

Corrective Services (Prescribed Surveillance Devices) Amendment Regulation 2025

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019* (HR Act), I, Laura Gerber, Minister for Youth Justice and Victim Support and Minister for Corrective Services, provide this human rights certificate with respect to the *Corrective Services (Prescribed Surveillance Devices) Amendment Regulation 2025* (Amendment Regulation) made under the *Corrective Services Act 2006* (CS Act).

In my opinion, the Amendment Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

On 2 June 2023, the *Corrective Services (Emerging Technologies and Security) and Other Legislation Amendment Act 2023* received assent. Among other amendments, this Act introduced section 173A to the CS Act which creates a framework for the use of surveillance devices in and around corrective services facilities. The new section 173A defines surveillance device as a device capable of transmitting or recording sound, images or changes in an environment.

The *Corrective Services (Promoting Safety) and Other Legislation Amendment Act 2024* further amended section 173A of the CS Act to provide better clarity on the lawful use of surveillance devices and the definition of a covert surveillance device.

The Amendment Regulation prescribes surveillance devices able to be authorised by the chief executive for use in corrective services facilities under section 173A. Authorisation of a surveillance device must not authorise the covert use of that device and must include requirements about the use, storage and destruction of recordings made by the device.

Schedule 1 of the *Corrective Services Regulation 2017* (CS Regulation) prescribes the Southern Queensland Correctional Complex as a prison on a site that is master planned for multiple corrective services facilities. This site contains the currently operational Southern Queensland Correctional Complex (female prison) and the Lockyer Valley Correctional Centre (male prison) which has not commenced operations. Section 149 of the CS Act provides that a regulation may declare a place to be a prison and assign a name to a prison.

The Amendment Regulation will declare the site to be Southern Queensland Correctional Precinct.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

In relation to the Amendment Regulation, I consider the following human rights to be relevant:

- right to privacy and reputation (section 25).
- the right to humane treatment while deprived of liberty (section 30(1)).

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

Surveillance Devices

(a) the nature of the right

Right to privacy and reputation

The right to privacy has a broad scope, with a focus on preserving personal autonomy and dignity. Section 25(a) of the HR Act protects individuals from arbitrary interference with their privacy, family, home or correspondence. The right to privacy protects the individual against interference with their physical and mental integrity, freedom of thought and conscience, legal personality, sexuality, family and home, and individual identity.

The use of surveillance devices within a corrective services facility do impact on an individual's right to privacy. Surveillance devices enable prisoners, corrective services officers and visitors to a facility to be monitored; for example, while having conversations or undertaking activities and tasks. Footage can also be recorded and stored for future review of incidents, thereby increasing the extent of this impact on individual privacy.

Right to humane treatment while deprived of liberty

Section 30(1) of the HR Act requires that all persons must be treated with humanity and with respect for their inherent human dignity, recognising the particular vulnerability of all persons deprived of their liberty. Individuals who are detained should not be subject to any hardship or constraint that is in addition to that resulting from the deprivation of their liberty (that is, a person who is detained should retain all their human rights subject only to the restrictions that are unavoidable in a closed environment).

The right is informed by a number of United Nations standards, including the *United Nations Standard Minimum Rules for the Treatment of Prisoners* which covers matters such as accommodation conditions, adequate food, personal hygiene, clothing and bedding standards, exercise, medical services, and disciplinary procedures. Under the *International Covenant on Civil and Political Rights*, the application of the right to humane treatment when deprived of liberty cannot depend on government resources and must be applied without discrimination.

In the correctional environment, surveillance is more intrusive than in other spaces. This includes the monitoring of intimate or sensitive activities such as removal of clothing searches. Use of surveillance devices in these situations would limit the right to humane treatment while deprived of liberty and so must be justified with regard to the factors set out in section 13 of the HR Act. It is noted that section 9 and 10 of the CS Regulation already provides for strict safeguards for the monitoring, recording and use of recordings of removal of clothing searches.

- (b) The nature of the purpose of the limitation to be imposed by the legislation, if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Right to privacy and reputation

The limitation on privacy is justified and consistent with a free and democratic society based on human dignity, equality and freedom. In authorising the use of a surveillance device, the chief executive must be satisfied that use of the device will enhance one or more of the following prescribed matters:

- the safety of prisoners, corrective services officers, visitors to the facility and the community,
- the maintenance of security and good order at the facility,
- the prevention of intimidation, corruption and the commission of other offences at the facility, or
- the detection of prohibited things entering, at or leaving the facility.

The chief executive's authorisation does not allow for the covert use of prescribed surveillance devices, which reduces the impact of the Amendment Regulation's interference with the human right of privacy.

Right to humane treatment while deprived of liberty

Surveillance activity is common to corrective services facilities both nationally and internationally and is necessary for maintaining the good order and security of the facility, as well as supporting the health and welfare of those within a facility. Generally, a level of surveillance, such as monitoring interview rooms with closed-circuit television cameras, is lawful and expected in a safe correctional environment, such as under section 158 of the CS Act, and would not amount to a limitation of this right.

Furthermore, by supporting the use of surveillance devices in prisons the Amendment Regulation is aligned with Recommendation 23 of the Crime and Corruption Commission Queensland's *Taskforce Flaxton: An Examination of Corruption Risks and Corruption in Queensland Prisons* report. The report highlights that the greater use of surveillance technology reduces opportunities for prisoners to be mistreated and improves the capacity of inspectors and oversight agencies to access appropriate information about prison performance and corruption risk. This promotes the right to life (section 16), the right to security of person (section 29), and the right to humane treatment while deprived of liberty (section 30(1)).

- (c) The relationship between the limitation to be imposed by the legislation, if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Surveillance devices are essential tools for promoting safety and good order in corrective services facilities, and for preventing corruption and misconduct. The Amendment Regulation supports the use of prescribed devices in a framework that justifies that use and ensures that surveillance devices and the data they record are handled responsibly, to protect as much as possible the privacy of staff, visitors, and prisoners in accordance with section 173A of the CS Act.

Inherent in the use of this technology is the capture of footage of private, or in some cases intimate activities or images of those involved. Further, the storage of this footage is a

necessary further limitation on these rights to ensure the evidence is available to be reviewed after an incident by both internal and external review authorities. The limitations, therefore, help to achieve the intended purpose.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

There is no less restrictive, but equally effective, way to monitor the corrective services environment, minimise risks to safety, guarantee a swift response to an incident, and to protect the health, safety and wellbeing of those within a facility. Accordingly, the limits imposed on human rights by authorising the use of prescribed surveillance devices are necessary to achieve their purposes.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

On one side of the scales, clearly authorising surveillance devices to monitor the correctional environment results in an interference with an individual's privacy, and in circumstances where use of a device monitors more intimate activities, can limit the right to humane treatment while deprived of liberty. Any use of such technology must, therefore, ensure interference with these rights is necessary and justified.

On the other side, the use of surveillance technology within the correctional environment is an essential safety precaution necessary to ensure the safety of persons within that environment. Corrective services facilities are also a closed environment, and the use of electronic surveillance plays a key role in promoting human rights as a source of truth for the treatment of prisoners.

For these reasons, it is considered that the Amendment Regulation does not unnecessarily limit the right to privacy, because the interferences with the right are not arbitrary. Further, it is considered that any particular use of these provisions to monitor more intimate activities that limits the right to humane treatment while deprived of liberty does so only to the extent that is reasonable and necessary. Any limitations on human rights are therefore considered justified.

(f) any other relevant factors

N/A

Naming of Southern Queensland Correctional Precinct

This amendment does not engage or limit human rights.

Conclusion

In my opinion, the *Corrective Services (Prescribed Surveillance Devices) Amendment Regulation 2025* is compatible with the HR Act because it limits human rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

THE HONOURABLE LAURA GERBER MP
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and Minister for Corrective Services