relation to a prisoner's property if a prisoner escapes.

Part 12 Compensation

Compensation for loss or damage of property

Clause 319 provides that a person may claim compensation from the State for property that has been lost or damaged while being stored by the chief executive or transported by the chief executive between corrective services facilities.

Part 13 Information

Division 1 Releasing information to eligible persons

Eligible persons register

Clause 320 (1) provides that the chief executive must keep a register of persons who are eligible to receive information under clause 325 (*prisoner information*) about a prisoner who has been sentenced to a period of imprisonment for an offence of violence or a sexual offence.

This clause does not provide for the registration of a prisoner's friends and family, legal representatives, or persons 'interested' in the status of a prisoner, unless it can be demonstrated that that person's life or physical safety is in jeopardy.

Subclause (2) prescribes which persons are eligible to apply to be registered as an eligible person. These persons include—

(a) the actual victim of the offence;

(b) an immediate family member of a deceased victim of the offence ("immediate family member' has been included in the dictionary to the Act);

(c) the parent or guardian of a victim who is under 18 years, or of another victim with a legal incapacity, of the offence;

(d) another person who satisfies the chief executive through documentary evidence, of the prisoner's history of violence against the person.

Example—

A person who has a domestic violence order under the *Domestic and Family Violence Protection Act 1989*. It is not intended to include a person who does not have a current domestic violence order. However consideration for registration may be given to a person who may have had a domestic violence order against the prisoner in the past. An applicant who had a domestic violence order against a prisoner prior to the prisoner's admission to custody would not have had reason to apply for another order while a prisoner is in custody, if the original order had expired.

(e) another person who satisfies the chief executive that the person's life or physical safety could reasonably be expected to be endangered because of a connection between the person and the offence.

Examples –

1. The applicant was a witness to an offence for which a prisoner has been convicted, and has received threats in relation to his or her testimony.

2. The applicant is connected with the victim of an offence and as a result is receiving threats from a prisoner.

3. The applicant is a person whom Departmental intelligence or another Government agency (for example the Queensland Police Service or the Department of Child Safety) believe may be at risk of violence upon a prisoner's release.

Subclause (3) provides that the application must be accompanied by documentary evidence satisfying the chief executive of the applicant's identity.

Example—

Documentary evidence may include, photographic identification, such as a copy of a driver's licence or passport, or other documentation such as a copy of a birth certificate.

Subclause (4) provides that the applicant may nominate an agency or person to receive the prisoner information for the applicant.

Example—

A victims' support agency.

Subclause (5) defines "offence of violence" in this section to mean an offence in which the victim suffers actual or threatened violence.

Declaration must be signed by applicant or nominee

Clause 321 provides that a declaration must be signed by the applicant or the nominee which states that the applicant or nominee will not disclose any prisoner information released to them for public dissemination.

Application by child

Clause 322 provides that if the applicant is a child, the chief executive must give the child information about registering.

As definition of "child" is not contained in the Bill, reference will be made to the definition in the *Acts Interpretation Act 1954* which defines "child" to mean "if age rather than descendancy is relevant, means an individual under the age of 18".

Example—

Information that may be provided to an applicant less than 18 years may include:

1. how to register; or
2. what information may be released if an application is approved;
3. how details may be removed from the register or
4. any other information that may assist a child under 18 years to make an informed decision in relation to making an application.

The clause provides that the chief executive must tell the child that the child's parent or guardian may register to receive the prisoner information for the child, prior to registering the child as an eligible person.

Deciding application

Clause 323 provides that the chief executive may refuse an application to be an eligible person if the chief executive believes, on reasonable grounds,

that the release of prisoner information to the applicant may endanger the security of any corrective services facility, or the safe custody or welfare of any prisoner; or the safety or welfare of someone else.

Example—

It may not be appropriate for a prisoner in custody to receive information concerning another prisoner.

The clause also provides in relation to child applicants, that the chief executive may only register a child if the child's registration is in the child's "best interests".

Example of considerations for "best interests" –

The consideration of the "best interests" of a child may include such matters as:

1. the sex and age of the child;
2. the maturity of the child;
3. the need for the child to be protected from harm;
4. whether a suitable parent, guardian, or other responsible adult (such as a the child's counsellor) or agency is available to support and assist the child to understand the information.

Where a child applicant is a child in care, the chief executive must consult with the child protection chief executive in deciding what is in the child's best interests.

When deciding to register an eligible person, the chief executive may have regard to whether the applicant's need for information outweighs a prisoner's right to privacy. In making such a decision, it may be considered whether the provision of information to an applicant about a prisoner will assist that applicant to protect their own safety and/or the safety of their family.

Removing details from eligible persons register

Clause 324 provides circumstances in which the chief executive may remove a person's details from the register including if the chief executive reasonably considers the person's continued registration may endanger the security of a corrective services facility, the safe custody or welfare of a prisoner, or the safety or welfare of someone else.

The chief executive may also remove a person's details if the eligible person discloses, for public dissemination, any prisoner information released to the person under this division.

Releasing information

Clause 325 provides examples of the types of information that the chief executive may release to an eligible person, or a nominee to the extent that the chief executive considers appropriate.

In situations where the chief executive has decided to register a person who is not a 'victim', the chief executive must consider what information should be provided to that person to assist that person to prepare for a prisoner's release.

Examples –

A person who was in a relationship with a prisoner prior to and during his or her incarceration and decided to end the relationship while the prisoner is still in custody, may have suffered threats of retaliation, through the mail. The chief executive may decide to provide the eligible person with the prisoner's actual release date to be better prepared for a prisoner's release.

Division 2 Criminal history of relevant person

Subdivision 1 Preliminary

Purpose of Division 2

Clause 326 provides that the purpose of this division is to ensure the chief executive has all the relevant information about a person to assess a person's suitability to be employed or continue to be employed in the corrective services environment or to visit a corrective services facility.

The purpose of Division 2 is achieved by providing the chief executive with the ability to obtain criminal history information and other information about a relevant person.

Definitions for Division 2

In this Division clause 327 defines *charge* and *relevant person* for the division. A charge, of an offence, means a charge in any form, including for example—

(a) a charge on an arrest;

(b) a notice to appear served under the *Police Powers and Responsibilities Act 2000*, section 214;

(c) a complaint under the *Justices Act 1886*;

(d) a charge by a court under the *Justices Act 1886*, section 42(1A) or another provision of an Act;

(e) an indictment.

The clause provides that a "relevant person" means—

(a) a person performing a function under the Bill,

(b) a staff member or

(c) an applicant seeking to be engaged by the department or a position as a staff member; and

(d) for subdivision 3 – includes a visitor; other than an accredited visitor.

The dictionary defines a *"staff member"* to mean an employee of the department or an engaged service provider or a corrective services officer.

An employee or prospective employee in a corrective services facility administered through a contract with an engaged service provider may be assessed as to whether the person is a "relevant person" and subject to the same suitability checking by the chief executive in relation to his or her criminal history or other relevant information as an employee or prospective employee in a publically administered corrective service facility.

Relationship with *Criminal Law (Rehabilitation of Offenders) Act 1986*

Clause 328 provides that the division applies to a person despite anything in the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

Chief executive must advise of duties of disclosure etc.

Clause 329 provides that the chief executive must tell a person who wishes to be employed or appointed to perform a function under the Act that the person has a duty to disclose the person's complete criminal history.

The chief executive must also tell the person that information may be obtained about the person by the chief executive and that guidelines for dealing with such information are available from the chief executive on request.

Subdivision 2 Disclosure of criminal history

Person seeking to be a relevant person must disclose criminal history

Clause 330 provides that a person seeking to be employed or to perform a function under the Act must disclose to the chief executive whether or not they have a criminal history. If the person does have a criminal history, the person must disclose their complete criminal history.

Relevant person must disclose changes in criminal history

Clause 331 provides that a relevant person must immediately disclose to the chief executive the details of any change in that person's criminal history.

A change in criminal history is taken to have occurred when a relevant person who does not have a criminal history acquires a criminal history.

Requirements for disclosure

Clause 332 provides that a person is required to give the chief executive a disclosure in the approved form.

The information disclosed in the form by the person about a conviction or charge of an offence in the person's criminal history must include whether a conviction or charge exists, when the offence was committed or alleged to have been committed and the details of the offence or alleged offence.

If there has been a conviction, the person must disclose whether or not a conviction was recorded and the sentence imposed.

False, misleading or incomplete disclosure or failure to disclose

Clause 333 provides that a maximum penalty of 100 penalty units or 2 years imprisonment applies to any person who gives the chief executive a disclosure that is false, misleading or incomplete or who fails to make a disclosure to the chief executive unless the person has a reasonable excuse.

The penalty however does not apply to a person who gives the chief executive incomplete information if the person indicates in the disclosure the information that the person is unable to provide; and otherwise gives the information in the disclosure to the best of the person's ability.

A charge resulting from an offence against this section need only state that the disclosure was without specifying which, 'false, misleading or incomplete'.

Subdivision 3 Chief executive may obtain criminal information from other entities about criminal history and particular investigations

Chief executive may obtain report from commissioner of police service

Clause 334 provides that the chief executive may obtain a report from the commissioner of police in relation to a relevant person who is employed or performs a function under the Act or is seeking to be a person employed or performing a function under the Act or a person who requests to visit a corrective services facility.

The chief executive may ask the commissioner to provide—

(a) a written report about the person's criminal history;

(b) a brief description of the circumstances of a conviction or charge mentioned in the person's criminal history; or

(c) information about an investigation relating to the possible commission of a serious offence by a person who is employed or performs a function under the Act or is seeking to be a person employed or performing a function under the Act.

The commissioner must comply with the request and the duty imposed on the commission only applies if the information is in the commissioner's possession and accessible to the commissioner.

The commissioner need not comply with the chief executive's request if the commissioner believes that provision of the information:

(a) may prejudice or hinder an investigation; or

(b) may lead to the identification of an informant; or

(c) affect the safety of a police officer, complainant or other person; or

(d) if the commissioner is satisfied that the outcome of an investigation has led or is likely to lead to a reasonable suspicion that the person has committed a serious offence.

The clause also provides that the information need not be provided where the commissioner is reasonably satisfied for a completed investigation that it has not led, and is unlikely to lead, to a reasonable suspicion that the person committed a serious offence.

Also, for an investigation that has not been completed where the commissioner is reasonably satisfied the investigation is unlikely to lead to a reasonable suspicion that the person committed a serious offence.

Prosecuting authority to notify chief executive about committal, conviction etc.

Clause 335 provides that the Director of Public Prosecutions must inform the chief executive where the Director of Public Prosecutions becomes aware that a relevant person (other than a visitor) has been charged with an indictable offence and committed by a court for trial for an indictable offence, or is convicted of an indictable offence.

Subdivision 4 Control on use of information about criminal history and particular investigations

Use of information obtained under this division

Clause 336 provides that the chief executive may only use information obtained under this division to assess a person's suitability to be, or continue to be a relevant person.

When determining a person's suitability, the chief executive must have regard to matters relating to the date of the offence or alleged offence, the nature of the offence and any other information considered relevant by the chief executive, such as the person's proposed duties or duties under this Act.

Person to be advised of information obtained

Clause 337 provides that prior to using information obtained to assess a person's suitability to be or continue to be a relevant person, the chief executive must afford the person procedural fairness.

Reconsidering decision

Clause 338 provides that a relevant person may seek a reconsideration of a decision by the chief executive that the person is not suitable to be or continue to be a relevant person.

Confidentiality

Clause 339 provides that a public service employee in the department or a selection panel member who has acquired information about someone else's criminal history or information relating to an investigation about the possible commission of a serious offence, must not disclose the information to anyone else.

The clause provides for a maximum penalty 100 penalty units or 2 years imprisonment for disclosure of the information to anyone else.

However the clause provides that the penalty provision is not invoked where information may be disclosed so that a person's suitability to be or continue to be a relevant person can be assessed, or if the person consents to the information being disclosed, or if the disclosure is required under an Act a penalty will not be incurred.

Guidelines for dealing with information

Clause 340 provides that the chief executive must make guidelines for dealing with information obtained about the criminal history details of a person who seeks to become, or continue to be, a relevant person.

The purpose of the guidelines is to ensure that natural justice is afforded to the persons about whom the information is obtained and only relevant information is used in assessing the persons' suitability to be, or continue

to be, relevant persons and decisions about suitability of persons, based on the information are made consistently.

The guidelines must be provided upon request to any person seeking to be a relevant person.

Division 3 Other provisions about information

Confidential information

Clause 341 provides that an informed person must not disclose confidential information unless the disclosure is for the purposes of the Bill or if the disclosure is to discharge a function under another law or if the person is required to make a disclosure by a court.

A maximum penalty of 100 penalty units or 2 years imprisonment is provided for the

The clause provides a definition for an "informed person."

Example—

A staff member

"Confidential information" is defined in the section.

Example—

1. A person's private details;
2. Information that could reasonably be expected to pose a risk to the security or good order of a corrective services facility.

The clause provides where the chief executive may authorise the disclosure of confidential information if a person's life or physical safety could otherwise reasonably be expected to be endangered; or it is otherwise in the public interest.

Example—

A psychiatric report in relation to a prisoner who has been transferred to another State.

Information may also be disclosed if it only informs someone of the corrective services facility that a prisoner is accommodated in, or if an offender is subject to an order in the community, that the offender is subject to the order.

Commissioner to provide offender's criminal history

Clause 342 provides that the commissioner of police must provide upon the request of the chief executive a report on the criminal history of an offender, providing the information is in the possession of the commissioner.

Example—

The chief executive may request the official police criminal history of a person sentenced to imprisonment or ordered to undergo a community based order.

The clause provides that the criminal history information can include information the commissioner can access the information through arrangements with the police service of another State.

Example—

The commissioner must provide, in addition to the criminal history of offences committed in Queensland by a person, the criminal history of offences committed by the person in other States.

The chief executive may provide the information to others, such as the chief executive of an institution to which the prisoner is to be transferred, or a parole board.

Examples –

1. The offence details of a prisoner transferred to the John Oxley Memorial Hospital for treatment of a psychiatric disorder.
2. The *Parole Orders (Transfer) Act 1984* provides that all documents, which would normally include a criminal history, that were before a parole board which granted parole to a prisoner must be sent to the State to which a request for the transfer of the parole order is sent.
3. Where an offender on a community based order is permitted to reside in another State the *Penalties and Sentences Act 1992*, section 136 provides that a copy of the order and other relevant documents and information, which would normally include a criminal history, be forwarded to the proper authority in that State.

Traffic history

Clause 343 provides that the transport chief executive must provide upon the request of the chief executive a report on the traffic history of an offender in the possession of the transport chief executive, or providing that

the transport chief executive can access the information through arrangements with the police service of another State.

The chief executive may provide the information to others, such as the chief executive of an institution to which the prisoner is to be transferred, or a parole board.

Pre-sentence report

Clause 344 provides that if required by a court, the chief executive must prepare a pre-sentence report about a stated person convicted of an offence.

This report, known as a "pre-sentence report" may be used by the court to assist in determining an appropriate sentence. The report may make recommendations, for instance, that a person is or is not suitable to be granted a community based order. The report would normally be prepared by an officer employed to supervise offenders in the community.

A pre-sentence report may, for example, state the person's criminal or traffic history obtained under clause 342 or 343.

Subclause (3) provides that if the court which requires a pre-sentence report in relation to a convicted person grants the person bail, it must order the person to report to a nominated corrective services officer or office within a stated time.

Subclause (4) provides that a pre-sentence report must be given to the court within 28 days, if in writing in triplicate.

Subclause (5) and (6) provides that a copy of the report must be given to the prosecution and the convicted person's legal representatives and in sufficient time before the sentencing proceedings to enable both parties to consider and respond to the report.

Subclause (7) provides that the court may order that all or a part of the report not be shown to the convicted person.

Example—

The report may contain information provided by the victim of the offence which, if disclosed to the convicted person, could place the victim in jeopardy.

Subclause (8) provides that the copy of the report must be returned to the court before the end of the sentencing proceedings.

Subclause (9) provides that a report, purporting to be a pre-sentence report made by a corrective services officer, is evidence of the matters contained in the report.

Subclause (10) provides that an objection must not be taken or allowed to the evidence contained in the pre-sentence report on the ground that it is hearsay.

Part 14 Surrender Of Equipment And Identity Card

Staff Members

Clause 345 provides a person who stops being a staff member must immediately return to the chief executive any firearm or other weapon issued to the person.

A person must also return, as soon as practicable their identity card and anything else that was issued to that person for the performance of their duties under the Act.

Part 15 Legal Provisions

Royal prerogative of mercy etc. not affected

Clause 346 provides that the provisions of the Bill do not affect the royal prerogative of mercy.

Section 11A of the *Constitution Act 1867* provides that the Governor is the representative of the Queen in the State. As a consequence, the Governor possesses certain powers known as the Royal Prerogatives which include the power to be able to grant a pardon of a sentence. The royal prerogative of mercy was previously preserved by the Act, section 246. It is also preserved in the Commonwealth and in the other States and Territories.

Nothing in the Bill should be interpreted as overriding any authority or jurisdiction that a court, judge or justice may possess under another Act or law unless specifically provided for in the Bill.

Interpretation of authority for admission to corrective service facility

Clause 347 enables the chief executive to apply to a Supreme Court judge for an interpretation of an authority for admitting a prisoner into custody.

The court's interpretation is sufficient authority for the chief executive to deal with the person in accordance with the judge's interpretation.

An appeal cannot be made against the judge's interpretation.

An "authority" for admitting a person to a corrective services facility, means an authority mentioned in clause 9(1) of the Bill.

Execution of warrant by corrective services officer

Clause 348 provides that a corrective services officer may execute a warrant requiring police to convey a person before a court to a corrective services facility.

Example—

A corrective services officer may take custody of a person at the court and convey the person to a corrective services facility.

Protection from liability

Clause 349 provides that an official does not incur civil liability for an act done, or omission made, honestly and without negligence under this Bill.

The clause also provides that a member of a parole board does not incur civil liability for an act done, or omission made honestly with or without negligence under this Bill.

Sub clause (3) provides that subject to an official or member acting honestly and without negligence any civil liability incurred for an act or omission attaches to the State.

The term "official" is defined to mean:

(a) the Minister; or

(b) the chief executive;

(c) a person, other than a member of the parole board appointed for this Act;

(d) a volunteer

An official does not include an engaged service provider, or person appointed by an engaged service provider, performing the function of the persons named as officials under subclause (4).

Proceedings for offences

Clause 350 provides that a proceeding for an offence against the Bill, other than an offence of unlawful assembly, riot or mutiny, is a summary proceeding under the *Justices Act 1886*.

The time frame for commencement of proceedings is 1 year after the offence was committed or within 6 months after the offence comes to the complainant's knowledge, but within 2 years after the offence was committed.

Evidentiary aids

Clause 351 provides that it is not necessary to prove an appointment of a person under the Act such as the chief executive, a corrective services officer or a member of a parole board amongst other persons named in the clause.

This clause also provides that a certificate signed by the chief executive or secretary of a parole board can be used as evidence.

Example—

That a person is, or was at a particular time, a prisoner.

Part 16 Miscellaneous

Review of Act

Clause 352 provides that the Minister must review the efficacy and efficiency of this Bill within 7 years of its commencement.

Exemption from tolls

Clause 353 provides that a vehicle used for transporting prisoners is not required to pay a toll imposed for the use of a road, bridge or ferry.

Approved forms

Clause 354 provides that the chief executive may approve the forms to be used and if there is an order or instrument made or granted under this Bill, the instrument or order must be in a form approved by the chief executive.

Regulation-making power

Clause 355(1) empowers the Governor in Council to make regulations for the purposes of the Bill. A regulation made under sub clause (1) may prescribe offences and penalties for a contravention of a regulation or fees payable for purposes under the Bill.

Chapter 7 Transitional and other provisions for *Corrective Services Act 2006*

Part 1

Preliminary

Definitions for chapter 7

Clause 356 provides definitions of certain terms for this Chapter, namely:

- ***2000 Act*** means the *Corrective Services Act 2000*.
- ***applied discipline procedure*** - see clause 406.
- ***commencement*** means the commencement of this section.
- ***previous***, if followed by a provision number, means the provision under the 2000 Act.

Continued actions or things to be read with necessary changes

Clause 357 provides that where an action was done or something was brought into existence under a provision of the 2000 Act a provision of chapter 7 may provide that the previous action of thing continues in force

or existence and is taken to be an action or thing under this Bill or a provision of this Bill.

The previous action or thing is to be read with, or continued in force with, the changes necessary to make it consistent with this Bill; and to adapt its operation to this Bill, however, nothing prevents the provision of this chapter providing for other matters in relation to the action or thing.

Part 2 Prisoners And Other Persons In Custody

Division 1 Custody and Admission

Division 1 contains clauses 358 to 364, and ensures that where prisoners have been detained in the custody of the chief executive or of the commissioner, and admitted into a corrective services facility in accordance with the requirements of the 2000 Act, that those prisoners are still validly detained, and that all records, and administrative procedures surrounding their admission are valid under the Bill.

Clause 363 deals with prisoner classifications and applies to a prisoner who, immediately before the commencement, had a classification under previous section 12 (***previous classification***), and provides that:

(a) If, immediately before the commencement, the prisoner's previous classification was maximum security, the chief executive is taken to have classified the prisoner under clause 12(1) with the security classification of maximum.

(b) If, immediately before the commencement, the prisoner's previous classification was high security, medium security or low security, the chief executive is taken to have classified the prisoner under clause 12(1) with the security classification of high.

(c) If, immediately before the commencement, the prisoner's previous classification was open security, the chief executive is taken to have classified the prisoner under clause 12(1) with the security classification of low.

For applying clause 13 to a prisoner to whom this section applies, (which deals with classification reviews) the end of the first interval is to be

worked out on the basis of the decision about classification, or a review of a classification, under previous section 12.

Example—

A prisoner was classified as maximum security on 1 October 2005. On 26 March 2006, the prisoner's classification was reviewed under previous section 12 as low security. No change is made to the classification before the commencement and, under subsection (3), the prisoner's security classification is high on the commencement. Under section 12(3), a prisoner with a security classification of high, must be reviewed at intervals of not longer than 1 year. Therefore, under subclause 363(5), the prisoner's classification must be reviewed before 26 March 2007.

Division 2 Management of prisoners

Division 2 contains clauses 365 to 371 and confirms that directions given under the previous section 14(1), orders or directions given under previous section 15(2) or 15(3)(b), authorisations given under previous section 15(7), applications or approvals made or given under previous section 16, notices lodged or approvals given under previous section 23(1) or 26(1), and notices given under previous section 24 are valid under the Bill.

Clause 371 specifically provides that clause 28 of the Bill, which concerns the prohibition on prisoners carrying on a business while serving a period of imprisonment inside a corrective services facility, does not apply, until the end of 21 days after the commencement, to a prisoner in a corrective services facility who was carrying on a business immediately before the commencement.

Division 3 Children accommodated with female prisoners

Division 3 contains clauses 372 to 374 and ensures that where a female prisoner has applied for or had approved an application made under section 20 of the 2000 Act to have a child accommodated with them in a corrective services facility, or was, immediately before commencement, entitled to apply under previous section 22 for a review of a decision of the chief executive in relation to that section, or had already applied under section 22 for a review of a decision mentioned in that section that had not been dealt

with by the chief executive, those applications, approvals, entitlements or rights of review are valid as if this Bill had not been enacted.

Division 4 Search of prisoners

Division 4 contains clauses 375 to 379, and confirms that orders for personal searching given under previous section 26(1) if the order was in force immediately before the commencement and directions or orders to strip search a prisoner given under previous section 26A, are taken to continue to be in force under the relevant clauses of the Bill.

Also, test samples given or required to be given by a person under previous section 30 are taken to have been given or are required to be given under clause 41 of the Bill.

Similarly, the register that was required to be kept of searches under previous section 29, is taken to be part of the register required to be kept under clause 40(1) for a particular facility.

Division 5 Mail and phone calls

Division 5 provides, under clause 380, that the approval of a person or number as mentioned in previous section 36(1)(b) and in force immediately before the commencement is taken to be an approval of the person or telephone number as mentioned in section 50(1)(b).

Division 6 Special treatment orders and crisis support orders

Division 6 contains clauses 381 to 384, confirms that a special treatment order made under previous section 38 or a crisis support order made under previous section 42, continue to be in force according to its terms and is taken to be a safety order under clause 53 of the Bill, and a medical examination undertaken in relation to the special treatment order or crisis support order under previous sections 40 or 45 is taken to be an examination undertaken under clause 57.

The clause also ensures that a prisoner's entitlements to review in relation to a special treatment order or crisis support order are not eroded by the introduction of the Bill, and provides that where a prisoner has asked for a review of a special treatment order under previous section 39(2), or had asked for a review of a crisis support order under previous section 44(1) those orders must be reviewed under the relevant clauses of the Bill.

Records kept in relation to these orders under previous sections 41 or 46 are taken to be part of the record required under clause 59(1) of the Bill.

Division 7 Maximum security orders

Division 7 contains clauses 385 to 388 and provides that a maximum security order made under previous section 47 that was in force immediately before commencement, a medical examination carried out on a prisoner under previous section 51, a request or an entitlement to make a request immediately before the commencement for a review of a maximum security order under previous section 50(1), or a record kept under previous section 52 are continued under the relevant clauses of the Bill.

Division 8 Transfer and removal of prisoners

Division 8 contains clauses 389 to 392, and ensures that an order to transfer a prisoner to another corrective services facility or health institution made under previous section 53, an order or attendance authority made under previous section 54, an authority given under previous section 55, or an order made under previous section 56 will continue according to their terms and is taken to have been made under the relevant provisions of the Bill. The review rights under previous section 53(5) are provided for in the Bill, and cater for a prisoner who has made, or was entitled to make immediately before the commencement, a request for a review of a transfer decision.

Division 9 Leave of absence

Division 9 contains clauses 393 to 396, and provides that an order granting leave other than resettlement leave under previous section 58(1), or

resettlement leave under previous section 58(10(e), or an authority to pay a prisoner's expenses while on leave under previous section 63(1), or a suspension of an order for leave requiring a prisoner to return to a corrective services facility under previous section 64(4) all continue to be in force according to the original terms of the order, authority or suspension under the appropriate clauses of the Bill.

Division 10 Interstate leave of absence

Division 10 contains clauses 397 to 399, and provides that an unexpired interstate leave permit issued under previous section 67 and still in force immediately before commencement, and an unexecuted warrant issued for the return of an interstate prisoner issued under previous section 72(4) that was current immediately before the commencement continues to have effect according to its terms and is taken to be a warrant issued under section 95(4).

Previous section 73, which deals with the liability of the State for damaged caused by a prisoner granted interstate leave of absence, continues to apply in relation to an act done or omission made, or a right of action that existed, before the commencement, as if this Act had not been enacted.

Division 11 Remission and conditional release

Subdivision 1 Remission

Subdivision 1 contains clauses 400 to 402, and provides that an existing grant of remission, or an eligibility to apply for a grant of remission immediately prior to the commencement made under previous section 75, including a decision by the chief executive in relation to a prisoner's eligibility for remission continue to apply as if the Bill had not been enacted. The division also allows for the situation under previous section 75 or clause 402 of this Bill where a court sets aside a grant of remission and orders the chief executive to remake the decision, a provides the chief executive must remake the decision as if the Bill had not been enacted.

Subdivision 2 Conditional Release

Subdivision 2 contains clauses 403 and 404. In relation to conditional release orders made under previous section 76(3) and in force immediately before commencement, which have not been cancelled, suspended or expired under previous section 80, the Division provides they remain in force under the Bill in accordance with their particular terms, as conditional release orders made under clause 98(1). Only orders suspended or cancelled immediately before the commencement under the previous section 80 are to be dealt with under Chapter 2, Part 2, Division 10, Subdivision 3 of this Bill.

Division 12 Arrest of prisoners

Division 12 contains clause 405 and provides that a prisoner who, immediately before the commencement, was unlawfully at large as defined under previous section 85 is taken to be a prisoner who is unlawfully at large under section 112, and that any period a prisoner is unlawfully at large includes any period before the commencement that the prisoner was unlawfully at large as defined under previous section 85.

Further, a warrant issued for a prisoner under previous section 85(2) that, immediately before the commencement, had effect and had not been executed continues in force according to its terms and is taken to be a warrant issued under section 112(2) and may be executed by any corrective services officer or any police officer.

Part 3 Breaches and offences

Division 1 Breaches of discipline by prisoners

Division 1 contains provisions 406 to 409.

Act or omission that is a breach of discipline before commencement

Clause 406 applies to an act done or omission made by a prisoner before the commencement that was a breach of discipline under the 2000 Act as in force immediately before the commencement, and had not been finally dealt with under the Act before the commencement. Previous chapter 3, part 1 (the ***applied discipline procedure***) applies in relation to the act or omission despite this Bill. Specific requirements are outlined in relation to previous sections 86(4) and 86(7), and the clause requires the chief executive to keep records for this clause as required by clause 120 of the Bill.

(3) For the applied discipline procedure—

(a) a reference in previous section 86(4) to the person in charge of a corrective services facility is taken to be a reference to the person the chief executive considers is the most appropriate person at the corrective services facility to whom the commissioner's advice should be given; and

(b) a reference in previous section 86(7) to an approved form is taken to be a reference to the relevant form approved under the 2000 Act.

(4) Despite subsection (2), previous section 90 does not apply, but the chief executive must comply with section 120 for a decision, and any review of a decision, under the applied discipline procedure.

Existing order for separate confinement

Clause 407 provides that an order for the separate confinement of a prisoner made under previous section 88, if the order was in force immediately before the commencement or an order for the separate confinement of a prisoner made under the applied discipline procedure is taken to be an order made under section 118(2)(c) of the Bill.

Each of the following orders is taken to be an order made under section 118(2)(c)—

(a) an order for the separate confinement of a prisoner made under previous section 88, if the order was in force immediately before the commencement;

(b) an order for the separate confinement of a prisoner made after the commencement under the applied discipline procedure.

Review of decision about breach of discipline

Clause 408 provides that the applied disciplinary procedure applies to a decision that a prisoner has committed a breach of discipline, whether the decision was made before the commencement, under previous section 88 or after the commencement, under the applied discipline procedure.

Continuation of disciplinary breach register

Clause 409 provides that a register kept for a corrective services facility under previous section 90 and in existence immediately before the commencement is taken to be part of the register required under section 120 for the corrective services facility.

Division 2 Seizing property

Division 2 contains clauses 410 to 412 and provides that things seized under the previous section 106 that were not dealt with under previous chapter 3, part 4 before the commencement are taken to have been seized under clause 46, 47 or 138 depending on the nature of the thing.

Receipts and notices given under the 2000 Act in relation to things seized under this clause are valid for the Bill.

The clause also provides that persons who immediately before the commencement had applied for a review of a decision to forfeit a seized thing or who were eligible to apply for such review, are to have that decision reviewed under previous section 109 as if this Bill had not been enacted, or to have the decision reviewed if they make the application within 28 days of the decision to forfeit being made.

Division 3 Use of lethal force

Division 3 contains clauses 413 and 414 and provides that an authorisation given under previous section 114 or a record kept under previous section 117 is taken to be an authorisation given under clause 145 or a record kept under clause 148.

Part 4 Corrective Services Facilities

Division 1 Existing corrective services facilities

Division 1 contains clauses 415 to 417, and provides that a declaration of a place as a prison under previous section 118(1)(a), a community corrections centre under previous section 120(1)(a)(i), or a WORC or WCC site under previous section 120(1)(a)(iii) that was in force immediately before the commencement are continued under the relevant clauses in the Bill, other than WORC or WCC sites which are now referred to as work camps under clause 151(1)(a)(ii), and may be amended or repealed under clause 149(1) and 151(1).

Similarly, the division provides that the assignment of a name to a prison, community corrections centre or WORC or WCC site is under the 2000 Act taken to be assignments of names to prisons, community corrections centres or work camps under the relevant clauses of the Bill and may be amended or repealed under clause 149(1) and 151(1).

Division 2 Visiting corrective services facilities

Division 2 contains clauses 418 to 425 and provides that in relation to visiting corrective services facilities, approvals given before the commencement under previous sections 124(1) and 125(2), applications made before the commencement but neither granted nor refused under previous section 125(1), suspensions made under previous section 128 and the right to seek a review of that suspension under previous section 128(3), and an entitlement to apply for a review of a decision by the chief executive refusing access to a corrective services facility under previous section 125(5) are taken to be approvals, applications, suspensions and entitlements under the relevant clauses of the Bill.

Similarly, an identifying particular taken under previous section 127 is taken to be an identifying particular under clause 162, and an audiovisual recording or other monitoring record made under previous section 129 is taken to have been made under clause 158.

Part 5 Parole

Division 1 Existing post-prison community based release orders

Division 1 contains clauses 426 to 432, and ensures that prisoners are not adversely affected by the Bill and the provisions within the Bill relating to parole orders. As parole is the only form of early release from custody under the Bill, it is important that prisoners who have been granted another form of early release under the 2000 Act, or who were eligible immediately before commencement to apply for such release are able to continue that release, or apply for a parole order under the Bill.

Post-prison community based release order

Clause 426 provides that a post-prison community based release order granted under the 2000 Act and in force immediately before the commencement (the ***previous order***) continues in force according to its terms; and is taken to be a parole order granted under this Bill.

Eligibility for post-prison community based release order

Clause 427 provides that where a prisoner was eligible, immediately before the commencement, for a post-prison community based release order under previous section 134, the prisoner's eligibility date for the post-prison community based release order is taken to be the prisoner's parole eligibility date for a parole order under chapter 5, part 1, division 1, subdivision 2 of the Bill.

Application for post-prison community based release order

Clause 428 applies to an application for a post-prison community based release order made, but not decided, under previous section 133 or 134 before the commencement (the ***previous application***), and provides that the previous application is taken to be an application for a parole order:

The clause also provides that the previous application is taken to have been made to, or for a parole order to be granted by, the replacement board for the board that may, under the 2000 Act, have granted the parole order.

This Bill applies to the previous application in relation to the way the replacement board may deal with the previous application.

Existing authority for prisoner's expenses while on parole

Clause 429 provides that an authority given under previous section 145(2) and in force immediately before the commencement continues in force according to its terms; and may be amended or cancelled by the chief executive.

Travelling interstate or overseas while on parole

Clause 430 applies to an order under previous section 147 or 148 (the ***previous order***) granting leave to a prisoner.

Suspension of parole order by chief executive

Clause 431 provides that a post-prison community based release order (the ***previous order***) that was suspended by an order of the chief executive under previous section 149 if the suspension was in force immediately before the commencement is taken to have been suspended under clause 201(2).

If the chief executive issued a warrant under previous section 149(2) because of the suspension and the warrant was in effect and had not been executed before the commencement, it continues to have effect according to its terms and is taken to be a warrant issues under clause 202.

Reviewing existing regional board's decision to refuse application

Clause 432 provides that if, before the commencement, a prisoner has applied under previous section 155 for a review of a refusal of an application by the prisoner, and the Queensland board established under the 2000 Act has not taken action mentioned in previous section 155(5)(a) or (b), the Queensland Parole Board must review the refusal under chapter 5, part 1, division 2, subdivision 3 of the Bill.

Division 2 Existing community corrections boards

Subdivision 1 Queensland Community Corrections Board

Subdivision 1 provides that the Queensland Community Corrections Board established under the 2000 Act continues in existence as the Queensland Parole Board until either the appointment day of the Queensland Parole Board or 1 year after the commencement.

The subdivision also provides that the person who, immediately before the commencement, holds appointment as the president, or deputy president, of the Queensland Community Corrections Board holds office as the president, or deputy president, of the Queensland Parole Board until its appointment day, and that the person who was the secretary of the Queensland Community Corrections Board immediately before the commencement is taken to have been appointed as secretary of the Queensland board under clause 223.

Similarly, any guidelines made under previous section 167 and in force immediately before the commencement are taken to be guidelines made under clause 227 for 1 year after the commencement of this subdivision.

Annual report

Clause 436 provides that if the annual report of the Queensland board for the financial year ending 30 June 2006 as required under previous section 168 has not been given under that section before the commencement the board must give the report to the Minister under previous section 168 as if this Bill had not been enacted.

Subdivision 2 Regional community corrections boards

Subdivision 2 contains clauses 437 to 440 and provides that the Central and Northern Queensland Regional Parole Board is established and amalgamates the previous North Queensland Regional Community Corrections Board, the Townsville Regional Community Corrections

Board and the Central Queensland Regional Community Corrections Board.

The clause also provides that the Southern Queensland Regional Parole Board is established by the Bill and amalgamates the Brisbane Regional Community Corrections Board, the South Queensland Regional Community Corrections Board and the West Moreton Regional Community Corrections Board.

The regional community corrections board members remain as members of the relevant parole board until their office is vacated under clause 236.

However, a person who, immediately before the commencement, holds appointment as the president, or deputy president, of an existing regional board goes out of office as the president, or deputy president, on the commencement and is not entitled to compensation because of the operation of this subsection.

Similarly, a person who, immediately before the commencement, holds appointment as the secretary of an existing regional board goes out of office as the secretary on the commencement.

The subdivision also requires that if the annual report for an existing regional board for the financial year ending 30 June 2006 has not been given under previous section 180 before the commencement the replacement board must give a report to the Minister on or before 30 September 2006, and person who was the president of the existing regional board must give help to the replacement board.

Subdivision 3 Powers of corrections boards

Subdivision 3 contains clause 441, and provides that an attendance notice issued under previous section 182 by a corrections board within the meaning of the 2000 Act continues in force under the Bill according to its terms and as if it was issued under clause 244.

Part 6 Administration

Division 1 Chief executive

Division 1 contains clauses 442 to 447, and provides that the following, where occurring or in force, and where relevant, not revoked, continue as if made under the relevant clause of the Bill dealing with such matters:

- powers exercised immediately before commencement by the chief executive under previous section 188;
- an administrative policy made under previous section 189(1);
- an administrative procedure made under previous section 189(1);
- services or programs established under previous section 190(1);
- the requirement to wear a monitoring device under previous section 191;
- a declaration of emergency declared under previous section 192; and
- a request by the chief executive to the commissioner of police to provide police officers under previous section 193

Division 2 Engaged service providers

Division 2 contains clauses 448 and 449, and provides that an authorisation of an entity as an engaged service provider under previous section 196 and in force immediately before the commencement (the ***previous authorisation***) continues in force according to its terms and is taken to be an authorisation of the entity as an engaged service provider under section 274.

The division also provides that the appointment of a person under previous section 198(1) to review an engaged service provider's performance of authorised functions continues in force according to its terms, if before the commencement, the person had not finished preparing the report for the chief executive and is taken to be an appointment under section 276 to review the engaged service provider's performance of the authorised functions.

Division 3 Continuing appointments

Division 3 contains clauses 450 to 459, and provides generally that an appointment or authorisation made before the commencement that is, under this division, taken to be an appointment or authorisation under a provision of this Bill continues until the end of the term of appointment or authorisation, if any; and on the conditions of the appointment or authorisation that are consistent with this Bill.

Specifically division 3 provides that entities that, immediately before the commencement, were appointed under previous section 201 (corrective services officers), previous section 205(b) (corrective services dogs), previous section 209(1)(a) (doctors appointed for a prison), previous section 211 (official visitors), previous section 218 (an Aboriginal or Torres Strait Islander elder, respected person or indigenous spiritual healer), previous section 219 (inspectors), previous section 224 (volunteers), previous section 231 (person's in the custody of the proper officer of a court) or previous section 219(3) (inspectors appointed to investigate an incident under previous section 223, where no report has yet been given to the chief executive) are taken to have been appointed under the relevant clauses of the Bill for that purpose.

The division lists the relevant clauses for each category of previous appointment.

Division 4 Property

Division 4 contains clauses 460 to 463, and provides that prisoner's trust funds in existence prior to the commencement are continued in existence under the Bill, including those previous sections that relate to trust account records, the investment of prisoners trust funds and authorised deductions. Similarly, an approval of an activity or program under previous section 238, including the rates of pay for that activity or program as set by the chief executive, remains in force under the Bill.

Division 5 Compensation

Division 5 contains clause 464 and provides that where, immediately before the commencement, a person was entitled to apply under previous section 241(2) for compensation for loss or damage mentioned in that section, that person may apply for the compensation under previous section 241(2) as if this Act had not been enacted.

Division 6 Information

Division 6 contains clauses 465 to 467.

Clause 465 provides that the register of concerned persons established under previous section 242 and in existence immediately before the commencement is taken to be part of the eligible persons register, and that an application under previous section 242(2) that has neither been granted nor refused before the commencement is taken to be an application under section 320(2). Similarly, a notice under previous section 242(3) is taken to be the nomination of an entity under section 320(4).

Clause 466 provides that if the chief executive asked the commissioner for a report about the criminal history of a person under previous section 244 (the ***previous request***) before the commencement, and the commissioner had not given the report, the previous request is taken to be a request under either:

- for a previous request about an offender mentioned in previous section 244(1)(a)—clause 342(1); or
- otherwise—clause 334.

Clause 467 provides that where the chief executive asked the transport chief executive for a report about an offender's traffic history under previous section 244A (the ***previous request***) before the commencement and the transport chief executive had not given the report, the previous request is taken to be a request under clause 343.

Division 7 Legal provisions

Division 7 contains clause 468, and provides that a proceeding started before the commencement under a provision of any of the repealed Acts, and pending at the commencement, may be continued as if this Act had not been enacted.

A proceeding in this clause means a proceeding under the *Judicial Review Act 1991* in relation to a decision made under any of the repealed Acts or for an offence against a provision of any of the repealed Acts.

Part 7 Other Transitional Provisions

Part 7 contains clauses 469 to 473.

References in Acts or documents

Clause 469 ensures that references in other Acts or documents to the Act is a reference to this Bill once commenced, and a reference to the Regulation is a reference to a regulation made under this Bill.

Clause 471 also provides that where there is a reference in the Bill to certain things, they are taken to have the corresponding meaning from this Bill, namely:

- a reference to a WORC site or WCC site is taken to be a reference to a work camp; and
- a reference to the person in charge of a corrective services facility, or a particular type of corrective services facility, within the meaning of the 2000 Act is taken to be a reference to the chief executive; and
- a reference to a special treatment order or crisis support order is taken to be a reference to a safety order; and
- a reference to a community work order is taken to be a reference to a work order; and
- a reference to a post-prison community based release order is taken to be a reference to a parole order; and
- a reference to post-prison community based release is taken to be a reference to parole; and

- a reference to the Queensland Community Corrections Board is taken to be a reference to the Queensland Parole Board; and
- a reference to a regional community corrections board is taken to be a reference to generally, a regional parole board; or
    - if the reference is to the North Queensland Regional Community Corrections Board, the Townsville Regional Community Corrections Board or the Central Queensland Regional Community Corrections Board—the Central and Northern Queensland Regional Parole Board; or
    - if the reference is to the Brisbane Regional Community Corrections Board, the South Queensland Regional Community Corrections Board or the West Moreton Regional Community Corrections Board—the Southern Queensland Regional Parole Board.

Authorities and actions

Clause 470 provides that where an authority was made, or an action taken, under a previous provision, if the authority was in force or the action continued to have effect immediately before the commencement and there is a corresponding provision under this Act for the previous provision, then the authority or action continues in force, or continues to have effect, according to its terms; and is taken to have been made or taken under the corresponding provision under this Bill.

Clause 470 is subject to a specific provision under this chapter in relation to the authority or action.

For the purposes of clause 470:

> ***authority*** means an approval, authorisation, certificate, classification, decision, declaration, determination, direction, guideline, instrument, order, parole order, permit, policy, procedure, recommendation, transfer instrument or other authority.
>
> ***corresponding provision under this Act***, for an authority or action, includes a provision under this Act that provides for the authority to be made, or action to be taken, by the chief executive even if the person who made the authority or took the action under the previous provision was not the chief executive.
>
> ***made*** includes given and issued.

order includes an order given orally or in writing, but does not include a parole order.

previous provision, for an authority made or action taken, means a provision of 1 of the repealed Acts under which the authority may be made or action taken.

Corrective Services Rules

Clause 471 removes any doubt by declaring that, to the extent the corrective services rules were in force immediately before the expiry of the 2000 Act, section 272, the corrective services rules expired on the expiry of that section.

Note – The 2000 Act, section 272 expired on 1 July 2002.

For clause 471:

corrective services rules means the corrective services rules made under the *Corrective Services (Administration) Act 1988;* and under the *2000 Act*, section 272, continued in force as regulations under the *2000 Act*.

Previous expectations of prisoner

Clause 472 applies to a prisoner sentenced for an offence committed before the commencement, whether or not the prisoner was sentenced for the offence after the commencement.

The clause provides that on and from the commencement, this chapter and chapters 2 and 5 are the only provisions dealing with the previous expectations of the prisoner and that if, before the commencement, the prisoner had a previous expectation, it is extinguished to the extent it is not provided for under this chapter or chapter 2 or 5.

Clause 472 has no effect in relation to a proceeding mentioned in section 468 however applies in relation to an application made by the prisoner and dealt with on or after the commencement even if the application was made before the commencement, and prevails to the extent it is inconsistent with clause 470.

In this clause—

previous expectation, for a prisoner, means any expectation the prisoner may have had in relation to a matter under the 2000 Act, including, for example, any of the following:

(a) an expectation to have a review of a classification as mentioned in previous section 12(4);

(b) an expectation to be transferred under previous section 53(1);

(c) an expectation to be granted approval as mentioned in previous section 56(2);

(d) an expectation to be eligible to participate in a WORC program or WCC program as mentioned in previous section 57;

(e) an expectation to be granted leave of absence under previous chapter 2, part 2, division 9;

(f) an expectation to be granted remission under previous section 75;

(g) an expectation to be granted conditional release under previous section 76;

(h) an expectation to be discharged or released on a particular day, as mentioned in previous section 82 or 83.

All release to be dealt with under this Act

Clause 473 applies to a prisoner sentenced for an offence committed before the commencement, whether or not the prisoner was sentenced for the offence after the commencement, and provides that on and from the commencement this chapter and chapters 2 and 5 are the only provisions under which the prisoner may be released before the end of the period of imprisonment to which the prisoner has been sentenced; and the only requirements for the granting of the release are the requirements that apply under this Bill.

Clause 473 also provides that if, before the commencement, the prisoner had any expectation to be able, after the commencement, to be released before, or to be considered for a release taking effect before, the end of the period of imprisonment to which the prisoner has been sentenced, the expectation is extinguished to the extent that the release is not provided for under subclause (2).

Subclauses 473 (2) and (3) apply in relation to an application made by the prisoner and dealt with on or after the commencement even if the application was made before the commencement.

If a form of release for which the prisoner made an application before the commencement corresponds to a form of release that, after the commencement, is available under chapter 5, the application must be dealt with, to the greatest practicable extent, as an application for the form of

release under chapter 5, but this subsection does not authorise release before the day mentioned in clause 180.

Clause 473 has no effect in relation to a proceeding mentioned in section 468 however this clause prevails to the extent it is inconsistent with clause 470 or the *Acts Interpretation Act 1954*, sections 20 and 20C(3), the Criminal Code section 11(2), the *Penalties and Sentences Act 1992*, section 180 or any other law of similar effect.

In this clause—

expectation includes right, privilege, entitlement and eligibility.

Part 8 Declaration And Validation Provisions

Part 8 contains clauses 474 and 475.

Declaration and validation about particular warrants issued under Penalties and Sentences Act 1992

Clause 474 declares that:

(a) a Magistrates Court has and always has had, including before the commencement of this section, power to issue a warrant for a person's detention for the purposes of a relevant Corrective Services Act provision; and

(b) a warrant for a person's detention issued or purported to have been issued by a Magistrates Court for a relevant Corrective Services Act provision was sufficient for its purpose.

(2) In this clause:

relevant Corrective Services Act provision means—

(a) the 2000 Act section 9(1)(a); or

(b) a provision of 1 of the other repealed Acts that corresponded to the provision mentioned in paragraph (a).

Declaration about prisoner for the 2000 Act, Ch 5, pt 1

Clause 475 declares that:

(a) a person, including a person who was the subject of a post-prison community based release order within the meaning of the 2000 Act, was and always was a prisoner for that Act, chapter 5, part 1 (the ***relevant provisions***) during the period starting on 1 October 2003 and ending on the commencement of this clause, if, during the period, the person was in the custody of the chief executive of the department in which that Act was administered;

(b) a decision made or purportedly made, or an action taken or purportedly taken, in relation to the person under the relevant provisions is, and always has been, as valid as it would have been if the person were a prisoner for the relevant provisions when the decision was made or the action was taken.

Part 9 Saving, Transitional And Validating Provisions Under Corrective Services Act 2000

Part 9 contains clauses 476 and 477.

Clause 476 provides for the continuing effect of particular provisions of the 2000 Act to the extent the provisions have effect immediately before the commencement. It does not limit the application of the *Acts Interpretation Act 1954*, section 20A to a declaration of a thing for a saving or transitional purpose under the 2000 Act as mentioned in that section for a matter not dealt with in this part.

Clause 477 provides that the provisions set out in schedule 2 (the ***continuing provisions***) continue to apply in relation to matters before the commencement to which they would have applied under the 2000 Act. The continuing provisions are numbered with the section numbers of the 2000 Act; and are to read in the context of the 2000 Act.

Example—

1. A reference in a continuing provision to ‘the commencement of this section’ is a reference to when the section commenced as part of the 2000 Act.

2. A term used in a continuing provision (for example, ‘post prison community based release order’) is the term as defined in the 2000 Act.

Chapter 8 Repeal and amendment of other Acts

Part 1 Repeal

Part 1 repeals the *Corrective Services Act 2000* No. 63.

Part 2 Amendment Of Other Acts

Part 2 provides for the consequential amendments to be made to other Acts as a result of this Bill.

Clause 488 inserts a new provision into the *Penalties and Sentences Act 1992* that provides for the proper officer of a court to give the chief executive (corrective services) record of order for imprisonment.

Clause 493 inserts a new division 3 into the *Penalties and Sentences Act 1992* to provide for court ordered parole and to create a consistent approach to the setting of either fixed release dates for parole or parole eligibility dates for prisoners sentenced to a period of imprisonment.

This new division will require a sentencing court to fix a parole release date for offenders who are sentenced to a period of imprisonment of three years or less and the period of imprisonment does not include a term of imprisonment for a sexual offence as defined in Schedule 1 of the Bill or a serious violent offence as defined in the *Penalties and Sentences Act 1992*.

The date that the court fixes for an offender's release to parole is the date the offender will be released from custody. A corresponding provision within the Bill (clause 199) requires the chief executive to release the offender to parole on the date fixed by the court and issue the offender with a court ordered parole order unless a offender can not be released because the offender is remanded in custody on another charge. An offender will be required to serve the balance of their period of imprisonment under supervision in the community unless there is cause for a regional parole board to amend, suspend or cancel the court ordered parole order due to the behaviour of an offender following their release to parole.

If an offender is sentenced to a further term of imprisonment before being released to parole and the offender's period of imprisonment is still three

years or less and does not include a term of imprisonment for a sexual offence or serious violent offence, a new parole release date must be fixed by the court. In fixing the date, the court must not set a date that is earlier than the previous parole release date.

Because it is mandatory to fix a parole release date, a clause has been inserted that provides that the last day of a person's sentence can be the parole release date. This recognises that in some circumstances offenders are sentenced to very short periods of imprisonment and it is neither practical nor intended that the offender spend some time under supervision in the community. In these circumstances the chief executive of the Department which administers corrective services is not required to issue a court ordered parole order and the offender will be discharged.

The Division also provides that a court may fix the date that an offender is eligible for parole in relation to a period of imprisonment which includes a term of imprisonment for a sexual offence or a serious violent offence. However a parole eligibility date for a serious violent offence cannot be earlier than 80% of the term of imprisonment.

The Division also provides that a court may fix the date the offender is eligible for parole if the offender is sentenced to a term of imprisonment and the offender is serving a period of imprisonment of more than three years. If the court elects not to set a parole eligibility date for an offender, the statutory eligibility dates in the Bill will apply. The parole eligibility date for an offender is the date that an offender may be granted parole by a parole board if the offender applies for parole.

The Division clarifies that if an offender is sentenced to a further term of imprisonment a court must fix a date that an offender is eligible for parole if a court has previously made a recommendation for parole or has fixed a date that the offender is eligible for parole, whether that date or time is in the future or has passed.

The date that the court fixes must not be earlier than the previous parole eligibility date.

Example—

An offender is sentenced to six years imprisonment on 1 July 2006 and the court fixes the parole eligibility date for the offender as 1 July 2008. The prisoner applies for parole and is refused parole on 1 July 2008. The prisoner is subsequently sentenced to a further term of imprisonment on 1 July 2011 of two years to be served cumulatively. The sentencing court is required to fix a parole eligibility date because the statutory eligibility date for parole would be 30 June 2010.

The Division also makes clear that an offender should only have one parole release date or parole eligibility date operable at any time and that when sentencing an offender to a series of terms of imprisonment a court is only required to set a date for the period of imprisonment and not each individual term of imprisonment.

Schedules

Schedule 1 Sexual Offences

Schedule 1 provides a list of sexual offences to be used to determine eligibility for court-ordered parole and for a prisoner to be transferred to a work camp. The Bill also provides that a victim of a sexual offence listed in the schedule may register as an eligible person to obtain certain information about a prisoner.

Schedule 2 Continuing Provisions Of The *Corrective Services Act 2000*

Schedule 2 contains a number of transitional provisions contained in the Act that are required to be preserved under the Bill.

Schedule 3 Minor And Consequential Amendments Of Other Acts

The Bill has necessitated a number of minor and consequential amendments to other Acts.

Schedule 4 Dictionary

The dictionary contains a list of terms and phrases used throughout the Bill.