

CORRECTIVE SERVICES LEGISLATION AMENDMENT BILL 1999

EXPLANATORY NOTES

GENERAL OUTLINE

Objective of the Legislation

The *Corrective Services (Administration) Act 1988* provides for the functions and powers of the QCSC related to the administration of corrective services in Queensland.

This Bill seeks to abolish the Queensland Corrective Services Commission (QCSC) and the government owned corporation Queensland Corrections (QC). The amendments also establish the Corrective Services Advisory Council and provide for a head of power for the new Department of Corrective Services. These policy objectives were approved by Cabinet on 8th February 1999 following consideration of the report—*Corrections in the Balance—A Review of Corrective Services in Queensland*.

This Bill also seeks to provide express head of power to support the placement and management of maximum security prisoners and to clarify the powers in relation to the segregation of prisoners by amending the *Corrective Services Act 1988*.

Means of Achieving Policy Objectives

This Bill amends the *Corrective Services (Administration) Act 1988* to achieve the policy objectives outlined above. There are no alternative methods for achieving these government policy objectives.

In relation to the Maximum Security Unit, the Bill achieves the objective of ensuring the secure and proper management of maximum security prisoners for whom mainstream prison accommodation is not suitable. Secure and proper management is to be achieved by the segregation of maximum security prisoners subject to maximum security orders from the

general prison population and, where necessary, from other prisoners in the maximum security facility. There is no alternative method for achieving this government policy objective as these prisoners who will become subject to a maximum security order have exhausted all other custodial options before being considered for placement in the maximum security facility.

Estimated Cost of Implementation for Government

It is anticipated that no additional costs will be incurred by the abolition of the Commission and the GOC and their replacement by a department. Amendments to the *Corrective Services Act 1988* which relate to placement of prisoners in maximum security facility have no cost implications.

Consistency with Fundamental Legislative Principles

The amendments to the *Corrective Services (Administration) Act 1988* transfer all assets, liabilities and staff to the new structural arrangements, and do not propose any significant changes to policy which may affect fundamental legislative principles. The status quo will therefore be maintained in respect of the operation of corrective services in Queensland.

In respect of the amendments to the *Corrective Services Act 1988*—placing appropriate maximum security prisoners upon maximum security orders and accommodating them within a maximum security facility will not offend fundamental legislative principles. The powers to restrict the liberty, privileges and other aspects of prison life are clearly defined and are subject to appropriate review both with the assistance of an Official Visitor or by the process of judicial review. The amendments are not proposed to operate retrospectively. The amendments do not effect or remove any right or liberty expressly provided for in the *Corrective Services Act 1988*.

Consultation conducted in Development of Bill

In relation to the amendments to the *Corrective Services (Administration) Act 1988* consultation has occurred with government departments responsible for legislation affected by this Bill. Other agencies were satisfied that the operational ‘status quo’ will be maintained through the

organisational transition from the QCSC to the department, and that there were no other issues in respect of these amendments.

In regard to the amendments to the *Corrective Services Act 1988* consultation was sought with the Department of Justice and Attorney-General and the Department of Premier and Cabinet in relation to the amendments for prisoners subjected to maximum security orders. The departmental views expressed in relation to these amendments indicated that the management of this category of prisoner was a Corrections matter alone and did not overlap into the jurisdiction of these departments.

No department expressed any objections to the proposed amendments or identified any breach of fundamental legislative principles.

The views expressed were put forward as a departmental view and other officers concerned did not presume to speak for their respective Ministers. Community Agencies were consulted with in relation to the implementation of policy for maximum security prisoners. The general concern expressed by community agencies was that the *Corrective Services Act 1988* did not provide a clear and express power for the management of maximum security prisoners. Community Agencies were not consulted in relation to the contents of this Bill.

NOTES ON CLAUSES

PART 1—PRELIMINARY

The amendments in this Part provide for the commencement of the Corrective Services Legislation Amendment Bill 1999 from date of proclamation, except for Part 2—Amendments of *Corrective Services Act 1988* which will take immediate effect.

Minor and consequential amendments are identified in the Schedule attached.

PART 2—AMENDMENT OF CORRECTIVE SERVICES ACT 1988

Clause 4 provides that the *Corrective Services Act 1988* is amended by this part.

Clause 5 provides for the definition of ‘maximum security facility’ to be included in the definitions section of the Act.

Clause 6 creates a new Section 38A within the *Corrective Services Act 1988*, providing a head of power for the management of prisoners according to their security or other classification pursuant to regulation. This provision provides the basis for the varying conditions of management and treatment which may be applied to meet the needs of prisoners as they progress through the Corrections system. The provision also allows the Chief Executive to proscribe more restrictive custodial conditions or less restrictive custodial conditions depending upon the classification of prisoners. These general management powers are subject to the exceptions listed in the new section 38A (2). *Clause 7* establishes a new Subdivision 1A to be inserted into the *Corrective Services Act 1988* to specify the conditions of accommodation and management of prisoners within the maximum security classification who pose additional risks within a custodial environment. The purpose of Subdivision 1A is to specifically provide for this subclass of maximum security prisoners for whom all other placement options have been exhausted.

The chief executive is responsible for the security and management of prisons and the safe custody and welfare of prisoners.

However, within the custodial environment there may be prisoners who have killed or caused serious injury to other prisoners or who have previously escaped or attempted to escape from high security facilities. This new Subdivision specifies the chief executive’s powers for managing prisoners who fall into this category to ensure the Department fulfills its responsibilities.

If there is a risk that a maximum security prisoner will inflict death or serious injury upon another prisoner, prison staff or other persons, the chief executive may issue a maximum security order (an MS order). Such an order may also be made on the grounds that a maximum security prisoner poses a high risk of escape or poses a substantial threat to prison security

and good order.

The effect of a MS order is to place the prisoner into a maximum security facility (an MS facility) which is separate from the general prison population. The MS order will contain directions regarding the extent to which the prisoner:

- is segregated from other prisoners;
- can receive visits involving direct contact;
- receive privileges; and
- access programs and services within the confines of the MS facility.

The term of a MS order cannot exceed six months but a further order can be made to run consecutively with a previous order provided the prisoner has been given the opportunity to make a submission on their behalf in respect of any further order

A prisoner subject to an MS order can request that an Official Visitor review the order. If this occurs, an Official Visitor must review the order and recommend to the chief executive whether the order should be confirmed, amended or appealed. While the Official Visitor's recommendation is not binding, the chief executive must take the recommendation into account when considering whether the current order is to be confirmed, amended or repealed. A provision has been created to ensure that prisoners within a maximum security facility receive regular reviews by a medical officer, at least every 28 days.

PART 3—AMENDMENT OF CORRECTIVE SERVICES (ADMINISTRATION) ACT 1988

Act amended in Part 3

Clause 8 identifies the Corrective Services (Administration) Act 1988 as the Act being amended.

Amendment of title

Clause 9 amends the long title of the Act.

Amendment of s 2 (Objects)

Clause 10 deletes reference to the Queensland Corrective Services Commission from the objects of the Act.

Amendment of s 7 (References to various officers and the commission)

Clause 11 amends various nomenclature associated with the QCSC in order that the Act reflects the abolition of that agency. In particular, amendments are as follows:

- *Clause 11(1)* deletes reference to the commission in the heading for this section.
- *Clause 11(2)* amends the section by defining a reference to a community correctional officer as a reference to a corrective services officer or employee, employed under the *Public Service Act 1996* as a community correctional officer.
- *Clause 11(3)* amends the section by defining a reference to a custodial correctional officer as a reference to a corrective services officer or employee, employed under the *Public Service Act 1996* as a custodial correctional officer.
- *Clause 11(4)* amends the section by defining a reference to a general manager of a prison to mean a reference to a corrective services officer or employee employed as a general manager of a prison under the *Public Service Act 1996*.
- *Clause 11(5)* omits references to officers and employees of the commission and replaces these references with the new designations of corrective services officer or corrective services employee. These designations are defined. In addition this clause provides for references to the chief executive (corrective services) in any Act to be taken to be the chief executive or a person or body taken to be the chief executive under section 23C(5) of the *Corrective Services (Administration) Act 1988*.

Omission of s 8 (Administration)

Clause 12 deletes reference to the administration of this Act by the Queensland Corrective Services Commission.

Replacement of Part 2 heading

Clause 13 replaces the heading for this Part to reflect the role of the chief executive for corrective services.

Omission of Part 2 Division 1

Clause 14 deletes Part 2 Division 1 of the Act that referred to the constitution and composition of the commission, the duration of appointment of commissioners, their fees and allowances and their role in representing the Crown.

Replacement of Division 2 heading

Clause 15 replaces the heading for Part 2 Division 2 by inserting reference to the functions and powers of the chief executive.

Amendment of s 18 (Functions of Commission)

Clause 16 replaces references to the functions of the commission with the functions of the chief executive. All functions previously defined as being the functions of the commission are included in the functions of the chief executive. There are no additions to this list of functions.

Amendment of s 19 (Powers of Commission)

Clause 17 replaces references to the ‘commission’ with ‘chief executive’. These references relate to the exercise of powers necessary for the discharge of the functions under the Act, such as acquiring property, establishing facilities, engaging persons and staff, entering into arrangements and engaging other persons or bodies to conduct operations on behalf of the chief executive. This amendment also replaces references to ‘officers’ with ‘corrective services officers’, and ‘commission’ with ‘department’.

Replacement of s 21 (Delegation by commission)

Clause 18 omits reference to the power of the commission to delegate commission powers by replacing this section with reference to the delegation powers of the chief executive to appropriately qualified corrective services officers or employees.

Omission of s 23 (Commission subject to direction of Minister)

Clause 19 omits reference to the commission being subject to direction of the Minister. This section is not replaced with specific reference to the chief executive being subject to direction from the Minister, as this is provided for in s 54 (1) of the *Public Service Act 1996*.

Renumbering of Part 2 Division 2A

Clause 20 amends this heading by renumbering this division as Division 2A.

Replacement of Part 2 Division 3 and Part 3

Clause 21 deletes those sections of the Act prescribing how and when commission board meetings will be held. Specifically, times and places of meetings, provisions for a quorum, notice of meetings and details of commissioners responsibilities amongst other administration requirements.

A new Part 3 is inserted detailing provisions for the Corrective Services Advisory Council. These provisions establish the advisory council and specify the functions, its composition and arrangements for meetings. In addition, terms of appointment and condition of appointment provisions are specified. The advisory council will be appointed by the Minister and will meet between 4 and 6 times each year.

Omission of s65 (Service of documents on Commission)

Clause 22 deletes provision for the service of legal documents on the secretary to the commission. Service of documents will be upon the Crown Solicitor on behalf of the State.

Omission of ss67—70

Clause 23 deletes provisions for the protection of the Commission's name, certificates of evidence of a Commission decision and Governor in Council grants in fee simple to the Commission.

Amendment of s71 (Regulation-making power)

Clause 24 amends the section whereby the Governor in Council can make regulations with respect to officers and employees of the Commission. Provision for regulations to be made with respect to corrective services officers or employees is maintained. In addition this clause amends references to the 'commission' and replaces these with 'chief executive'.

Omission of ss72 and 73

Clause 25 deletes provision for the Act to be reviewed on two occasions. Each of these reviews has occurred. Once the *Corrective Services (Administration) Act 1998* and the *Corrective Services Act 1988* are amalgamated in a second round of legislative amendments in 1999, a specific provision will be inserted requiring a regular review of the operation of that Act. This clause also deletes certain transitional provisions in the *Corrective Services (Administration) Act 1988* for nomenclature used prior to the establishment of the Commission.

Omission of Part 6, Divisions 2 and 3

Clause 26 omits divisions 2 and 3 from Part 6 which were transitional provisions following the establishment of the Commission.

Insertion of new part 6 Division 5

Clause 27 inserts new transitional arrangements from the Commission to the department as Division 5.

Subdivision 1 defines 'contract officer' 'QC' and 'QCSC' and states that this provision overrides any other provision in either the Government Owned Corporations Act 1993 or the Government Owned Corporations (Queensland Corrections Corporatisation) Regulation 1997

Subdivision 2 dissolves the positions of chairperson, deputy chairperson and other commissioners of the QCSC previously provided for in the Act. The entity known as QCSC is dissolved, and all assets and liabilities of the QCSC are to become assets and liabilities of the State. Provisions for the transfer of the persons appointed to the positions of Director-General of QCSC and Secretary to QCSC to the new department are stated. This subdivision also provides for the contract of the director-general to become a contract under the *Public Service Act 1996* and for the person to continue to be engaged with the new department under their existing contract conditions.

This new section states that s 71 of the *Public Service Act 1996*—which provides for officers on contract to revert to a tenured position, at the same classification level and salary that applied prior to their contract commencing, if their contract expires—does not apply.

Subdivision 3 dissolves Queensland Corrections (QC) and all assets and liabilities of QC become assets and liabilities of the State. Provisions for the transfer of the person appointed to the position of Chief Executive Officer of QC to the new department are stated. This subdivision also provides for the contract of the Chief Executive Officer to become a contract under the *Public Service Act 1996*—with the exception of s 71—and for the person to continue to be engaged with the new department under their existing contract conditions.

Subdivision 4 provides special transition provisions for officers and employees of QCSC and QC. The clause provides for all officers or employees of both agencies, and those on contract to either agency to be transferred to the new department. All contract officers with either QC or QCSC will be offered positions in the new department and become contracted officers of the department. This subdivision also provides for the contracts of these officers to become contracts under the *Public Service Act 1996*—with the exception of s 71—and where applicable for salary or wage rates to be preserved. All persons employed as a community correctional officer, custodial correctional officer and general manager of a prison continue to be provided for under this clause. In addition this section ensures that outstanding disciplinary proceedings can be transferred to the new department following passage of this Bill and that staff accrued entitlements are transferred to the new department.

Lastly this clause states that employment conditions in place will continue to apply following the transition to the new department for a period of 12 months, whereupon public service directives will apply.

Subdivision 5 provides for the transition of all instruments, pending proceedings, actions commenced and references to QCSC or QC in other Acts. All QCSC or QC instruments in existence prior to the commencement of this amendment are to be continued and applied to the State. Similarly all outstanding proceedings are to be continued and applied to the State, instead of QCSC or QC.

All actions commenced by either QCSC or QC are to continue and remain in force following commencement of this amendment.

This clause also provides for documents certified by the Secretary to the Commission to continue to have evidentiary value if these are required in future proceedings.

References to QCSC or QC are taken to be references to the chief executive or the State (whichever is appropriate) in all other Acts.

Amendment of Schedule (Dictionary)

Clause 28 deletes certain definitions that will no longer be applicable to this Act following commencement of the amendment. Additional definitions, such as ‘advisory council’ and ‘corrective services entity’ are provided.

SCHEDULE—MINOR AND CONSEQUENTIAL AMENDMENTS

The following Acts have been amended to account for the changes in nomenclature outlined above :

Corrective Services Act 1988

Criminal Code

Criminal Justice Act 1989

Criminal Law (Rehabilitation of Offenders) Act 1986

Criminal Offence Victims Act 1995

Health Rights Commission Act 1991

Juvenile Justice Act 1992

Mental Health Act 1974

Parole Orders (Transfer Act) 1984

Penalties and Sentences Act 1992

Public Trustee Act 1978

Superannuation (State Public Sector) Act 1990

Whistleblowers Protection Act 1994

It is not intended that any of these minor amendments will alter the meaning of any current provisions, other than to remove references to the QCSC, Commissioners, QC, and other titles that will be replaced upon commencement of this Act.

The schedule replaces references to ‘commission’ with ‘chief executive’ and renames ‘commission’s rules’ as ‘corrective services rules’. In addition references to the ‘seal of the commission’ as the evidence of a rule are deleted and replaced by certification by the chief executive. Other amendments include -

- ‘chief executive’ or ‘chief executive (corrective services)’ in place of ‘commission’;
- ‘corrective services entity’ in place of ‘commission entity’;

- ‘corrective services officer or employee’ in place of ‘an employee or officer of the commission’;
- ‘a corrective services officer’ in place of ‘an officer of the commission’;
- ‘directions of the chief executive’ in place of ‘directions of the commission’;
- ‘be the chief executive’ in place of ‘be the commission’.

Current definitions of ‘defined office holder’ and ‘commission entity’ have been omitted.