Corrective Services (Promoting Safety) and Other Legislation Amendment Bill 2024

Explanatory Notes

Short title

The short title of the Bill is the Corrective Services (Promoting Safety) and Other Legislation Amendment Bill 2024.

Policy objectives and the reasons for them

The number one priority for the correctional system in Queensland is the safety of frontline corrective services officers, victims of crime, offenders and the broader community. Safety encompasses physical, psychological, behavioural and environmental considerations. It is more than compliance, it is about proactively improving systems, practices and skills across the correctional environment over time.

The *Corrective Services Act 2006* (CSA) provides for the humane containment, supervision and rehabilitation of almost 30,000 prisoners and offenders across Queensland. In line with this purpose, the Bill amends the CSA and other legislation to promote the safety of victims of crime, frontline corrective services officers, offenders, and the broader community.

The main objectives of the Bill are to:

- enhance the legislative framework for the Queensland Corrective Services (QCS) Victims Register to promote the safety and wellbeing of victims engaging with the service;
- require representation for victims on the Parole Board Queensland (the Board) to increase victims' input into parole decisions;
- strengthen powers to respond to abuse of prisoner communication channels to protect the community from prisoners who seek to inflict harm from behind bars;
- enable the use of certain police powers for reportable child sex offenders being supervised under the *Dangerous Prisoners (Sexual Offenders) Act 2003* (DPSOA) to strengthen community safety;
- increase the penalty for possession of a gel blaster on corrective services land in response to evolving behaviour putting safety at risk;
- protect the use of victim and intelligence information to support effective decision making;
- clarify the authority for corrective services officers to use body-worn cameras while in the community to promote the safety of frontline corrective services officers;
- provide greater flexibility for prescribing protections and requirements around how invasive prisoner searches are conducted to accommodate diverse prisoner needs;
- update legislative requirements to support the independence, diversity and efficient administration of the Board;

- enable QCS to lawfully detain prisoners from Norfolk Island in line with the Queensland Government's commitments under the *Intergovernmental Partnership Agreement on State Service Delivery to Norfolk Island*; and
- address a number of other minor and technical issues to support the continued safe operations of corrective services.

Enhancing the QCS Victims Register

Victim involvement is an essential part of the criminal justice system. Through the QCS Victims Register, eligible persons who are registered against sentenced prisoners are kept up-to-date and informed about important events and have the opportunity to participate in the parole process. The Victims Register provides information to eligible persons that may assist them to plan for their safety if a prisoner is released, empowers them to make submissions to decision makers about parole, and notifies them of prisoner events that may affect their safety.

A suite of amendments to the CSA are proposed to streamline the registration process to reduce instances of re-traumatisation, extend the eligibility criteria to ensure access for those that need it, increase flexibility for how an eligible person can engage with the parole process and clarify what information is provided to eligible persons to support their safety. The amendments focus on ensuring the Victims Register continues to be an effective mechanism for promoting the safety and wellbeing of victims.

These amendments complement other initiatives being advanced to support victims of crime, including in response to recommendations of the Women's Safety and Justice Taskforce *Hear her voice* reports and the Legal Affairs and Safety Committee Report No. 48, 57th Parliament, *Inquiry into support provided to victims of crime*. The amendments ensure the QCS Victims Register can continue to work alongside other partners supporting victims across government and fulfill its legislated functions.

Victim representation on the Parole Board Queensland

The Board is made up of a diverse membership including the president and deputy presidents, professional board members, police representatives, public service (QCS) representatives and community board members.

These membership requirements were implemented in response to recommendations in the 2016 *Queensland Parole System Review* (QPSR). The QPSR highlighted the importance of community representation on the Board in ensuring the wider Queensland community has a voice in the parole decision process.

On 12 September 2023, the Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence announced the Queensland Government's commitment to ensuring there is a victims' representative within the community membership of the Board.

In line with this commitment, the Bill amends the CSA to require representation for victims on the Board during community board member recruitment. The amendment aims to better inform parole decisions with information about the breadth of challenges,

setbacks and trauma that can be associated with a victim's journey from the offence to sentencing and beyond.

Responding to abuse of prisoner communications

Maintaining contact with family and support networks outside of the correctional environment is an important element of prisoner rehabilitation. However, this positive engagement should be balanced against the need to ensure the safety of the people using those systems. Despite the checks and balances already in place, prisoners continue to use prison communications systems, such as the prisoner telephone system, to perpetrate crimes and re-victimise people in the community, particularly in relation to domestic and family violence.

The Queensland Audit Office in the *Keeping people safe from domestic and family violence Report 5: 2022-23* at page 39 noted that the prisoner telephone system provides a means for perpetrators to continue to contact their victims. Resulting recommendation 21 was to enhance systems and processes for monitoring prisoners to ensure they do not breach domestic violence orders.

The *Domestic and Family Violence Death Review and Advisory Board Annual Report 2019-20* also recommended that a review of the mechanisms through which prisoners may contravene a domestic violence order while in custody be undertaken with a view to identifying and addressing existing gaps (recommendation 7).

The Women's Safety and Justice Taskforce's first report, *Hear her voice: Addressing coercive control and domestic and family violence in Queensland*, acknowledged that communication avenues, such as the prisoner telephone system, were pathways for perpetrators to continue their pattern of violence and abuse. Specifically, at page 23, submissions highlighted stalking, monitoring and surveillance of victims through telephone and digital means, promotes a perception of the perpetrator's constant presence during the relationship after separation or when incarcerated.

In response to these issues, the Bill implements a suite of amendments to the CSA which strengthen powers to respond to abuse of prisoner communication channels to protect the community from prisoners seeking to inflict harm from behind bars.

Enabling the use of police powers in relation to reportable child sex offenders on post-sentence supervision

A significant portion of offenders subject to a supervision or interim supervision order under the DPSOA are also reportable offenders under the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* (CPOROPOA). Section 4 of the CPOROPOA prescribes that an offender subject to the CPOROPOA who is also subject to supervision under the DPSOA, is only required to make an initial report under the CPOROPOA before their reporting obligations are suspended. This suspension is made on the basis that the offender is supervised under the DPSOA by corrective services officers, and continued reporting to police would be duplicative.

As a result, some police powers that would ordinarily apply to monitoring these offenders do not continue to apply. These include police powers to demand production

of, and search devices under the CPOROPOA (section 67FC) and to enter premises to verify reported details under the *Police Powers and Responsibilities Act 2000* (PPRA) (section 21A). The Bill enlivens the use of certain police powers in relation to reportable offenders supervised by QCS under the DPSOA. The Bill amends the CPOROPOA and the PPRA to extend powers to this cohort in a manner that is consistent with the application of the powers to reportable offenders who are not supervised under the DPSOA.

Expansion of the powers to reportable offenders that are supervised under the DPSOA will provide consistent mechanisms across both reportable offender cohorts to verify reported personal details (as defined in section 10A of the CPOROPOA) and review devices. These powers are intended to complement QCS' case management and supervision of the DPSOA offenders and promote community safety.

Gel blaster offence

The availability of gel blasters in the community has increased in recent times and has resulted in QCS locating or observing offenders in possession of a gel blaster at places where corrective services are delivered. This behaviour presents a real risk to the safety of staff and other persons on corrective services land, and security of property.

In 2020, steps were made to appropriately address the risks of gel blasters in the general community by introducing an offence under section 67 (Possessing and acquiring restricted items) of the *Weapons Act 1990*. However, further deterrence is required in the context of corrective services.

The Bill creates a stronger deterrent for behaviour that is increasingly putting the safety and wellbeing of frontline corrective services officers and other people at risk through the creation of a new offence for possession of a restricted item, including a gel blaster, on corrective services land.

Protecting victim and intelligence information in decision making

Under the CSA, decision makers consider a range of confidential information when making decisions about the management of prisoners and offenders. This includes decisions made by the Board about an offender's suitability for release into the community on parole. Information that can inform these decisions can include information from a victim of crime or intelligence about criminal activity. Use of such information in decision making is critical to ensuring the safety and security of the correctional system and the broader community.

In *McQueen v Parole Board Queensland* [2022] QSC 27, Brown J set aside two decisions made by the Board in part because an information notice provided to the applicant did not comply with the requirement to provide reasons for the decision under section 208 (Reconsidering decision to suspend or cancel parole order) of the CSA. Brown J held that the information notice did not comply in part because the Board had not disclosed confidential information regarding adverse intelligence reports about the applicant's risk to community safety.

It is essential that decisions made under the CSA involving assessments about safety and risks associated with prisoners and offenders are informed by sensitive information, where appropriate. Not only is this approach consistent with legislative and policy requirements, but a failure to take this information into account would undermine the effectiveness of these decisions, increasing risks to the safety of the correctional environment and the broader community.

While care should be taken to afford a prisoner a fair process, including the provision of adequate reasons for decisions that impact them, this does not override the need to prevent the disclosure of certain information that could result in further harm.

The Bill provides discretion for decision makers acting under the CSA not to disclose certain information in decision making. The amendments aim to ensure critical information is available to inform effective decisions about the safety and security of the correctional system and prevent harm to individuals or the community.

Using body-worn cameras outside of corrective services facilities

Body-worn cameras are commonly deployed by law enforcement, correctional and security agencies across Australia. They provide vital, contextual evidence when investigating incidents and serve as a deterrent to anti-social behaviour and assaults. QCS uses body-worn cameras to ensure the safety and security of staff, offenders and other people interacting with the correctional system.

In line with the Queensland Law Reform Commission's 2020 *Review of Queensland's laws relating to civil surveillance and the protection of privacy in the context of current and emerging technologies*, it is important to ensure there is clear lawful authority for the use of surveillance devices that appropriately safeguards individual privacy.

The Bill clarifies the authority for corrective services officers to use body-worn cameras while escorting prisoners or performing other functions to promote safety and accountability in community-facing corrective services.

Prescribing search requirements to accommodate diverse prisoner needs

There is a high demand for contraband in correctional centres and its presence is a significant risk to the safety of prisoners, staff and visitors. The CSA provides the authority for QCS to conduct different types of searches for a range of reasons, including to detect and deter the introduction of contraband. The CSA includes a range of requirements about how searches are conducted to protect the safety and dignity of prisoners being searched and the corrective services officers conducting the search.

As an example of one such safeguard, sections 34 (Personal search of prisoners leaving particular part of corrective services facility) and 38 (Requirements for search requiring the removal of clothing) and section 39 (Body search of particular prisoner) of the CSA all require corrective services officers or health practitioner conducting the search to be of the same sex as the prisoner.

The September 2023 Queensland Human Rights Commission report, *Stripped of our dignity: A human rights review of policies, procedures, and practices in relation to strip*

searches of women in Queensland prisons (QHRC report) highlighted the need for more flexibility in how searches are conducted for women, taking into account the diverse needs of women including in relation to being pregnant, breastfeeding, having a disability or wearing religious clothing.

Recommendation 17.1 of the QHRC report noted the tension between the same sex search requirements in the CSA and the desire to provide additional flexibility for trans and gender diverse or intersex prisoners to request an alternative approach to being searched. In this context, amendments to the *Births, Deaths and Marriages Registration Act 2023* (BDMRA), once commenced, will allow an individual to legally identify as a sex marker outside of the binary descriptors.

In response, the Bill implements amendments which provide greater flexibility for prescribing protections and requirements around how invasive prisoner searches are conducted. These amendments aim to better accommodate the diverse needs of prisoners while maintaining safety and dignity for prisoners and frontline corrective services officers now and into future practice.

Supporting the Parole Board Queensland

Supporting the administration of the Parole Board Queensland

In 2021, the Queensland Government engaged KPMG International Limited (KPMG) to provide current state insights and advice on future efficiencies and modernisation considerations for the Board. The review highlighted certain actions that needed to be undertaken to ensure a sustainable operating model moving forward.

Included in the *Statement of Government's reforms to design a sustainable Parole Board Queensland operating model*, published in response to the KPMG review, was a commitment to formally clarify the Board's official status, and ensure appropriate governance, structural and functional arrangements for its operations.

The Bill updates the legislative requirements to support the independence, diversity and efficient administration of the Board in line with these Government commitments.

Diversity of the Parole Board Queensland membership

Recommendation 39 of the QPSR relates to legislating a requirement for at least one professional board member to be a First Nations person. This recommendation aims to improve the cultural awareness of parole decision making by ensuring the prisoner population, where First Nations people are overrepresented, is adequately represented in the make-up of the Board. This recommendation was supported by the Government.

The Bill amends the CSA to require the appointment of at least one professional board member who is a First Nations person.

The Bill includes further amendments to the legislative guidance for the appointment of professional board members and public service representatives, and creates more flexibility for appointment of part-time or temporary board members. These

amendments aim to inform parole decision making through diverse views and experiences relevant to the prisoner cohort and offender rehabilitation.

Lawful detention of Norfolk Island prisoners

The Commonwealth Government is responsible for funding and delivering services to Norfolk Island (NI), an external territory administered under the *Norfolk Island Act 1979* (Cth). On 22 October 2021, the Queensland Government signed the *Intergovernmental Partnership Agreement on State Service Delivery to Norfolk Island*, which facilitated the commencement of negotiations for the transition of responsibility for assisting the Commonwealth with the delivery of services on Norfolk Island to Queensland from the New South Wales Government.

Within this framework, the Commonwealth has requested Queensland's assistance with the lawful detention of Norfolk Island prisoners as required. This is due to there being no suitable prison or similar facility available on Norfolk Island.

The *Sentencing Act 2007* (NI) and the *Removal of Prisoners Act 2004* (NI) enable Norfolk Island Courts to detain and require the escort of a prisoner from Norfolk Island to Queensland for detention. The Bill amends the CSA to complement these frameworks with a clear lawful authority for QCS to receive and lawfully detain a Norfolk Island prisoner once in Queensland in accordance with the provisions of the CSA. These amendments support the Queensland Government's commitment to transitioning the delivery of certain state services to the Norfolk Island community from the New South Wales Government to Queensland.

Minor and technical issues:

Confirming arrangements for assisting the proper officer of a court

The proper officer of a court is responsible for the management, security, and good order of court cells. Section 308 of the CSA provides the proper officer of a court with all of the powers of the chief executive that are necessary to discharge their functions in relation to a prisoner in court cells. The proper officer may ask the chief executive to provide corrective services officers to help the proper officer perform its functions (section 308(2)(a)).

Pursuant to section 309 of the CSA, the proper officer of a court may delegate its functions and powers to an appropriately qualified person. This enables corrective services officers to manage prisoners in court cells on behalf of the proper officer, including managing movement, control and searching of adult prisoners in certain court facilities.

In practice, QCS provides assistance to the proper officer in accordance with these provisions at the Brisbane Magistrates Court and the Supreme and District Courts Brisbane. The Bill enacts amendments which confirm the arrangements for QCS when providing assistance to the proper officer of a court, to support the continued delivery of an efficient and effective service.

Clarifying chief executive responsibilities

In September 2008, offender health services were moved from the portfolio responsibility of the Minister for Corrective Services to the portfolio responsibility of the Minister for Health (published in *Extraordinary Queensland Government Gazette Vol 349, No 34*). Since this time, Queensland Health has been responsible for the provision of health services to prisoners in QCS' custody. This arrangement is reflected in the Administrative Arrangements Orders made under the *Constitution of Queensland 2001*.

The Bill makes a minor amendment to clarify that the chief executive's responsibilities are subject to the Administrative Arrangements Orders in line with these arrangements.

Enabling prisoner transfers for palliative or personal care

In line with Queensland Health's responsibility for the delivery of health services to prisoners, where possible, services are provided at a corrective services facility. Where a service cannot be provided in custody, section 68 of the CSA authorises QCS to escort a prisoner to a place for medical treatment.

In practice, QCS escorts prisoners to locations for Queensland Health to provide a range of health services including medical treatment, health care, personal care or in some cases, palliative care. Transfers can be short or long term in nature, depending on the prisoner's health needs which can be complex. For example, some prisoners may require nursing-home level of care and need assistance with activities of daily living such as bathing, dressing and toileting. These prisoners may have difficulty with independent mobility or be at risk of falls. This may be due to age, disability, medical conditions, or end-of-life care.

In line with existing practice, the Bill clarifies that the chief executive can order the transfer of a prisoner to a place for palliative or personal care to support flexibility for prisoners to access vital services in support of their wellbeing.

Facilitating video link oversight of law enforcement removals

Official visitors play an important role in the accountability of Queensland's correctional system by ensuring a regular, accessible, independent program of visitation to correctional centres to assist prisoners to manage and resolve their complaints. Section 70 of the CSA requires an official visitor to be physically present and witness a prisoner providing consent to be removed from a corrective services facility by a law enforcement agency. This requirement presents logistical challenges at short notice.

The Bill clarifies that an official visitor may witness a prisoner consenting to be removed by law enforcement from a corrective services facility by video link to provide additional flexibility for the independent oversight of this function.

Modernising the use of gendered language

The Bill includes amendments to modernise the use of gendered language as required to ensure the CSA is aligned with modern drafting standards in advance of the commencement of the BDMRA.

Ensuring the validity of past parole transfer decisions

The *Parole Orders (Transfer) Act 1984* (Qld) establishes Queensland's participation in a national scheme for the formal transfer of parole orders between Australian jurisdictions. The purpose of the scheme is to support the rehabilitative aspects of parole by enabling parolees to transfer their order interstate, where it is appropriate to do so.

For full implementation of the transfer scheme across Australia, each state or territory must declare the laws of the other states and territories to be a corresponding law via gazette notice. Due to an oversight in 1984, when corresponding laws for Queensland were originally gazetted, the *Parole Orders (Transfer) Act 1984* (WA Act) was not declared. On 15 September 2023, an updated gazette notice was published to declare corresponding laws for Queensland including all states and territories.

The Bill ensures the validity of past parole transfer decisions to address the oversight in the historical gazetting of corresponding laws in other states and territories.

Achievement of policy objectives

The Bill achieves these objectives by amendments which include:

Enhancing the QCS Victims Register

The Bill enacts a suite of amendments to the CSA to enhance the Victims Register to promote the safety and wellbeing of eligible persons.

Streamlining the registration process for the QCS Victims Register

Amendments in the Bill streamline the registration process for the Victims Register to reduce re-traumatisation which can occur if a victim is required to re-disclose information through an application.

The Bill will enable an entity supporting an eligible person to refer the person to the Victims Register for registration. This will enable an entity to obtain consent from the eligible person and forward their details in the format approved to the Victims Register, removing the onus of registering with the Victims Register from the victim and improving their experience of the criminal justice system. Referral entities could include another government support service, victims' representative groups or equivalent victims' registers in other jurisdictions.

The Bill will provide the ability for the chief executive to register an eligible person without an application where the chief executive is satisfied that such a person is entitled to be registered as an eligible person against the prisoner. This provides additional flexibility to improve victims' interactions with criminal justice agencies.

The Bill also provides that while an eligible person will continue to have their details removed from the Victims Register in prescribed circumstances (for example, if the person requests to be removed or the prisoner is discharged), if the prisoner returns to custody within 90 days of the removal occurring the chief executive has the discretion to reinstate the eligible person's registration without the need for a new application. This is at the chief executive's discretion to ensure that it only occurs in appropriate circumstances.

Extending the eligibility criteria for the QCS Victims Register

The Bill amends the grounds on which a person may register as an eligible person against an offender who has committed a homicide offence (a homicide offender).

The Bill relies on the definition of homicide offence consistent with existing section 175B of the CSA, relevant to the no body-no parole policy.

The Bill maintains existing grounds for registration against a homicide offender, including for a person that is an immediate family member of the deceased victim, or a person who is endangered because of a documented history of violence by the offender against the person.

The Bill extends the entitlement for a person to be registered against a homicide offender if the chief executive is satisfied the registration is warranted due to the impact of the homicide offence on the individual.

The Bill also extends eligibility for victims of a homicide offence, including the deceased victim's immediate family, to register against a prisoner that has completed their sentence for the homicide offence and has returned to custody or QCS supervision for subsequent offending of any kind.

The Bill clarifies that an eligible person can be registered against a prisoner who has been sentenced to a period of imprisonment for an offence of violence or a sexual offence, or a prisoner subject to an order under the DPSOA. This removes any doubt about eligibility for registering against prisoners on post-sentence orders under the DPSOA either in custody or in the community.

The Bill updates the definition of 'immediate family member' in schedule 4 of the CSA to ensure that First Nations family and kinship relationships are acknowledged for the purpose of registering to receive information about any prisoner or homicide offender on behalf of a deceased victim of crime.

The Bill retains existing discretion to refuse to register an eligible person if the chief executive reasonably believes the 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.

Increasing flexibility for how an eligible person can engage with the parole process

The Bill amends section 188 of the CSA to provide flexibility for the Board to accept a submission from an eligible person about a prisoner's parole application that is not in writing. The Board will retain the discretion to approve or specify the format of a submission that is not in writing. Future alternate submissions could be in the form of a voice recording, via telephone or via video link.

The Bill ensures an eligible person is empowered to nominate a person or body, such as a victims' advocacy group, to receive any information from the Victims Register on their behalf, including about parole applications. The person or body nominated must consent to receive the information and may withdraw their consent by written notice. Under existing section 324(1)(c) an eligible person can request to be removed from the register, including details of a nominee. The Bill ensures the chief executive will also have the discretion to refuse to accept a nominee if they are not considered reasonably suitable in the circumstances.

Clarifying what information is provided to an eligible person

The Bill amends section 324A of the CSA to update the information an eligible person is entitled to receive from the Victims Register. The Bill provides that the QCS chief executive must inform an eligible person of the fact of the death of the prisoner and if the prisoner died while detained in a corrective services facility, the date the prisoner died, the fact and date of the prisoner's escape, and the details of the prisoner's change of name, registered under a law of the State, such as the BDMRA once commenced.

The Bill also provides that if the chief executive reasonably believes the disclosure of information to an eligible person will endanger the safety and 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 can refuse disclosure of the information.

The Bill amends section 325 of the CSA to clarify what information the Victims Register may provide an eligible person where appropriate. This includes that the chief executive may inform an eligible person of other matters relevant to the prisoner's parole (including suspension or cancellation), the fact and details of the prisoner's alteration of record of sex under the BDMRA, and the prisoner's deportation or removal status under the *Migration Act 1958* (Cth) if it is known to QCS.

The Bill also amends section 325 to clarify what information the Victims Register may release to an eligible person registered against a homicide offender who is subject to community-based supervision, to the extent that information is known to QCS. The Bill provides that, if appropriate, an eligible person in these circumstances may be informed of matters including the current location of the offender, the nature of the community-based order, that the offender has ceased supervision, details of a change or name or change of sex, the deportation or removal status of the offender and the death of the offender.

The Bill maintains the existing requirement that an eligible person or their nominee must not further disclose information provided to them by the Victims Register. The Bill also ensures that requirements to notify an eligible person, including through their nominee, are satisfied if reasonable attempts to contact the eligible person or nominee are made.

Victim representation on the Parole Board Queensland

The Bill amends section 221 of the CSA to require the appointment of at least one community board member that is a victims' representative. 'Victims' representative' is defined as someone with expertise or experience relevant to the impact of crime on victims and victims interacting with the criminal justice system.

Responding to abuse of prisoner communications

The Bill replaces sections 50 – 52 of the CSA to strengthen powers to respond to abuse of prisoner communication channels aiming to protect the community from prisoners seeking to inflict harm from behind bars.

The Bill strengthens the framework for contacts to be approved for a prisoner's personal calls. The Bill enables contacts to be approved or revoked for a prisoner's personal calls if the chief executive reasonably believes:

- an individual proposed to be approved is a victim or alleged victim of an offence committed or alleged to have been committed by the prisoner;
- the contact details proposed are not correct or are not suitable for a personal call to be made by a prisoner (for example, a 1800 number); or
- the call is likely to be used to engage in prohibited prisoner communication.

The Bill defines prohibited prisoner communication to include a personal call that constitutes or facilitates:

- an offence;
- a breach of a domestic violence order or notice or other court order against a prisoner;
- domestic violence;
- a threat to a person's safety or welfare;
- an incitement to commit violence against a person or to destroy property,
- gambling by a prisoner; or
- a threat to the security or good order of a corrective services facility.

The Bill provides that approval required for a personal call must be revoked if the individual informs the chief executive that they do not consent, or no longer consent, to being contacted by the prisoner.

The Bill enables the chief executive to suspend the approval of an individual while investigating whether the approval should be revoked. The Bill also provides that the suspension of an approval ceases to have effect six months after it was imposed if the chief executive has not revoked the approval or withdrawn the suspension.

The amendments in the Bill relating to personal calls will not affect a prisoner's ability to communicate with their lawyer and engage in other authorised prisoner

communications, such as with the ombudsman and the inspector of detention services, without the communications being monitored or recorded by the chief executive. The Bill also ensures that other entities may be approved for all or a class of prisoners to contact via a personal call.

The Bill ensures that limitations on the length and frequency of prisoners' personal calls can be increased or decreased to address levels of risk. This is achieved by clarifying that the chief executive may determine the terms and conditions for the making of personal calls, including when and how (for example by audio or audio-visual means) calls can be made.

The Bill provides for different terms and conditions to be made according to a prisoner's security classification (including any risk sub-category), the special needs of prisoners (as defined in schedule 4 of the CSA), or another factor prescribed by regulation.

The Bill provides that more restrictive terms and conditions may be applied to an individual prisoner if the prisoner is likely to use personal calls to engage in prohibited prisoner communication. The Bill outlines the factors to which the chief executive may have regard in deciding whether to apply more restrictive terms and conditions to an individual prisoner.

A safeguard has been included to provide that a prisoner must not be prevented from making at least seven personal calls in a seven-day period. Other safeguards include that the terms and conditions, other than those for an individual prisoner, must be included within the administrative procedures made under section 265 of the CSA, that procedures must be published, and that the chief executive must be satisfied that procedures are compatible with human rights when authorising the procedures.

The Bill enables restrictions to be placed on how often prisoners can top up their phone accounts, by allowing the chief executive to limit the amount a prisoner may spend on personal phone calls within a specified period. Restrictive conditions may only be put in place where the chief executive reasonably believes an individual prisoner is likely to use personal calls to engage in prohibited prisoner communication.

The Bill expands powers to end calls involving violence, coercion, harassment or threats by clarifying the chief executive's power to end a prisoner's personal call if the chief executive reasonably believes there has been a contravention of the terms and conditions applicable to the call or the call is being, or has been, used to engage in prohibited prisoner communication.

The Bill expands powers to suspend prisoner communications while the commission of an offence is being investigated.

The Bill future-proofs the CSA by providing that personal calls may be made by audio or audio-visual communication, depending on the availability of technology. As the Bill reframes the communication framework, existing sections 50 to 52 of the CSA are replicated in the new framework, including the offence for diverting a phone call, currently enacted under section 50(5).

Enabling the use of police powers in relation to reportable child sex offenders on post-sentence supervision

Amendments will enable the Queensland Police Service (QPS) to use certain police powers in relation to reportable offenders supervised under the DPSOA.

The Bill amends section 21A of the PPRA to expand the ability for police to enter a premises where a reportable offender generally resides to verify the offender's personal details reported by the offender under the CPOROPOA to include equivalent reporting under the DPSOA order. Consistent with the existing power to enter in relation to reportable offenders not supervised under the DPSOA, the power is limited to verifying personal details, as defined under the CPOROPOA.

The Bill also amends section 31 of the CPOROPOA to clarify that police may photograph a thing that is required to be reported by the offender under their DPSOA order, and amends section 67FC of the CPOROPOA to enable police to require production of, and inspect devices, where an officer forms a reasonable suspicion that the offender has committed an indictable offence against the DPSOA (such as contravention of their DPSOA order).

These amendments are not intended to enliven an offender's reporting requirements under the CPOROPOA, nor affect the purpose of section 4 of the CPOROPOA, being to eliminate any duplication of reporting. The amendments will ensure police powers remain in place, regardless of whether the offender is reporting personal details to police or QCS.

Gel blaster offence

The Bill creates a new offence under the CSA for any person who enters or attempts to enter corrective services land while in possession of a restricted item, including a gel blaster, punishable by up to two years' imprisonment.

The offence will not have been committed if the person did not know and could not, by the exercise of reasonable diligence, have known they were on corrective services land. However, as an additional safeguard, the prosecution must first establish that there was appropriate signage at the corrective services land at the time of the alleged offence.

Other exceptions will apply where the possession is approved by the chief executive or the person is an officer of, or assisting an officer of, a law enforcement agency, protective service or emergency service. *Corrective services land* and *appropriate signage* are defined exhaustively for the purpose of the new offence. Amendments to the *Corrective Services Regulation 2017* are included to prescribe the restricted items for this offence, including gel blasters and inoperable firearms.

Protecting victim and intelligence information in decision making

The Bill inserts a new section 340AA to clarify that when a decision maker is required to provide reasons for a decision made under the CSA, the decision maker may withhold the detail of information that informed the decision for prescribed reasons.

The Bill limits use of the discretion to situations where the decision maker is reasonably satisfied that disclosure of the information could be expected to:

- enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained; or
- endanger a person's life or physical safety; or
- seriously threaten a person's welfare; or
- prejudice public safety or national security; or
- prejudice the detection, investigation, or prosecution by a law enforcement agency of a terrorism offence, an offence with a maximum penalty of 14 years or more, or another offence prescribed by regulation for this section; or
- be prohibited under a law of this or any other State or the Commonwealth.

The Bill also protects past decisions made in reliance on information of the kind protected by new section 340AA from potentially being set aside if that information was not disclosed. The Bill achieves this by providing that a decision is, and is taken to have always been, as valid as it would have been if, at the time the decision was made, section 340AA had applied.

However, the Bill ensures that if a decision to which section 340AA applies has, before its commencement, been found to be invalid by a court or set aside by court order, the finding or order stands.

Using body-worn cameras outside of corrective services facilities

The Bill authorises a corrective services officer to use a body-worn camera issued to the officer while acting in the performance of the officer's duties outside of a corrective services facility. The provision ensures that use is not unlawful only because that use is incidental to an authorised use, or is inadvertent or unexpected.

The Bill provides that an officer may use the body-worn camera when the officer has a prisoner under their control (such as during an escort), is responding to an incident (as defined in sch 4 of the CSA), is using or considering a use of force, believes there is an imminent and significant risk to the life self or safety of an individual, or believes that an offence or breach of discipline is being or has been committed.

The Bill further also ensures that use of a body-worn camera in a sensitive location such as a private residence, changeroom, shower or toilet, is only permitted if the officer believes there is an imminent and significant risk to the life, health or safety of an individual.

Other safeguards in the Bill ensure that the authority does not extend to using a body-worn camera which is deliberately hidden from view or disguised, or to monitoring and recording a prisoner communication, such as a discussion with the prisoner's lawyer, which could not be lawfully recorded if it took place in a corrective services facility.

Prescribing search requirements to accommodate diverse prisoner needs

The Bill provides authority to prescribe in regulation how invasive searches are to be conducted. The Bill replaces current requirements in the CSA for officers or health practitioners conducting invasive searches (personal searches, searches requiring the

removal of clothing and body searches of prisoners) with a clear head of power to prescribe requirements and procedures in the regulation for the effective carrying out of the search, respecting a prisoner's dignity and addressing the special or diverse needs of a prisoner.

Future regulation amendments will be progressed in line with this head of power to retain the general protection for officers or health practitioners to search prisoners of the same gender and include discretion to allow a different approach where safe and appropriate.

The amendments in the Bill relating to existing search protections will not commence until a regulation made under new section 39A commences. This is intended to ensure that there is no gap in the legislative safeguards and protections for prisoners and those conducting the searches.

Supporting the Parole Board Queensland

Supporting the administration of the Board

The Bill amends section 217A of the CSA to clarify that the Board is not a statutory body for the purposes of the *Financial Accountability Act 2009*, the *Statutory Bodies Financial Arrangements Act 1982*, or other Queensland statutes. The Board will continue to not control its funds but will retain complete independence in decision making from the parent agency. The provision retains the existing provision that the Board is not a public sector entity under the *Public Sector Act 2022*.

The Bill amends section 229A of the CSA to prescribe additional functions for the president in managing the performance of appointed board members and giving directions about the practices and procedures to be followed by the Board. The Bill further amends section 229A to provide that the president must promote the efficient and effective operation of the Board.

To support these arrangements, the Bill amends section 236 of the CSA to clarify that the parole board secretariat performs its functions by providing administrative and legal support for the Board, clarify that the chief executive may assign public service employees to the secretariat and note that those employees remain responsible to the chief executive under the *Public Sector Act 2022*.

A further amendment will streamline the criminal history check process for prospective board members. This amendment will ensure the chief executive, via the secretariat, is authorised to obtain the check to support the appointment via Governor in Council.

Diversity of the Parole Board Queensland membership

To promote First Nations representation within the Board's professional membership, the Bill amends section 221 of the CSA to require that a least one professional board member appointed is a First Nations person.

The Bill provides additional legislative guidance around the relevant qualifications for professional board members and public service representatives. A new subsection is

inserted in section 221 to clarify that a relevant qualification for a professional board member includes a qualification in law, criminology, medicine, psychology, behavioural science and social work. Section 221(1)(e) is amended to provide that the composition of the Board is to include a public service representative who has expertise or experience in the supervision or rehabilitation of offenders.

The Bill supports the Board to offer flexible working arrangements by clarifying that while the president and deputy presidents must be appointed on a full-time basis, a professional board member may be appointed on a full-time or part-time basis. The Bill also replaces section 228 of the CSA with a new process for more flexible temporary appointments of a president, deputy president and professional board members.

Lawful detention of Norfolk Island prisoners

The Bill provides clear authority for QCS to take lawful custody of a Norfolk Island prisoner sentenced or remanded by a court of Norfolk Island, in line with the *Removal of Prisoners Act 2004* (NI) and the *Sentencing Act 2007* (NI). The Bill allows provisions of the CSA to support the management of Norfolk Island prisoners as if they were a Queensland prisoner, subject to other provisions in the Bill.

The Bill excludes the application of the Queensland parole framework under the CSA to Norfolk Island prisoners, noting parole is provided for under the *Sentencing Act 2007* (NI), unless a regulation provides for the Queensland parole framework to apply to Norfolk Island prisoners. The Bill provides future flexibility to exclude or modify the application of sections of the CSA, including the parole provisions, for Norfolk Island prisoners where there are incompatibilities.

Finally, the Bill excludes Norfolk Island prisoners from the application of the DPSOA and any other acts in the future via a regulation. The purpose of these exclusions is to limit the unintentional exposure of Norfolk Island prisoners to other Queensland legislation by virtue of the prisoner being in the chief executive's custody in Queensland, unless this is appropriate.

Confirming arrangements for assisting the proper officer of a court

The Bill requires the proper officer of a court to request assistance in writing from the QCS chief executive to delegate proper officer functions to corrective services officers or watch house officers.

The Bill clarifies that the chief executive must make administrative procedures under section 265 of the CSA to facilitate corrective services officers performing functions and exercising powers delegated to corrective services officers by the proper officer of a court. The Bill requires the chief executive to consult with the proper officer of a court before making the administrative procedures.

The Bill authorises the inspection of services provided by corrective services officers on behalf of the proper officer of a court. The Bill authorises an inspector to enter the court facilities and, with the consent or at the request of the proper officer of a court, to perform certain functions. Functions may include interviewing any prisoner, corrective services officer or court officer present, having access to a place in the facilities where

the inspector may conduct an interview, and inspecting and copying relevant documents.

The Bill does not impose an obligation on the proper officer of a court to provide the requested information, but if the request is refused, the proper officer must give the inspector written reasons.

Other minor and technical issues:

The Bill makes other minor and technical amendments to support the continued safe operations of corrective services.

The Bill amends section 263 of the CSA to clarify that the chief executive's responsibility for the welfare of prisoners is subject to the administrative arrangement orders made under the *Constitution of Queensland 2001*, which currently provide that the health chief executive is responsible for prisoner health services.

The Bill amends section 68 of the CSA to clarify that a prisoner may be lawfully transferred to a place for ongoing palliative or personal care.

The Bill amends section 70 of the CSA to clarify that an official visitor can witness a prisoner consenting to a law enforcement removal from a corrective services facility via video link.

The Bill amends the CSA to modernise language related to gender. This includes removing references to mother and father in section 25 of the CSA and replacing these with parent as well as replacing references to his or her as required.

The Bill amends the *Parole Orders (Transfer) Act 1984* (Qld) to ensure the validity of decisions made to transfer and register parole orders between Queensland and other states and territories since the commencement of the Act in 1984.

Alternative ways of achieving policy objectives

There are no alternative and equally effective ways of achieving the policy objectives.

For many of the issues addressed by the Bill, it is possible for QCS to amend operational policies and procedures instead of amending legislation. However, legislation is preferable because it will provide clarity and certainty about heads of power, facilitate timely decision making that takes into account all relevant factors and ensure legislative safeguards are in place. Legislation places clear and transparent obligations on the chief executive and the Board which promote consistency in practice and decision making. This is considered the most efficient and effective way to ensure the continued safe and humane containment, supervision, and rehabilitation of offenders through the delivery of correctional services in accordance with the CSA.

Estimated cost for government implementation

There are no anticipated costs to government in implementing the Bill.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. Potential inconsistencies with fundamental legislative principles under the *Legislative Standards Act 1992* (LSA) are considered justified and are addressed in detail below.

Enhancing the QCS Victims Register

Extending the eligibility criteria for the QCS Victims Register and prescribing additional information that must and may be provided to eligible persons may generally be considered to be inconsistent with the rights and liberties of individuals (section 4(3)(a) of the LSA), which includes a right to privacy. This is because the Bill expands the number of people that may be eligible to receive information and expands the volume of private information about the relevant prisoner or homicide offender that is able to be disclosed.

However, this is considered justified on the basis that those who can be registered must first meet a high threshold of legislated eligibility. This threshold is set on the basis that these individuals are impacted by high-harm crimes of personal violence and the information disclosed recognises the long-term trauma associated with such crime, and in many cases the eligible person's need to forward plan for their safety and welfare.

There are also significant safeguards included in the legislation to prevent inappropriate disclosure, including that the disclosure of discretionary information must be appropriate in the circumstances, that the chief executive may choose not to disclose required information for prescribed reasons, and that the eligible person or nominee must sign a declaration that they will not further disclose or disseminate the information provided.

Increasing flexibility for how an eligible person can engage with the parole process

Providing the Board with discretion to accept a submission from an eligible person in a format other than in writing may be considered inconsistent with the rights and liberties of individuals (section 4(3)(a) of the LSA) because it provides the Board with discretion to accept submissions other than in the prescribed format, and there are no criteria outlining when this discretion may be used.

This is considered justified as the amendment aims to increase victim engagement with the parole process, particularly in circumstances where an eligible person is illiterate, English is their second language, or they face other barriers to making a submission in writing. The Board is suitably placed to determine an appropriate format of a submission as the authority who considers it as a part of their decision making process.

Responding to abuse of prisoner communications

Allowing the chief executive to not approve prisoner communication with personal contacts, or limit or suspend contact in limited circumstances may be considered inconsistent with the rights and liberties of individuals (sections 4(3)(a) and (b) of the LSA) as it subjects a prisoner’s contact with family and friends to administrative power. It may also be inconsistent with the principles of natural justice as the chief executive

can immediately enact the power without the prisoner being given an opportunity to present their case to a decision maker. However, it is considered justified as the swiftness of the limitation or suspension will only be done in limited circumstances where the chief executive believes that the prisoner is using the prisoner communications to inflict harm or without consent to contact a person. Despite no immediate hearing, the prisoner will still be entitled to request a review of the decision, make an internal complaint with an official visitor and apply for a judicial review under section 20 of the *Judicial Review Act 1991* (JRA).

The creation of a head of power to prescribe terms and conditions for different classes of prisoners in the regulation may also be considered inconsistent with the fundamental legislative principle requiring that legislation have sufficient regard to the institution of Parliament (section 4(4)(a) of the LSA) as it allows for delegation of powers to the regulation rather than being prescriptive in the Act. However, this is considered justified as the delegation will ensure additional flexibility to account for the different resourcing and technology available at different corrective services facilities and will enable QCS to better respond to other identified emerging risks. The head of power is sufficiently clear as to what requirements may be prescribed for in the regulation and is sufficiently narrow, with the legislation explicitly prescribing two factors and only additional factors to be prescribed by regulation. The regulation will also be subject to appropriate parliamentary scrutiny and accompanied by a human rights certificate.

Enabling the use of police powers in relation to reportable child sex offenders on post-sentence supervision

Enabling the use of certain police powers to apply when a reportable offender under the CPOROPOA is also subject to an order under the DPSOA may be considered inconsistent with sections 4(3)(e) and (f) of the LSA as it will allow police to enter a residence without a search warrant, may enliven a search of an individual's electronic device, and could result in self-incrimination by requiring individuals to provide access details to devices which may result in police discovering a further offence.

These inconsistencies are considered justified. Offenders supervised under the DPSOA are those that present a serious danger to the community, by presenting an unacceptable risk of committing a serious sexual offence if released without an order being made. Where such an offender is also a reportable offender under the CPOROPOA, this is because of a history of sexual offences committed against a child. Ensuring consistent tools are available across both schemes to verify matters reported will continue to promote the safety of the community, in line with the purposes of both schemes. The amendments also ensure the scope of the powers is limited to be consistent with the scope of the power as currently enacted for other reportable offenders.

Gel blaster offence

The increased penalty related to bringing restricted items (prescribed to include gel blasters and inoperable firearms) onto corrective services land may be viewed as being inconsistent with the rights and liberties of individuals (section 4(3)(b) of the LSA) because the increase in the associated penalty enables a court to impose the ultimate sanction of imprisonment. However, it is considered justified because restricted items

pose a significant threat to the safety and security of frontline corrective services officers and offenders, and the offence provides a suitable balance of deterrence and punishment. The increase in penalty is also justified in the context of the alarm that would be experienced by corrective services officers who encounter an individual possessing a restricted item on corrective services land. This is due to the likelihood the item would not be distinguished from a real firearm, the unique high security nature of corrective services land, and the significant risk of personal harm associated with a person bringing a restricted item onto corrective services land.

The offence includes safeguards, including that all corrective services land must be adequately signed and includes exceptions where the person has the approval of the chief executive or is carrying the item for a law enforcement, protective service or emergency services purpose. The increase in penalty for the offence is therefore considered proportionate to the level of risk, including in the most extreme cases.

The amendments to the offence may also be considered inconsistent with section 4(3)(d) of the LSA because the offence places the evidential burden on the defendant to adduce evidence that they did not know the land was corrective services land. This is considered justified, as the evidential burden only shifts to the defendant once the prosecution has proved beyond a reasonable doubt that the corrective services land was appropriately signed. This creates an opportunity for the defendant to adduce evidence that despite the signage, they were unaware and could not have been aware that the land was corrective services land. Placing the evidentiary burden on the defendant in this instance therefore acts as a safeguard for individuals accused of this offence by providing them an opportunity to satisfy the court that they were unaware they had entered corrective services land. The inconsistency is therefore justifiable.

The creation of a head of power to prescribe for restricted items in the regulation may be considered inconsistent with having sufficient regard to the institution of Parliament (section 4(4)(a) of the LSA) as it allows for delegation of powers to the regulation rather than being prescribed in the Act. However, this is considered justified as the delegation will ensure future flexibility to prescribe items which pose a threat to the safety and security of corrective services facilities and the individuals within. The amendment creating the head of power is not vague, and is sufficiently narrow in that the head of power is only for prescribing restricted items.

<u>Protecting victim and intelligence information in decision making</u>

Strengthening protections for information from being disclosed in decision making may be considered inconsistent with the principles of natural justice (section 4(3)(b) of the LSA) as it will remove the ability for a prisoner to be provided with all of the information used in a decision about them made under the CSA. However, these impacts are considered justified to ensure the use of critical information when making decisions under the CSA that directly impact the safety of individuals and the community. The Bill ensures appropriate limitations on the discretion not to disclose the information, including that the decision maker must be satisfied to a high threshold that withholding the information is necessary, only certain information can be withheld and that the amendment does not remove the requirement for a decision maker to provide a ‘gist’ of the information relied on. This strikes an appropriate balance

between providing an individual with the required information as to how the decision was made, while ensuring individual and community safety is prioritised.

The Bill also validates any previous decisions to withhold information which may be considered inconsistent with section 4(3)(g) of the LSA as it retrospectively and adversely removes the right to request a review of the decision on the grounds that the information was not disclosed under the JRA. While these impacts are acknowledged, due regard has been given to the impacts the amendments have on these rights and the amendments are considered reasonably justified. This is because the reversal of decisions to withhold sensitive information from offenders, would unjustifiably erode public confidence in QCS and the Board, and may adversely impact on the operations of a law enforcement agency, the safety of an individual (including a victim), or disclose a confidential information source. Further the amendment does not validate decisions that have been overturned by a court, or impact on the ability of a person to seek judicial review of the decision on other grounds.

Using body-worn cameras for escorts and other prescribed functions

A new power for the chief executive to authorise the use of a body-worn camera outside of a corrective services facility may be considered inconsistent with the rights and liberties of individuals (section 4(3)(a) of the LSA) as it will impact on the privacy of persons being monitored, including those who are captured inadvertently, and it may capture private or confidential information. The authorisation is considered justified as it has significant safeguards built-in to ensure appropriate use and it is directly linked to the intent to protect the safety of corrective services officers, prisoners and the community, and to rectify a significant gap in surveillance.

The creation of a head of power in the regulation to prescribe for sensitive locations may be considered inconsistent with having sufficient regard to the institution of Parliament (section 4(4)(a) of the LSA) as it allows for delegation of powers to the regulation. However, this is considered justified, as the Act is prescribes several locations which are to be treated as sensitive locations, and the creation of the head of power ensures future flexibility to prescribe additional sensitive locations as identified and required to protect the rights of individuals at those locations.

Prescribing search requirements to accommodate diverse prisoner needs

The replacement of the requirements in the CSA for invasive searches to be conducted by an officer of the same sex with a head of power to prescribe for search requirements in the regulation, may be considered inconsistent with having sufficient regard to the institution of Parliament (section 4(4)(a) of the LSA) as it allows for delegation of powers to the regulation rather than being prescribed in the Act.

However, this is considered justified as the delegation will ensure additional flexibility to better accommodate the diverse needs of prisoners and ensure the CSA aligns with the pending assent of the BDMRA. The amendment creating the head of power is not vague as to what requirements may be prescribed for in the regulation, specifying factors which may be prescribed for in the regulation. Further, the existing protections within the CSA will not be repealed until the replacement regulation commences to ensure there is no gap in legislative safeguards.

Lawful detention of Norfolk Island prisoners

The Bill prescribes separate heads of power to exclude or modify the application of sections of the CSA and other Queensland statutes to Norfolk Island prisoners via regulation. This delegation of legislative power may be considered inconsistent with the institution of Parliament (sections 4(2)(b) and (c) of the LSA) as it enables the delegation of legislative power, including the power to modify the application of the CSA, to a regulation, instead of the Legislative Assembly.

Permitting the delegation of legislative power through regulations is considered justified as these provisions provide flexibility to be able to adapt to future operational needs while ensuring that an appropriate level of parliamentary scrutiny is maintained. The legislative framework in the Bill will enable QCS to operationalise the unique arrangement for lawfully transporting and detaining sentenced and remanded Norfolk Island prisoners in corrective services facilities and still provide flexibility for the future provision of additional corrective services, including parole, to Norfolk Island.

Safeguards for this delegation of legislative power include that the amendments will only apply to a small number of prisoners. As regulations, any amendments would still be subject to disallowance, therefore maintaining an appropriate level of parliamentary oversight. Further, section 41 of the *Human Rights Act 2019* requires that a human rights certificate must accompany any subordinate legislation, which will provide additional safeguards for any individuals who are subject to these heads of power.

Finally, the use of instruments to tailor the application of laws to the context of Norfolk Island is consistent with the approach to amending Norfolk Island legislation or applying other legislation to Norfolk Island via the Norfolk Island Applied Laws Ordinance 2016. The Norfolk Island Applied Laws Ordinance 2016 is an instrument of subordinate legislation, established under section 19A of the *Norfolk Island Act 1979* (Cth), which provides for the application of external laws to Norfolk Island, rather than by an Act of Parliament. The legislative framework in the Bill is based on the similar legislative approach applied in New South Wales (NSW) to allow for the provision of custodial services to Norfolk Island through a law under the State.

Ensuring the validity of past parole transfer decisions

Inserting a validating provision to address historic transfer decisions may be viewed as inconsistent with section 4(3)(g) of the LSA as it may be considered to adversely affect the rights and liberties of individuals retrospectively. This is because the amendment removes the right to a review for prisoners subject to disciplinary outcomes where the transfer decision was believed to have been validly registered.

While the purpose of the model legislation supports the rehabilitative aspects of parole by enabling parolees to transfer their parole order interstate, there are likely cases where parolees breached conditions of their parole order that was not, at the time, validly registered. These breaches could have resulted in the individual having been imprisoned in Queensland. On this note, the retrospectivity of the amendment would remove the ability for an individual to make a claim under the JRA, due to unlawful detention (in the event they were imprisoned during the period of invalidity). This enlivens section

4(3)(b) of the LSA in that the removal of the ability to make a claim under the JRA could be viewed as depriving an individual of their right to be heard.

However, the inconsistencies are considered justified as the amendments merely validate past decisions which were believed to have been made validly, in good faith, with the individual's consent and for their benefit. Whilst there is the possibility these individuals were subject to breach action during the period the orders were inadvertently not validly registered, any breach action taken would have been consistent with the breach action taken should the order have been registered validly. The retrospective amendments are curative in nature and do not remove a right or liberty that an individual was intended to possess. Furthermore, the protection from liability under the JRA is limited to where the transfer occurred in good faith and is considered justified in the circumstances.

Consultation

Stakeholder feedback has been taken into account in finalising the Bill.

The following stakeholders were consulted on both the Norfolk Island amendments and the other amendments in the Bill: the Aboriginal and Torres Strait Islander Legal Services (Qld), Australian Transgender Support Association of Queensland, Bar Association of Queensland, Bravehearts, Crime and Corruption Commission Queensland, District Court of Queensland, DV Connect, Ending Violence Against Women Queensland, Equality Australia, First Nations Women's Legal Services NQ Inc, Indigenous Lawyers Association of Queensland, Intersex Human Rights Australia, Intersex Peer Support Australia, Legal Aid Queensland, LGBTI Legal Service, Magistrates Court of Queensland, , Office of the Director of Public Prosecutions, Office of the Information Commissioner, Office of the Public Advocate, Office of the Queensland Health Ombudsman, Office of the Queensland Ombudsman, the Parole Board Queensland, Pride in Law, Prisoners' Legal Service, Protect All Children Today, Queensland Audit Office, Queensland Council for Civil Liberties, Queensland Court of Appeal, Queensland Health Victim Support Service, Queensland Homicide Victims Support Group, Queensland Human Rights Commission, Queensland Indigenous Family Violence Legal Service, Queensland Law Society, Queensland Nurses and Midwives' Union, Queensland Police Union of Employees, Queensland Public Guardian, Queensland Sexual Assault Network, Red Rose Foundation, Relationships Australia, Sisters Inside Inc, Supreme Court of Queensland, Together Union Queensland, Transcend Australia Limited, United Workers Union, Victim Connect, Victims Assist Queensland, and Women's Legal Service Queensland. Consultation with the Norfolk Island Governance Committee on the Norfolk Island amendments was conducted separately.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland and is not uniform with legislation of the Commonwealth or another state or territory. However, in developing the Bill, consideration has been given to the legislation of the Commonwealth and other states and territories, where appropriate.

Enhancing the QCS Victims Register

Increasing flexibility for how an eligible person can engage with the parole process

South Australia (SA), the Australian Capital Territory (ACT) and Western Australia (WA) provide some flexibility in legislation for submissions from victims on parole to be provided in a means other than writing, and these approaches were used to inform the approach taken within the Bill. Section 77(2)(ba) of the *Correctional Services Act 1982* (SA) provides for submission to be made in writing or, by prior arrangement with the Board, in person. Section 124(1)(a)(i) of the *Crimes (Sentence Administration) Act 2005* (ACT) allows for a submission to be made orally or in writing. Section 5C(2) of the *Sentence Administration Act 2003* (WA) provides for a person to make a submission on behalf of a victim who is unable to make one due to age, disability or infirmity.

Victim representation on the Parole Board Queensland

A jurisdictional scan was conducted when determining the framework for embedding a victims' representative on the Board. The settled framework aims to ensure Queensland is aligned with other states and territories who have legislative requirements for parole board members, including community board members, to have a level of knowledge or regard to victims of crime. The predominant influence was taken from the South Australian legislative provisions which ensures the victims' representative captures individuals with lived experienced, professional experience, including volunteering with or membership of a victims' organisation. Overall, the adopted approach draws from the legislative provisions at section 183(2A) of the *Crimes (Administration of Sentences) Act 1999* (NSW), sections 103(4)(b)(i) and (iv) and 103(5) of the *Sentence Administration Act 2003* (WA), section 3B(1)(e) of the *Parole Act 1971* (NT), section 62(2)(c)(i) of the *Corrections Act 1997* (Tas) and section 55(3)(d) of the *Correctional Services Act 1982* (SA).

Protecting victim and intelligence information in decision making

Section 194 of the *Crimes (Administration of Sentences) Act 1999* (NSW) restricts the provision of reports, despite a legislative requirement to provide a report under the Act, where disclosure of the report may, for example, endanger any person or jeopardise the conduct of any lawful investigation. In addition, numerous provisions in the *Migration Act 1958* (Cth) (including but not limited to sections 133A, 134A and 198AB) provide that the rules of natural justice do not apply in relation to a decision made. Certain sections, including part 2, division 3, subdivision AB also provide an exhaustive statement of the requirements of the natural justice rule in relation to the Act. These approaches were considered in informing the approach taken within the Bill.

Using body-worn cameras outside of corrective services facilities

In developing the provisions surrounding the use of body-worn cameras outside of a corrective services facility, consideration was given to interstate and international (New Zealand) legislation. A variety of approaches which frame the rules governing the use of body-worn cameras by various government agencies (including police, ambulance, and correctional staff) were researched, analysed, and informed the changes to the framework as proposed within the Bill.

Prescribing search requirements to accommodate diverse prisoner needs

A jurisdictional scan of legislation for corrections in other jurisdictions was conducted when considering the most appropriate model for accommodating the diverse needs of prisoners with respect to search requirements, and to ensure this model fits with the BDMRA. Particular reference was drawn from the approach taken in the Victorian legislation. Section 45 of the *Corrections Act 1986* (Vic) provides the authority for searches, with the requirements for how invasive searches should occur prescribed in the *Corrections Regulations 2019* (Vic) at section 86.

Lawful detention of Norfolk Island prisoners

The proposed legislative framework in the Bill to provide for the lawful detention of Norfolk Island prisoners in Queensland is based on similar provisions in part 2, division 5 of the *Crimes (Administration of Sentences) Act 1999* (NSW).

Notes on provisions

Part 1 Preliminary

1 Short title

Clause 1 states that, when enacted, the Bill will be cited as the *Corrective Services (Promoting Safety) and Other Legislation Amendment Act 2024*.

2 Commencement

Clause 2 outlines the provisions of the Act that will commence other than on assent.

Subclause (1) provides that part 2, division 3 (Amendments commencing other than on assent), other than clauses 36 to 39; part 3, division 1 (Amendment of *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*); and part 3, division 3 (Amendment of *Police Powers and Responsibilities Act 2000*), will commence on a day to be fixed by proclamation.

Subclause (2) provides that clauses 36 to 39 will commence on the day on which a regulation made for the *Corrective Services Act 2006* (CSA), section 39A (as inserted by clause 39) commences.

Part 2 Amendment of Corrective Services Act 2006

Division 1 Preliminary

3 Act amended

Clause 3 states that this part and schedule 1 amend the CSA.

Division 2 Amendments commencing on assent

4 Insertion of new ch 2, pt 1A

Clause 4 inserts new part 1A (Prisoners from Norfolk Island) in chapter 2 (Prisoners), which provides a legislative framework for the lawful transport and detention of Norfolk Island prisoners in corrective services facilities, in line with the Queensland Government's commitments to the Commonwealth Government under the *Intergovernmental Partnership Agreement on State Service Delivery to Norfolk Island*.

New section 18A (Definitions for part) inserts definitions for 'constable,' 'Norfolk Island court,' 'Norfolk Island magistrate,' 'Norfolk Island warrant,' and 'order,' for this part. These definitions correspond to definitions in the *Removal of Prisoners Act 2004* (Norfolk Island) (RoPA) and the *Norfolk Island Act 1979* (Cth). The section also references the definition of 'Norfolk Island prisoner' in new section 18B (Meaning of Norfolk Island prisoner).

New section 18B (Meaning of Norfolk Island prisoner) defines 'Norfolk Island prisoner.'

Subsection (1) provides that a Norfolk Island prisoner is a person who is liable to undergo imprisonment or other detention in custody, such as a period of remand, in Queensland under a law in force in Norfolk Island.

Subsection (2) clarifies that a Norfolk Island prisoner does not include a person who is the subject of a written direction made by the Minister under section 9 (Relationship between this Act and the *Transfer of Prisoners Act 1983* (Cth)) of the RoPA.

New section 18C (Custody and detention of Norfolk Island prisoners) provides for the lawful custody and detention of Norfolk Island prisoners in Queensland.

Subsection (1) provides that a constable who has a Norfolk Island prisoner in custody under a Norfolk Island warrant is authorised to have custody of, and deal with, the Norfolk Island prisoner in Queensland under the warrant. A constable is a member or special member of the Australian Federal Police, including a member of the Norfolk Island Police Force and, for the purpose of section 7 (Arrest of prisoner unlawfully at large) of the RoPA, a member of the police force of a state or territory.

Subsection (2) provides that under a Norfolk Island warrant, a corrective services officer may take control of the Norfolk Island prisoner the subject of the warrant from a constable in Queensland, and transport the prisoner to a corrective services facility.

Subsection (3) specifies that a corrective services officer may act under subsection (2) only if the Queensland Corrective Services (QCS) chief executive has been given the Norfolk Island warrant or a copy of the warrant.

Subsection (4) provides that a Norfolk Island prisoner may be admitted to and detained in a corrective services facility specified by the chief executive for the period of the Norfolk Island prisoner's imprisonment or other detention.

Subsection (5) provides that a Norfolk Island prisoner is taken to be in the chief executive's custody while under the control of a corrective services officer under subsection (2), and while detained in a corrective services facility under subsection (4).

Subsection (6) specifies that a Norfolk Island prisoner remains in the chief executive's custody until discharged, even if the prisoner is lawfully outside of a corrective services facility, except for any time when the prisoner is lawfully in another person's custody. This ensures that a Norfolk Island prisoner remains in the chief executive's custody when attending court or medical appointments if escorted by a corrective services officer, but not if the prisoner is admitted to an authorised mental health service.

Subsection (7) provides that subsection (4) applies despite anything stated in a Norfolk Island warrant about a specified corrective services facility in which the period of imprisonment or other detention is to be served, or a specified person in charge of a corrective services facility to whom the Norfolk Island prisoner is to be produced. This provision allows the chief executive the flexibility to determine the placement of a

Norfolk Island prisoner in a suitable corrective services facility, despite what may be stated on a Norfolk Island warrant.

New section 18D (Application of Act to Norfolk Island prisoners) provides for the application of the CSA to Norfolk Island prisoners.

Subsection (1) provides that the CSA applies in relation to a Norfolk Island prisoner who is in the chief executive's custody under section 18C as if the order or sentence of the Norfolk Island court or Norfolk Island magistrate under which a Norfolk Island prisoner is liable to undergo imprisonment or other detention were made or imposed by a court of the State under a law of the State. This approach allows a Norfolk Island prisoner to be managed as a prisoner in accordance with the CSA while in the chief executive's custody. This application of the CSA to the custody of a Norfolk Island prisoner is subject to subsection (2) and any regulation made under subsection (3).

Subsection (2) specifies that chapter 5 (Parole) of the CSA does not apply to a Norfolk Island prisoner unless a regulation made under subsection (3) provides otherwise. This section does not remove access to parole for the Norfolk Island prisoner under other legislation, including the *Sentencing Act 2007* (Norfolk Island).

Subsection (3) provides that a regulation may specify that a provision of the CSA, other than a provision of this part, does or does not apply to the Norfolk Island prisoner or applies to the Norfolk Island prisoner as modified by the regulation. This head of power is intended to provide future flexibility as required to ensure the safe and effective management of Norfolk Island prisoners.

Subsection (4) provides that a regulation made under subsection (3) must declare it is made under that subsection.

Subsection (5) provides that the application of the CSA to a Norfolk Island prisoner is subject to the RoPA and the *Sentencing Act 2007* (Norfolk Island) and stops having effect if a Norfolk Island prisoner is discharged or delivered into the custody of a constable under a Norfolk Island warrant.

New section 18E (Provision relating to parole for Norfolk Island prisoners) authorises the Parole Board Queensland (the Board) to have functions in relation to the parole of a Norfolk Island prisoner if a regulation is made under new subsection 18D(3) to prescribe that Norfolk Island prisoners be subject to parole provisions under chapter 5 of the CSA.

Subsection (1) provides that this section applies, if under a regulation made under section 18D(3), all or part of chapter 5 (with or without modification) applies to a Norfolk Island prisoner who is in the chief executive's custody under section 18C.

Subsection (2) provides that the Board has the functions of a Board under the *Sentencing Act 2007* (Norfolk Island) in relation to a Norfolk Island prisoner.

Subsection (3) provides that the Board is not required to perform a function in relation to a Norfolk Island prisoner who is released on parole in Norfolk Island and is not in

the State, unless the Board is required to perform the function under an arrangement made with the Commonwealth under section 18C of the *Norfolk Island Act 1979* (Cth).

New section 18F (Producing Norfolk Island prisoners before Norfolk Island court at place in Queensland) provides for the production of Norfolk Island prisoners held in corrective services facilities before the Norfolk Island court where the court is sitting at a place in Queensland.

Subsection (1) specifies that this section applies if a Norfolk Island court, by order or a notice given to the chief executive, requires a Norfolk Island prisoner who is detained in a corrective services facility under a Norfolk Island warrant to be produced before a Norfolk Island court at a stated place in Queensland, at a stated time and for a stated purpose.

Subsection (2) provides that the chief executive must produce the Norfolk Island prisoner at the place and time, and for the purpose, stated in the order or notice of the Norfolk Island court.

Subsection (3) provides that if the order or notice of the Norfolk Island court requires the Norfolk Island prisoner to be transferred to a Norfolk Island court at a place in Queensland, the transfer of the Norfolk Island prisoner to the Norfolk Island court must be authorised by an order of the chief executive.

Subsection (4) clarifies that this section does not limit the application of section 69 (Transfer to court), as applying under section 18D, in relation to a Norfolk Island prisoner.

New section 18G (Return of Norfolk Island prisoners to Norfolk Island) provides when the chief executive is to return a Norfolk Island prisoner to Norfolk Island.

Subsection (1) provides that this section applies if a constable gives the chief executive a Norfolk Island warrant requiring the delivery of a Norfolk Island prisoner who is detained in a corrective services facility under another Norfolk Island warrant into the custody of the constable and the constable is to convey the Norfolk Island prisoner in custody to Norfolk Island.

Subsection (2) provides that the chief executive must deliver the Norfolk Island prisoner into the custody of the constable.

Subsection (3) provides that the delivery of the Norfolk Island prisoner into the custody of the constable must be authorised by an order of the chief executive.

New section 18H (Early discharge or release not prevented) provides that nothing in this part prevents the early discharge or release, such as to parole, of a Norfolk Island prisoner under a law of the Commonwealth or a law in force in Norfolk Island.

New section 18I (Particular Acts do not apply to Norfolk Island prisoners in chief executive's custody) specifies Acts which do not apply to Norfolk Island prisoners.

Subsection (1) provides that this section applies in relation to a Norfolk Island prisoner who is in the chief executive's custody under section 18C.

Subsection (2) specifies that the *Dangerous Prisoners (Sexual Offenders) Act 2003* (DPSOA) and another Act prescribed by regulation which would otherwise apply to the Norfolk Island prisoner because the Norfolk Island prisoner is in the chief executive's custody, do not apply to the Norfolk Island prisoner even though the Norfolk Island prisoner is in the chief executive's custody.

Subsection (3) inserts a requirement that a regulation under subsection (2)(b) must declare it is made under that subsection and may be made in the same instrument as a regulation made under section 18D(3).

New section 18J (Evidentiary aid for Norfolk Island prisoners) specifies the evidentiary weight of a Norfolk Island warrant.

Subsection (1) provides that in a proceeding under an Act, a document purporting to be a Norfolk Island warrant or a copy of a Norfolk Island warrant and to be signed by an authorised person is evidence of the matters stated in the document.

Subsection (2) defines 'authorised person' as having the meaning given by the RoPA; that is, a magistrate; or the registrar or a deputy registrar of the Supreme Court or the Court of Petty Sessions; or a sheriff, registrar, deputy registrar, district registrar, or similar officer, of a federal court.

5 Amendment of s 68 (Transfer to another corrective services facility or a health institution)

Clause 5 amends section 68 to provide that a prisoner may also be transferred to a health facility or personal care facility. A 'personal care facility' is envisaged to include, but not be limited to, aged care and palliative care facilities.

Subclause (1) amends the heading of section 68 to replace the reference to 'health institution' with 'health facility or personal care facility' to reflect the broader application of this section to include transfers for palliative or other personal care.

Subclause (2) inserts a new subsection which specifies that a prisoner may be transferred to a place for assessment and provision of palliative or other personal care. 'Personal care' is intended to include, but not be limited to, supervision of, or assistance with, a prisoner's personal hygiene, toileting and dressing.

6 Amendment of s 70 (Removal of prisoner for law enforcement purposes)

Clause 6 inserts a new subsection in section 70 which provides that an official visitor is taken to be in the presence of a prisoner, for the purposes of witnessing a prisoner agreeing to be removed from a corrective services facility for a law enforcement purpose, if the official visitor can see and hear the prisoner via contemporaneous communication link, such as through a video conference call. Subclause (2) is consequential to the amendment.

7 Insertion of new ch 3, pt 2B

Clause 7 inserts a new part 2B (Offence to possess restricted item on corrective services land) in chapter 3 (Breaches of discipline and offences).

New section 124B creates an offence in the CSA for a person to possess a restricted item on corrective services land.

Subsection (1) prohibits a person from possessing a restricted item while on corrective services land if the person knows or ought reasonably to know, that the person is on corrective services land. This offence carries a maximum penalty of two years' imprisonment.

Subsection (2) provides exceptions to this offence where the possession is approved by the chief executive, or the person is an officer, or is assisting an officer, of a law enforcement agency, protective service or emergency service acting in that capacity.

Subsection (3) provides that if it is established in a prosecution for an offence against subsection (1) that, at the time of the alleged offence, there was appropriate signage at the corrective services land, the defendant bears the evidential burden of proving they did not know, and could not by the exercise of reasonable diligence have known, that the land was corrective services land.

Subsection (4) defines 'appropriate signage', 'corrective services land,' and 'restricted item' for the section.

'Appropriate signage' is defined as signage which identifies the land as corrective services land or warns a person entering the land that there is an increased penalty for possessing a restricted item on the land and that prior approval from the chief executive is required for possessing a restricted item on the land.

'Corrective services land' is defined as land on which a corrective services facility is located, land owned or leased by the State adjacent to a corrective services facility and used for a purpose associated with the corrective services facility, land owned or leased by the State and used for a purpose related to the supervision of supervised dangerous prisoners (sexual offenders), land comprising the premises and curtilage of a community corrections office or other place at which community corrective services are provided and land owned or leased by the State and used as an educational or training facility for corrective services officers. This is intended to capture all locations where corrective services staff are based for their duties, including for example, the escort and security branch, dog squad and the QCS training academy. Where, for example, a community corrections office may be located within a building with other services, corrective services land for the purpose of this offence only applies to the rooms or areas which are used for QCS and are appropriately signed.

'Restricted item' is defined to mean the items prescribed by regulation to be a restricted item for the offence. Providing for the items to be prescribed by regulation allows alignment with the definitions of gel blaster and inoperable firearm which are defined in section 9 of the *Weapons Categories Regulation 1997*. Clause 48 of the Bill amends the *Corrective Services Regulation 2017* to prescribe restricted items for this offence.

8 Amendment of s 175B (Definitions for chapter)

Clause 8 removes the definition of 'homicide offence' from section 175B as the Amending Act moves the definition to schedule 4 (Dictionary).

9 Amendment of s 188 (Submission from eligible person)

Clause 9 amends section 188 to clarify the arrangements for notifying and receiving submissions from, an eligible person.

Subclause (1) amends subsection (2) to clarify that the requirement for the chief executive to give each eligible person in relation to the prisoner written notice of the prisoner's application for a parole order is subject to the restrictions in new section 324AA (Provision of notice or information to eligible person).

Subclause (2) removes the references to 'written' from subsection (3) and subsection (4), respectively.

Subclause (3) amends subsection (6) to provide that the Board must consider any submission provided by an eligible person under section 188.

Subclause (4) inserts a new subsection which provides that submissions made under existing section 188(3)(c) may be made in writing or in another form approved by the Board. These amendments provide flexibility for the Board to accept a submission from an eligible person which is not in writing, such as a video or voice recording.

10 Replacement of s 217A (Parole Board not public sector entity)

Clause 10 replaces existing section 217A with a new section 217A (Nature of entity) which clarifies the entity status of the Board.

Subclause (a) provides that the Board does not control funds and is not a statutory body within the meaning of the *Statutory Bodies Financial Arrangements Act 1982* or the *Financial Accountability Act 2009*. The parent agency for the Board retains control of funds.

Subclause (b) retains the provision that the Board is not a public sector entity for the purpose of section 8(2)(s) of the *Public Sector Act 2022*.

11 Amendment of s 221 (Membership)

Clause 11 amends section 221 to provide additional legislative guidance and requirements for professional board members, community board members and public service representatives.

Subclause (1) removes 'legal or medical qualification' from subsection (1) at subparagraph (c) as examples of qualifications relevant to the functions of the Board.

Subclause (2) replaces the reference to 'probation and parole matters' in subsection (1) at subparagraph (e) with 'the supervision or rehabilitation of offenders,' thereby

enabling the appointment of a public service representative with a broader range of relevant experience.

Subclause (3) inserts a new subsection to provide that, without limiting the requirements for professional board members, a relevant qualification for the Board includes a qualification in law, criminology, medicine, psychology, behavioural science and social work.

Subclause (3) also inserts a requirement that at least one of the professional board members appointed must be an Aboriginal or Torres Strait Islander person. 'Aboriginal people' and 'Torres Strait Islander' people are terms defined in the *Acts Interpretation Act 1954*.

Subclause (3) further inserts a requirement that at least one of the community board members appointed must be a person who has expertise or experience relevant to victims of crime. A person with expertise or experience relevant to victims of crime could include someone with lived experience as a victim of crime or someone with experience working with or counselling victims of crime.

Subclause (4) is consequential to the amendments.

12 Amendment of s 223 (Appointment)

Clause 12 replaces subsection (3) in existing section 223 to amend appointment arrangements for the Board.

Subclause (1) replaces subsection (3) in section 223 to provide that before recommending a person to Governor in Council for appointment, the Minister must request that the chief executive assess the person's suitability to perform functions as a member of the Board by obtaining the person's criminal history and other information about them under existing chapter 6 (Administration), part 13 (Information), division 2 (Criminal history of relevant person).

Subclause (1) also retains the requirement that the President and any deputy president of the Board be appointed on a full-time basis.

Subclause (1) further provides flexibility for professional board members by enabling them to be appointed on a full-time or part-time basis. There continues to be no requirement to appoint a community board member on a full-time or a part-time basis.

Subclause (2) is consequential to the amendments.

13 Amendment of s 225 (Conditions of appointment)

Clause 13 inserts subsection (5) in section 225, which provides that the President of the Board or the Minister may ask the chief executive to assess the suitability of a person to continue to perform functions as a member of the Board by obtaining the person's criminal history and other information about the person in accordance with chapter 6 (Administration), part 13 (Information), division 2 (Criminal history of relevant person).

14 Replacement of s 228 (Acting appointments)

Clause 14 replaces existing section 228 with a new section to provide more flexibility in acting appointment arrangements for the Board.

Subsection (1) provides that Governor in Council may appoint a person to act as the president, a deputy president or a professional board member if the person meets the requirements for appointment to the Board.

Subsection (2) provides that a person appointed to act as the president is appointed, as stated in the instrument of appointment, to act as the president while the office of president is vacant; or the president is absent from duty or from the State or cannot, for another reason, perform the duties of the president. The instrument of appointment could state that the person is to act as the president for all or part of the vacancy or absence.

Subsection (3) provides that a person appointed to act as a deputy president or a professional board member is appointed to carry out duties from time to time as directed by the president during a stated period; or for a stated matter. This provision provides flexibility for a pool of suitable persons to be approved and drawn on by the president as the need arises.

Subsection (4) provides that before making a recommendation to Governor in Council for appointment of an acting board member, the Minister must request that the chief executive assess the person's suitability to act in that capacity by obtaining the person's criminal history and other information about the person under existing chapter 6 (Administration), part 13 (Information), division 2 (Criminal history of relevant person).

Subsection (5) requires that the Minister must consult with the president before making a recommendation to Governor in Council for appointment of an acting deputy president.

Subsection (6) provides that a person may not be appointed as an acting board member for a continuous period of more than one year; or a period which, with the cumulative periods of other appointments of the person as an acting board member, forms a continuous period of more than one year.

Subsection (7) specifies that subsection (6) does not apply to the appointment of a person to act as the president or a deputy president if, in recommending the person for the appointment, the Minister has consulted with the parliamentary committee (within the meaning of section 223 (Appointment)).

Subsection (8) provides that an acting board member is appointed on the terms, not otherwise provided for by this Act, decided by Governor in Council.

Subsection (9) provides that the president or Minister may ask the chief executive to assess the suitability of a person to continue to perform functions as an acting board member by obtaining the person's criminal history and other information about the person under existing chapter 6, part 13, division 2.

15 Amendment of s 229A (Functions of president)

Clause 15 amends section 229A to provide additional functions of the President of the Board.

Subclause (1) inserts a new subsection which provides that the functions of the President include managing the performance of appointed board members and acting appointed board members, thereby ensuring the President has appropriate oversight of those board members that are not public sector employees or police representatives.

Subclause (1) also clarifies that the President can give directions about the practices and procedures to be followed by the Board in conducting its business.

Subclause (2) inserts a new subsection which provides that the President must promote the efficiency and effectiveness of the Board's operations.

Subclause (3) is consequential to the amendments.

16 Amendment of s 236 (Establishment and functions)

Clause 16 amends section 236 to clarify the functions of, and appointment arrangements for, the Board secretariat.

Subclause (1) replaces the reference to 'in performing its functions' from section 236(2) with 'by providing administrative and legal support for the operation of the Board.' This is intended to capture the current functions performed by the secretariat.

Subclause (2) replaces existing subsections (3) and (4) with a new subsection which provides that the chief executive may assign public service employees of the chief executive's department to the secretariat. It includes a note which clarifies that the employees remain responsible to the chief executive in accordance with the *Public Sector Act 2022*.

17 Insertion of new s242GA

Clause 17 inserts new section 242GA (Information relevant to administration), which requires the Board to report to the chief executive about the efficiency and effectiveness of its operations, reflecting that the parent agency retains control of the funds for the Board and responsibility for its efficient and effective operation.

Subsection (1) provides that, if asked by the chief executive, the Board must provide stated information about a matter affecting the management or administration of the Board or the operations of the secretariat.

Subsection (2) specifies that, if the chief executive requests, this information must be provided in writing.

18 Insertion of new s 242I

Clause 18 inserts new section 242I (Vacancies or defects in appointment of members), which provides that an act or proceeding of the Board (such as a parole decision or meeting) is not invalid only because of a vacancy in its membership, or a failure to comply with subsections 221(3) or (4). This provision is intended to ensure the Board can continue to make decisions in the interim if a required member resigns or there is another reason the requirements have not been met, such as persistent recruitment difficulties. This provision is intended to operate in addition to section 26 (Appointment not affected by defect etc.) of the *Acts Interpretation Act 1954*.

19 Amendment of s 263 (Functions and powers)

Clause 19 inserts a reference to 'and any administrative arrangements made by the Governor in Council' in subsection (1). This amendment reflects that 'offender health services' are the responsibility of a different chief executive under the Administrative Arrangements Orders.

20 Amendment of s 294 (Appointing inspectors generally)

Clause 20 amends section 294 to clarify that inspectors' functions include reviewing the quality of services provided by QCS to support the proper officer of a court.

Subclause (1) replaces the heading of existing section 294 with 'Appointment and functions of inspectors.'

Subclause (2) inserts new subparagraph (f) in subsection (2) to provide that inspectors' functions include reviewing services provided under this Act by corrective services officers to support the proper officer.

A note is included in subclause (2) to clarify that support provided under the CSA comprises helping the proper officer under section 308 (Powers of proper officer of a court) and performing functions and exercising powers delegated to corrective services officers by the proper officer under existing section 309 (Delegation of powers of proper officer of a court).

21 Insertion of new s 303A

Clause 21 inserts new section 303A (Inspector's powers relating to the proper officer of a court), which specifies an inspector's powers in relation to the proper officer of a court.

Subclause (1) provides that an inspector conducting a review under section 294(2)(f) may, with the consent or at the request of the proper officer, enter the court facilities not accessible to the public, interview any prisoner, staff member, or court officer present at the facilities; have access to a place in the facilities where the inspector may conduct an interview out of the hearing of other persons; inspect and copy a document kept at the facilities which is relevant to services provided by a corrective services officer, other than a document to which legal professional privilege attaches. The

inspector may also request that the proper officer provide stated information relevant to the review.

Subclause (2) clarifies that while the proper officer is not under any obligation to provide the information under subclause (1), if the request is refused, the proper officer must give the inspector a written notice stating the reasons for the refusal.

22 Amendment of s 305 (Inspectors' reports)

Clause 22 inserts new subsection (3) in existing section 305, which requires the chief executive to provide a copy of an inspection report to the proper officer of a court where an inspection of services provided to the proper officer has occurred.

23 Amendment of s 309 (Delegation of powers of proper officer of a court)

Clause 23 inserts new subsections in existing section 309.

New subsection (2) provides that the proper officer of a court and chief executive or commissioner (of police) may enter into a written agreement governing the delegation of functions or powers by the proper officer to corrective services officers or watch house officers (within the meaning of section 308 of the Act).

New subsection (3) clarifies that non-compliance with a written agreement does not invalidate a delegation.

24 Amendment of ch 6, pt 13, div 1, hdg (Releasing information to eligible persons)

Clause 24 amends the heading of chapter 6, part 13, division 1 to replace the reference to 'Releasing' with 'giving notices.'

25 Replacement of ss 320-323

Clause 25 replaces existing sections 320 to 323 with new provisions about the eligible persons register.

New section 320 (Eligible persons register) retains the requirement for the register and streamlines the registration process.

Subsection (1) retains the requirement for the chief executive to keep a register of eligible persons who may receive notices or information about prisoners or homicide offenders under the Act.

Notes are included in subsection (1) to clarify the sections under which notices or information must or may be given to an eligible person, subject to the restrictions in new section 324AA. The first note provides that, a notice of an application by a prisoner for a parole order must be given to an eligible person under section 188. The second note provides that information about a prisoner, including a prisoner who is a homicide offender, must be given to an eligible person under section 324A. The third note

provides a discretion for information to be given to an eligible person about a prisoner or homicide offender under existing section 325 (Releasing other information).

Subsection (2) outlines the factors of which the chief executive must be satisfied to make an entry in the eligible persons register. The first is that the prisoner or homicide offender is a prisoner or homicide offender for whom an entry can be made, meaning they qualify under the grounds for registration in new sections 321 (Effect of offence and violence as ground for registration) or 322 (Domestic violence as ground for registration) or 323 (Registration against homicide offender). The second is that the person proposed to be registered against the prisoner or homicide offender is entitled to be registered and requests or consents to the registration.

Subsection (3) replicates an existing provision in the CSA by providing that despite being satisfied of the matters stated in subsection (2), the chief executive may refuse to register a person against a prisoner or homicide offender if the chief executive reasonably believes that giving the person a notice or information as an eligible person may endanger the security of a corrective services facility; or the safe custody or welfare of a prisoner; or the safety or welfare of someone else. An example of where such considerations may arise is where the person and the prisoner or homicide offender are located in the same corrective services facility.

Subsection (4) provides a discretion for the chief executive to make an entry in the eligible persons register against a prisoner or homicide offender on application in the approved form by a person claiming to be an eligible person; or on referral in the approved form by an entity supporting an eligible person; or on the chief executive's own initiative. An entity supporting the eligible person could include a victim's support agency or a register in another jurisdiction.

New section 321 (Effect of offence and violence as ground for registration) retains the grounds for an eligible person to register against a prisoner sentenced to a period of imprisonment for an offence of violence or a sexual offence.

Subsection (1) provides that an entry can be made in the eligible persons register against a prisoner who has been sentenced to a period of imprisonment for an offence of violence or a sexual offence; or who is subject to a continuing or interim detention order, or a supervision or an interim supervision order under the DPSOA (having been found guilty of a serious sexual offence within the meaning of that Act). This is similar to an existing provision in the CSA.

Subsection (2) provides that a person is entitled to be registered as an eligible person if the person is a person against whom the offence was committed; or an immediate family member of a deceased victim of the offence, regardless of whether the victim died as a result of the offence. 'Immediate family member' is defined in schedule 4. Subsection (2) also provides that a person is entitled to be registered as an eligible person if the chief executive is satisfied the person's life or physical safety could reasonably be expected to be endangered because of a documented history of violence by the prisoner against the person; or a connection between the person and the offence.

Subsection (3) defines an 'offence of violence' for the purpose of the section as an offence where a victim suffers actual or threatened violence.

New section 322 (Domestic violence as ground for registration) retains the grounds for a person to register against any prisoner, regardless of the nature of the offence for which they are sentenced to a period of imprisonment for, if there is a domestic violence history or risk. This ground provides that a domestic violence victim can be an eligible person and receive information about a prisoner, even if the offence for which a person is imprisoned, does not directly relate to the domestic violence victim or a relevant domestic violence offence.

Subsection (1) provides that an entry can be made in the eligible persons register against a prisoner who has been sentenced to a period of imprisonment for any offence if there is or has been a domestic violence order or notice in force against the prisoner; or the chief executive is satisfied that the prisoner has committed domestic violence. The chief executive may be satisfied the prisoner has committed domestic violence by a documented history of domestic violence by the prisoner or by other evidence.

Subsection (2) provides that a person is entitled to be registered as an eligible person against the prisoner if the chief executive is satisfied the person is at risk of domestic violence from the prisoner.

New section 323 (Registration against homicide offender) provides new grounds for a person to register against a homicide offender.

Subsection (1) provides that an entry can be made in the eligible persons register against a homicide offender. 'Homicide offender' is defined in schedule 4. This section entitles an eligible person to register against a homicide offender, regardless of the offence for which the homicide offender served a period of imprisonment, or if the offender is subject to a community-based order.

Subsection (2) specifies the circumstances in which a person is entitled to be registered against a homicide offender. The first circumstance is if the person is an immediate family member of a victim of the homicide offence. 'Immediate family member' is defined in schedule 4. The second circumstance where a person is entitled to be registered is if the chief executive is satisfied the person's registration is warranted because of the effect of the homicide on the person. This grounds could be considered where there is no immediate family, but there is an extended family member or close friend who seeks to register, or where a first responder to the crime seeks to register due to the effect of the offence on that person. The third circumstance where a person is entitled to be registered is where the chief executive is satisfied the person's life or physical safety could reasonably be expected to be endangered because of a documented history of violence by the offender against the person or a connection between the person and the homicide offence.

New section 323A (Registration if eligible person is child or person with impaired capacity) maintains that for a child to be registered as an eligible person on the eligible persons register, the chief executive must be satisfied the registration is in the child's best interests.

Subsection (1) provides that if an eligible person is a child, a parent or guardian of the child is taken to be an eligible person and, subject to the Act may be registered instead of or in addition to the child.

As definition of 'child' is not contained in the Act, 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."

Subsection (2) provides that if an eligible person is a person with impaired capacity, a guardian of the person or an attorney of the person with an enduring power of attorney is taken to be an eligible person and, subject to the Act, may be registered instead of, or in addition to the person with impaired capacity.

Subsection (3) maintains that for a child to be registered as an eligible person on the eligible persons register, the chief executive must be satisfied the registration is in the child's best interests. The consideration of the 'best interests' of a child may include such matters as: the age and maturity of the child; the need for the child to be protected from harm; whether a suitable person is available to support and assist the child to understand the information. In the case of a child who is in care, the provisions require the chief executive to consult with the child protection chief executive in deciding whether registration of the child is in the child's best interests. This section provides that if the chief executive decides to register the child, the chief executive must give the child information about being an eligible person and about how to be removed from the register and tell the child and the child's parent or guardian that they may register as an eligible person.

New section 323B (Nomination of entity to receive information on behalf of eligible person) replicates existing section 320(4) which allows an eligible person to nominate an entity, including another individual, to receive information on behalf of the eligible person.

Subsection (1) provides that an eligible person may nominate an entity (such as a friend or a victims' support agency) as an entity to which the chief executive may give a notice or information required or authorised to be given to the eligible person under the Act, including a notice under section 188, information under section 324A and information under section 325.

Subsection (2) provides that the chief executive may refuse to accept a nomination if the chief executive is not satisfied that the entity consents to the nomination or does not consider the entity to be reasonably suitable in the circumstances.

Subsection (3) provides that details of a nominee must be noted in the eligible persons register.

Subsection (4) provides that if a nominee withdraws consent to the nomination, the details must be removed from the register.

26 Amendment of s 324 (Removing details from eligible persons register)

Clause 26 amends section 324 to clarify when the chief executive may remove an eligible person's details and when the chief executive must remove the person's details from the eligible persons register in line with other amendments to this division.

Subclause (1) amends subsection (1) at subparagraph (a) to clarify that this section does not apply to a homicide offender. This amendment supports that different criteria for registration and removal apply to eligible persons who are registered against a homicide offender, acknowledging the lifelong and devastating consequences that homicide offences can have on victims, their families and the community.

Subclause (2) removes the reference to 'in custody' from existing section 324(1)(a)(iii). The effect of this amendment is to clarify current practice that the chief executive must remove an eligible person's details from the eligible persons register when the prisoner in relation to whom the person is registered dies, regardless of whether this death occurs in the community or in custody.

Subclause (3) inserts a subparagraph in existing section 324(1), which has the effect of requiring that the chief executive remove an eligible person's details from the eligible persons register, for a homicide offender, when the homicide offender dies.

Subclause (4) replaces the reference to 'prisoner's conviction' in subsection (1) at subparagraph (b) with 'conviction of the prisoner or homicide offender,' thereby expanding its application to a homicide offender.

Subclause (5) is consequential to the amendments in subclauses (1) – (4).

Subclause (6) amends the wording of the existing section 324(2)(a) to reflect the different stages an eligible person may register against a homicide offender.

Subclause (7) replaces the reference to 'prisoner information released to the person under this division' in section 324(2)(b) with 'notice or information given to the person under this Act as an eligible person.' This is consequential to the amendments, to ensure the language captures homicide offenders who are no longer prisoners.

Subclause (8) inserts a new subsection which provides that the chief executive may, on the chief executive's own initiative, reinstate details of an eligible person registered against a prisoner other than a homicide offender if, within 90 days after the removal of the details, the prisoner is again in the custody of the chief executive. The purpose of this amendment is to enable a swifter process for the eligible person to be re-registered without the need for an application, such as in circumstances where a prisoner is temporarily transferred to another jurisdiction and then returns to custody in Queensland.

Subclause (9) replaces the reference to 'prisoner information' in subsection (4) with 'a notice or information under this Act.'

Subclause (10) is consequential to the amendments in subclauses (6) – (9).

27 Insertion of s 324AA

Clause 27 inserts new section 324AA, which clarifies the chief executive's discretion to refuse to give an eligible person a notice or information under this Act, including when the chief executive must not give an information notice.

Subsection (1) replicates the requirement that the QCS chief executive must not give an eligible person a notice or information under the Act unless certain criteria are met. The criteria are that the person has given the chief executive a signed declaration stating that the person will not disclose, for public dissemination, any notice or information about a prisoner given to the person under this Act, and where a nominee for the eligible person is noted in the eligible persons register, both the nominee and eligible person must sign the declaration. This aims to protect the privacy of prisoners and homicide offenders who have information disclosed about them.

Subsection (2) provides that the chief executive may refuse to give an eligible person a notice or information under the Act if the chief executive reasonably believes that giving the notice or information to the person may endanger the security of a corrective services facility; or the safe custody or welfare of a prisoner; or the safety or welfare of someone else. For example, it may not be appropriate for a prisoner in custody to receive information concerning another prisoner at the same location.

Subsection (3) replaces existing section 324A(3) to clarify that where an eligible person has elected a nominee to receive information on their behalf, the chief executive must endeavour to give the notice or information to the nominee. The new subsection allows for an exception, where the chief executive may give the notice or information directly to the eligible person if the chief executive has been unable to give the notice or information to the nominee despite a reasonable attempt to do so.

Subsection (4) provides that a requirement to give a notice or information to an eligible person is taken to have been complied with if the chief executive has made a reasonable attempt to give the notice or information to the person but has been unable to do so.

Subsection (5) specifies that section 324AA does not apply to confidential information disclosed to an eligible person or nominee under section 341 (Confidential information).

28 Amendment of s 324A (Right of eligible persons to receive particular information)

Clause 28 clarifies the information that must be disclosed to an eligible person.

Subclause (1) provides that the chief executive's obligation to give an eligible person certain information about a prisoner is subject to new section 324AA.

Subclause (2) amends existing section 324A(1) to clarify that the chief executive's obligation to give an eligible person certain information about a prisoner includes a prisoner who is a homicide offender. The section does not apply to a homicide offender that is not also a prisoner, as the information relates only to prisoners.

Subclause (3) replaces existing section 324A(1)(c) to provide that, in addition to the other information that is already prescribed, the chief executive must give an eligible person the following information about a prisoner in relation to whom the eligible person is registered, the death of the prisoner, and if the prisoner died while detained in a corrective services facility, the date of the death; the escape of a prisoner and the date

of escape; and the details of a change of name of the prisoner registered under a law of the State about births, deaths and marriages, such as the new name.

Subclauses (4) to (6) are consequential to the amendment in subclause (3).

Subclause (7) omits existing section 324A(3) as a consequential amendment to the insertion of s324AA(3).

29 Amendment of s 325 (Releasing other information)

Clause 29 replaces section 325 to clarify information that may be disclosed to an eligible person where the chief executive considers disclosure of the information to be appropriate.

Subsection (1) provides that subject to section 324AA, the chief executive may give an eligible person registered against a prisoner or homicide offender information, within the knowledge of the chief executive, about the prisoner or offender as the chief executive considers appropriate.

Subsection (2) provides that without limiting the information which may be given, the information may include information about the current location of a prisoner; the transfer of a prisoner between corrective services facilities or interstate or overseas; the length of the term of imprisonment the prisoner is serving; any further cumulative terms of imprisonment imposed on the prisoner while in custody for the offence; the nature of any DPSOA order the prisoner to which the prisoner is subject, or that a DPSOA order has ceased; the results of the prisoner's application for parole orders; other matters relevant to the parole of the prisoner such as parole suspensions or cancellations or timing for parole applications; details of a reassignment or alteration of the sex of the prisoner noted or recorded in a register kept under a law of the State about births, deaths and marriages; the deportation or removal status of the prisoner under the *Migration Act 1958* (Cth), if known; and other exceptional events relating to the prisoner. New subsection 325(2) specifies that the information about a prisoner includes a homicide offender. Of note, this section has been drafted in preparation for the commencement of the *Births, Deaths and Marriages Registration Act 2023* (BDMRA).

Subsection (3) provides that without limiting the information which may be given, the information may include information within the knowledge of the chief executive, about a homicide offender who is not a prisoner, namely the current general location (such as a region or city in Queensland) of the offender or that the offender is no longer a resident of the State; the nature of a community-based order, parole order, or order under the DPSOA, to which the offender is or becomes subject; the offender has ceased to be subject to a community-based order, parole order, or order under the DPSOA; details of a change of name (such as the new name) of the offender registered under a law of the State about births, deaths and marriages; details of a reassignment or alteration of the sex of the prisoner noted or recorded in a register kept under a law of the State about births, deaths and marriages (in preparation for the BDMRA); the deportation or removal status of the prisoner under the *Migration Act 1958* (Cth), if known; the death of the offender; and other exceptional events relating to the offender.

30 Amendment of s 326 (Purpose of div 2)

Clause 30 replaces existing section 326(1) to expand the purpose of the division to include ensuring the chief executive can provide to the Minister or the President of the Board all the relevant information needed to assess a person's suitability to be, or continue to be, a board member or acting board member in accordance with sections 223 (Appointment), 225 (Conditions of appointment) and 228 (Acting appointments).

31 Amendment of s 336 (Use of information obtained under this division)

Clause 31 replaces subsection 336(2) to provide that information about a person's criminal history must only be used for the purposes of this division and is consequential to the amendment in clause 30.

32 Insertion of new s 340AA

Clause 32 inserts new section 340AA, which provides a discretion for a decision maker who is required to give reasons for a decision or proposed decision made under this Act not to, in giving reasons, disclose prescribed information.

Subsection (1) provides that the decision maker is not required to disclose anything that the decision maker is satisfied could reasonably be expected to enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained; or endanger a person's life or physical safety; or seriously threaten a person's welfare; or prejudice public safety or national security; or prejudice the prevention, detection, investigation or prosecution by a law enforcement agency of a terrorism offence, or an offence with a maximum penalty of 14 years or more imprisonment, or another offence prescribed by regulation for this section; or be prohibited under a law of this or another State or the Commonwealth. This aims to ensure critical information is available to inform effective decisions about the safety and security of the correctional system and prevent any harm to individuals or the community.

Subsection (2) defines 'decision maker' as the parole board or a person required or authorised to make a decision under this Act. This is intended to capture, for example, parole decisions made by the Board, decisions made by the President or a deputy president, and decisions made by the chief executive or their delegate.

33 Amendment of ch 7A, hdg (Other transitional provisions)

Clause 33 inserts 'and validation' in the heading, after 'transitional' as a consequence of the amendment in clause 34.

34 Insertion of ch 7A, pt 17

Clause 34 inserts a validation provision 490ZI (Validation of certain decisions) which protects past decisions made in reliance of information of the kind protected by the new section 340AA from being set aside if that information was not disclosed.

Subsection (1) provides that the validation provision applies to a decision of an entity made under this Act or a repealed Act before the commencement of the amending Act.

Subsections (2) and (3) provide that a decision and anything done as a result of the decision is, and is taken to always have been, as valid and lawful as it would have been if, at the time the decision was made, new section 340AA had applied to the decision.

Subsection (4) of the validation provision qualifies subsection (3) by providing that if a decision to which the validation provision applies has, before the commencement of the amending Act, been found by a court to be invalid or has been set aside by court order that the finding of the court still stands. However, if the decision is remade after that commencement, section 340AA applies to the decision as remade.

Subsection (5) of the validation provision defines 'amending Act' as the *Corrective Services (Promoting Safety) and Other Legislation Amendment Act 2024*.

35 Amendment of sch 4 (Dictionary)

Clause 35 amends schedule 4 (Dictionary).

Subclause (1) omits the definitions of 'homicide offence,' 'immediate family member' and 'prisoner information' from schedule 4.

Subclause (2) inserts a definition of 'constable' referencing new section 18A.

Subclause (2) inserts a new definition of 'domestic violence' that refers to section 8 (Meaning of domestic violence) of the *Domestic and Family Violence Prevention Act 2012*.

Subclause (2) inserts a new definition of 'domestic violence order or notice' to mean an order or notice that would be included in a person's domestic violence history under the *Domestic and Family Violence Protection Act 2012.*

Subclause (2) relocates the definition of 'homicide offence' from section 175B to schedule 4.

Subclause (2) inserts a definition of 'homicide offender' which applies for the purpose of entitlement to be registered on the eligible persons register. The inserted definition of 'homicide offender' is a person who has been found guilty of a homicide offence.

Subclause (2) expands the definition of 'immediate family member' to include equivalent First Nations kinship relationships.

Subclause (2) inserts a new definition of 'impaired capacity' to align with the *Guardianship and Administration Act 2000*, schedule 4 (Dictionary).

Subclause (2) inserts new definitions for 'Norfolk Island court,' 'Norfolk Island magistrate,' 'Norfolk Island prisoner,' 'Norfolk Island warrant' and 'order.' These definitions reference new section 18A.

Subclause (3) omits the reference to 'including the chief inspector,' from the existing definition of 'inspector.'

Division 3 Amendments commencing other than on assent

36 Amendment of s 34 (Personal search of prisoners leaving particular part of corrective services facility)

Clause 36 omits subsection (2) of existing section 34, which provides that a personal search of a prisoner may be carried out only by a corrective services officer of the same sex. This section will not commence until a regulation made under new section 39A is in force.

37 Amendment of s 38 (Requirements for search requiring the removal of clothing)

Clause 37 removes the requirement for searches of prisoners requiring the removal of clothing to be carried out by a corrective services officer of the same sex as the prisoner being searched. This section will not commence until a regulation made under new section 39A is in force.

Subclauses (1) and (2) are consequential to the amendment.

38 Amendment of s 39 (Body search of particular prisoner)

Clause 38 removes the requirement for body searches of prisoners to be carried out by a health practitioner of the same sex as the prisoner. This section will not commence until a regulation made under new section 39A is in force.

Subclauses (1) to (3) are consequential to the amendment.

39 Insertion of new s 39A

Clause 39 inserts new section 39A (Further requirements and procedures for searches) to provide a head of power for a regulation to prescribe further requirements and procedures in relation to searches. The insertion of this section will allow for the 'same sex' requirements to be replaced in a regulation. Specifically, the amendments authorise a regulation to prescribe how searches are to be conducted to provide additional flexibility to better accommodate the diverse needs of prisoners, including trans and gender diverse or intersex prisoners. This ensures that legislative safeguards can be maintained to protect the dignity of corrective services officers and prisoners, including by ensuring that prisoners continue to be protected from searches being conducted by officers or health practitioners of the opposite sex.

Subsection (1) specifies that the regulation-making power extends to the carrying out of a personal search, a body search or a search requiring the removal of clothing.

Subsection (2) provides that without limiting subsection (1), further requirements and procedures may be prescribed for the effective carrying out of the search; or respecting a prisoner's dignity; or taking into account the special or diverse needs of a prisoner.

40 Amendment of ch 2, pt 2, div 4, hdg (Mail, phone calls and other communications)

Clause 40 amends the heading to replace the reference to 'phone' calls with 'personal' calls.

41 Replacement of ch 2, pt 2, div 4, sdivs 2-4

Clause 41 replaces chapter 2, part 2, division 4, subdivisions 2 to 4 with a new subdivision 2 (Personal calls) and subdivision 3 (Other communications).

New section 50 (Personal calls) provides for the regulation of personal calls made by prisoners.

Subsection (1) provides that a prisoner in a corrective services facility may make personal calls on the terms and conditions determined by the chief executive under new section 51. The term 'call' is not intended to require use of a telephone. The provisions are intended to provide for any type of approved technology.

Subsection (2) defines 'personal call.' The new definition specifies that a 'personal call' is a call made by a prisoner to an individual on admission to a corrective services facility; or to individuals approved by the chief executive for the prisoner; or to entities approved by the chief executive for all prisoners or a class of prisoners.

Personal contacts for individual prisoners must be approved by the chief executive in accordance with new section 52. Contacts that may be approved for all prisoners to contact could include support services. Contacts that may be approved for a class of prisoners could include a support service that is local to one corrective services facility, a women's or men's service, or a provider delivering services to a particular cohort of prisoners, such as an education program.

Subsection (3) retains discretion for the chief executive to allow a prisoner to have a personal call in other circumstances, such as in the event of a family or other personal emergency. This may include the making or receiving of a call as appropriate or available. A contact is not required to be approved for this subsection.

Subsection (4) specifies that a call under subdivision 3 is not a personal call.

Subsection (5) provides that personal calls are to be made at the expense of the prisoner except that the prisoner must be entitled to one free call upon admission to a corrective services facility or where the chief executive excuses the prisoner from paying for a call on grounds considered sufficient by the chief executive.

New section 51 (Terms and conditions for making personal calls) provides for the making of the terms and conditions governing how a prisoner may make a personal call.

Subsection (1) prescribes matters that may be set out in the terms and conditions made by the chief executive for personal calls. These matters are not exhaustive, but include,

when calls may be made; how calls may be made, such as through audio-visual means; and the length and frequency of personal calls.

Subsection (2) extends the chief executive's power to apply the new terms and conditions in a way which differentiates between prisoners according to the security classification, including risk sub-category, of the prisoners; or the special needs of prisoners; or another factor prescribed by regulation. This provision recognises the need to tailor terms and conditions to account for differences in the risk of prisoners, technology, infrastructure, or the special needs of prisoners, such as prisoners with a disability that may require adjustments. 'Special need' of a prisoner is defined in schedule 4.

Subsection (3) provides that the terms and conditions under subsection (1) are to be set out in administrative procedures under section 265. This creates consistency and transparency in decisions and requirements.

Subsection (4) provides that the chief executive may apply more restrictive conditions (in accordance with subsection (1)), to a prisoner if the chief executive reasonably believes the prisoner is likely to use personal calls to engage in prohibited prisoner communication (defined in schedule 4).

Subsection (5) provides that for subsection (4), the chief executive may have regard to several factors including the prisoner's history of domestic violence; information from a law enforcement agency; the prisoner's history of engaging in prohibited prisoner communication; the nature and seriousness of the prisoner's criminal history; and any other factor the chief executive considers relevant.

Subsection (6) creates a safeguard and provides that the terms and conditions under this new section must not limit a prisoner to less than seven personal calls in any seven-day period.

New section 52 (Refusing and revoking approval of individual for personal call) provides discretion for the chief executive to approve, refuse, suspend or revoke the approval of an individual contact for a prisoner.

Subsection (1) provides that the chief executive must not approve an individual for personal calls by a prisoner, and must revoke the approval of such an individual, if the individual informs the chief executive that the individual does not consent, or no longer consents, to the prisoner calling the individual.

Subsection (2) provides additional circumstances to that in subsection (1) that the chief executive may refuse to approve an individual, and may revoke the approval of an individual, for personal calls by a prisoner. These circumstances include where the chief executive reasonably believes the individual is a victim or alleged victim of an offence or alleged offence committed by the prisoner; the contact details proposed for the personal call to an individual are not correct or suitable; the personal call is likely to be, or has been, used to engage in prohibited prisoner communication. 'Prohibited prisoner communication' is defined in schedule 4.

Refusal or removal of an individual for personal calls to a prisoner in the prescribed circumstances is discretionary to account for the individual circumstances. For example, it may be appropriate in some circumstances for a victim that consents to have contact with a prisoner.

Subsection (3) provides that an approval of an individual contact may be suspended while consideration is given to revoking the approval.

Subsection (4) provides that where a suspension has occurred under subsection (3), the suspension will cease to have effect six months after it was imposed, if before that time the chief executive has not revoked the approval or withdrawn the suspension. This provision ensures suspensions are not indefinite.

Subsection (5) specifies that nothing within new section 52 derogates from the power of the chief executive to revoke an approval under section 24AA of the *Acts Interpretation Act 1954*.

New section 52A (Offence by prisoner relating to diversion of personal call) relocates existing offences in sections 50(5) and 51 into a specific offence provision and updates the offences to reflect new terminology of 'personal call' in the subdivision. The maximum penalty of six months' imprisonment is retained.

New section 52B (Recording or monitoring of personal calls) retains existing subsections in 52(1), (3) and (5) relating to the monitoring and recording of personal calls. The new section solely addresses the monitoring and recording of prisoner's personal calls as defined at new section 50(2). Original sections governing calls not permitted to be monitored are relocated to new sections 52D and 52E.

Subsection (1) replicates existing section 52(1) and provides authority for the chief executive to record and monitor a prisoner's personal calls. The chief executive retains the discretion not to monitor or record a personal call, for example, it may be appropriate not to monitor or record personal calls with certain organisations approved for all prisoners or a class of prisoners to contact.

Subsection (2) replicates existing section 52(3) which requires the prisoner and other party to the personal call to be told that the communication may be recorded and monitored.

Subsection (3) replicates existing section 52(5) which requires that where through the recording and/or monitoring of a prisoner's personal call, information about the commission of an offence has been revealed, such as to the officer monitoring the call, the chief executive must give that information to the relevant law enforcement agency.

New section 52C (Power to end personal calls) replaces existing section 52(4) to expand the existing powers to end personal calls by expanding the types of behaviours which may trigger the chief executive to end a call. The new section permits the chief executive to end a prisoner's personal call if the chief executive reasonably believes there has been a contravention of the terms and conditions applicable to the call under new section 51 or the call is being, or has been, used to engage in prohibited prisoner communication. 'Prohibited prisoner communication' is defined in schedule 4.

Subdivision 3 (Other communications) relates to other authorised prisoner communications.

New section 52D (Communication with lawyer) provides clear authorisation for the prisoner to communicate with their lawyer.

Subsection (1) provides that a prisoner is authorised to communicate by phone or other approved means with their lawyer. This communication is subject to the lawyer's identity and appointment being confirmed. The need for confirmation of appointment and identity is intended to prevent prisoner's circumventing approval systems by listing an individual for a personal call as the prisoner's lawyer.

Subsection (2) provides that communication with a prisoner under subsection (1) of this section, is to take place in accordance with arrangements approved by the chief executive and must not be monitored or recorded by the chief executive. Arrangements approved by the chief executive may include video conferencing or other technology.

New section 52E (Other authorised prisoner communications) provides for other prisoner communication which must not be recorded or monitored by the chief executive.

Subsection (1) replicates existing section 52(2)(b) to (e), maintaining the same group of prisoner communications that must not be recorded or monitored, being prisoner communication with an officer of a law enforcement agency, the parole board, the ombudsman and the inspector of detention services. The new section clarifies that communication with these entities is an approved communication, without requiring the pre-approval of the chief executive.

Subsection (2) replaces existing section 52(2)(b) to (e), maintaining that communication between the prisoner and entities listed in subsection (1) must not be recorded, and adds a specification that such communication takes place in accordance with arrangements approved by the chief executive to provide flexibility for the chief executive to approve, for example, the method of communications.

42 Amendment of s 173A (Electronic surveillance of corrective services facilities)

Clause 42 clarifies the limits of the chief executive's authorisation to use a prescribed surveillance device at a corrective services facility.

Subclause (1) inserts a new subparagraph in subsection (3) to clarify that an authorisation by the chief executive to use a prescribed surveillance device at a corrective services facility must not include the recording or monitoring of a prisoner communication which cannot be lawfully recorded or monitored under chapter 2, part 2, division 4, subdivision 3 (Other communications). Section 173A was inserted in the CSA through the *Corrective Services (Emerging Technologies and Security) and Other Legislation Amendment Act 2023* and will commence on a day to be fixed by proclamation.

Subclause (2) amends the explanation of covert use of a device to reflect that where use of the device is not openly acknowledged the use of the device will be covert and not able to be authorised under section 173A. Use of a device could be openly acknowledged through signage or via an information booklet warning a person or prisoner that they are being recorded, or where the device is clearly visible.

Subclause (3) is consequential to the amendment in subclause (1).

43 Insertion of new s 173B (body-worn camera used by corrective services officer outside corrective services facility)

Clause 43 inserts new section 173B to clarify the authority for corrective services officers to use body-worn cameras outside of a corrective services facility, subject to the provision.

Subsection (1) provides that subject to this section, a corrective services officer is authorised to use a body-worn camera while acting in the performance of the officer's duties outside of a corrective services facility.

Subsection (2) provides that a body-worn camera may only be used outside of a corrective services facility to record or monitor activity when the corrective services officer has a prisoner under the officer's control, is responding to an incident, is using or considering using force (in reliance on existing chapter 3, part 5), believes there is an imminent and significant risk to the life, health or safety of an individual or believes that an offence or breach of discipline is being, has been or is about to be committed and that use of the device may provide evidence relevant to the offence or breach of discipline.

Subsection (3) provides that where an activity being recorded or monitored takes place in a sensitive location, a body-worn camera may only be used if the corrective services officer believes there is an imminent and significant risk to the life, health or safety of an individual. This provision ensures that only use that meets this high threshold can be authorised in a sensitive location.

Subsection (4) specifies that a body-worn camera must not be used to record or monitor prisoner communication that could not be lawfully recorded or monitored under chapter 2, part 2, division 4, subdivision 3 if it took place in a corrective services facility.

Subsection (5) provides that a body-worn camera used by a corrective services officer must be a body-worn camera issued to the officer by the chief executive and must not be deliberately hidden from view or disguised to look like another type of device. This is intended to prohibit covert use of body-worn cameras by a corrective services officer.

Subsection (6) provides that use of a body-worn camera is not rendered unlawful because it is incidental to an authorised use, or inadvertent or unexpected. Such use could include, for example, background conversations.

Subsection (7) specifies that this section is a provision authorising the use of a listening device for the purposes of section 43 (Prohibition on use of listening devices) at subsection (2) subparagraph (d) of the *Invasion of Privacy Act 1971*.

Subsection (8) provides that the administrative procedures made by the chief executive under section 265 must include requirements about the use, storage and destruction of recordings made by a corrective services officer using a body-worn camera outside of a corrective services facility.

Subsection (9) defines 'body-worn camera' and 'sensitive location' for the purpose of the section. 'Sensitive location' may include additional places prescribed by regulation.

44 Amendment of s 265 (Administrative powers)

Clause 44 amends section 265 to confirm arrangements for corrective services officers supporting proper officers of courts.

Subclause (1) inserts a new subsection, which provides that the chief executive must make administrative procedures to facilitate the effective and efficient provision under the CSA of services by corrective services officers to support the proper officer of a court. A note is included in this subclause which clarifies that the support provided under the CSA comprises of helping the proper officer of a court under section 308 and performing functions and exercising powers delegated to corrective services officers by the proper officer of a court under section 309.

Subclause (1) also inserts a new subsection which provides that before making the administrative procedures, the chief executive must consult with the proper officer of a court affected by the administrative procedures.

Subclause (2) is consequential to the amendments.

45 Amendment of s 311 (Prisoners trust fund)

Clause 45 amends section 311 to enable the chief executive to limit the amount a prisoner may spend on personal calls within a specified period, thereby providing another mechanism to address prisoners' abuse of the telephone system.

Subclause (1) inserts new paragraph (d) in section 311(6) which provides that the chief executive may limit the amount a prisoner may spend on personal calls within a stated period. This limit will not apply to a prisoner's general trust account, which can be used to purchase amenities.

Subclause (2) inserts new subsections in section 311. The first subsection requires that limitations on a prisoner's trust fund be set out in administrative procedures developed under section 265.

The second subsection enables more restrictive limitations to be applied to an individual prisoner if the chief executive reasonably believes the prisoner is likely to use personal calls to engage in prohibited prisoner communication.

The third subsection outlines the considerations to which the chief executive may have regard when forming a reasonable belief that the prisoner is likely to engage in prohibited prisoner communication, namely whether a domestic violence order or notice is, or has been, in force against the prisoner; the terms of any domestic violence

order or notice or other court order in force against the prisoner; information from a law enforcement agency; any record of the prisoner engaging in prohibited prisoner communication and making personal calls contravening applicable terms and conditions; the nature and seriousness of the prisoner's criminal history or history of breaching domestic violence orders or notices or other court orders; and any other factor the chief executive considers relevant.

The last subsection qualifies that any limitations on a prisoner's trust fund must not be so restrictive as to effectively limit a prisoner from making fewer than seven personal calls in any seven-day period.

Subclause (3) is consequential to the amendments.

46 Amendment of sch 4 (Dictionary)

Clause 46 inserts definitions of 'personal call' and 'prohibited prisoner communication' in schedule 4.

Part 3 Amendment of Corrective Services Regulation 2017

47 Regulation amended

Clause 47 states that this part amendments the *Corrective Services Regulation 2017*.

48 Insertion of new s 45

Clause 48 inserts a provision to prescribe 'restricted items' for the purpose of new section 124B (Offence to possess restricted item on corrective services land). For the purposes of the offence a gel blaster and an inoperable firearm are prescribed, as defined in *Weapons Categories Regulation 1997*, sections 9(f) and (g), respectively.

Part 4 Amendment of other Acts

Division 1 Amendment of Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004

49 Act amended

Clause 49 states that this part amends the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* (CPOROPOA).

50 Amendment of s 31 (Power to take photographs)

Clause 50 inserts 'or under a supervision order under the *Dangerous Prisoners (Sexual Offenders) Act 2003*' in existing section 31(3) to authorise a police officer to photograph a thing where the reportable offender is required to report information about the thing under a supervision order or interim supervision order under the *Dangerous Prisoners (Sexual Offenders) Act 2003* (DPSOA).

A 'reportable offender' is defined under the CPOROPOA. Where a reportable offender is concurrently subject to the requirements of a supervision order under the DPSOA, section 4 of the CPOROPOA operates to suspend the offender's reporting requirements under the CPOROPOA, other than an initial report. The amendment does not override section 4 of the CPOROPOA.

51 Amendment of s 67FC (Access information for digital devices)

Clause 51 inserts 'or the *Dangerous Prisoners (Sexual Offenders) Act 2003*' in existing section 67FC(1), thereby enabling an authorised police officer to access a reportable offender's digital device in circumstances where the officer suspects, on reasonable grounds, that the offender has committed an indictable offence against the DPSOA. An indictable offence against the DPSOA includes an offence against section 43AA (Contravention of relevant order) of the DPSOA.

The amendments to the CPOROPOA ensure there is consistency between the police powers applicable to reportable offenders who are reporting under the CPOROPOA and reportable offenders who are subject to supervision under a DPSOA order.

Division 2 Amendment of Parole Orders (Transfer) Act 1984

52 Act amended

Clause 52 states that this part amends the *Parole Orders (Transfer) Act 1984*.

53 Amendment of s 3 (Definitions)

Clause 53 replaces the definition of 'corresponding law' with a new definition which is 'a law of another state or territory that relates to the transfer of parole orders.' The new definition does not include a requirement that the law be specified in a gazette notice.

The *Parole Orders (Transfer) Act 1984* (WA), part 7.6 of the *Crimes (Sentence Administration) Act 2005* (ACT), the *Parole Orders (Transfer) Act 1983* (Vic), the *Parole Orders (Transfer) Act 1983* (NSW), the *Parole Orders (Transfer) Act 1983* (Tas), the *Parole Orders (Transfer) Act 1981* (NT) and the *Parole Orders (Transfer) Act 1983* (SA) are currently enacted as corresponding laws for the purpose of the Act.

The effect of this clause is that if one of the corresponding laws is amended or replaced, the definition will not need to be updated.

54 Omission of s 4 (Declaration of corresponding laws)

Clause 54 is consequential to clause 53.

55 Insertion of new s 15

Clause 55 inserts new section 15 (Validation provision), which applies to a parole order registered under this Act or under the law of another state or a territory before the commencement. The section provides that the Act is taken to have always applied in

relation to the registration as if each law of another state or territory which relates to the transfer of parole orders had been declared a corresponding law under the Act. This section validates past decisions made where there was no corresponding law for that jurisdiction declared at the time of the decision.

Division 3 Amendment of Police Powers and Responsibilities Act 2000

56 Act amended

Clause 56 states that this part amends the *Police Powers and Responsibilities Act 2000*.

57 Amendment of s 21A (Power to enter residence of reportable offender)

Clause 57 replaces section 21A(1)(a) to provide that a police officer may, at any time, enter premises where a reportable offender generally resides to verify the offender's personal details reported by the offender under the CPOROPOA or under a supervision order under the DPSOA. The amendment ensures use of the power is limited to verifying *personal details*, as prescribed in schedule 2 of the CPOROPOA, which are reported by the reportable offender under either the requirements of the CPOROPOA (as is currently prescribed) or under a supervision order made under the DPSOA.

Schedule 1 Other amendments

Item 1 replaces the reference to 'himself or herself, or' in section 12 (Prisoner security classification) at subsection (4)(d) with gender-neutral language.

Item 2 replaces the reference to 'his or her own room' in section 18 (Accommodation) with gender-neutral language.

Item 3 replaces the reference to 'mother or father' in section 25 (Registration of birth) at subsection (1) with gender-neutral language.

Item 4 replaces the reference to 'his or her' in section 30 (Deciding application) at subsection (2)(b) with gender-neutral language.

Item 5 replaces the reference to 'his or her' in section 38 (Requirements for search requiring the removal of clothing) at subsection (5) with gender-neutral language.

Item 6 replaces the reference to 'his or her person' in section 39 (Body search of particular prisoner) at subsection (1)(b) with gender-neutral language.

Item 7 replaces the reference to 'harm to himself or herself' in section 41 (Who may be required to give test sample) at subsection (1)(b)(ii) with gender-neutral language.

Item 8 replaces the reference to 'harming himself, herself, or' in section 53 (Safety order) at subsection (1)(a) with gender-neutral language.

Item 9 replaces the reference to 'harming himself, herself, or' in section 58 (Temporary safety order) at subsection (1)(a) with gender-neutral language.

Item 10 replaces the reference to 'harm himself, herself, or' in section 58 (Temporary safety order) at subsection (1)(b) with gender-neutral language.

Item 11 replaces the reference to 'inform himself or herself' in section 116 (Considering whether breach of discipline committed) at subsection (7) with gender-neutral language.

Item 12 replaces the reference to ', or disguise himself or herself' in section 124 (Other offences) at subsection (1)(h) with gender-neutral language.

Item 13 replaces the reference to 'harm himself or herself' in section 143 (Authority to use reasonable force) at subsection (1)(e)(i) with gender-neutral language.

Item 14 replaces the reference to 'harming himself or herself' in section 143 (Authority to use reasonable force) at subsection (1)(e)(ii) with gender-neutral language.

Item 15 replaces the reference to 'harm himself or herself' in section 143 (Authority to use reasonable force) at subsection (3)(c)(i) with gender-neutral language.

Item 16 replaces the reference to 'harming himself or herself' in section 143 (Authority to use reasonable force) at subsection (3)(c)(ii) with gender-neutral language.

Item 17 replaces the reference to 'his or her' in section 175A (Conducting searches) at subsection (2)(a) with gender-neutral language.

Item 18 replaces the reference to 'harm to himself or herself' in section 201 (Chief executive may amend parole order) at subsection (1)(b) with gender-neutral language.

Item 19 replaces the reference to 'harm to himself or herself' in section 205 (Amendment, suspension or cancellation) at subsection (1)(c) with gender-neutral language.

Item 20 replaces the reference to 'himself or herself' in section 307 (Prisoner in proper officer of a court's custody) with gender-neutral language.

Item 21 amends section 391 (Removal of prisoner for law enforcement purposes) at subsection (2) to update the cross reference to section 70(5), and is consequential to the amendment in clause 6.

Item 22 replaces the reference to 'his or her' in schedule 4, definition *personal search*, with gender-neutral language.