# CORRECTIVE SERVICES BILL 2000

## EXPLANATORY NOTES

The Corrective Services Bill 2000 has been drafted in accordance with current legislative drafting practice and written in plain English. Consequently, particular clauses and sub-clauses require little or no specific explanation. As a result certain clauses and sub-clauses have been repeated or summarised in general terms only.

### GENERAL OUTLINE

#### Objective of the Legislation

The general policy objective of the Bill is to provide for the safe and humane containment, supervision and rehabilitation of sentenced offenders and persons detained in custody on remand. A major priority of the Bill is the safety of the community, the safety of staff and visitors and the safety of offenders. The proposed Bill will provide for the management of offenders within a safe environment and according to their risks and needs so as to address and provide for their rehabilitation requirements.

The Bill proposes to provide that offenders' entitlements, other than those entitlements or rights which can not be reasonably provided because of the limitations of imprisonment or the sentence of the court, are safeguarded. Specifically, the Bill will recognise the need to respect an offender's dignity and provide for the special needs of offenders who are not of the general male mainstream offender population.

In achieving these objectives, the Corrective Services Bill will replace the *Corrective Services (Administration) Act 1988* (*CSA Act*) and the *Corrective Services Act 1988* (*CS Act*). In addition, those current provisions of the *Corrective Services Regulation 1989* which should be contained within principal legislation, for example, provisions for early discharge through remission, have been translated to the Bill.

**Reasons why the proposed legislation is necessary**

In January 1999, the Queensland Corrective Services Review's report Corrections in the Balance was completed and submitted to the Minister for Police and Corrective Services. The Review had *inter alia* been required to assess the effectiveness of the operation of the *CS Act* and the *CSA Act.*

Several of the report's recommendations related to the need for new corrective services legislation. The report identified that there was an urgent need for the adoption of a legislative and policy framework that was simpler, more effective and more accessible than that currently in operation. In this regard, the report noted that the current legislative and policy arrangement was unwieldy, cumbersome and confusing.

Consequently, the report recommended that the Bill should remove the current power to make corrective services rules and general manager's rules and replace them with the power to make consistent and statewide departmental policies. The report also proposed that the *CS Act* and the *CSA Act* be replaced by one consolidated Act. It was considered that the new Act should address the issues identified in the report as requiring clarification and attention and should incorporate other relevant legislative recommendations, for example, the removal of provisions which are a duplication of other statutes.

There were almost 50 legislative issues which were identified as requiring resolution. The major issues were the inadequacies of the criteria for the granting of early discharge through remission; the absence of provisions for the use of lethal force in circumstances where the lives of community members, staff or other prisoners are being threatened; the powers of search, seizure and disposal of prohibited articles; the absence of specific provisions for the management and safe operation of community corrections centres; and, the lack of clarity in terms of the provisions relating to visitors to corrective service facilities.

**Means of achieving objectives**

The objectives of the Bill are to find the best mechanism to ensure that the risk to the community of further offending is minimised and to ensure that the sentence imposed by the court operates upon the prisoner for the whole of the period of imprisonment, whether in custody or under supervision in the community.

The objectives of the legislation are achieved by providing for the fair, safe, consistent and transparent management and supervision of offenders. The purpose of the new legislation is clearly stated to ensure that the safety of the community is the major criterion for all decisions relating to a prisoner's access to the community through transfer, leave of absence and early release. The safety of staff and prisoners and the good order of corrective services facilities are fundamental criteria for decisions relating to the management of prisoners and, that the dignity and special needs of all offenders are upheld to the greatest possible extent within the corrective services environment.

The significant features of the proposed Bill and the major changes to the corrective services system are provided as follows.

- **Remission provisions**

*The provisions for the early discharge of prisoners through remission are currently provided for in the Corrective Services Regulation 1989. These provisions represent a mathematical formulation for early release and were based, in part, on the previous Prisons Act 1958 which emphasised the promotion of work and discipline.*

*A prisoner, with the exception of life sentenced prisoners, may be eligible for release after serving two-thirds of his/her sentence if he/she can satisfy the low threshold test of having been of good conduct and industry whilst imprisoned. However, since 1997, prisoners who have been convicted of serious violent offences pursuant to the Penalties and Sentences Act 1992 or sentenced to an indefinite period of imprisonment, are not eligible to have their sentences remitted.*

*Neither the Corrective Services Act 1988 nor the Corrective Services Regulation 1989 cite, as a relevant consideration, whether the prisoner may pose a risk to the community by re-offending once released. A prisoner may be of good conduct and industry during the period of imprisonment, but may not have addressed the behaviour which led to his or her initial incarceration.*

The policy objective of the remission proposal is to find the best mechanism to ensure that risk to the community is minimised and to ensure that a prisoner's full sentence is served either in custody or under supervision in the community. It is not intended to introduce new measures which will unfairly treat current prisoners.

Therefore, it is not proposed to abolish remission provisions for prisoners retrospectively. Current prisoners, other than those who have been convicted of serious violent offences or sentenced to an indefinite period of imprisonment, have access to remission of one third of their sentence, subject to their good conduct and industry, and this will be retained.

The additional criterion of "unacceptable risk to the community" is contained in departmental policy and is currently used to determine remission of sentences. However, due to a number of successful judicial review challenges to decisions to not grant remission to prisoners who were perceived to be of an unacceptable risk, this policy contains a low threshold for the criterion of "unacceptable risk". It is proposed to strengthen this criterion and elevate it to principal legislation to provide greater protection for the community. Additionally, the factors which are considered when assessing the criterion of "good conduct and industry" will be made more transparent.

It is proposed to remove access to additional days of remission, eg. Christmas remission and overtask remission. These types of remission are considered to be anachronistic.

For future prisoners, access to early release through remission will be abolished. Different provisions are proposed for prisoners serving short sentences as opposed to those serving longer sentences (more than two years). Prisoners serving sentences of two years or less, are considered to be a lower risk to the community and they will be eligible for early release through conditional release after serving two-thirds of their sentence. The decision in regard to early release will be subject to the chief executive determining that the prisoner's release does not pose an unacceptable risk to the community and the prisoner has been of good conduct and industry.

In practice, this decision will be delegated to the person in charge of the facility in which the prisoner is accommodated. If the person in charge considers that a decision may be made to not grant conditional release, clause 79 provides that the prisoner must be given a notice of the reasons and must be given the opportunity to make a written submission. Furthermore, this submission must be considered before the decision to grant or refuse early release is made.

Prisoners serving sentences of more than two years, will be eligible for early release through a post-prison community based release order such as home detention. In this way, they remain under supervision as stipulated in the post-prison community based release order until their full sentence is

discharged. Post-prison community based release orders are considered and approved by independent community corrections boards.

Access to "exceptional circumstances" parole will be retained for all current and future prisoners to provide for early release to parole when exceptional circumstances arise, for example, a prisoner's life threatening illness.

- **Use of Force**

*The CS Act provides for a corrective services officer to use such force as is reasonable to compel a prisoner to obey an order, or to restrain a prisoner who is attempting to commit or committing an offence against this Act or another Act. The current Act also provides that a corrective services officer may use reasonable force to remove a visitor from a prison, or search and arrest the visitor and search the visitor's vehicle if there is a reasonable belief that the visitor is committing or about to commit an offence.*

*This provision lacks detail in relation to the circumstances in which officers are authorised or justified to use weapons including firearms; the circumstances in which officers are authorised or justified to use prison dogs; and, the proximity (outside of the gazetted prison boundary) in which officers may use force against a prisoner. Certain custodial officers are authorised to carry weapons, for example, officers on perimeter duty around a secure prison, but have been without legislative provisions to know when and in what circumstances lethal force may be used.*

It is proposed to clarify the powers of a corrective services officer in regard to the use of force against prisoners and visitors. The Bill also provides an appropriate balance between the need to protect prisoners and visitors from the use of unnecessary or excessive force and the need to protect the community from persons who are committing further offences or who are attempting to escape.

The Bill clearly defines the circumstances in which authorised correctional officers may use force, including the use of corrective services dogs, the use of reasonable force and the use of lethal force. These provisions are consistent with similar powers given to police officers under the *Police Powers and Responsibilities Act 2000*.

The Bill provides the strict circumstances in which lethal force may be deployed, for example, if there is a reasonable suspicion that an escaping prisoner is likely to cause grievous bodily harm to, or the death of, an innocent person. Related provisions provide certain safeguards for the use of lethal force such as the provision of appropriate training; the giving of a warning before lethal force is deployed; and, the recording and reporting of the use of lethal force to the Minister.

- **Search powers in regard to visitors**

*The CS Act provides that it is an offence against the Act for a person to take any article or substance into a prison without lawful authority. On this basis, sections 107, 108 and 109 of the Act provide the authority to search and arrest persons suspected of committing an offence and search a visitor or employee of the department, respectively.*

*Section 107 provides that, where there are reasonable grounds to believe that a person has committed, is committing or is about to commit an offence, a correctional officer may use reasonable force to either arrest the person or search the person and his/her possessions (including any motor vehicle). Section 108 provides specific provisions in regard to 'visitors', that is, any person visiting a prison or prisoner or seeking entry to a prison. Although this section does not require 'reasonable grounds' prior to a search of a visitor, it elevates the authority to request a visitor to submit to a search to that of general manager. The visitor may decline to submit but will then be subject to the visit being terminated or cancelled. Section 109 provides the power to search officers performing a function under the Act and employees of the department.*

The existing legislative provisions are considered to be problematic in that the type of 'search' to which a person/visitor may be submitted is not prescribed. For example, stakeholders have raised concerns in regard to the legality of strip searching and pat-down searches of visitors. In addition, the absence of the criterion of 'reasonable grounds' in regard to the searching of visitors in section 108, has raised issues concerning perceived targeting of certain visitors to strip search for punitive reasons.

The proposed Bill has attempted to address these concerns and clarifies the position of the department in terms of the searching of visitors, officers and employees. It is proposed to translate the provisions of section 107(b) where there are reasonable grounds to believe that a person has committed

or is committing an offence, an authorised corrective services officer may use reasonable force to search the person and his/her possessions, including the person's vehicle. However, the power to arrest all persons, other than prisoners, has been removed and replaced with a short period of detention so that the suspicion can be referred to the Queensland Police Service QPS for an appropriate response.

The clear intent of the Bill is that visitors, officers and employees will not be subject to a strip search, a personal search or body search under this Bill. If there is sufficient reason to justify any of the above searches, the corrective services officer must refer the matter to the QPS. Also, as departmental employees are now subject to the *Criminal Justice Act 1989*, it is more appropriate that the matter of search and possible arrest be referred to a more appropriate law enforcement agency.

The Bill defines the type of searches which may be undertaken by corrective services officers in regard to visitors, including other officers and employees of the department. For example, a visitor to a secure facility may be required to submit to a scanning search and must be required to submit to a general search. A 'scanning search' includes a scan of a person and his/her personal property and possessions by electronic or other means which does not require a person to remove his/her general clothing or to be touched by another person. A scanning search may include, but is not limited to the use of a portable electronic apparatus which can be passed over the person; an electronic apparatus through which the person is required to pass; or a dog trained to detect the scent of prohibited substances. A 'general search' is a search to reveal the contents of outer garments, hand luggage and pockets of a person without touching the person.

The Bill also provides that any visitor who refuses to submit to a general or scanning search may be refused access to the facility or, if already granted access, may be directed to leave the facility or be removed, or may be granted a non-contact visit.

- **Search powers in regard to prisoners**

*Section 47 of the CS Act provides wide ranging powers in regard to the searching of prisoners and anything in their possession. Furthermore, the chief executive also has power to make rules prescribing the circumstances in which correctional officers must search prisoners. The general manager*

*of a prison may order the search of a prisoner for any purpose and a correctional officer may search a prisoner if reasonable grounds exist to do so.*

*This section also provides for strip searching of prisoners and a notification of the strip search after the search has been undertaken.*

*Sections 48 and 49 provide for the body searches by medial officers and nurses appointed to a prison and the taking of test samples of breath and urine.*

*Section 20 of the Corrective Services Regulation 1989 provides for the searching of prisoners and their possessions within community corrections centres if it is necessary or desirable in the interests of the good order and security of the centre.*

The current provisions for searching are considered inadequate in regard to the specific types of searches, the circumstances of the search and the authorising officer. The intent of the search provisions of prisoners is to prevent the possession of dangerous or prohibited things or their conveyance into corrective services facilities. The Bill provides a clear obligation to protect prisoners, staff and the community and powers which support this obligation are vital.

The Bill does not propose to list all things which a prisoner may have in his or her possession. This list would be, by necessity, too prescriptive and largely ineffective. It is proposed to provide a list of prohibited things within the regulation. The Bill will also provide that a prohibited thing found in a prisoner's room is evidence that the thing is in the prisoner's possession. Although this appears to be a reverse of the onus of proof the prisoner may still test and contest the evidence if the matter proceeds to court. This provision is considered necessary to discourage the import and possession of potentially dangerous items and drugs, and to ensure the protection and safety of the community, staff and other prisoners.

As one of many strategies for the prevention of illicit drugs in facilities, the power to strip search prisoners who are suspected of carrying a prohibited item or substance is considered necessary. The Bill proposes to restrict the current powers of corrective services officers to search other persons, that is, a person may only be required to submit to a scanning search and/or general search and this raises the possibility of prohibited items and substances entering the facility.

The Bill retains the power to direct a prisoner to undergo a personal search or a strip search. The dictionary to the Bill defines 'personal search' and 'strip search' to mean, respectively, a search in which light pressure is momentarily applied to the prisoner over his or her general clothes without direct contact being made with the prisoner's genital or anal areas; or a female prisoner's breasts, and a search in which a prisoner removes all garments during the course of the search, but in which direct contact is not made with the prisoner.

The translation of the powers to strip search prisoners may be regarded as an infringement of a prisoner's right to the preservation of his or her personal dignity. While it is acknowledged that many people find the idea of strip searching an affront to their personal dignity, it is considered that such powers are warranted in a correctional environment in order to ensure the safety of prisoners, staff and the community and the security and good order of the facilities. The proposals in this regard meet with Australia's obligations under the United Nations Single Convention on Narcotic Drugs 1961.

Several safeguards have been built into the Bill to ensure the powers are not misused and to protect a prisoner's dignity. The dignity of the prisoner is to be respected as much as possible by restricting this power to officers of the same gender as the prisoner and by requiring that strip searches be undertaken by no more corrective services officers than is necessary to carry out the search but by no less than two officers. The Bill further proposes that a strip search must not be carried out in the view of a person who is not of the same gender as the prisoner being searched.

In addition, the Bill specifically provides that a strip search may be preceded by any other less intrusive search. The Bill also proposes that the person in charge of a corrective services facility must establish a register to record the details of each strip search that is performed. This would allow such searches to be scrutinised by official visitors, the Parliamentary Commissioner for Administrative Investigations or the Criminal Justice Commission and will minimise the possibility of abuse.

To ensure a prisoner's dignity is respected during any exercise of the proposed powers, corrective services officers will be required to ensure that reasonable care must be taken to protect the dignity of the prisoner; and, that as far as is reasonably practicable, the way a prisoner is searched must be conducted to ensure minimal embarrassment.

In summary, the Bill recognises the privacy and protection of law abiding persons by ensuring that the proposed powers are properly balanced with an individual's rights to privacy.

- **Mail and phone calls**

*The provisions relating to prisoner mail and phone calls are currently contained in the Corrective Services Regulation 1989. Under the Regulation, correctional authorities are empowered to monitor phone calls, restrict the use of phone calls, check mail for prohibited items, read and censor prisoners' mail and detain mail that is believed to contain illegal or other prohibited items.*

The proposed provisions will provide for correctional authorities to have the power to prevent illegal or other prohibited things from being received or sent by prisoners through the postal system. The proposed power to open, search and censor mail is carefully defined and must only be used for the security or good order of the corrective services facility or the safety of persons in the community and within the facility.

A corrective services officer may only seize mail, excluding privileged mail, or anything in the mail, to prevent a risk to the security or good order of the facility, the commission of an offence or breach of a court order, or to prevent inappropriate correspondence leaving the facility. This provision will also prevent a prisoner arranging the purchase of goods without the consent of the person in charge who will ensure that the prisoner has the ability to pay for the ordered goods or that the goods are not prohibited items.

In relation to privileged mail, the Bill proposes that the person in charge may require a prisoner to open his or her privileged mail before it is sent, to allow a corrective services officer to search it if the person in charge reasonably suspects the mail contains something that may physically harm the person to whom it is addressed or a prohibited thing. However, a corrective services officer must not read the privileged mail without the prisoner's written consent and once searched, privileged mail must be promptly delivered to the person to whom it is addressed. The Bill provides that the person in charge may seize something in a prisoner's privileged mail only if it may physically harm the person to whom it is addressed, or it is a prohibited thing.

- **Visits to corrective services facilities**

*The current Act provides little guidance in respect to visits to prisons and makes no provision for visits to community corrections centres. The legislation is silent on a number of matters such as the frequency and types of visits to prisoners, the status of persons visiting a facility and does not clearly articulate the powers to grant, deny or suspend visits.*

The Bill will attempt to strike the appropriate balance between providing prisoners with access to family, friends and lawyers and protecting the safety of prisoners and staff and the security and good order of corrective services facilities.

The Bill proposes to provide a minimum entitlement of one personal non-contact visit each week except during periods of a declared emergency. The person in charge of a corrective services facility may also approve additional contact visits each week to assist family relationships and to facilitate visits for Aboriginal and Torres Strait Islander prisoners from tribal elders or the community representatives.

The Bill also provides clear provisions for an unaccompanied child to visit a prisoner if it is in the best interests of the child; the behaviour permitted during a contact visit; and, the requirements and conditions of access to a facility including a visitor's right to seek a review of the chief executive if denied access by the person in charge.

Additionally, the chief executive will have the power to keep prints as proof of identity when a visitor has consented to give his or her prints. The Bill has provided a power to suspend a visit if the visitor fails to comply with reasonable directions or is charged with an offence committed in a corrective services facility.

As previously mentioned, the wide-ranging powers to search visitors and staff currently provided by the *CS Act* have been removed and searching of visitors, including staff, is restricted to scanning or general searching only.

- **Substance Testing of Offenders**

*The CS Act provides powers to compel a prisoner to provide a sample of breath or urine where it is believed on reasonable grounds that the sample may afford evidence of the commission of an offence or breach of discipline. With the assistance of a registered nurse or medical practitioner, samples of a prisoner's blood, saliva or hair may be taken.*

*The CS Act does not provide a the power to conduct random urine or breath testing for statistical purposes. A percentage of the prison population is randomly selected for testing and the results do not identify individual prisoners. The results of the testing are used for statistical purposes to determine the level of drug use within correctional centres. This type of test has no current legislative basis and is carried out on a voluntary basis, that is, a prisoner has the right to refuse the test without penalty. Evidence is available that increasing numbers of prisoners are refusing the test which therefore provides inaccurate statistical analysis of the test results and patterns.*

*The CS Act is also silent on the power of substance testing of groups of prisoners at a facility, for example, the testing of kitchen workers when a syringe has been found in that area and the testing of offenders subject to an order.*

The Bill proposes to give the chief executive powers to test prisoners for drug use at anytime and to test persons who are subject to a court or board order which requires testing to be undertaken. In this way, prisoners and offenders will have a reasonable expectation that the use of an illicit substance will be discovered.

The chief executive may also order that a set percentage of randomly selected prisoners provide a test sample for statistical purposes. It is proposed that a provision for random selection be included based on section16(2) of the *Jury Act 1995* which includes the use of a computer programme to make a random selection. There will be no consequences attached to providing a positive test sample for these prisoners as they are not identified.

It is also proposed to provide for a range of consequences which may follow the recording of a positive test result or the refusal to provide a test sample within a reasonable time. It is the intent of this provision to provide for the circumstances of the use of an illicit substance. For example, a prisoner may be required to undertake a medical, therapeutic or behavioural treatment program to address his or her addiction rather than being breached or charged with a prisoner offence.

A prisoner who refuses to provide a test sample, and/or tampers or masks a test sample, will be deemed to have tested positive for the consumption of a prohibited substance.

- **Detention in a watch-house**

Under current provisions, section 32(2) of the CS Act provides that, where a person's term of imprisonment, or period of detention, is 31 days or less, the person may remain for that time in a watch-house. Section 32(3) of the Act provides that, where a person's term of imprisonment or period of detention is more than 31 days, the person may be kept in the watch-house until he or she is able to be conveniently conveyed to prison. Section 33(1) of the Act provides that a person comes into the custody of the chief executive of the Department of Corrective Services when he or she is admitted to a prison.

Since 1998, the department has held an agreement with QPS, based on Ministerial direction, that a person should not be detained in a watch-house for a period greater than seven days unless at the convenience of the officer in charge of the watch-house. This direction was given to ensure that prisoners were not held in watch-houses for inappropriately long periods of time.

The Bill has translated the provisions of sections 32 and 33 of the *CS Act* with an amendment to the time allowed and an amendment which provides that a person may be conveniently taken to a corrective services facility rather than to a 'prison'. These provisions were retained to enable prisoners, who are serving terms of imprisonment of less than 21 days, to remain in regional or remote watch-houses for that period. In this way, the prisoner remains in his or her community and the cost to the QPS of transporting and escorting the prisoner to a corrective services facility is avoided.

These provisions also provide for the QPS to keep persons in regional or remote watch-houses when these persons are required to appear in the local court on further matters. The alternative is to transfer a prisoner to a correctional centre and then to transport the prisoner back to the court. The demand on court time and QPS resources has made this latter approach inefficient.

By further providing that a person may be admitted into a 'corrective services facility', rather than a 'prison', the department will be able to place low risk sentenced prisoners at a community corrections centre, when such a facility exists in that region, as an alternative to transporting them to a secure facility.

These provisions will assist in resolving the issue of removing low risk Aboriginal and Torres Strait Islander prisoners from their communities and will help to reduce the high costs of transporting short term prisoners from the far north and central regions of the State to Lotus Glen and Townsville correctional centres.

- **Early discharge**

*The CS Act currently provides that the chief executive may discharge a prisoner immediately prior to his or her discharge date. However, section 81 of the CS Act does not provide a minimum time which must be served by a short term prisoner before he or she is eligible to receive early discharge.*

*The current provision does not extend to sentenced prisoners who may be in the custody of the commissioner of police in a regional or remote watch-house. Such prisoners must be transported to a prison before they can access this provision.*

The Bill has translated section 81 of the *CS Act*, which provides for the early discharge of sentenced prisoners of between seven to 14 days prior to their discharge date. However, the Bill proposes to extend this provision to enable short-term prisoners, in watch-houses, to receive early discharge. This provision also specifies that early discharge may not be accessed until a prisoner has served at least half of the person's period of imprisonment. For example, a prisoner who is sentenced to 20 days imprisonment in a regional or remote area may remain at the discretion of the officer in charge of the local watch-house and access early discharge of seven days after serving 10 days. In effect, the prisoner will be in the watch-house for 13 days.

The policy of detaining persons in watch-houses, for periods of up to seven days, will be maintained for all persons who cannot conveniently be detained in a watch-house by the QPS for longer than seven days.

- **Official visitor scheme**

*The official visitors scheme was established by the CS Act in 1988. Official visitors were originally appointed by, and reported to, the QCSC Board. On 1 May 1999, the board's functions and powers were transferred to the chief executive of the Department of Corrective Services in accordance with the Corrective Services Legislation Amendment Act 1999.*

The Bill translates the current power of the chief executive to appoint an appropriately qualified person as an official visitor. Under the doctrine of the separation of powers, the legislature, the executive and the judiciary operate independently of each other. When the official visitor scheme was introduced in 1988, the Parliamentary Bill Book for the *CS Act* clearly stated that official visitors would not have a judicial role.

This intent was consistent with Kennedy's 1988 recommendation that, while official visitors would be a major check on the correctional system, they would not have the power to overturn management or disciplinary decisions. The official visitor scheme replaced the previous system of visiting justices. Under the former *Prisons Act 1958*, visiting justices had a judicial role and accordingly were appointed by the Governor in Council.

Section 22(3) of the *CS Act* provides that a person shall be appointed as an official visitor for a period of three years unless sooner dismissed from office by the chief executive. Section 22(4) provides that a person may be eligible for further appointment. The Bill translates the provision of section 22(3) but does not expressly provide that the person may be eligible for further appointment. The appointment of persons is the responsibility of the chief executive in accordance with the *Public Service Act 1996* and it was considered unnecessary to explicitly state that a person may be eligible for reappointment.

Section 23(2)(b) of the *CS Act* provides that an official visitor can hear and investigate a complaint of a person subject to the certain community based orders. This provision was not translated to the proposed Bill as it is rarely, if ever, used. Persons subject to a parole order, a probation order, a community service order or a fine option order are free to complain and appeal decisions of a community correctional officer to a community corrections board, a court, the Office of the Parliamentary Commissioner for Administrative Investigations and anyone else in the community. They are not in the custody of the chief executive and have the same right of access to appeals and complaints as any other member of the community.

The Bill Book to the *CS Act* clearly intended that the official visitor scheme should apply in lieu of the visiting justices scheme which applied to prisoners in prisons and the newly established community corrections centres. It is presumed that, in 1988, this provision was added to cover the possibility that a person, subject to these orders, may be accommodated in a community corrections centre at some stage. However, these offenders would not be accommodated in a corrective services facility unless they had

received a sentence of imprisonment, thereby making the provision redundant.

Section 24(c) of the *CS Act* provides that an official visitor may have access to any document kept for the purposes of the Act or the *CSA Act*. The Bill provides the power to access any document, other than a document to which legal professional privilege applies, at the facility to which the official visitor is appointed and requires that a corrective services officer must provide reasonable assistance to access documents. The intent is not to limit an official visitor's access to documents but to provide any relevant document to the official visitor at the facility to which they are appointed.

- **Powers of an inspector**

*Section 29(1)(b) of the CS Act provides an inspector with the power to require a prisoner, officer or employee to provide information and answer questions relevant to the inquiry. Section 126 of the CS Act also provides that answers or information, given under compulsion, can not be admissible against the person in proceedings other than proceedings in respect of an offence founded on the giving of false or misleading answers or information.*

The Bill, for the same reasons applying to official visitors and corrective services officers in regard to fundamental legislative principles, has clarified the powers of an inspector to compel answers. The Bill provides the power of an inspector to require any person to give information but the inspector must also warn the person that it may be an offence to fail to give the information without reasonable excuse. It is a reasonable excuse not to give information if it will incriminate the person.

- **Community corrections boards**

*The CS Act provides for the establishment, functions and powers of the Queensland Community Corrections Board and the regional community corrections boards. Currently, these boards are the granting authorities for prisoners' applications for early release to parole. They also consider and make a recommendation to the chief executive who is the granting authority in regard to applications for release to work and home detention.*

*Criticisms of the current Act include the unnecessary duplication of the requirement that all parole applications must be considered by a regional board prior to consideration by the Queensland Board, the jurisdictions of the boards are outdated, and the requirement for the chief executive to be the granting authority for similar release orders.*

To assist community corrections boards to make decisions expediently in regard to supervised post-prison community based orders, the Bill provides a number of new changes. The first change is to remove the need for regional boards to consider each prisoner's application and to forward a recommendation to the Queensland Community Corrections Board. This duplication is unnecessary and places a major impost on regional boards' time.

With the removal of the requirement for regional boards to consider Queensland board applications, the jurisdiction of the regional boards has been extended from five years or less to less than eight years. The Queensland Community Corrections Board's jurisdiction subsequently encompasses prisoners serving sentences of eight years or more.

Finally, the community corrections boards will be the granting authority for the three types of post-prison community based release orders (release to work, home detention and parole) to ensure consistency in decision making. The boards will be able to provide the most appropriate form of supervised release, in accordance with the prisoner's risk and needs, to prisoners who are serving sentences of more than two years, after they have served 50% of their sentence or as recommended by the court.

- **Planning for the future**

To prepare correctional facilities to meet the accommodation and treatment needs of prisoners, particularly those prisoners who have special needs, the Bill provides requirements to consider when refurbishing or building correctional facilities. For example, research has identified that there are many similar issues facing both elderly prisoners and prisoners with disabilities. Such issues include the physical difficulty coping with prison conditions and fixtures eg stairs, sloping walkways, distances between buildings; the availability of special nutrition/dietary care; special housing; the need for special appliances and prostheses; and, the use of prisoner aides to provide non-medical assistance.

The design of correctional facilities, diet, health/medical appliances and services and staffing issues, for example, must be considered for possible increases in the number of elderly prisoners and prisoners with disabilities. In this way, prisoners with special needs will be humanely accommodated in corrective services facilities

- **Interstate Travel**

For the first time, prisoners will be able to apply for interstate leave of absence to visit a sick relative or attend a funeral. Currently, there are no legislative provisions which allow a prisoner in custody to travel outside of the State and a prisoner must apply and be granted a temporary parole order through a community corrections board. In many situations, by the time a prisoner's application is prepared and submitted to a board, the immediacy for the request has past. This new provision will help acknowledge the importance of maintaining contacts with the family for prisoners who have interstate relatives.

The provisions of interstate leave of absence had to substantially comply with similar interstate provisions in order to be accepted by corrective services in other States such as New South Wales.

**Estimated Cost of Implement for Government**

There are no expected administrative costs to Government in implementing the Bill, beyond the costs associated with the abolition of remission. In abolishing remission for future prisoners, there is an expectation that there will be a daily increase of 34 prisoners serving sentences of two years or less and a daily decrease of 15 prisoners serving more than two years, equalling a overall daily increase of 19 prisoners at an expected cost of $724,014 p.a. However, no additional funding is being sought for this expected impact.

The proposed Bill is largely a consolidation of the powers and responsibilities contained within the current corrective services Acts and Regulation and does not impact on staffing and program costs. The costs associated with the provision of education and training on the new legislation will be borne by the department.

**Consistency with Fundamental Legislative Principles**

It is the department's view that the Bill is consistent with fundamental legislative principles to the greatest extent possible within the correctional environment. However, a number of concerns over fundamental legislative principles was raised by stakeholders after the circulation of the draft consultation Bill. These concerns are addressed as follows.

Abolition of remission

The abolition of early discharge through the granting of remission will not be retrospective and all prisoners who were sentenced before the commencement of the new Act or sentenced after the new Act for offences committed prior to the commencement of the new Act, will continue to be eligible for early discharge through remission.

However, the power to grant early release through remission and the criterion of unacceptable risk to the community are elevated from current regulation and departmental policy, respectively, to the Bill to ensure transparency of decision making. The factors considered in determining a prisoner's risk to the community are also provided in the Bill.

For future prisoners, early discharge through remission will be abolished but other early release mechanisms will be available. For example, prisoners serving sentences of two year or less will have access to conditional release at the same time as they would have been eligible for remission, that is, after having served two-thirds of their sentence. Future prisoners, who are serving sentences of more than two years, will be able to access early release through a post-prison community based release order after serving half of their sentence.

The Bill provides for a review process when the chief executive is considering refusing to grant either remission or conditional release. Prisoners must be given at least 21 days notice of the consideration not to grant to enable them to make a written submission. In effect, the power of the chief executive to grant conditional release will be delegated to the person in charge of the corrective services facility. The power to grant remission is already delegated to general managers, for prisoners serving two years or less, and to appropriately qualified staff of the Office of Sentence Management for prisoners serving longer sentences.

Use of force

There are two aspects within the proposal which have possible fundamental legislative principle implications: the use of reasonable force and the use of lethal force. The proposed powers are clearly defined with the provision of safeguards and were developed in consideration of provisions under the Criminal Code, the *Police Powers and Responsibilities Act 2000* and other Australian correctional jurisdictions.

The use of reasonable force is not new in the Queensland correctional environment and has previously been legislated for under the *CS Act*. It is not unreasonable for corrective services officers to have the power to use reasonable force. For example, when dealing with an uncooperative prisoner it is essential that the officer have the necessary power to be able to enforce any direction that he or she may be statutorily permitted to make. Correctional personnel receive extensive training in all aspects of prisoner management and the use of reasonable force is an element of such training. The proposal clearly defines the circumstances in which reasonable force may be used in addition to clearly specifying the type of restraint devices that may be used.

The proposal, in relation to the use of lethal force against escaping prisoners in certain circumstances, is a departure from the fundamental legislative principle requiring legislation to have sufficient regard to the rights and liberties of individuals. However, there is considered to be sufficient justification for the proposal.

With the armed assaults on both the Sir David Longland Correctional Centre in November 1997 and the Borallon Correctional Centre in February 1998, for the purpose of assisting several high security prisoners to escape from lawful custody, the need for the matter to be clarified in legislation was demonstrated.

The previous Government proposed under the *Corrective Services Amendment Bill 1998* to allow custodial officers to discharge firearms against escaping prisoners without regard to whether the escape or attempted escape posed any danger to other persons. However, this Bill lapsed with the calling of the June 1998 State Election.

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

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

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

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

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

In addition, the term "secure custody" when used in respect to the use of lethal force has been defined in the Dictionary to mean a prison having a perimeter designed to prevent escape, a corrective services transport vehicle or a court facility. This will preclude the proposed power from being exercised at a low security prison farm, a WORC or WCC site or a community corrections centre.

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

Body searches

The Bill proposes that a person in charge of a corrective services facility be empowered to authorise a doctor to subject a prisoner to a body search in certain prescribed circumstances. The dictionary to the Bill defines the term "body search" to mean a search of a prisoner by a doctor that may include an examination, in accordance with medical protocols, of any orifice or cavity of the prisoner's body.

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

In the first instance, it would not be practicable for such decisions to be subject to review given the often emergency circumstances regarding body searches, for example, when there is a reasonable belief that a prisoner is carrying a parcel of an illicit and life threatening drug in a body cavity.

Secondly, the power proposed is carefully defined to specify the occasions for which it may be used. In this regard, the person in charge is proposed to be empowered to authorise a doctor to conduct the search if the person in charge reasonably believes that a prisoner has ingested something that may jeopardise the prisoner's health or well being; a prisoner has a prohibited thing concealed within his or her person that may potentially be used in a way that may jeopardise the security and good order of a facility; or the search may reveal evidence of the commission of an offence or breach of discipline by the prisoner.

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

In addition, provision is made for a person in charge to maintain a register recording the details of each body search. The register is to record the names of all persons present during such searches and the details of any article, substance or thing discovered. This requirement would open the process to the scrutiny of official visitors and the Criminal Justice Commission.

Prisoners' phone calls and mail

The proposals in relation to the recording and monitoring of prisoners' phone calls and opening, searching and censoring of prisoners' mail are a departure from the general fundamental legislative principle that sufficient regard be given to the rights and liberties of individuals. However, there is considered to be sufficient justification for the proposal.

In a correctional environment it is necessary for authorities to have appropriate power to ensure the security or good order of corrective services facilities and to protect the safety of the persons both within the facility or in the general community. It is considered essential that correctional authorities be empowered to detect telephonically arranged activities which could compromise the security of a corrective services facility and prevent material from being sent if it threatens someone's health or well being.

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

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

Accommodation of children in custody

The Bill provides that only female prisoners may have their children stay with them in custody under prescribed conditions. While the proposal appears to discriminate against male prisoners by not providing similar arrangements, it should be noted that this limitation is considered to be in the best interests of the child.

The threat of abuse in male facilities is such that even young male adults (under 18 years) are required to be separately accommodated from adult male prisoners for their safety. Stakeholders have been vocal in ensuring

that the provision to provide separate accommodation for young prisoners is retained in the Bill.

In light of this provision and in view of the high risk associated with male prisoners, the placement of children in male facilities is unacceptable. Additionally, the placement of children with their mothers is regarded as a welfare measure under the *Anti-Discrimination Act 1991* (Qld), section 104, and is consistent with the convention on the Rights of the Child.

The Bill supports additional measures for the maintenance of parent-child relationships by providing for extended visits for parents in corrective services facilities and by providing for additional compassionate leaves of absence for prisoners who are the primary care givers of a child under 17 years..

Interest received on personal moneys held in trust

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

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

Safeguards have been provided with respect to the proposal. For instance, the Bill provides that prisoners' trust fund interest is to be used for the general benefit of prisoners. The chief executive will have the discretion to use the interest earnings to meet the sporting, educational or cultural needs of prisoners. Furthermore, the proposal requires the chief executive to report annually to the Minister on the manner in which trust fund interest has been used. It is anticipated that this report would be included as an element of the department's Annual Report thereby facilitating public scrutiny of the process.

Disposal of property of escaped prisoner

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

This proposal has implications in terms of the fundamental legislative principle that requires that compulsory acquisition of property be only undertaken with fair compensation. However, in view of the circumstances, there is considered to be sufficient justification for the proposal.

It would be unreasonable to expect the chief executive to continue recognising the property rights of an escaped prisoner. A major issue in this regard is the continued storage of the escapee's property and is compounded by the uncertainty of when the prisoner will be apprehended and returned to lawful custody. In this regard some escapees are known to have been unlawfully at large for several years. Nevertheless, safeguards have been provided in relation to the proposal.

Firstly, before taking action to dispose of, or destroy, the abandoned property the person in charge of the corrective services facility has to obtain the consent of the chief executive.

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

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

Substance Testing

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

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

The proposed provisions include the identification of persons addicted to substances and treating that addiction. The proposed consequence of returning a positive test may result in one of a range of consequences, not just prosecution. Furthermore, the proposal provides that any action against a prisoner in the event he or she returns a positive test sample should be taken having regard to the circumstances of the case and the needs of the prisoner involved. It is also important to note that similar provisions are found within the *Drugs Misuse Act 1986* and the *Traffic Act 1949*.

Current statutory powers have proven to be inadequate in checking and reducing illicit drug use in prisons and, without the proposed powers, the department will be unable to make significant progress in preventing such incidents. Introduction of the proposed powers should significantly lower the risks to prisoners and the community would also receive benefits from the proposed provisions as it is ultimately in the community's interests to have prisoners re-enter the community free from drug addiction.

Detention of persons other than prisoners

The Bill proposes that a person other than a prisoner may be searched and detained by a corrective services officer in circumstances where a "security offence" is reasonably suspected to have been committed. The *CS Act* provides correctional officers with the power to arrest persons other than prisoners for offences defined in section 104 of that Act but provides no other guidance in terms of subsequent dealing with the arrested person.

The current power to arrest is proposed to be removed and to be replaced with a power to detain for up to four hours to enable a police officer to attend and deal with the matter. It should be noted that the *Corrective Services Amendment Bill 1998* proposed a similar power of detention for up to three hours.

The Bill also proposes that corrective services officers have the power to require that a person state their name and address in the event that there is reasonable suspicion that the person has committed an offence against the Bill. The Bill proposes that a person must comply with an officer's

requirements in this regard unless they have a reasonable excuse not to comply. The Bill proposes a safeguard by providing that, in the event a person does not comply with an officer's requirement to state his or her name and address, and it is not proved that the person has committed any offence, the person has not committed an offence by declining to state his or her name and address.

It is considered necessary to provide for these matters in order to ensure the security and good order of corrective services facilities. The general community will also benefit from the enhancement of security of corrective services facilities as there will be a reduced likelihood of escapes with or without outside armed assistance.

Protection of officials from civil liability

The Bill proposes to provide that an official does not incur civil liability for an act done, or omission made, in certain instances. For the purpose of this clause the term "official" is proposed to mean the Minister, the chief executive, a person appointed for the Bill and a volunteer. An official does not include an engaged service provider performing the function of a person mentioned in (a) to (d).

One fundamental legislative principle requires legislation to not confer immunity from proceeding or prosecution without adequate justification. While the proposal confers immunity on officials in certain circumstances there is considered to be adequate justification for the proposal.

The 1999 Queensland Corrective Services Review considered that the current provision under the *CSA Act* (section 65) did not offer staff sufficient protection and stated that the provision should be considered with respect to the Cabinet guidelines on the matter.

In this regard, Cabinet's decision no 37501 of 20 April 1982 provides guidelines for the Crown’s acceptance of responsibility for claims against officers. Where any claim is made against a Crown employee who has behaved diligently and conscientiously in the course of his or her duties, the Crown may undertake full responsibility for the cost of defence and any award of damages. The Crown will not accept responsibility where the action arises out of something not related to the performance of an officer's duties. If an indemnity is granted, the Crown Solicitor will undertake the defence of the matter in such circumstances.

It may reasonably be argued that the protection of officers, who have acted honestly and without negligence in the performance of their duties, is

justified particularly when the principle is already provided for in 'whole of government' policy. The current lack of sufficient statutory protection for individuals may cause a good deal of unnecessary anxiety for an honest, diligent and conscientious officer who has been served with a claim.

It should be noted that the protection is proposed to only apply to acts done or omissions made honestly and without negligence.

Maximum security orders/crisis support orders

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

The proposal essentially reflects the amendments to the *Corrective Services Act 1988* made during 1999. The chief executive is responsible for the security and management of prisons and the safe custody and welfare of prisoners. However, within the custodial environment there are prisoners who have killed, or have caused serious injury to, other prisoners or who have previously escaped or attempted to escape from high security facilities. Therefore, the chief executive must have the power to protect the general prison community from harm posed by such prisoners.

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

In relation to crisis support orders, the proposal impacts on the rights and liberties of a prisoner through the provision of a program that enables the involuntary detention in a medical unit or hospital for psychological treatment of a prisoner without the prisoner's consent. However, there is considered to be sufficient justification for the proposed provisions.

It should be noted that a prisoner must not be placed in a crisis support unit as a means of punishment. The proposal is necessary to protect the health and safety of prisoners. The crisis support unit will provide medical treatment and observation for a prisoner who is considered to be at risk of self-harm or of doing harm to others and suitable safeguards have been incorporated into the proposal.

The reasons why a prisoner may be placed in a crisis support unit are clearly defined and the term of any crisis support order is specifically stated. This will prevent a prisoner from being accommodated unnecessarily within a crisis support unit. The proposal also provides that a prisoner be accorded procedural fairness in the event it is necessary to renew the prisoner's crisis support order.

Depending on the length of the term of an order, an internal review mechanism is incorporated into the proposal. This review mechanism requires the decision maker to receive and consider the recommendation of a doctor or psychologist.

Finally, the Bill requires that records be maintained in respect to a prisoner who is placed in a crisis support unit. This will open the process up to the scrutiny of official visitors and the Criminal Justice Commission.

Power to compel a person to answer a question

Some stakeholder agencies have raised objections to what is perceived as a curtailment of official visitors' power to question and probe. Section 24(b) of the *CS Act* provides that an official visitor may require a prisoner or employee or officer to provide any information or answer any question relevant to an investigation undertaken by the official visitor. Section 126 of the CS Act also provides that answers or information given under compulsion, can not be admissible against the person in proceedings other than proceedings in respect of a false or misleading answer or information. These provisions were not translated to the Bill. The power currently given to corrective services officers to require an answer from a prisoner (section 44(2) of the *CS Act*) has also been removed for consistency.

Since 1988, the Scrutiny of Legislation Committee has been formed to ensure that fundamental legislative principles are not breached in regard to the development of new legislation. The power to compel a person to answer a question which may incriminate the person is considered a breach of fundamental legislative principles.

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

Recognition of Aboriginal tradition and Torres Strait Islander custom

Finally, the Bill provides for the recognition of Aboriginal tradition and Torres Strait Islander custom. Clause 119 provides that, when establishing new facilities, the chief executive must ensure provisions are made for a meeting place for Aboriginal and Torres Strait Islander prisoners. In addition, elders, respected persons or spiritual healers who are relevant to prisoners must be notified of a prisoner's illness or death.

**Consultation conducted in development of the Bill**

An extensive process of consultation has been undertaken in the development of the proposals for the *Corrective Services Bill 2000.* In the first instance, all stakeholder submissions received by the department since 1988, in regard to corrective services legislation, were considered in the identification and policy development of over 50 legislative issues. These legislative issues were then collated into 29 issue papers with each paper containing an explanation of the problems associated with each issue, a summary of research and an analysis of policy responses in other correctional jurisdictions.

The external stakeholder consultation process for the Bill commenced in October 1999 with the distribution of 29 issue papers with a request for stakeholder comment and advice.

A series of stakeholder workshops and presentations were conducted in Brisbane, Rockhampton, Townsville and Cairns following collation of the stakeholder advice to the issue papers.

A working draft of the Bill was distributed within the department and internal stakeholder advice was considered in the development of the consultation draft. The distribution of the draft consultation Bill on 6 June 2000 was the final stage of the process. Responses were received from over 40 stakeholder agencies and departments.

# CHAPTER 1—PRELIMINARY

## Short title

Clause 1. specifies the short title of the Bill as the *Corrective Services Act 2000*.

## Commencement

Clause 2. provides for the Bill to commence on a day to be proclaimed.

## Purpose

Clause 3. (1) states that the purpose of corrective services is community safety and crime prevention through the humane containment, supervision and rehabilitation of offenders.

The term "corrective services" is defined in the dictionary to mean community corrective services and custodial corrective services. In addition, the term "offender" is defined in the dictionary to mean a prisoner, or a person who is subject to a community based order, being a non custodial order made by a court.

*Example—*

> Probation order, community service order, fine option order or a conditional release order; or a post-prison community based release order, being an order made by a corrections board releasing a prisoner from detention.

*Example of (iii)—*

> Release to work order, home detention order, parole order.

Subclause (2) states that the Bill recognises that every member of society has certain basic human entitlements, and that, for this reason, an offender's entitlements, other than those that are necessarily diminished because of imprisonment or another court sentence, should be safeguarded.

In the past there have been calls for "prisoners' rights" to be enshrined in the legislation. The 1988 Commission of Review into Corrective Services in Queensland considered this issue at some length. Kennedy received submissions from some community groups that suggested rights for prisoners that Kennedy found to be hardly compatible with security operations in prisons. Kennedy considered that, to issue an official

statements of prisoners rights, would result in an overly legalistic environment for the resolution of grievances. Accordingly, Kennedy did not proceed to recommend the adoption of "legally defined rights" (Final Report 1988, p. 190).

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

The case of the Victorian correctional jurisdiction was pointed out as an example in this regard. The PSMC noted that the Electoral and Administrative Review Commission (EARC) in its Review of the Preservation and Enhancement of Individuals' Rights and Freedoms (1993) had also considered the issue. EARC's recommendations in this respect, in conjunction with its overall recommendation for a bill of rights in Queensland, were subsequently considered by the Legal, Constitutional and Administrative Review Parliamentary Committee ("Should Queensland Adopt a Bill of Rights", 1998, Report No 12). The committee noted a number of significant difficulties with the issue and, as a consequence, recommended against the adoption of a bill of rights in any form, including that proposed by EARC.

In consideration of this history, the Bill simply undertakes to safeguard those "basic human entitlements" to which every person is entitled. Such basic entitlements may include, for example, having access to adequate accommodation and health and medical care. The Bill clearly seeks to provide for such matters (refer, for example, to clauses 13, 15, 40, 45, 51 and 119 of the Bill).

Other basic entitlements may include being treated fairly by public officials, being permitted to maintain family ties and being accorded appropriate recognition in terms of any special needs. Again, the Bill seeks to safeguards such matters (refer, for example, to clauses 3(3), 39, 50, 79, 89, 91(2), 122, 189(2) and 190 of the Bill). It should also be noted that under section 285 of the Criminal Code, correctional authorities have a duty to provide for the necessities of life for those undergoing detention.

Subclause (3) states that the Bill also recognises the need to respect an offender's dignity; and Subclause (3) states that the Bill also recognises the need to respect an offender's dignity; and the special needs of some offenders by taking into account an offender's age, gender or race and any disability an offender has. The culturally specific needs of Aboriginal and Torres Strait Islander offenders are also recognised.

The expression "special need of an offender" is defined in the dictionary to mean a need the offender has, compared to the general offender population, because of the offender's age, disability, gender or race.

**Definitions**

Clause 4. states that a dictionary is provided under schedule 3 in relation to the meaning of terms and expressions used in the Bill.

**References to person in charge or prisoner**

Clause 5.(1) states that in a provision of the Bill, a reference to the person in charge is a reference to the person in charge of a corrective services facility.

> Subclause (2) states that in a provision of this Bill about a person in charge, a reference to a corrective services facility is a reference to the facility of which the person is the person in charge and a reference to a prisoner is a reference to a prisoner at the corrective services facility of which the person is the person in charge.

Subclause (3) states that in a provision of the Bill about a prisoner, a reference to a corrective services facility is a reference to the facility at which the prisoner is accommodated. This provision is provided for clarification purposes. The term "prisoner" is defined in the dictionary while a "person in charge" is appointed pursuant to clause 199 of the Bill.

# CHAPTER 2—PRISONERS

## PART 1—CUSTODY AND ADMISSION OF PRISONERS

### Where persons to be detained

Clause 6. (1) provides that a person sentenced to a term of imprisonment, or required by law to be detained for a period of imprisonment, must be detained for the period in a corrective services facility. The term "corrective services facility" is defined in the dictionary to mean a prison or a community corrective services facility. The latter term is defined in the dictionary to mean a community corrections centre, a WORC site or a Women's Community Custody (WCC) site.

Subclause (2) provides that if the period of imprisonment or detention in subclause (1) is 21 days or less the person may be detained in a police watch-house for part or all of the period. The subclause also provides that, where the period is more than 21 days, the person may be detained in a police watch-house until it is convenient to take the person to a corrective services facility. The *Corrective Services Act 1988* provided that the period of detention in a watch-house be no longer than 31 days.

*Examples—*

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

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

Subclause (3) states that the clause applies subject to the provisions of the Bill that allow a prisoner to be lawfully outside a corrective services facility and other relevant statutes such as the Criminal Code and the *Juvenile Justice Act 1992.*

*Example—*

A prisoner may be lawfully outside of a corrective services facility when undertaking leave of absence or participating in a community work order for a WORC Program.

**When persons in chief executive's custody**

Clause 7.(1) provides that if a person sentenced to a term of imprisonment or required by law to be detained in custody for a period is, while being taken to a corrective services facility for detention, under the control of a corrective services officer, the person is taken to be in the chief executive's custody.

Pursuant to section 33 of the *Acts Interpretation Act 1954* the term "chief executive", when used in this Bill, refers to the chief executive of the public sector unit that deals with the matters to which the provision relates and is administered by the Minister for the time being administering the provision (that is, the Department of Corrective Services).

Subclause (2) provides that when admitted to a corrective services facility for detention, a person is taken to be in the chief executive's custody.

Subclause (3) states that subclauses (1) and (2) apply despite the provisions of a warrant committing the person into someone else's custody.

Subclause (4) provides that, except for any time when the person is in another person's lawful custody, the person remains in the chief executive's custody until discharged, even if the person is lawfully outside of a corrective services facility.

The Bill provides examples of when a person is lawfully outside of a corrective services facility. They being, while the person is subject to a post-prison community based release order or a conditional release order, when the person is being transferred between facilities or when the person is attending court, at which time the person is in the custody of the proper officer of the court.

Subclause (5) provides that, in a warrant committing a person to a particular corrective services facility or requiring a prisoner to be produced to the keeper or officer in charge of a corrective services facility, a reference to the keeper or officer in charge of the facility is a reference to the chief executive.

Subclause (6) provides that the chief executive is taken to have custody of a person even if the person is in the physical custody of, or being supervised by, an engaged service provider.

Chapter 6 of the Bill provides for engaged service providers.

*Example—*

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

**When persons in commissioner's custody**

Clause 8.(1) provides that if a person sentenced to a term of imprisonment or required by law to be detained in custody for a period is, while being taken to a corrective services facility for detention, under the control of a police officer, the person is taken to be in the commissioner's custody.

The term "commissioner" is defined in the dictionary to mean the commissioner of the police service.

Subclause (2) provides that when admitted to a police watch-house for detention, a person is taken to be in the commissioner's custody and, except for any period when the person is in someone else's lawful custody, the person remains in the commissioner's custody until discharged even though the person may lawfully be outside a watch-house.

*Example of when a person may lawfully be outside a watch-house—*

A person from a remote community who is sentenced to a term of imprisonment of less than 21 days is detained in the local police watch-house for the duration of his sentence to enable him to maintain his family connections. During that period of detention the person is summoned before a court to appear as a witness in a matter involving another person.

Subclause (3) provides that subclauses (1) and (2) apply despite the provisions of a warrant committing the person into someone else's custody.

**Authority for admission to corrective services facility**

Clause 9.(1) provides that a person must not be admitted to and detained in a corrective services facility unless accompanied by the appropriate court documents such as a warrant for the person's detention or a verdict and judgement record under the *Criminal Practice Rules 1999* containing the name of the person and particulars of the judgement pronounced on the person.

The document referred to in (b) is a court calendar, form 401, issued under rule 62.

Subclause (2) provides that a person may be taken to and detained in any corrective services facility specified by the chief executive notwithstanding that a warrant committed the person to a particular corrective services facility or to a police watch-house.

*Example—*

> A warrant may be addressed to the person in charge of a particular prison to which a person was intended to be sent by the sentencing court. Irrespective of the warrant's address details, the person may lawfully be admitted to another corrective services facility in the event there is insufficient or inappropriate accommodation at the facility identified in the warrant.

**Identification of prisoners**

Clause 10.(1) requires the chief executive to establish a record that contains each prisoner's details.

Subclause (2) provides that, for purposes of identifying a prisoner, a corrective services officer may photograph the prisoner and may take fingerprints, palm prints, foot prints, toe prints, eye prints or voice prints of the prisoner.

Subclause (3) provides that the photos or prints must be destroyed if the prisoner is found not guilty of the offence for which the prisoner was detained in custody, other than on the grounds of unsoundness of mind, or if the proceedings for the offence for which the prisoner is being detained are discontinued or dismissed.

Subclause (4) provides that the photographs and prints must not be destroyed if, for any part of the period of detention for the offence, the prisoner was also being detained for another offence of which the prisoner has been convicted, or for which proceedings have not been discontinued or dismissed.

*Example—*

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

Subclause (5) provides that for the purposes of the clause the term "prisoner" includes a person subject to a community based order (that is, a probation, community service, intensive correction or a fine option order).

**Prisoner to be informed of entitlements and duties**

Clause 11.(1) provides that when a prisoner is admitted to a corrective services facility for detention, the person in charge must inform the prisoner about the prisoner's entitlements and duties under this Bill and the administrative policies and procedures relevant to the prisoner's entitlements and duties. Under clause 189 of the Bill the chief executive is empowered to make administrative policies and procedures to facilitate the effective and efficient management of corrective services.

Subclause (2) provides that the person in charge must take reasonable steps to ensure that an illiterate or non-English speaking prisoner understands the things referred to in subclause (1).

Subclause (3) provides that the person in charge must make a copy of this Bill available to all prisoners and may make a copy of other legislation available to a prisoner. Generally, copies of this Bill would be available in the respective prison libraries for access by prisoners.

**Prisoner classifications**

Clause 12. (1) provides that a prisoner on remand is classified as high security.

Subclause (2) provides that the chief executive must classify a prisoner into a classification of either maximum, high, medium, low or open.

Subclause (3) provides that when determining the appropriate classification for a prisoner the chief executive must consider all relevant factors including the following:

(a) the level of risk to the community;

(b) the nature of the offence for which the prisoner is charged or has been convicted;

(c) the period of imprisonment the prisoner is serving;

(d) whether the prisoner has any outstanding charges and the nature of those charges;

(e) the prisoner's criminal history (if any);

(f) the prisoner's escape record (if any);

(g) the prisoner's demonstrated attitude towards the sentence being served;

(h) the likelihood of the prisoner being deported or extradited and the prisoner's demonstrated attitude towards the deportation or extradition;

(i) the prisoner's previous conduct in a corrective services facility, including whether the prisoner has committed an offence or breach of discipline or returned a positive test sample;

(j) the prisoner's previous conduct while subject to a community based order or post prison community based release order;

(k) the prisoner's medical history, including any psychological or psychiatric history;

(l) the likely influence of the prisoner's family relationships.

There is no special provision provided for a prisoner to seek review of his or her assigned classification. The initial classification of a prisoner is based on a standardised instrument which assigns a numeric score to each relevant factor. The total score is matched against a recommended classification level. A prisoner is advised of his or her score and classification and advised of when his or her classification rating will be next reviewed and how they may attain a lower classification at that time.

Furthermore, the classification of prisoners, who are serving sentences of more than one year, are automatically checked and verified by authorised Office of Sentence Management staff, at Central Office, to ensure that classifications are assigned consistently, appropriately to the prisoner's circumstances and without bias.

A prisoner is able to seek a review of his or her classification through a complaint to an official visitor or the Parliamentary Commissioner for Administrative Investigations or by seeking judicial review.

*Example—*

1. A prisoner has an extensive criminal history and has previously received a substantial number of major breaches for fighting other prisoners. The prisoner's classification may be 'medium'. In order to receive a classification of 'low' the prisoner would have to undertake a program of anger management and not receive another major breach of discipline before the next classification review.

Subclause (4) requires the chief executive to review a prisoner's classification, for a prisoner on remand, when the prisoner is sentenced to a term of imprisonment and, for other prisoners, at intervals of not longer than six months.

Subclause (5) provides that the chief executive may make different arrangements for the management of prisoners of different classifications.

*Example—*

A prisoner classified as maximum and accommodated in a maximum security unit is necessarily managed under a different regime to a prisoner classified as low or open and accommodated at an open security corrective services facility.

**Accommodation**

Clause 13.(1) provides that whenever practicable, each prisoner in a corrective services facility must be provided with his or her own accommodation, that is, in a single cell.

Subclause (2) provides that a prisoner under the age of 18 years must be kept apart from prisoners who are 18 years or older unless it is in the prisoner's best interests not to be kept apart.

The Bill provides two examples in this respect:

1. A young Aboriginal prisoner may be accommodated with older prisoners to enable the young prisoner to be with a family member.
2. A young prisoner may be accommodated with older prisoners to allow the young prisoner to participate in a WORC program.

## PART 2—MANAGEMENT OF PRISONERS

### *Division 1—Management of prisoners generally*

**Directions to prisoners**

Clause 14. (1) provides that a corrective services officer may give a prisoner a direction that the officer reasonably believes to be necessary:

(a) for the welfare or safe custody of the prisoner or other prisoners; or

(b) for the security or good order of a corrective services facility; or

(c) to ensure the prisoner complies with an order; or

(d) to ensure the prisoner or another prisoner does not commit an offence against this Bill or another Act or a breach of discipline.

*Examples—*

1. A group of high security prisoners may have gathered together and have commenced to act in a tumultuous manner. An officer may direct the prisoners to disperse so as to avoid the escalation of the situation.

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

Subclause (2) provides that a direction may be given in writing or orally and may apply generally or be limited in terms of its application.

*Examples—*

1. ORALLY—The directions referred to in the examples given under subclause (1) would be given orally.

2. IN WRITING—On admission a prisoner is given a handbook detailing day to day restrictions in respect of the corrective services facility's operation.

**Medical examination or treatment**

Clause 15.(1) requires a prisoner to submit to a medical examination or treatment by a doctor if the doctor considers the prisoner requires medical attention.

The term "doctor" is to be understood in terms of the definition provided under section 36 of the *Acts Interpretation Act 1954* where it is defined to mean a medical practitioner.

Subclause (2) provides that a prisoner must submit to an examination by a doctor or a psychologist if the chief executive or the person in charge orders it for such reasons as to assign a classification to the prisoner or to decide where to initially place the prisoner, or to decide whether to transfer the prisoner to another place.

The term "psychologist" is defined in the dictionary to have the meaning given by the *Psychologists Act 1977.*

*Examples—*

1. A prisoner may suffer from a latent psychological disorder which manifests itself during the term of the prisoner's imprisonment. This may necessitate an amendment being made to the prisoner's initial classification in order that appropriate arrangements are made to accommodate the changed circumstances.

2. A psychological assessment may be required to ascertain the risk the prisoner poses of re-offending if the prisoner was transferred from a prison to a community corrections centre or a WORC program.

Subclause (3) relates that for a medical examination or treatment, a doctor may take a sample of a prisoner's blood or another bodily substance or order a prisoner to provide a sample of the prisoner's urine or another bodily substance and give the prisoner directions about the way in which the sample is to be provided.

Subclause (4) provides that a prisoner must comply with an order or direction given under the preceding subclause.

Subclause (5) provides that if a prisoner does not submit to an examination or treatment, the doctor and anyone acting at the doctor's direction may use the force that is reasonably necessary to make the prisoner comply with the direction given under subclause (4).

Subclause (6) empowers a doctor to authorise another person to examine or treat a prisoner if the doctor is authorised or required to carry out the examination or give the treatment or would, if qualified to carry out the examination or give the treatment, be so authorised or required, and the other person is qualified to carry out the examination or give the treatment.

*Example—*

> The clause envisages situations where the doctor appointed to a corrective services facility may refer a prisoner to a specialist. An example would be a pregnant prisoner being referred to a gynaecologist.

**Private medical examination or treatment**

Clause 16.(1) provides that a prisoner may make a written application to the chief executive for approval to be examined or treated by a doctor or psychologist of the prisoner's choice.

*Example—*

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

Subclause (2) provides the chief executive with the discretion, in specified circumstances, to approve such examination or treatment. The chief executive may grant an application if satisfied that the prisoner's application is not frivolous or vexatious, the prisoner has sufficient money to pay for the treatment or examination and any associated costs and, the prisoner's nominated doctor or psychologist is willing and available to conduct the examination or treatment.

Subclause (3) provides that where such approval has been given, the prisoner must pay all necessary and associated costs attendant upon such examination or treatment. "Necessary and any associated costs" includes any costs relating to the transfer and escort of the prisoner to the doctor or psychologist.

Subclause (4) requires the chief executive to consider any report or recommendation made by the nominated doctor or psychologist, but is not bound by them. The chief executive must take into consideration all reports or recommendations in the context of the health and safety of the prisoner as well as the safety of the community and the good order and security of the facility.

*Example—*

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

**Dangerously ill prisoners**

Clause 17. requires that if the person in charge, or a doctor appointed to a corrective services facility, considers a prisoner to be dangerously ill or seriously injured, the person in charge must immediately notify the person nominated by the prisoner as the prisoner's contact person, a chaplain and, for an Aboriginal or Torres Strait Islander prisoner, an Aboriginal or Torres Strait Islander legal service that represents the area in which the facility is located and, if practicable, a relevant elder, respected person or indigenous spiritual healer.

**Death of prisoner**

Clause 18.(1) requires that, in the event of the death of a prisoner, the person in charge must, as soon as practicable, notify a doctor appointed to the facility, the police officer in charge of the police station nearest to the place where the prisoner died, the person nominated by the prisoner as the prisoner's contact person, a chaplain and, for an Aboriginal or Torres Strait Islander prisoner- an Aboriginal or Torres Strait Islander legal service that represents the area in which the prisoner died and, if practicable, a relevant elder, respected person or indigenous spiritual healer.

Subclause (2) requires the chief executive to keep records, prescribed under a regulation, of the death of any prisoner. It is anticipated that the regulation will require the following details of any death to be recorded:

(a) name of prisoner;

(b) time and date of death;

(c) place of death;

(d) cause of death as recorded on the death certificate;

(e) time and date notifications required under clause 18 (1) of the Bill were issued;

(f) names and date of appointment of inspectors to investigate the death of the prisoner.

**Registration of birth**

Clause 19.(1) provides that a birth certificate made for a child whose mother or father is, or was when the child was born, detained must not state that fact or contain any information from which that fact can reasonably be inferred.

Subclause (2) provides that if an address that is required by the *Registration of Births, Deaths and Marriages Act 1962* to be shown would contravene subclause (1)(a), the address must be shown as the city or town in which, or nearest to which, the address is situated.

**Children living in facilities**

Clause 20.(1) applies the clause to a female prisoner who gives birth to a child during her period of imprisonment or who has custody of a child, whether or not the prisoner is the child's mother.

The policy in relation to the exclusive application of the provision to certain female prisoners, was decided after due consideration was given to the best interests of any child likely to be accommodated under this provision. This issue was covered under the earlier section of the Explanatory Notes relating to fundamental legislative principles.

Subclause (2) provides that a female prisoner mention in subclause (1), upon admission to a corrective services facility, must be informed that she may apply to the person in charge to have the child accommodated with her. Furthermore, that if she does apply and her application is successful, she will have primary responsibility for the child's care and safety, including all costs associated with that care.

This provision reflects that provided under section 286 of the Criminal Code 1899 (Duty of person who has care of child). However, in the event the female prisoner became unable to care for the child, for example due to illness, the most likely scenario would be that the department would ensure the child's care and safety needs were met while simultaneously taking steps to find a suitable alternative placement for the child.

Subclause (3) provides that the prisoner or the chief executive of the department in which the *Child Protection Act 1999* is administered, may apply to the person in charge to have the child accommodated with a prisoner. Under the Administrative Arrangements Order (No.1) 2000 the *Child Protection Act 1999* is administered by Families, Youth and Community Care Queensland.

*Example—*

> Where a female prisoner's young child is the subject of a protection order made by Families, Youth and Community Care Queensland and the foster-family with whom the child is placed is leaving the State for a short period and alternative accommodation is required for the child.

Subclause (4) provides that the person in charge may grant an application if it is in the child's best interests and:

(a) there is suitable accommodation in the facility for the female prisoner and her child; and

(b) the child has not started primary school; and

(c) the child is immunised in accordance with the recommendations of the department in which the *Health Act 1937* is administered; and

(d) the child is not subject to a court order requiring the child to live with someone else; and

(e) if the child is under the care of the department in which the *Child Protection Act 1999* is administered—the chief executive of that department has consented.

Under the Administrative Arrangements Order (No. 1) 2000 the *Health Act 1937* is administered by the Department of Health. The age of the child referred to in (b) above must be less than the minimum age of compulsory attendance at school, specified under the *Education (General Provisions) Act 1989.*

Subclause (5) provides that in deciding what constitutes the child's best interests, the person in charge must consult with the chief executive of the department in which the *Child Protection Act 1999* is administered or, if the child is an Aboriginal or Torres Strait Islander person, representatives from the relevant Aboriginal or Torres Strait Islander community.

**Removing child from facility**

Clause 21.(1) provides that the person in charge may remove a child, being accommodated with a prisoner, from the corrective services facility if:

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

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

(c) the female prisoner requests it; or

(d) the child starts primary school; or

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

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

*Example of removal under (e)—*

Where a female prisoner is returned from a community corrections centre to a secure facility following further charges, and where there is no accommodation available in the mothers' unit or prisoner's cell, the accommodation of the child may be refused until suitable accommodation becomes available.

Subclause (2) precludes the separation of a child from the female prisoner as a form of discipline against the prisoner. The accommodation of a child under this provision is not a privilege which may be forfeited by the female prisoner as a punishment under this Bill.

**Reviewing decisions about children**

Clause 22. provides that a female prisoner may apply to the chief executive to review a decision of the person in charge to refuse the prisoner's application to have her child accommodated with her in the facility or to remove her child from the facility.

**Marriage**

Clause 23.(1) requires that a person in the chief executive's custody must notify the chief executive, in writing, before lodging a notice of intention to marry under the *Marriages Act 1961* (Commonwealth).

The clause prescribes a maximum penalty of 20 penalty units for a failure to comply. Action in this regard is appropriate when considering the chief executive's statutory responsibility under clause 10 (1) of the Bill to keep records of the details of prisoners. This is particularly relevant for a female prisoner who may change her surname upon marriage.

Subclause (2) provides that a marriage of a prisoner within a corrective services facility may only be conducted with the chief executive's approval and must be conducted in a way decided by the chief executive. It is anticipated that the regulation will provide that the chief executive must ensure that any marriage conducted in a corrective services facility must:

(a) be conducted by a Minister of Religion or a civil celebrant in a manner that minimises any disruption to the facility;

(b) be supervised by an appropriate number of corrective services officers;

(c) not jeopardise the security or good order of the facility by taking into consideration relevant factors such as the location of the marriage ceremony within the facility.

It is anticipated that the regulation will also provide that the prisoner must meet the costs incurred by the facility in holding the ceremony at the facility.

*Example—*

The chief executive may require that the marriage be held at a particular place within a corrective services facility and may specify the number of people who may be invited to the ceremony.

**Change of name**

Clause 24. requires that a person in the chief executive's custody must notify the chief executive, in writing, before changing his or her name by deed poll. In view of the chief executive's statutory responsibility under clause 10 (1) of the Bill it is necessary that the chief executive, at all times, be informed of any identification changes in order for the appropriate records to be updated. Up to date prisoner records are required to enable the department to:

(a) effectively supervise prisoners released on post-prison community based orders. The Queensland Community Corrections Board has expressed the concern that supervision of prisoners in the community becomes more difficult if they are known by another name;

(b) provide accurate information concerning certain prisoners to persons registered in the Concerned Persons Register;

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

Additionally, the Queensland Community Corrections Board has a responsibility to supply information to certain persons pursuant to the *Criminal Law Amendment Act 1945*. The discharge of this obligation may be problematic where a prisoner, released on a post prison community based order and who is subject to the provisions of the *Criminal Law Amendment Act*, changes his or her name by deed poll without first advising the chief executive in this regard.

The clause prescribes a maximum penalty of 20 penalty units or 6 months imprisonment for a failure to comply with this condition. In view of the circumstances outlined above this penalty is considered to be appropriate.

***Division 2—Search of prisoners***

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

**Power to search**

Clause 25.(1) provides that the person in charge may order a corrective services officer to conduct a scanning search, general search or personal search of a prisoner or to search the prisoner's accommodation. The term "scanning search" is defined in the dictionary to mean a search of a person by electronic or other means that does not require a person to remove his or her general clothes or to be touched by another person. The dictionary gives as examples of a scanning search, a portable electronic apparatus that can be passed over the person, an electronic apparatus through which the person is required to pass or a dog trained to detect the scent of prohibited substances.

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

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

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

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

*Examples of when power may be exercised—*

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

2. Certain prisoners are permitted leave of absence from a corrective services facility to engage in outside employment or attend at an educational facility. Such prisoners may, on their return to the facility, attempt to smuggle into the facility dangerous drugs or things prohibited by regulation. The clause provides the power to search for such items.

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

Subclause (2) allows a corrective services officer, on his or her own initiative but in specified circumstances, to conduct a scanning, general or personal search of a prisoner. The specified circumstances exist where the officer reasonably believes that the prisoner possesses something that jeopardises or is likely to jeopardise the security or good order of the facility or the safety of persons in the facility.

*Examples—*

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

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

3. Where a prisoner has, when passing through an electronic scanning device, given a positive indication that the prisoner has on his or her person a metallic object, the officer is empowered by the provision to proceed with further searches e.g., general or personal to locate the item. The clause is sufficiently flexible to allow for a particular type of search or a combination of searches to be conducted.

Subclause (3) provides that the power to search a prisoner includes a power to search anything in the prisoner's possession.

*Examples—*

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

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

Subclause (4) provides that the power to search a prisoner may be exercised on the day on which the prisoner is discharged or released.

*Example—*

The provision contemplates the situation where a prisoner, due for discharge or release on leave of absence, attempts to take out of the corrective services facility something that would not be permitted to leave the facility. For example, the prisoner to be discharged or released is attempting to take out on behalf of a fellow prisoner a letter containing threats to a victim. The search would locate this letter and stop it leaving the facility.

**Personal searches**

Clause 26.(1) provides that the person in charge of a secure facility must ensure that each prisoner entering or leaving the facility submits to a personal search. The term "secure facility" is defined in the dictionary to mean a prison with a perimeter fence that is designed to prevent the escape of a prisoner.

Subclause (2) safeguards a prisoner's dignity by providing that a personal search of a prisoner may only be carried out by an officer of the same gender as the prisoner being searched.

**Strip searches**

It is considered that strip searching powers are warranted in a correctional environment to ensure the security and good order of corrective services facilities and the safety of the persons therein. This is particularly relevant with respect to the issue of illegal drug use in corrective services facilities. In relation to illegal drugs, Australia is obligated under the United Nations Single Convention on Narcotic Drugs 1961 which is found as the First Schedule to the *Narcotic Drugs Act 1967* (Cwlth). Article 2 (5) states:

(a) A party shall adopt any special measures of control which in its opinion are necessary having regard to the particularly dangerous properties of a drug ...

(b) A party shall, if in its opinion the prevailing conditions in its country render it the most appropriate means of protecting the public health and welfare, prohibit the production, manufacture, export and import of, trade in, possession or use of any such drug ...

The need to prevent illicit substances gaining entry to correctional facilities is also recognised in other quarters. In *R v Zwarczy* [1998] SASC 6781 (20 July 1998) the court made reference to the issue of drugs in prison and commented that the supply of heroin is especially serious if the proposed recipient is a prisoner in gaol and that it is important to the integrity of the correctional system that gaols be kept as free of drugs as possible.

In the Royal Commission into Aboriginal Deaths in Custody: *Report of the Inquiry into the death of Kingsley Richard Dixon*; 7.1.8 Observations as to drugs in gaol, Muirhead said that the use of drugs is a threat to prison discipline, a threat to the security and efficiency of prison staff and a threat to the true well-being, health and security of prisoners. The commission found that persons in custody, under the influence, are likely to act unpredictably and recklessly with possible loss of life. Trading and exchange of drugs within prison walls is likely to cause division amongst prisoners and may contribute to cliques and standover tactics. Prison procedures, practices and facilities (including medical facilities) should ideally be designed to minimise the introduction of drugs and of equal importance to cope with such use, with any eye on the well-being of prisoners as well as general administration and consideration of staff.

The commission noted that, in this area, prison authorities are in a dilemma. On the one hand it is recognised that a common source of introduction (contract visits) should not be abolished but there is a necessity to stem the flow. The commission further recommended that it was important to adequately fund resources to find ways and means of minimising the introduction of drugs in Australian penal institutions, for example, not only scientific detection methos, but medical surveillance such as random urine testing.

While the *Corrective Services Act 1988* (section 47) provided for strip searching powers of prisoners, the following provisions are considered to be more comprehensive. A number of safeguards have been built into the provisions to ensure the powers regarding strip searches are not misused and that officers exercising such powers remain accountable. It should be noted that visitors are not subject to the strip searching provisions of the Bill.

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

Subclause (1) provides that the person in charge may order the strip search of a prisoner for the specified purpose of detecting concealed prohibited things. It is anticipated that the regulation will provide that prohibited things will include such things as security keys, unauthorised money and illegal drugs.

*Example—*

The person in charge of a facility may receive information from a source internal to the facility e.g., the facility's intelligence unit, or external to the facility e.g., the police, that a prisoner has concealed on their person a prohibited thing. The provision empowers the person in charge to order a corrective services officer to strip search the prisoner.

Subclause (2) safeguards the dignity of a prisoner by providing that a strip search must be carried out only by a corrective services officer of the same gender as the prisoner. The provision further provides that a search be carried out by no less than two officers but by no more officers than is reasonably necessary to carry out the search. This requirement also affords some protection to an officer from any allegations of inappropriate behaviour towards the prisoner being strip searched. The provision is intended to lower risks to prisoners and to officers from potential abuse or false complaint.

Subclause (3) ensures that a strip search must not be carried out in view of a person of a different gender to the prisoner or by persons other than the officers conducting the search. This provision means that a strip search is conducted in such a manner so as to afford the prisoner the greatest degree of privacy practicable whilst the search is undertaken.

Subclause (4) provides that a strip search of a prisoner may be preceded by a less intrusive search, for example, by a scanning, general or personal search.

*Example—*

Personal contact visits between a prisoner and a prisoner's visitor have been used to introduce dangerous drugs or prohibited things into a corrective services facility. The provision allows officers to require a prisoner to submit to a general search (say, revealing the content of their pockets) before proceeding to order the prisoner to remove their clothing for the purposes of a strip search.

**Body searches**

Clause 28.(1) provides that the person in charge may authorise a doctor, in specified circumstances, to conduct a body search of a prisoner. The specified circumstances exist where the person in charge reasonably believes that:

(a) the prisoner has ingested something that may jeopardise the prisoner's health or well being; or

(b) the prisoner has a prohibited thing concealed within his or her person that may potentially be used in a way that may pose a risk to the security or good order of a facility; or

(c) the search may reveal evidence of the commission of an offence or breach of discipline by the prisoner.

The term "body search" is defined in the dictionary to mean a search of a prisoner's body and includes an examination of an orifice or cavity of the prisoner's body.

Subclause (2) provides that a nurse must be present during a body search of a prisoner, and if the doctor is not of the same gender as the prisoner, the nurse must be of the same gender. This provision is intended to safeguard the dignity of a prisoner undergoing a body search and affords some protection to the doctor against any allegations of impropriety made by prisoner.

The term "nurse" is defined in the dictionary to mean a registered nurse under the *Nursing Act 1992.*

Subclause (3) provides that if the doctor reasonably requires help to conduct the body search, the doctor may ask someone else to help the doctor.

Subclause (4) safeguards the dignity of a prisoner by requiring that another person asked to assist a doctor under subclause (3) must be of the same gender as the prisoner unless the situation is an emergency.

Subclause (5) identifies the circumstances under which a doctor is permitted to seize a thing discovered during the body search. Those circumstances are that seizing the thing would not be likely to cause grievous bodily harm to the prisoner and that the doctor believes the thing may be evidence of the commission of an offence or breach of discipline by the prisoner.

Subclause (6) provides that the doctor must give a seized thing, as soon as practicable, to a corrective services officer.

**Register of searches**

Clause 29. requires the person in charge to establish a register that records the details of each strip or body search performed within the facility. The provision also requires that the details to be recorded in that register include, for example, the names of the persons present and the details of anything seized from the prisoner.

This provision further safeguards prisoners by opening the process to official scrutiny, for example, by official visitors and the Criminal Justice Commission.

**Who may be required to give test sample**

Clause 30.(1) provides that the chief executive may require a prisoner or an offender, if it is required by an order, to give a test sample. The dictionary defines the term "test sample" to mean a sample of blood, breath, hair, saliva or urine.

Subclause (2) requires that the chief executive must give the person the results of any tests conducted on the test sample as soon as practicable after the chief executive receives them.

**Random testing**

Clause 31.(1) provides that the chief executive may require a number of randomly selected prisoners at a corrective services facility to give test samples.

Subclause (2) provides that no record must be made which can identity the donor of a test sample.

Subclause (3) provides that the results of any test conducted on the test samples must be used for statistical purposes only.

Subclause (4) provides that in this clause the expression "randomly selected prisoners" means prisoners selected by a computer programmed to make a random selection of names from prisoner records and the term "test sample" is restricted to mean a sample of breath or urine.

**Giving test samples**

Clause 32.(1) provides that the person in charge, a doctor or a nurse may give the prisoner directions about the way the prisoner must give a test sample.

Subclause (2) provides that only a doctor or nurse may take a blood sample. This clause does not prevent a corrective services officer from obtaining a sample, except blood, from a prisoner for purposes under the Bill.

Subclause (3) provides that a doctor or nurse, and anyone acting in good faith at the direction of the doctor or nurse, may use the force that is reasonably necessary to enable the doctor or nurse to take the sample.

*Example—*

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

**Consequences of positive test samples**

Clause 33.(1) provides that, if a prisoner gives a positive test sample, the test result may be considered when assessing the prisoner's classification or the prisoner may be required to undertake a medical or behavioural treatment program.

The dictionary defines the term "positive test sample" to mean a test sample that shows a prisoner has used a substance that is a prohibited thing. Prohibited things will be prescribed by regulation pursuant to clause 93 of the Bill.

Subclause (2) provides that, in addition to a prisoner being dealt with for the commission of an offence or a breach of discipline as a result of a positive test, the provisions of subclause (1) may be applied.

Subclause (3) provides that for subclause (1) the circumstances of the case and the individual prisoner's needs must be taken into account.

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

> A prisoner having returned from leave of absence provides a urine sample which tests positive to low grade use of marijuana. The prisoner has no previous history of drug taking and claims that the positive result may have been caused by passive smoking. The person in charge of the facility may, for instance, give the prisoner the benefit of the doubt and issue a warning.

Subclause (4) provides that a prisoner is taken to have given a positive test sample if the prisoner:

(a) refuses to supply a test sample within a reasonable time; or

(b) alters or invalidates the results of a test sample; or

(c) attempts to alter or invalidate the results of a test sample; or

(d) tampers, or attempts to tamper, with a test sample.

This provision is necessary in view of the ongoing need by correctional authorities to confront the use of illegal drugs by prisoners in corrective services facilities, particularly in view of the security and safety risks presented by such use (refer to previous comments regarding the strip search provisions of the Bill). In this regard it is particularly necessary in consideration of the specific statutory responsibilities imposed on correctional authorities under clauses 3 (1), 188 (1) and 200 (1) of the Bill.

It is therefore required in order to prevent a prisoner avoiding detection for the consumption or use of an illegal or prohibited substance by any of the above means. A prisoner would be informed of this provision when admitted to a corrective services facility, pursuant to clause 11 of the Bill.

### *Division 3—Mail and phone calls*

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

#### Prisoner's mail at prisoner's own expense

Clause 34.(1) provides that a prisoner must purchase anything he or she requires in relation to postal needs.

*Example—*

The prisoner must pay stationery and postage costs.

Subclause (2) provides that if a prisoner does not have sufficient funds to pay for postage costs the costs may be met by the chief executive.

Subclause (3) provides that a prisoner in a situation under subclause (2) may post a letter no more than twice a week unless otherwise approved by the person in charge.

Subclause (4) identifies a circumstance where the chief executive must bear the cost of postage.

*Example—*

Where a prisoner, undertaking an approved educational program, is required to submit assignments.

**Opening, searching and censoring mail**

Clause 35.(1) provides that the person in charge may open, search and censor a prisoner's incoming or outgoing mail, other than privileged mail.

The dictionary defines the term "prisoner's mail" to mean mail sent to, or by, a prisoner. The dictionary also defines the term "privileged mail" to mean mail sent to, or by, a person who is prescribed under a regulation. It is anticipated that the regulation will provide that mail to or from the following persons be privileged mail for the purpose of this clause:

(a) the Parliamentary Commissioner for Administrative Investigations appointed under the *Parliamentary Commissioner Act 1974*, the Ombudsman (Commonwealth), and the Ombudsman of any other State or Territory of the Commonwealth;

(b) a Minister;

(c) the Attorney-General of the Commonwealth;

(d) an official visitor;

(e) the Registrar or Clerk of a Court;

(f) the commissioner of the police service or the secretary of the Police Complaints Tribunal;

(g) the Director of Public Prosecutions;

(h) a member or secretary of a community corrections board;

(j) an officer of the Corrective Services Investigation Unit;

(k) an officer of the Department of Corrective Services Intelligence Group;

(l) the chairperson, Human Rights Commission;

(m) the chairperson, Criminal Justice Commission;

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

(o) the chief executive;

(p) another person nominated by the chief executive.

Subclause (2) provides that the person in charge may open and search a prisoner's privileged mail, in the prisoner's presence, if the person in charge reasonably suspects the mail contains something that may physically harm the person to whom it is addressed or a prohibited thing.

Subclause (3) protects the privacy of any privileged mail by requiring that the person in charge must not read the privileged mail without the prisoner's written consent.

Subclause (4) provides that once searched, a prisoner's mail must be immediately delivered to the person to whom it is addressed. In this context "immediate" means as soon as possible.

Subclause (5) provides that if a search of a prisoner's mail reveals information about the commission of an offence, the person in charge must give the information to the relevant law enforcement agency. The term "law enforcement agency" is defined in the dictionary.

*Example—*

A prisoner may make certain confessional statements in a letter to be posted to an associate of the prisoner. The subclause empowers the person in charge to forward this material to a relevant law enforcement agency for investigation.

Subclause (6) defines the term "search" as used in this clause to mean a search by an electronic scanning device or a physical search.

**Phone calls**

Clause 36.(1) provides that a prisoner may make 1 phone call on admission to a corrective services facility, at the chief executive's expense and phone approved persons at approved numbers, at the prisoner's own expense.

*Example—*

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

Subclause (2) provides that the chief executive may pay for a prisoner's call, mentioned in subclause (1)(b), if the person in charge considers there is sufficient reason to do so.

*Example—*

An impecunious prisoner may have necessity to make a telephone call to a relative about another family member who is dangerously ill. The person in charge of the corrective services facility may permit the prisoner to make that call notwithstanding the fact that the prisoner lacks sufficient funds to do so. In this case, the chief executive will bear the cost.

Subclause (3) provides that the person in charge may decide the length and frequency of prisoner telephone calls.

Subclause (4) ensures that a prisoner at a prison may not receive telephone calls from outside the prison, except in the event of a family or other personal emergency and with the consent of the person in charge.

*Example—*

A prisoner in a prison may be permitted to receive a telephone call in the event of a family crisis or other similar type emergencies.

Subclause (5) provides that a prisoner must not call an approved number knowing that the call will be diverted to another number to allow the prisoner to contact someone other than an approved person.

*Example—*

The prisoner may have a telephone number approved by the person in charge of the facility for that prisoner to contact. However, a bookmaker's telephone number or the prisoner's accomplice's telephone number will not be an approved number. The provision prohibits the prisoner ringing the approved number knowing that it will be diverted to the bookmaker's or the accomplice's telephone number.

The prisoner must not intentionally continue with a call that the prisoner knows is diverted from an approved number to another number and which allows the prisoner to contact someone other than an approved person or call an approved number and ask the person called to make a conference call to someone else.

The clause imposes a maximum penalty of 6 months imprisonment. The penalty is considered to be appropriate in view of the circumstances. It is intended to limit the opportunities for unauthorised activities to be undertaken, for example, phone calls to victims or to the families of victims. This approach is consistent with the principles of corrective services that are contained in clause 3 (1) of the Bill.

Subclause (6) defines the term "approved" as used in this clause to mean telephone numbers or persons approved by the person in charge.

**Recording or monitoring phone calls and electronic communications**

Clause 37.(1) provides that a corrective services officer may record or monitor a telephone call or electronic communication to or from a prisoner.

Subclause (2) provides that an officer must not record or monitor an authorised telephone call or electronic communication between a prisoner and the prisoner's lawyer, an officer of a law enforcement agency conducting an investigation or the Parliamentary Commissioner for Administrative Investigations.

Subclause (3) requires that the parties to a telephone call or electronic communication must be advised that the call or communication may be recorded and monitored. Further consideration is given to this provision under the section of the Explanatory Notes dealing with fundamental legislative principles.

Subclause (4) allows a corrective services officer to end a telephone call or electronic communication if the officer reasonably considers it constitutes an offence, a breach of a court order or a threat to the security or good order of the corrective services facility.

Subclause (5) provides that if a telephone call or electronic communication reveals information about the commission of an offence, the person in charge must give the information to the relevant law enforcement agency.

Subclause (6) defines "authorised call or communication" to mean a telephone call or electronic communication that the chief executive has authorised to be made.

### *Division 4—Special treatment orders*

**Special treatment orders**

Clause 38.(1) provides that the person in charge may make an order, a special treatment order, that a prisoner be segregated, or partially segregated, from other prisoners.

Subclause (2) provides that the person in charge may make a special treatment order only if it is for the prisoner's safety or the security or good order of the corrective services facility. It should be noted that a prisoner must not be ordered to receive special treatment as a form of punishment.

*Example—*

A prisoner may be ordered to undergo special treatment because of threats that have been made against the prisoner.

Subclause (3) provides that a special treatment order must be for a period of no more than 7 days unless the chief executive otherwise approves, and must specify the conditions, prescribed under a regulation, that apply to a prisoner's treatment. In relation to the conditions of special treatment it is anticipated that the regulation will provide for the following matters:

(a) that a prisoner undergoing special treatment is to be segregated, or partially segregated, from other prisoners and must be placed in his/her cell or other place separate from other prisoners, or group of prisoners. Any such placement should take account of any special needs of the prisoner;

(b) that the person in charge of a corrective services facility must review daily the placement of a prisoner undergoing special treatment; and

(c) that the person in charge of a corrective services facility must keep a register, in a format approved by the chief executive, of prisoners placed on special treatment. The register must contain the following information:

(i) date and time the prisoner was placed on special treatment;

(ii) the reason for the prisoner being placed on special treatment;

(iii) the name of the person who recommends, and the name of the person who subsequently orders that the prisoner receive special treatment;

(iv) comment of the person in charge of the corrective services facility following his/her daily review of the prisoner's placement;

(v) an indication if the prisoner wishes the matter to be referred to an Official Visitor (in cases where the period of special treatment exceeds 3 days);

(vi) privileges unable to be provided as a result of the prisoner being placed on special treatment, and reasons for forfeiture;

(vii) date of reviews by official visitor if period of special treatment exceeds one month;

(viii) date of reviews by medical officer; and

(ix) date and time the prisoner's special treatment order expires.

Subclause (4) provides that while receiving special treatment a prisoner is not to forfeit any privileges other than those that the prisoner cannot practicably receive while undergoing special treatment. Furthermore, the provision provides that a prisoner receiving special treatment must experience as little change as possible to the conditions of the prisoner's imprisonment.

*Example of a privilege that may be forfeited during special treatment—*

If a prisoner is undergoing special treatment because of threats that have been made, for the safety of the prisoner concerned, it may be necessary to restrict the prisoner's access to communal areas, such as the prison gymnasium, when it is being used by other prisoners.

**Review of special treatment orders**

Clause 39.(1) provides that if a prisoner is ordered to receive special treatment for a period of more than 1 month the official visitor must review the order as near as practicable to the end of the first month and then at intervals of not more than 1 month until the period ends.

Subclause (2) provides that if a prisoner is ordered to receive special treatment for a period of more than 3 days the prisoner may ask the person in charge to refer the order to an official visitor for review.

Subclause (3) provides that if a request under subclause (2) is made the person in charge must refer the order to an official visitor as soon as practicable.

Subclause (4) requires the official visitor to review the order as soon as practicable.

Subclause (5) provides that when an official visitor is reviewing an order as required in subclause (4) the official visitor may exercise the powers as provided in clause 215 of the Bill relating to the powers of an official visitor.

Subclause (6) provides that when the official visitor has completed the review he or she must recommend to the person in charge that the order be confirmed, amended or cancelled. Furthermore, if the official visitor recommends that the order be amended by reducing the period of special treatment, or that the order be cancelled, the official visitor must recommend to the person in charge what should be done about any privileges forfeited by the prisoner while receiving special treatment.

*Example—*

> If a prisoner forfeited television privileges during the period of special treatment and the official visitor recommended that the order be cancelled, the official visitor could also recommend that the prisoner be granted additional television privileges of, say, 1 extra hour per night for 3 nights.

Subclause (7) provides that on receiving the official visitor's recommendation the person in charge must consider the recommendation and either confirm or amend the order or cancel the order and substitute another.

Subclause (8) declares that in order to remove any doubt the person in charge is not bound by the official visitor's recommendation. This provision is consistent with clause 214 (7) of the Bill (Official visitor's function). It is also consistent with Kennedy's recommendation that while official visitors would be a check on the correctional system, they should not have the power to overturn management and disciplinary decisions.

**Medical examination**

Clause 40. requires that a doctor must examine a prisoner who has been ordered to receive a period of special treatment as soon as practicable after the period starts, after the first examination, at intervals that are, to the greatest practicable extent, of not more than 7 days; and, as soon as practicable after the period ends. This provision ensures that a prisoner's medical needs are not neglected or overlooked as a consequence of receiving special treatment.

**Records**

Clause 41.(1) provides that the person in charge must record the details of all prisoners who are ordered to receive special treatment. This provision also opens the process to official scrutiny, for example, by official visitors and the Criminal Justice Commission.

Subclause (2) requires that the details kept must include the prisoner's name, identification number and age, the dates the prisoner was medically examined and, if the order was reviewed:

(i) the date when the review was undertaken; and

(ii) the name of the official visitor who reviewed the order; and

(iii) the decision of the person in charge.

***Division 5—Crisis support orders***

**Crisis support orders**

Clause 42.(1) provides that a person in charge of a corrective services facility may make a crisis support order requiring that a prisoner be admitted to a crisis support unit or health centre in the facility if a corrective services officer advises the person in charge that the officer reasonably believes there is a risk that a prisoner may harm himself or herself or a doctor or psychologist advises the person in charge that the doctor or psychologist reasonably believes there is a risk that a prisoner may harm himself, herself or someone else.

*Example—*

A prisoner with a history of suicide attempts is admitted to prison and is observed as being withdrawn and has stated he or she is going to suicide.

The terms "crisis support unit" and "health centre" are defined in the dictionary. A crisis support unit is an area of a facility operated by a multi-disciplinary team comprising both clinical and custodial staff. A health centre is a part of a facility where prisoners are treated and medications are dispensed and is commonly referred to as the surgery. While there is further consideration of the impact of this section under the part of the Explanatory Notes dealing with fundamental legislative principles, it should be noted that a prisoner must not be placed on a crisis support order as a form of punishment.

Subclause (2) provides that the term of the order, if the order is made on the advice of a corrective services officer, must not be longer than 5 days or a shorter time it takes for a doctor or psychologist to examine the prisoner or, if the order is made on the advice of a doctor or psychologist, it must not be longer than 3 months.

Subclause (3) provides that a prisoner may be segregated from other prisoners who are also in the crisis support unit or health centre if it is reasonably necessary to reduce the risk of the prisoner harming himself or herself or someone else, including other prisoners. Any segregation in this respect must not be used as a form of punishment.

**Consecutive crisis support orders**

Clause 43.(1) provides for the person in charge to make another crisis support order in relation to a prisoner to take effect at the end of an existing order.

Subclause (2) provides that if the crisis support order was made on the advice of a doctor or psychologist under clause 42(1)(b) another order, commencing at the expiration of the first order, may be made only on the advice of a doctor or psychologist. A consecutive order must not be made if the first order was made on the advice of a corrective services officer unless a doctor or psychologist advises that such an order should be made.

Subclause (3) provides that another order made under subclause (1) must be made no earlier than 14 days before the end of the existing order.

Subclause (4) provides that procedural fairness be extended to a prisoner prior to consideration being given to the making of a new order. In this regard it is provided that the person in charge must not make a new order unless:

(a) not more than 28 days before the end of the existing order, the person in charge gives written notice to the prisoner advising the prisoner that—

(i) the person in charge is about to consider whether another order should be made; and

(ii) the prisoner may, within 14 days after receiving the written notice, make submissions to the person in charge about anything relevant to the decision about making the order; and

(b) the person in charge considers any submission the prisoner makes under paragraph (a)(ii).

**Review of crisis support order**

Clause 44.(1) provides that if the term of a crisis support order is longer than 2 months the prisoner may ask the person in charge to review the order.

Subclause (2) provides that a request under subclause (1) must be referred to a doctor or psychologist, other than the doctor or psychologist who advised the order be made, for review as soon as practicable.

Subclause (3) provides that the doctor or psychologist must review the order as soon as practicable.

Subclause (4) provides that when the order has been reviewed the doctor or psychologist must make a recommendation to the person in charge that the order be confirmed or cancelled.

Subclause (5) provides that upon receiving a recommendation under subclause (4) the person in charge must consider the recommendation and confirm, amend or cancel the order.

**Medical examination**

Clause 45. requires that a doctor must examine a prisoner accommodated in a crisis support unit or health centre as soon as practicable after the prisoner's admission to the unit or centre and thereafter at intervals that are, to the greatest practicable extent, of not more than 7 days. The provision ensures that a prisoner's medical needs are not neglected or overlooked during the period he or she is accommodated in a crisis support unit.

**Records**

Clause 46. (1) requires that the person in charge must record the details of all prisoners who have been admitted to a crisis support unit or health centre.

Subclause (2) specifies the details that must be included in the record. This provision is designed to open the process to official scrutiny, for example, by official visitors and the Criminal Justice Commission.

### *Division 6—Maximum security orders*

**Note:** The following provisions are also considered in the section of the Explanatory Notes dealing with fundamental legislative principles.

Clause 47. (1) empowers the chief executive to make an order, a maximum security order, that a prisoner be accommodated in a maximum security facility.

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

A prisoner placed on a maximum security order may be accommodated in a maximum security facility either at the prisoner's current corrective services facility or at another corrective services facility. Maximum security facilities will invariably be located at secure facilities in view of the circumstances surrounding the making of such orders. These circumstances are outlined in the next subclause.

Subclause (2) provides that a maximum security order may be made only if the prisoner has been classified, under a regulation, into the security rating of maximum security, and the rating is still current and the chief executive considers, on reasonable grounds, that 1 or more of the following apply:

(i) there is a high risk the prisoner will escape, or attempt to escape;

(ii) there is a high risk the prisoner will inflict death or serious injury on other prisoners or persons with whom the prisoner may come into contact;

(iii) generally, the prisoner is a substantial threat to the security or good order of the facility.

Subclause (3) provides that the term of a maximum security order must be not longer than 6 months.

Example of when an order may be made—

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

**Consecutive maximum security orders**

Clause 48. (1) provides for the chief executive to make another maximum security order for a prisoner to take effect at the end of an existing order.

Subclause (2) provides that an order made under subclause (1) must be made no earlier than 14 days before the end of the existing order.

Subclause (3) provides that procedural fairness be extended to a prisoner prior to consideration being given to the making of another order. In this regard it is provided that the chief executive must not make another order unless:

(a) not more than 28 days before the end of the existing order, the chief executive gives written notice to the prisoner advising that—

(i) the chief executive is about to consider whether another order should be made; and

(ii) the prisoner may, within 14 days after receiving the notice, make submissions to the chief executive about anything relevant to the decision about making the order; and

(b) the chief executive considers any submission the prisoner makes under paragraph (a)(ii).

*Example of when a consecutive order may be made—*

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

**Other matters about maximum security orders**

Clause 49. (1) provides that a maximum security order for a prisoner must include, to the extent it is practicable, directions about the extent to which the prisoner is to be segregated from other prisoners accommodated in the maximum security facility and the prisoner is to receive privileges.

Subclause (2) provides that the privileges the prisoner may receive while under the maximum security order must be limited to privileges that can be enjoyed within the maximum security facility and the enjoyment of which, in the circumstances of the order, may reasonably be expected not to pose a risk to the security or good order of the facility.

*Example of a privilege that may not be available in a maximum security facility—*

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

2. A contact visit with a personal visitor.

Subclause (3) provides that an order may include directions about the prisoner's access, within the maximum security facility, to programs and services, including training and counselling.

**Review of maximum security orders**

Clause 50.(1) enables a prisoner accommodated in a maximum security facility under a maximum security order to ask the person in charge to refer the order to an official visitor for review.

Subclause (2) provides that if a request under subclause (1) is made the person in charge must refer the order to an official visitor as soon as practicable.

Subclause (3) provides that the official visitor must review the order as soon as practicable.

Subclause (4) provides that if the term of an order is 3 months or less, the prisoner may not ask for the order to be referred for review more than once.

Subclause (5) provides that if the term of an order is more than 3 months, the prisoner may not ask for the order to be referred for review more than twice.

The provisions of subclauses (4) and (5) apply to a single maximum security order and do not prevent a prisoner asking for a review of a consecutive order.

Subclause (6) provides that despite subclauses (4) and (5), the prisoner may also ask for the order to be referred to an official visitor for review if the chief executive amends the order, other than as a result of a recommendation by an official visitor under subclause (9).

Subclause (7) provides that when an official visitor is reviewing an order as required in subclause (3) the official visitor may exercise his or her investigative powers as provided under clause 215 of the Bill (Official visitor's powers).

Subclause (8) provides that when the official visitor has reviewed the order he or she must make a recommendation to the chief executive that the order be confirmed, amended or cancelled.

Subclause (9) provides that upon receiving the official visitor's recommendation the chief executive must consider the recommendation and either confirm, amend or cancel the order.

Subclause (10) declares that to remove any doubt, the chief executive is not bound to follow the official visitor's recommendation. This provision is consistent with clause 214 (7) of the Bill (Official visitor's function).

**Medical examination**

Clause 51.(1) requires that a doctor must examine a prisoner accommodated in a maximum security facility under a maximum security order as soon as practicable after the order takes effect, thereafter at intervals that are, to the greatest practicable extent, of not more than 28 days, and as soon as practicable after the order ceases to have effect.

Subclause (2) provides that, for the purposes determining intervals between medical examinations, if another order is made to take effect at the expiration of an existing order, the orders are taken to be 1 order.

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

**Records**

Clause 52.(1) provides that the chief executive must record the details of all prisoners who are subject to a maximum security order.

Subclause (2) specifies the details that must be contained in the record. This provision is designed to open the process to official scrutiny, for example, by official visitors and the Criminal Justice Commission.

### *Division 7—Transfer and removal of prisoners*

**Transfer to another facility or a health institution**

Clause 53.(1) provides that a corrective services officer may order the transfer of a prisoner from a corrective services facility to another corrective services facility or to a place for medical or psychological examination or treatment or the examination or treatment of substance dependent persons. Transfers of a prisoner from one facility to another or to a place mentioned in (b)(i) and (ii) are in keeping with the effective sentence management of prisoners.

Subclause (2) provides that a transfer order may include the conditions the officer considers reasonably necessary. Such conditions may include that the prisoner be under the continuous supervision of a corrective services officer whilst on the transfer, or that the transfer is for a set period of time after which the prisoner must be returned to the facility from which they came.

Subclause (3) provides that a corrective services officer or a police officer must accompany a prisoner being transferred. In instances where, for example, it is considered appropriate that a welfare worker escort a prisoner to a drug rehabilitation clinic, the chief executive must, by written instrument, appoint the welfare worker to be a corrective services officer for the purposes of the transfer.

Subclause (4) provides that the prisoner may be detained in a place referred to in subclause (1) for as long as is necessary or convenient to give effect to the transfer order.

Subclause (5) provides that a prisoner who has been or is about to be transferred from a corrective services facility to another corrective services facility, other than a prisoner transferred as an initial placement after admission, may request the chief executive to review the transfer decision.

*Examples—*

1. A prisoner transferred from Sir David Longland Correctional Centre to Townsville Correctional Centre may ask the chief executive to review the transfer decision.

2. A prisoner, following admission to a corrective services facility upon sentence is assessed as requiring transfer to a secure facility. The prisoner may not ask for a review of the transfer decision.

Subclause (6) provides that, following the review of the transfer decision, the chief executive may confirm, amend or cancel the decision.

Subclause (7) provides that the chief executive's decision in respect of a review of a transfer decision is not subject to appeal or further review.

Subclause (8) provides that if a prisoner is transferred to a security patient's hospital, or an authorised mental health service, under the *Mental Health Act 1974*, the prisoner is taken to be in the custody of the hospital administrator while accommodated at the hospital or service.

**Transfer to court**

Clause 54.(1) provides that the chief executive must produce a prisoner at the time and place, and for the purpose, stated in a court order.

Subclause (2) provides that a party to a civil proceeding who requires a prisoner to attend court must pay the chief executive the expenses for the prisoner's attendance. For example, the payment of witness expenses.

Subclause (3) requires that the transfer of a prisoner to a court must be authorised by an order of the chief executive, even if it is required by a court order.

*Examples—*

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

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

Subclause (4) defines the terms "court" to include a tribunal or person with power to compel persons to attend before it, him or her, e.g. a Royal Commission and "civil proceeding" to not include a criminal proceeding or a proceeding relating to official misconduct alleged against an officer of the Department of Corrective Services.

**Removal of prisoner for law enforcement purposes**

Clause 55.(1) provides that a person may apply to the chief executive, in the approved form, for a prisoner to be removed from a corrective services facility to another place to enable the prisoner to provide information to a

law enforcement agency to help the agency discharge its law enforcement functions or to enable a law enforcement agency to question the prisoner about an indictable offence alleged to have been committed by the prisoner.

The term "law enforcement agency" is defined in the dictionary and includes the Queensland Police Service and the Criminal Justice Commission.

Subclause (2) provides that the chief executive may allow the prisoner to be removed only if the prisoner, in the presence of an official visitor, agrees in writing. If the prisoner does not agree to be removed from the facility, no further action can be taken. In this regard, an internal review mechanism is not considered necessary.

*Examples—*

1. A prisoner may be able to assist the Australian Federal Police in an investigation into importation into Australia of a dangerous drug. Such assistance may take the form of showing those officers a location outside of the confines of a corrective services facility, for example, a place in thick scrub used to store contraband.

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

Subclause (3) provides that a corrective services officer or a police officer must accompany a prisoner being removed. In instances where it is considered appropriate that the prisoner be removed by a person who is not a corrective services officer or a police officer, the chief executive must, by written instrument, appoint the person as a corrective services officer for the purposes of the removal.

*Example—*

Where a prisoner is removed by an officer of the Criminal Justice Commission.

Subclause (4) provides that while the prisoner is absent from the corrective services facility, the prisoner is taken to be in the custody of the chief executive of the law enforcement agency which requested the removal of the prisoner.

*Example—*

Where a prisoner is removed by an officer of the Criminal Justice Commission the prisoner is taken to be in the custody of the chairperson of the Criminal Justice Commission.

### *Division 8—WORC and WCC programs*

**Background:**

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

The 1993 Public Sector Management Commission (PSMC) Review of the Queensland Corrective Services Commission found that women prisoners were disadvantaged by security classification procedures and the limited alternative correctional settings. Furthermore, it found that women prisoners had a range of special health, program and social needs which were being insufficiently addressed by services, policies and procedures then offered. The PSMC Review considered that the *Report of the Women's Policy Review* provided a sound basis for addressing the range of institutional disadvantage experienced by women prisoners.

In response to the 1993 Women's Policy Review, the WCC Program was established in 1995 as a low security WORC type placement option for ten women prisoners. In 1998, the Numinbah Women's Unit was established as a farm placement option for up to 45 women. Statutory recognition of the WCC Program will facilitate opportunities for appropriate women prisoners to address their offending behaviour in less secure environments and to establish a legislative framework regulating the eligibility and transfer of relevant prisoners to that program.

The 1999 Queensland Corrective Services Review noted the calls for the statutory recognition of the WORC Program and the necessity to recognise the special needs of women prisoners by providing gender relevant deterrents and rehabilitative programs.

**WORC and WCC programs**

Clause 56.(1) provides that the chief executive may approve a program as a WORC or WCC program. The terms "WORC Program" and "WCC Program" are defined in the dictionary. Under clause 271 of the Bill the WORC and WCC Programs currently in existence under the corrective services rules are continued. The provision allows for the chief executive to approve further WORC and WCC Programs if this is considered to be necessary at any stage.

Subclause (2) provides that the chief executive may, by written order (a "community work order"), grant approval for a male prisoner to participate in a WORC program or a female prisoner to participate in a WCC program. Only prisoners who are granted community work orders under this provision will be transferred to WORC or WCC sites. The dictionary defines the terms "WORC site" and "WCC site".

Subclause (3) provides that a prisoner granted approval under subclause (2) must perform community service as directed by a corrective services officer.

*Example—*

> A prisoner who satisfies the relevant criteria may be granted a community work order and transferred to a WORC site to undertake community service repairing damage to a rural community caused by a natural disaster.

Subclause (4) provides that a community work order may include a condition that the chief executive considers reasonably necessary to help the prisoner's reintegration into the community or to secure the prisoner's good conduct or to prevent the prisoner committing an offence.

In relation to (a), a community work order may stipulate that the prisoner be granted reintegration leave to his or her home community in accordance with conditions set by the chief executive. It is anticipated that the regulation will provide the necessary supplementary detail to facilitate any decision making in this respect.

Subclause (5) provides that a prisoner, granted a community work order, must be given a copy of the order.

Subclause (6) provides that the copy of the community work order must be kept in the prisoner's possession for the duration of the order and must be produced at the request of a corrective services officer or a police officer.

**Eligibility for WORC and WCC programs**

Clause 57.(1) provides that a prisoner is not eligible to be granted approval to participate in a WORC or WCC program if:

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

(b) the chief executive is aware of an unexecuted warrant relating to the prisoner; or

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

(d) the State has appealed against the prisoner's sentence; or

(e) for a WORC program—the prisoner has been convicted of an offence under a provision mentioned in schedule 1.

The provision relating to the non-participation of prisoners in a WORC program who have been convicted of a serious violent offence is consistent with Government commitments that have been made to western Queensland communities since 1991.

Subclause (2) provides that when deciding whether to allow a prisoner to participate in a WORC or WCC program, the chief executive must consider any recommendation of the sentencing court and the risk the prisoner may pose to the community, including for example, by considering whether the prisoner is likely to escape, the risk of physical or psychological harm to the community and the degree of risk and the prisoner's classification or anything else the chief executive considers relevant.

*Example—*

A court may recommend that a prisoner undergo a particular form of counselling. The chief executive must consider whether the prisoner has satisfactorily completed that counselling.

***Division 9—Leave of absence***

**Leave of absence**

Clause 58.(1) provides that the chief executive may, by written order, grant leave of absence to a prisoner for a number of purposes including to undertake community service or educational or vocational activities, for

compassionate reasons or to receive medical, dental or optical treatment. It is anticipated that the regulation will provide the supplementary details concerning eligibility requirements for the granting of leave.

Subclause (2) provides the chief executive may place reasonable conditions on the grant of leave of absence.

Subclause (3) provides that the chief executive may order that a prisoner granted leave of absence remain in the physical custody of, or be supervised by, a corrective services officer during the period of leave.

**Compassionate leave**

Clause 59.(1) provides that the chief executive may grant compassionate leave to enable a prisoner:

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

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

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

(d) for a male or female prisoner who, before being imprisoned, was the primary care giver of a child under 17 years of age – to maintain the relationship with the child.

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

Subclause (3) defines the meaning of the term "primary care giver" as used in this clause.

**Resettlement leave**

Clause 60.(1) provides that the chief executive may grant resettlement leave of absence to a prisoner prescribed under a regulation. It is anticipated that the regulation will provide that resettlement leave of absence may be granted to a prisoner who has been granted a post prison community-based release order or who has served a minimum of 25 percent of the period of imprisonment and has no more than six months to serve before being eligible for release or, in the case of a prisoner whose non-parole period is 10 years or more, who has no more than 12 months to serve before being eligible for release.

Subclause (2) requires that if the chief executive decides to refuse to grant resettlement leave the chief executive must advise the prisoner of the decision.

**Leave of absence available to serious violent offenders**

Clause 61.(1) applies to the grant of leave of absence to a prisoner who has been convicted of a serious violent offence, to undertake community service, educational or vocational activities or for resettlement purposes. The term "serious violent offence" in this clause is defined in the dictionary to have the meaning as provided under the *Penalties and Sentences Act 1992*.

Subclause (2) provides that the chief executive must not grant leave unless the prisoner has served the period specified by the court as the period the prisoner must serve before being eligible for post-prison community based release.

Subclause (3) provides that the chief executive must not grant leave unless the prisoner has

served at least, if the prisoner is serving life imprisonment, 15 years of the sentence or, if the prisoner is serving a another period of imprisonment, 15 years or 80% of the sentence imposed, whichever is less.

Subclause (4) requires that in deciding whether to grant leave the chief executive must consider any recommendation made by the sentencing court about the prisoner. This includes, for example, any recommendation made by the court in relation to a particular program the prisoner should undertake.

Subclause (5) provides that it is a condition of the leave that the prisoner remain in the physical custody of a corrective services officer during the leave. These provisions were inserted into the *Corrective Services Act 1988* by the *Penalties and Sentences (Serious Violent Offences) Amendment Act 1997* and are retained to reflect the seriousness with which society views the nature of the offences committed by this category of offenders.

**Leave of absence available to certain other prisoners**

Clause 62.(1) provides that the following prisoners may be granted leave of absence only for medical, dental, optical or compassionate purposes:

(a) a prisoner detained on remand for an offence;

(b) a prisoner detained under the *Migration Act 1958* (Commonwealth), for example an imprisoned non-citizen facing deportation;

(c) a prisoner imprisoned for an indefinite period for contempt;

(d) a prisoner detained under the *Criminal Law Amendment Act 1945*, part 4 (being a person adjudged to be incapable of controlling their sexual instincts).

Subclause (2) provides that such prisoners are to remain in the physical custody of a corrective services officer during any leave. These prisoners are deemed to present as a high risk of escape or re-offending if not in the custody of a corrective services officer whilst on leave. The prisoners may access educational and rehabilitation programs conducted within the facility that accommodates them.

**Prisoner's expenses while on leave of absence**

Clause 63.(1) provides that the chief executive may authorise a prisoner who has been granted leave of absence to be given money or something else that the chief executive considers necessary to meet the prisoner's requirements while on the leave.

*Examples—*

1. The chief executive may give the prisoner monies deducted from the prisoner's trust account so that the prisoner may purchase necessities whilst on leave of absence.

2. The chief executive may provide a prisoner with an appropriate voucher to enable the prisoner to travel to their leave of absence destination.

Subclause (2) provides that a prisoner must return to the chief executive the unused portion of money given to the prisoner. For example, the prisoner is required to return any money unused during the leave of absence so that it may be deposited back into the prisoner's trust account.

**Prisoner's duties while on leave of absence**

Clause 64.(1) provides that the chief executive must give a prisoner who is granted leave of absence a copy of the order granting the leave.

Subclause (2) requires a prisoner on leave to keep the copy of the order in the prisoner's possession and, if requested to do so by a corrective services officer or police officer, produce the copy for inspection.

Subclause (3) requires a prisoner to comply with the conditions of leave stated in the order. The clause prescribes a maximum penalty of 6 months imprisonment where a prisoner fails to comply with a condition of the leave. This is considered to be an appropriate penalty to ensure that prisoners behave appropriately during their leave of absence.

Subclause (4) provides that if the chief executive reasonably suspects the prisoner has not complied with a condition of leave, the chief executive may suspend the operation of the order and require the prisoner to return to a corrective services facility

Subclause (5) provides that the chief executive need not notify the prisoner of the suspension of the order before requiring the prisoner to return, if the chief executive reasonably suspects the prisoner poses a serious and immediate risk of harm either to himself, herself or someone else.

This provision is designed to ensure community safety which is consistent with the principles of corrective services as stated in clause 3 of the Bill.

**Leave of absence is part of term of imprisonment**

Clause 65. provides that the time spent by a prisoner on leave of absence counts as time served under the prisoner's period of imprisonment. It should be noted, however, that the Bill provides that the period during which a prisoner is an escapee or is unlawfully at large does not count as part of that prisoner's term of imprisonment (clause 85(5)).

**What is not leave of absence**

Clause 66. provides leave of absence is not required to authorise the transfer of a prisoner from a corrective services facility, to another part of the facility to another corrective services facility, if the prisoner does not go anywhere else on the way to the facility.

*Examples—*

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

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

## *Division 10—Interstate leave of absence*

### Background:

In 1994 the Corrective Services Administrators' Conference considered a proposal from Victoria to recommend to the Corrective Services Ministers' Conference that a national approach to interstate leave of absence be adopted. The proposal gained unanimous support from the States' Ministers.

For the purposes of implementing this decision, States were required to enact identical legislative provisions. Once a State implemented this legislation they became a 'participating State' for the purposes of facilitating the interstate leave of absence of prisoners. The respective Governors in Council would publish in the Government Gazette the names of States that had enacted identical legislation to fall within the category of being a 'participating State'. To date the Australian Capital Territory, New South Wales and Victoria have passed such legislation.

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

### Interstate leave permits

Clause 67.(1) provides that the chief executive may, by written order (an "interstate leave permit"), grant leave of absence to a prisoner to travel to and from, and remain in, a participating State for a stated period of not more than 7 days for a purpose prescribed under a regulation.

It is anticipated that the regulation will include at least the following purposes in this regard:

(a) to visit a person with whom the prisoner has had a long standing personal relationship if that person is seriously ill; or

(b) to attend the funeral of a person with whom the prisoner had a long standing personal relationship.

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

*Examples—*

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

2. A prisoner may be approved to travel to a participating State to attend the funeral of the prisoner's spouse.

Subclause (2) provides that the chief executive may nominate, in the permit, a corrective services officer to escort the prisoner while on leave.

Subclauses (3) provides that the permit is subject to the conditions, including conditions about escorting the prisoner, the chief executive states in the permit.

*Examples—*

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

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

Subclause (4) provides that a prisoner must comply with the conditions of an interstate leave permit, unless the prisoner has a reasonable excuse. The maximum penalty for non-compliance is 6 months imprisonment.

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

**Effect of interstate leave permit**

Clause 68.(1) clarifies the effect of the permit. The provision provides that a permit is the authority for a prisoner to be absent from a corrective services facility, whether escorted by a corrective services officer or unescorted, for the purpose and the period stated in the permit.

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

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

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

**Amending or repealing permits**

Clause 69.(1) provides that the chief executive may, by signed instrument, amend or repeal an interstate leave permit.

Subclause (2) provides an amendment or repeal under subclause (1) takes effect immediately the chief executive signs the instrument.

**Notice to participating State**

Clause 70. provides that on the granting of an interstate leave permit, the chief executive must given written notice of the issue, and period, of the permit to the corresponding chief executive and chief officer of police of the participating State and the chief officer of police of any other State through which the prisoner is to travel to reach the participating State.

The term "corresponding chief executive" is defined in the dictionary to mean "the officer responsible for the administration of corrective services in that State".

**Effect of corresponding interstate leave permit**

Clause 71.(1) states that the provision applies to a person who is authorised to escort a prisoner under a corresponding interstate leave permit (an "interstate escort") to Queensland.

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

Subclause (2) provides that the interstate escort mentioned in subclause (1) is authorised, in Queensland, to escort the prisoner, for the purposes stated in the permit, including for the purpose of returning the prisoner to the participating State and for the period stated in the permit.

**Escape of interstate prisoner**

Clause 72.(1) states that the provision applies to a prisoner who is in Queensland under a corresponding interstate leave permit.

Subclause (2) provides that if the prisoner escapes from custody, the prisoner may be arrested without warrant by the prisoner's escort, a police officer or another person.

Subclause (3) provides that if the prisoner has escaped and has been arrested, or has attempted to escape, the prisoner may be taken before a magistrate.

Subclause (4) states that despite the terms of the corresponding interstate leave permit, the magistrate may, by warrant, order the prisoner to be returned to the participating State and to be delivered to an interstate escort.

Subclause (5) provides that the warrant may be executed according to its terms.

Subclause (6) provides that the prisoner mentioned in the warrant may be detained as a prisoner of the State for14 days after the warrant is issued or until the prisoner is delivered into the custody of an interstate escort, if that happens before the end of the 14 days.

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

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

**Liability for damage**

Clause 73. (1) provides that the State is liable for any damage or loss sustained by anyone in a participating State that is caused by the act or omission of a Queensland prisoner or the escorting officer while in the participating State under an interstate leave permit.

Subclause (2) provides that nothing in this clause affects any right of action the State may have against a prisoner or corrective services officer for the damage or loss concerned.

**Corresponding laws**

Clause 74. provides that the Governor in Council may, by regulation, declare a law of another State to be a corresponding law for the purposes of this division, if satisfied the law substantially corresponds to the provisions of this division.

***Division 11—Remission and conditional release***

**Background:**

For a number of years it has been recognised that the current system of prisoner remission is a flawed concept. This was because it failed to take account of the community risk factor which could be presented by the unsupervised discharge of some types of prisoners. Since the late 1980s successive Governments have undertaken to abolish the scheme. The following provisions are designed to retain the scheme for current prisoners, although it will now specifically incorporate the necessity for 'unacceptable risk' to be factored into the decision making process. For other prisoners a system of "conditional release" is proposed which will operate on a similar

basis to the proposed remission scheme in terms of 'unacceptable risk'. For both schemes, the need for decision makers to ensure that the safety of the community is not put at risk by the discharge or release of any prisoner will be paramount.

**Eligibility for remission**

Clause 75.(1) provides that a prisoner is eligible for remission if the prisoner was sentenced to a term of imprisonment for an offence committed before the commencement of this clause and the term of imprisonment is 2 months or more and, the prisoner has not been granted release under a post-prison community based release order.

*Example—*

A prisoner released on parole may not be granted remission of the parole period.

Subclause (2) provides that the chief executive must grant remission of one-third of the prisoner's term of imprisonment if the prisoner's discharge does not pose an unacceptable risk to the community and the prisoner has been of good conduct and industry.

*Example—*

A prisoner serving a term of imprisonment of 2 years which commenced on 1 March 2000 may, subject to the prisoner satisfying the provisions of this subclause, be granted remission of 8 months. The prisoner would be discharged on 30 June 2001 after serving 1 year 4 months with no further obligation with respect to the sentence imposed.

Subclause (3) provides that if a prisoner is convicted of an offence committed during the term of imprisonment, the chief executive may only grant remission for the balance of the term after the offence was committed.

Subclause (4) provides that in deciding whether the prisoner has been of good conduct and industry when granting remission for the balance of the term under subclause (3), the chief executive may only consider the prisoner's conduct and industry during the balance of the term.

**Eligibility for conditional release**

Clause 76.(1) provides that a prisoner is eligible for conditional release if the prisoner:

(a) was sentenced to a period of imprisonment of 2 years or less, for an offence that the prisoner committed after the commencement of this clause; and

(b) has served two-thirds of the period of imprisonment; and

(c) has not been convicted of an offence committed during the period of imprisonment.

Subclause (2) states that a default period of imprisonment for the non-payment of a fine or restitution, that is ordered to be served cumulatively with another period of imprisonment, is not be taken into account for subclause (1)(a). This provision is provided for clarification purposes to ensure that a prisoner serving a term of 2 years imprisonment, for example, does not become ineligible under this provision merely because of the non-payment of a fine that operates cumulatively on the current term.

Subclause (3) provides that the chief executive must make an order (a "conditional release order") granting a prisoner conditional release if the prisoner's release does not pose an unacceptable risk to the community and the prisoner has been of good conduct and industry.

Subclause (4) provides that a conditional release order may contain a condition that the chief executive considers reasonably necessary to help the prisoner's reintegration into the community, to secure the prisoner's good conduct or to prevent the prisoner committing an offence.

Subclause (5) provides that the chief executive must give a copy of the conditional release order to a prisoner released on the order.

**Risk to community**

Clause 77. provides that in deciding whether a prisoner's discharge or release poses an unacceptable risk to the community, the chief executive must have regard, but is not limited, to the following:

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

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

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

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

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

(f) any remarks made by the sentencing court;

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

(h) any behavioural report relating to the prisoner;

(i) anything else prescribed under a regulation.

**Good conduct and industry**

Clause 78. provides that in deciding whether a prisoner is of good conduct and industry, the chief executive must consider:

(a) whether the prisoner has complied with all relevant requirements to which the prisoner was subject; and

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

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

(d) anything else prescribed under a regulation.

**Refusing remission or conditional release**

Clause 79.(1) states that this clause applies if the chief executive is considering refusing to grant remission or to make a conditional release order.

Subclause (2) provides that procedural fairness be extended to a prisoner in the event of subclause (1). In this regard the chief executive must give the prisoner a notice:

(a) stating that the chief executive is considering refusing to grant remission or make the order; and

(b) outlining the reason for the proposed refusal; and

(c) inviting the prisoner to show cause, by written submissions given to the chief executive within 21 days after the notice is given, why the remission or conditional release order should not be refused.

Subclause (3) requires that the notice referred to in subclause (2) must be given to the prisoner at least 21 days before the date on which the prisoner would otherwise be eligible for remission or conditional release.

Subclause (4) requires that the chief executive must consider all written submissions made within the 21 days and inform the prisoner, by written notice, whether the remission or conditional release is refused.

**Cancellation of conditional release orders**

Clause 80.(1) provides that a conditional release order is cancelled if the prisoner, during the term of the order, commits an offence for which the prisoner is sentenced to a term of imprisonment that is not suspended.

Subclause (2) provides that the time for which the prisoner was released before committing the offence counts as time served under the prisoner's period of imprisonment.

*Example—*

A prisoner serving period of imprisonment of 2 years which commences on 1 March 2001is released on a conditional release order on 30 June 2002 after serving 1 year 4 months. The conditional release order will expire on 28 February 2003. On 15 February 2003 the prisoner appears at the Magistrates Court and is convicted of an offence committed on 1 February 2003 and sentenced to 4 months imprisonment to be served concurrently.

The prisoner's conditional release order is automatically cancelled from 1 February 2003. The period the prisoner spent on the order, excluding the day of release and the day of the commission of the offence, is counted as time served towards the 2 years the prisoner was originally sentenced to viz. 3 months from 1 November 2002 to 31 January 2003. The period from 1 February 2003 to 14 February 2003 (14 days) does not count as time served on the 2 years.

The original period of imprisonment will now expire on 14 March 2003.

**Effect of remission on cumulative sentences**

Clause 81. provides that in determining when a cumulative sentence starts, any remission granted to a prisoner must be taken into account.

*Example—*

A prisoner is sentenced to a term of imprisonment. The prisoner is subsequently sentenced to another term of imprisonment to be served cumulatively on the first term. The prisoner will commence to serve the cumulative term when the prisoner has served the first term less any remission granted.

### *Division 12—Discharge or release*

**Discharge or release of prisoner**

Clause 82.(1) provides that on a prisoner's release day, the prisoner must be discharged or released at the time decided by the chief executive.

Subclause (2) provides that where a prisoner's release day would, but for this subclause, be a Saturday or Sunday, a public holiday throughout Queensland or a public holiday at the place where the prisoner is in custody, the prisoner must be discharged or released on the day immediately before these days.

Subclause (3) provides that the chief executive may give a prisoner help, for a purpose prescribed under a regulation, on the prisoner's discharge or release. It is anticipated that the regulation will provide that the chief executive may grant assistance to a prisoner upon release to enable the prisoner to travel within the State or to another State or Territory of the Commonwealth to—

(i) the place of the prisoner's arrest; or

(ii) the place of the prisoner's residence; or

(iii) the place of the prisoner's employment; or

(iv) any other reasonable destination; or to provide initial support for the prisoner's subsistence if the chief executive believes the prisoner has insufficient means to do so.

*Examples—*

1. The chief executive may provide a once only payment of funds sufficient to meet the cost of the prisoner's necessities of life, upon the prisoner's discharge.

2. The chief executive may provide a prisoner with a travel warrant entitling the prisoner to travel by public transport back to the community from where the prisoner initially came.

Subclause (4) defines the term "release day" as used in this clause to include the day on which a prisoner is to be released on home detention, conditionally released, released on parole or discharged.

**Early discharge**

Clause 83.(1) states that the provision applies if the person has served at least half of the person's period of imprisonment.

Subclause (2) provides that the chief executive may order that the person be discharged if the person's period of imprisonment is less than 1 year, within 7 days immediately before the day of discharge or, if the person's period of imprisonment is 1 year or more, within 14 days immediately before the day on which the person would otherwise be discharged. It is anticipated that the regulation will also provide that in granting early discharge to a prisoner the following issues must be considered:

(a) evidence of the prisoner's involvement in breaches of the *Domestic Violence (Family Protection) Act 1989*;

(b) impact of the early discharge on the victim or the victim's family;

(c) the prisoner's institutional performance;

(d) outstanding warrants and criminal history.

The reason for the proposed regulation is to ensure that any unacceptable risk that may be posed by the early discharge of a prisoner into the community is taken into account during the decision making process.

**Remaining in facility after being eligible for discharge**

Clause 84.(1) provides that a prisoner may make written application to the chief executive for permission to remain in a corrective services facility after the prisoner is eligible to be discharged.

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

Subclause (3) provides that if the chief executive grants the application, the prisoner is taken to have completed the prisoner's term of imprisonment at the time at which the prisoner is eligible to be discharged and the prisoner must be discharged within 4 days after the day on which the prisoner is eligible to be discharged.

*Example—*

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

Subclause (4) provides that a person remaining in a corrective services facility after being eligible for discharge may be given a direction by a corrective services officer that the officer reasonably believes is necessary for the security and good order of the facility or the person's safety.

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

Subclause (6) provides that if the person fails to comply with a direction the person may be directed to leave the facility and reasonable and necessary force may be used to remove the person from the facility.

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

## *Division 13—Arrest of prisoners*

### Arresting prisoners unlawfully at large

Clause 85.(1) provides that if a prisoner is unlawfully at large, a corrective services officer may arrest the prisoner without warrant or apply in writing to an authorised person for the issue of a warrant for the prisoner's arrest.

Subclause (2) provides that the authorised person may issue the warrant only if satisfied the prisoner was unlawfully at large.

Subclause (3) provides that the authorised person may issue the warrant directed to all corrective services officers and the warrant may be executed by any of them.

Subclause (4) provides that a warrant may be issued and a prisoner may be arrested even if at the time of issue or arrest the prisoner could, if granted full remission for the prisoner's term of imprisonment, have been lawfully discharged.

Subclause (5) provides that the period during which a prisoner is unlawfully at large does not count as part of the prisoner's term of imprisonment.

Subclause (6) defines the terms "authorised person" and "unlawfully at large" as used in this clause.

# CHAPTER 3—BREACHES AND OFFENCES

## PART 1—BREACHES OF DISCIPLINE BY PRISONERS

**Breaches of discipline**

Clause 86.(1) provides that a regulation may prescribe an act or omission that constitutes a breach of discipline. It is anticipated that the regulation will provide that a prisoner commits a breach of discipline for the purposes of the Bill if the prisoner—

(a) disobeys or refuses to obey any lawful order of a corrective services officer, or contravenes or fails to comply with any provision of the Regulation, departmental policy/procedures or guidelines, or contravenes or fails to comply with any provision of the Bill (except where the contravention or failure to comply constitutes an offence under the Bill);

(b) has in his/her cell, or in his/her possession, or secretes in a place in a corrective services facility or beyond the precincts of a corrective services facility, any article or thing other than an article or thing which the prisoner has been directly or impliedly authorized to have in his/her possession;

(c) makes, or attempts to make or conceals, or has in the prisoner's possession any article or substance without the authority of a corrective services officer;

(d) makes any complaint other than a complaint to an official visitor, concerning the actions or behaviour of any prisoner, or a corrective services officer, which complaint is frivolous, vexatious or mischievous;

(e) makes any written or verbal statement to a corrective services officer knowing that statement to be untrue;

(f) uses insulting, obscene, abusive or threatening language to or in the presence of another person;

(g) acts in an indecent or disorderly manner;

(h) possesses any publication, film or computer game which contains any offensive, threatening, insulting, obscene, indecent or abusive text or image;

(i) without the permission of a corrective services officer leaves the place where the prisoner is required to be or without the permission of a corrective services officer, enters the accommodation of another prisoner or any other place the prisoner is not permitted to enter;

(j) works in a careless or negligent way, fails or refuses to work as directed, or deliberately damages or destroys a work product or process;

(k) participates in or organises any form of gambling;

(l) without the permission of a corrective services officer, alters his/her or another prisoner's appearance so that the altered appearance is at variance with that prisoner's appearance as described in the records of the Department of Corrective Services;

(m) prepares, manufactures, possesses or consumes, any alcohol or other intoxicating substance that has not been lawfully issued to the prisoner;

(n) wilfully consumes or inhales the fumes of any substance likely to induce an intoxicated state;

(o) without the permission of a corrective services officer, medical officer or registered nurse possesses, uses, ingests, or gives, distributes, supplies or administers to another prisoner by any means whatsoever, any drug or medication;

(p) without lawful excuse, possesses any needle, syringe, smoking accessory or other implement or part of any needle, syringe, smoking accessory or other implement intended for use in the administration of a drug;

(q) fails to comply with a direction to provide a sample of breath, blood, urine or other bodily secretion in order to assess whether the prisoner is using a dangerous drug as defined in the *Drugs Misuse Act 1986* or whether the prisoner has consumed any alcohol or other intoxicating substance;

(r) interferes with, adulterates or substitutes a sample of urine used for the purpose of assessing whether the prisoner is using a dangerous drug as defined in the *Drugs Misuse Act 1986*;

(s) has the presence of a dangerous drug, as defined in the *Drugs Misuse Act 1986*, in that sample of urine as supplied by that prisoner;

(t) alters, defaces, removes or destroys a notice issued or displayed for the purposes of the Bill;

(u) wilfully damages or destroys any part of a corrective services facility or property therein, or any part of a conveyance;

(v) without the permission of a corrective services officer, wilfully sets fire to any article or thing or damages or destroys any article or thing;

(w) transmits, or causes to be transmitted by any means whatsoever to any person any threatening or harassing message or to send or receive any letter or parcel containing a prohibited article;

(x) refuses to submit to departmental requirements in respect of any identification procedure;

(y) commits an act or omission that is contrary to the good order, management, security and discipline of a corrective services facility;

(z) traffics in prohibited articles or unauthorised substances;

(aa) removes or tampers with a monitoring or location/tracking device or wilfully interferes with the transmission or reception of a monitoring or location/tracking device;

(ab) takes from or barters with any prisoner or other person;

(ac) enters into a financial transaction, or contract with any person without the authority of a corrective services officer;

(ad) attempts to commit any of the above breaches of discipline,

Subclause (2) provides that if an act or omission could be dealt with either as an offence or as a breach of discipline the chief executive must immediately advise the commissioner of the act or omission.

*Example of act or omission that may constitute either a breach of discipline or offence—*

Breach of discipline—wilful damage or destruction of any part of a corrective services facility or property therein. (Proposed regulation)

Offence—wilful and unlawful destruction, damage, removal or otherwise interfering with any part of a corrective services facility or any property therein. (Clause 94 (h) of the Bill)

Subclause (3) provides that if an act or omission may constitute either an offence or a breach of discipline, the time permitted under clause 87 of the Bill for breach proceedings is suspended until the commissioner has advised the chief executive whether the act or omission will be prosecuted as an offence.

Subclause (4) provides that the chief executive must forward the commissioner's advice under subclause (3) to the person in charge of the corrective services facility at which the prisoner is accommodated.

Subclause (5) provides that a corrective services officer need not start proceedings against a prisoner for a breach of discipline if the officer considers the proceedings should not be started having regard to the trivial nature of the breach, the circumstances surrounding the commission of the breach or the previous conduct of the prisoner.

Subclause (6) provides that if the corrective services officer decides to start proceedings against a prisoner for a breach of discipline the officer must decide whether the prisoner should be proceeded against for a major breach or a minor breach. The terms "major breach" and "minor breach" are defined in the dictionary.

Subclause (7) states that if the officer decides to treat the breach as a major breach, the officer must notify, in the approved form, a corrective services officer who is more senior than the officer.

*Example—*

An officer becomes aware that a prisoner has committed a breach of discipline. The officer may decide, for example, that the circumstances of the case are so trivial that the prisoner should only be proceeded against for a minor breach. In this case the officer can initiate proceedings. However, if the officer decides that the circumstances of the case warrant the breach being dealt with as a major breach, then the matter must be referred to a senior officer for determination.

Subclause (8) prevents a double jeopardy situation arising by providing that a prisoner must not be punished for an act or omission as a breach of discipline if the prisoner has been convicted or acquitted of an offence that is constituted by the same act or omission.

Subclause (9) similarly prevents a double jeopardy situation arising by providing that a prisoner must not be charged with an offence if the prisoner has been punished for the act or omission that constitutes the offence as a breach of discipline.

**Considering whether breach of discipline committed**

Clause 87.(1) provides that if a prisoner is alleged to have committed a breach of discipline, a deciding officer must decide whether the breach was committed as soon as practicable after the officer first becomes aware of the alleged breach, but within as soon as practicable after the deciding officer becomes aware of the alleged breach, but within, for a minor breach, 24 hours after the officer becomes aware or, for a major breach, 7 days after the officer becomes aware; or if the commissioner was advised of the prisoner's act or omission and has advised the chief executive that the act or omission is not to be prosecuted as an offence—as soon as practicable, but within 7 days, after the chief executive is advised.

Subclause (2) provides that the deciding officer must inform the prisoner of any evidence that supports the allegation and give the prisoner a reasonable opportunity to make submissions in the prisoner's defence, including for example, by questioning any witness called by the officer who decided to start the proceedings under clause 86(5) of the Bill and calling a person within the facility to give evidence in the prisoner's defence, unless the (deciding) officer considers the evidence may be given in writing or in another form and give the prisoner a reasonable opportunity to make submissions in mitigation of punishment.

This provision is designed to afford procedural fairness to a prisoner who is alleged to have committed a breach of discipline.

Subclause (3) provides that the deciding officer may question the prisoner and anyone else who may be able to provide relevant information in relation to the alleged breach.

Subclause (4) provides that neither the officer nor the prisoner are allowed any legal or other representation before the deciding officer.

This provision specifically relates to major breaches. Furthermore, the requirement is to ensure that the proceedings are conducted in a manner that is prompt and non-adversarial.

Subclause (5) provides that the deciding officer is not bound by the rules of evidence but may, subject to any regulation, inform himself or herself about the matter in the way the officer thinks appropriate.

Subclause (6) requires that the consideration of a major breach of discipline must be videotaped.

The term "deciding officer" is defined in the dictionary. This provision will ensure the decision making process is opened to official scrutiny (for example, by official visitors and the Criminal Justice Commission).

**Consequences of breach of discipline**

Clause 88.(1) provides that this clause applies if a deciding officer is satisfied, on the balance of probabilities, that a prisoner has committed a minor breach of discipline or is satisfied, beyond a reasonable doubt, that a prisoner has committed a major breach of discipline.

Subclause (2) provides that the deciding officer may reprimand the prisoner without further punishment or order the prisoner to forfeit privileges that the prisoner may have otherwise received, for a minor breach, in the 24 hours starting when the prisoner is advised of the decision or, for a major breach, in the 7 days starting when the prisoner is advised of the decision or order the prisoner to undergo separate confinement in accordance with clause 91 of the Bill. The term "privileges" is defined in the dictionary to mean privileges prescribed under a regulation. It is anticipated that the Regulation will provide that any of the following privileges may be forfeited for a breach of discipline:

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

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

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

(d) use of or access to television, radio, audio cassette or compact disc players or computers, whether for personal use or for use as a member of a group;

(e) use of or access to musical instruments, whether for personal use or for use as a member of a group;

(f) use of or access to library facilities;

(g) purchasing goods other than essential toiletries or writing materials;

(h) use of or access to the prisoner's private property;

(i) receiving a contact personal visit;

(j) being granted leave of absence other than for compassionate reasons or medical, dental or optical treatment.

The consequence for a minor breach is identical to that currently provided for under the *Corrective Services Act 1988*.

Subclause (3) provides that separate confinement may be ordered for a minor breach of discipline only if the prisoner habitually committed minor breaches of discipline and, on the occasion of the last breach, was warned that the next breach could result in the prisoner being separately confined. This provision is designed to address the situation where a prisoner may habitually incur numerous minor breaches, thereby demonstrating a failure to address their offending institutional behaviour.

Subclause (4) provides that immediately after making the decision, the deciding officer must advise the prisoner of the decision, that the prisoner may have the decision reviewed and the process the prisoner must follow to have the decision reviewed.

Subclause (5) provides that if the prisoner wants to have the decision reviewed, the prisoner must notify the deciding officer immediately after being advised of the decision.

Subclause (6) provides that if the prisoner notifies the deciding officer that the prisoner wants to have the decision reviewed, the deciding officer's decision is stayed until the determination of the review.

**Review of decision**

Clause 89.(1) provides that a review of a decision that a prisoner has committed a breach of discipline must be by way of rehearing, unaffected by the decision, on the material before the deciding officer and any further evidence allowed by the officer conducting the review; and conducted by a

corrective services officer who is more senior than the deciding officer; and carried out as soon as practicable after the prisoner gives notice that the prisoner wants the decision to be reviewed.

Subclause (2) provides that the prisoner may be present at the hearing and make submissions in the prisoner's defence or in mitigation of punishment.

Subclause (3) provides that neither the deciding officer nor the prisoner are allowed any legal or other representation at the review hearing. Again, this is to ensure that the proceedings are conducted in a manner that is prompt and non-adversarial.

Subclause (4) provides that the prisoner may be accompanied by someone from the corrective services facility if the prisoner is disadvantaged by language barriers or impaired mental capacity. The support person in this case would be present to explain the process to the prisoner and to assist the prisoner in their submissions to the reviewing officer.

Subclause (5) provides that the review of a major breach of discipline must be videotaped. This requirement will also assist opening the decision making process to official scrutiny (for example, by official visitors, the Criminal Justice Commission and the Ombudsman).

Subclause (6) provides that the reviewing officer may confirm the decision or vary the decision or set the decision aside and substitute another decision for it.

Subclause (7) provides that immediately after making the decision, the reviewing officer must advise the prisoner of the decision.

Subclause (8) provides that the decision of the reviewing officer is not subject to appeal or further review under this Bill. This provision is necessary to ensure that a facility is not administratively paralysed by continuing reviews into the same matter.

**Disciplinary breach register**

Clause 90. provides that the person in charge must keep a register that contains details of each decision to deal with a prisoner for a breach of discipline and each decision that a prisoner has committed a breach of discipline, each review of a decision that a prisoner has committed a breach of discipline.

This provision is intended to aid official scrutiny of the process, for example by official visitors or the Criminal Justice Commission.

**Separate confinement**

Clause 91.(1) provides that the deciding officer may order a prisoner to be separately confined, for a period of no more than 7 days. The term "separate confinement" is defined in the dictionary to mean the segregation of the prisoner from other prisoners.

Subclause (2) provides that the order for a prisoner to undergo separate confinement must take account of any special needs of the prisoner and must contain directions about the extent to which the prisoner is to receive privileges.

The term "special need" is defined in the dictionary to mean "a need the offender has, compared to the general offender population, because of the offender's age, disability, gender or race.

*Example of a special need—*

The culturally specific needs of Aboriginal and Torres Strait Islander offenders."

This provision is designed to ensure that any special needs of a prisoner are not overlooked or neglected while undergoing separate confinement. Furthermore, it is anticipated that the Regulation will provide that any or all of the following privileges may be forfeited by a prisoner placed on separate confinement:

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

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

(c) use of or access to television, radio, audio cassette or compact disc players or computers, whether for personal use or for use as a member of a group;

(d) use of or access to musical instruments, whether for personal use or for use as a member of a group;

(e) use of or access to library facilities;

(f) purchasing goods other than essential toiletries or writing materials;

(g) use of or access to the prisoner's private property;

(h) receiving a contact personal visit;

(i) being granted leave of absence other than for compassionate reasons or medical, dental or optical treatment.

Subclause (3) requires that a doctor must examine a prisoner separately confined as soon as practicable after the order takes effect and ceases to have effect. This provision is designed to ensure that a prisoner's medical needs are not neglected or overlooked as a result of the prisoner being placed on separate confinement.

## PART 2—OFFENCES BY PRISONERS

### Unlawful assembly, riot and mutiny

Clause 92.(1) requires that a prisoner must not take part in an unlawful assembly. The maximum penalty for doing so is 3 years imprisonment. The penalty in this regard is unchanged from that provided for under the *Corrective Services Act 1988*.

Subclause (2) requires that a prisoner must not take part in a riot or mutiny. The maximum penalty for doing so is:

(a) if during the riot or mutiny the prisoner wilfully and unlawfully damages or destroys, or attempts to damage or destroy, property that is part of a corrective services facility and the security of the facility is endangered by it—life imprisonment; or

(b) if during the riot or mutiny the prisoner demands that anything be done or not done with threats of injury or detriment to any person or property—14 years imprisonment; or

(c) if during the riot or mutiny the prisoner escapes or attempts to escape from lawful custody, or aids another prisoner in escaping or attempting to escape from lawful custody—14 years imprisonment; or

(d) if during the riot or mutiny the prisoner wilfully and unlawfully damages or destroys, or attempts to damage or destroy any property—10 years imprisonment; or

(e) otherwise—6 years imprisonment.

The penalties provided in this regard reflect the seriousness which the community would view the commission of such offences within a correctional environment and are unchanged from those provided for under the *Corrective Services Act 1988*.

Subclause (3) provides that an offence against this clause is a crime. Under section 3 of the Criminal Code crimes are indictable offences; that is, an offender cannot, unless otherwise expressly stated, be prosecuted or convicted except upon indictment. The Code defines the term "indictment" to mean "a written charge preferred against an accused person in order to the person's trial before some court other than justices exercising summary jurisdiction".

Subclause (4) defines the term "unlawful assembly" as used in this clause.

*Examples of unlawful assembly—*

1. An unlawful assembly occurs when 3 prisoners assemble and call upon other prisoners to disrupt the normal operation of a corrective services facility.

2. A prisoner convicted of taking part in such an unlawful assembly may be sentenced to 3 years imprisonment.

Subclause (5) defines the terms "mutiny" and "riot" as used in this clause.

*Examples of a mutiny—*

1. A mutiny may occur when 3 or more prisoners formulate a plan to take over a facility or any part of the facility and thereby seek to wrest control from the lawful established authority. A mutiny may or may not be conducted tumultuously.

2. If, during the course of the mutiny, property is destroyed which endangers the security of the facility a prisoner is liable to life imprisonment.

3. If, during the course of the mutiny, a demand is made under threat of injury to a person a prisoner is liable to 14 years imprisonment.

4. If, during the course of the mutiny, an escape or an attempt to escape occurs a prisoner is liable to 14 years imprisonment.

5. If, during the course of the mutiny, unlawful damage to property occurs a prisoner is liable to 10 years imprisonment.

6. A prisoner participating only in a mutiny is liable to 6 years imprisonment.

*Examples of riot—*

1. A riot may occur when an unlawful assembly of prisoners act tumultuously.
2. If, during the course of the riot, property is destroyed which endangers the security of the facility a prisoner is liable to life imprisonment.
3. If, during the course of the riot, a demand is made under threat of injury to a person a prisoner is liable to 14 years imprisonment.
4. If, during the course of the riot, an escape or an attempt to escape occurs a prisoner is liable to 14 years imprisonment.
5. If, during the course of the riot, unlawful damage to property occurs a prisoner is liable to 10 years imprisonment.
6. A prisoner participating only in a riot is liable to 6 years imprisonment.

While the definitions for "unlawful assembly" and "riot" reflect those provided under the *Corrective Services Act 1988*, the definition for "mutiny" is derived from that drawn in *R v Aston* (No 3) [1991] 1 Qd R 443.

## Prohibited things

Clause 93.(1) states that a regulation may prescribe a thing to be a prohibited thing. It is anticipated that the regulation will provide for things and substances to be "prohibited things" for the purposes of the Bill, for example, a "weapon", or "replica of a weapon", or "replica", as defined under the *Weapons Act 1990* and *Weapons Categories Regulation 1997*.

Subclause (2) provides that a prisoner must not make, attempt to make, possess, conceal or knowingly consume a prohibited thing or something intended to be used by a prisoner to make a prohibited thing. The maximum penalty in this regard is 2 years imprisonment. This penalty is unchanged from that provided for under the *Corrective Services Act 1988*. The background comments to clause 27 of the Bill are also relevant for indicating the seriousness of an offence in this regard.

Subclause (3) states that subclause (2) does not apply if the prisoner has the chief executive's consent to make or possess the thing.

*Example of consent—*

A prisoner on leave of absence may be provided with financial assistance by the chief executive to enable them to travel to their destination.

Subclause (4) provides that a prohibited thing found in a prisoner's room, or on a prisoner, is evidence that the thing was in the prisoner's possession when it was found. This provision is provided to clarify the intent of subclause (2).

**Other offences**

Clause 94. specifies a number of specific offences that a prisoner must not commit while undergoing imprisonment and provides a maximum penalty of 2 years imprisonment. The provision consolidates a number of similar offences, together with their penalties, which were provided under the *Corrective Services Act 1988.* Other offences listed under the "Prisoner Offences" provision of the *Corrective Services Act 1988*, such as escape from lawful custody, are not repeated in this Act because the Criminal Code specifically provides for such matters.

## PART 3—GENERAL OFFENCES

**Obstructing corrective services officer**

Clause 95.(1) provides that a person must not obstruct a corrective services officer or a proper officer of a court, in the performance of a function under this Bill unless the person has a reasonable excuse. The maximum penalty for this offence is 40 penalty units or 1 years imprisonment. The term "proper officer of a court" is defined in the dictionary.

Subclause (2) provides that a person who obstructs a corrective services dog under the control of a corrective services dog handler performing duties as a corrective services officer is taken to obstruct a corrective services officer.

The maximum penalty in this regard would be that as provided for under subclause (1).

*Example—*

> A visitor may not co-operate with a corrective services officer who is using a corrective services dog to undertake a scanning search to detect the scent of prohibited substances.

Subclause (3) defines the term "obstruct" to include hinder, resist and attempt to obstruct.

**Prohibited things**

Clause 96.(1) provides that a person must not:

(a) take, or attempt to take, a prohibited thing into a corrective services facility; or

(b) cause, or attempt to cause, a prohibited thing to be taken into a corrective services facility; or

(c) give, or attempt to give, a prohibited thing to a prisoner or prisoner of a court; or

(d) cause, or attempt to cause, a prohibited thing to be given to a prisoner or prisoner of a court.

The maximum penalty for doing so is 100 penalty units or 2 years imprisonment. This provision reflects that currently provided under the *Corrective Services Act 1988*. While the imprisonment penalty is unchanged the monetary penalty has been increased from 40 to 100 penalty units to reflect the seriousness of bringing prohibited things, as prescribed by regulation, into corrective services facilities for prisoners. The term "prisoner of a court" is defined in the dictionary to mean a person who is in the custody of a court.

*Example—*

A visitor may attempt to pass an illegal drug to a prisoner during a contact visit.

Subclause (2) provides that subclause (1) does not apply if the person has the approval of, for a corrective services facility or a prisoner, the chief executive or for a prisoner of a court, the proper officer of the court.

Subclause (3) provides that the term "give" to include send, and that the term "prohibited thing" includes something that the person intends the prisoner or prisoner of a court to use to make a prohibited thing. Prohibited things will be prescribed by regulation pursuant to clause 93 (1) of the Bill.

**Removing things from facilities**

Clause 97. (1) provides that a person must not, without the chief executive's approval, remove, or attempt to remove, anything from a corrective services facility; cause, or attempt to cause, anything to be removed from a corrective services facility; or take, or attempt to take, anything from a prisoner, whether inside or outside a corrective services facility.

The maximum penalty is 40 penalty units.

*Example—*

A prisoner may request a visitor to take an uncensored letter from the facility to avoid scrutiny as provided for under the Bill.

Subclause (2) provides that subclause (1)(c) does not apply to a corrective services officer in the course of his or her duties.

**Unlawful entry**

Clause 98. provides that a person must not enter, or attempt to enter, a corrective services facility, without the person in charge's approval or assume a false identity for the purposes of entering a corrective services facility. The maximum penalty is 100 penalty units or 2 years imprisonment. This provision reflects that currently provided for under the *Corrective Services Act 1988.* However, while the imprisonment penalty is unchanged the monetary penalty has been increased from 40 to 100 penalty units to reflect contemporary sentencing practices.

**Killing or injuring corrective services dogs**

Clause 99.(1) provides that a person must not, without the chief executive's approval, kill or injure a corrective services dog or attempt to kill or injure a corrective services dog. The maximum penalty is 100 penalty units or 2 years imprisonment. This provision reflects that currently provided for under the *Corrective Services Act 1988*. However, while the imprisonment penalty is unchanged the monetary penalty has been increased from 40 to 100 penalty units to reflect contemporary sentencing practices.

Subclause (2) provides that if a person is convicted of killing or injuring a corrective services dog the court may, in addition to a penalty imposed under subclause (1), order the person to pay to the chief executive the reasonable costs of the chief executive for the veterinary treatment and care of the dog, the retraining of the dog or, if it is necessary to replace the dog, acquiring and training a replacement dog.

**Interviewing and photographing prisoners etc.**

Clause 100.(1) provides that a person must not interview a prisoner, or get a written or recorded statement from a prisoner, whether the prisoner is inside or outside of a corrective services facility or photograph or attempt to photograph a prisoner inside a corrective services facility or a part of a corrective services facility. The maximum penalty is 100 penalty units or 2 years imprisonment. This provision reflects that currently provided for under the *Corrective Services Act 1988.* However, while the imprisonment penalty is unchanged the monetary penalty has been increased from 40 to 100 penalty units to reflect contemporary sentencing practices.

*Example—*

> A journalist visits a prisoner claiming to be a friend of the prisoner and, without the chief executive's approval, conducts an interview.

Subclause (2) states that subclause (1) does not apply to the prisoner's lawyer or an employee of a law enforcement agency, the Parliamentary Commissioner for Administrative Investigations or a person who has the chief executive's approval.

Subclause (3) defines the terms "photograph" and "prisoner" for the purposes of this clause.

**Interfering with records**

Clause 101.(1) provides that a person must not, without the chief executive's approval take, or attempt to take, information from a record kept under this Bill or destroy, or attempt to destroy, information in a record kept under this Bill.

Subclause (2) provides that a person must not make, or attempt to make, a false entry in a record kept under this Bill. The maximum penalty for these offences are 100 penalty units or 2 years imprisonment. This provision reflects that currently provided for under the *Corrective Services Act 1988.*

However, while the imprisonment penalty is unchanged the monetary penalty has been increased from 40 to 100 penalty units to reflect contemporary sentencing practices.

**False or misleading information**

Clause 102.(1) provides that a person must not give an official information, including in a document, that the person knows is false or misleading in a material particular. The maximum penalty in this regard for a prisoner is 2 years imprisonment and for other persons the penalty is 100 penalty units or 2 years imprisonment. This provision reflects that currently provided for under the *Corrective Services Act 1988*. However, while the imprisonment penalty is unchanged the monetary penalty has been increased from 40 to 100 penalty units to reflect contemporary sentencing practices.

*Example—*

> A visitor may give false information regarding the details of their identity on a visitor application form.

Subclause (2) provides that subclause (1) does not apply to a person giving a document, if the person when giving the document, informs the official, to the best of the person's ability, how it is false or misleading; and, if the person has, or can reasonably obtain, the correct information—gives the correct information.

Subclause (3) provides that it is enough for a complaint against a person for an offence against subclause (1) to state that the information was, without specifying which, false or misleading.

Subclause (4) defines the term "official" for the purposes of this clause.

**Persons near prisoners**

Clause 103.(1) states that this clause applies if a corrective services officer, or someone else with control of a prisoner, (the "official"), reasonably believes a person near the prisoner is acting in a way that poses a risk to the security of the prisoner or the security or good order of the place in which the prisoner is detained.

*Example—*

A corrective services officer escorting a prisoner to a hospital for treatment notices a person approaching and recognises the person as a criminal associate of the prisoner. The officer may form the belief that the security of the prisoner is at risk.

Subclause (2) empowers the official to require the person posing a risk to the security of the prisoner, or the security or good order of the place in which the prisoner is detained, to leave the vicinity of the prisoner or place of detention.

*Example—*

The officer in the previous example may tell the person to move away.

Subclause (3) provides that the person must comply with the requirement, unless the person has a reasonable excuse. A maximum penalty of 40 penalty units or imprisonment for 1 year is imposed.

Subclause (4) defines the term "prisoner", as used in this clause, to include a prisoner of a court.

**Temporary detention for security offences**

Clause 104.(1) provides that this clause applies if a corrective services officer finds a person committing a security offence or finds a person in circumstances that lead, or has information that leads, the officer to reasonably suspect the person has just committed a security offence.

Subclause (2) provides that the corrective services officer, acting under subclause (1), may use reasonable and necessary force to undertake a general or scanning search of the person and anything in the person's possession, including a motor vehicle.

*Example—*

Acting on information that a visitor to a prisoner may attempt to bring a cutting implement into a facility, a corrective services officer may search the visitor's motor vehicle and may restrain the person from trying to prevent the officer from searching the vehicle.

Subclause (3) provides that the corrective services officer, acting under subclause (1), may detain the person until the person may be handed over to a police officer.

*Example—*

If, in the example given above, a corrective services officer locates a cutting implement which could be used by a prisoner to effect an escape, the officer may detain the person until police arrive to investigate the matter.

Subclause (4) provides that a person detained under subclause (3) must not be detained for longer than 4 hours.

*Example—*

A person detained by a corrective services officer under this clause must be released from such detention if a police officer has not arrived within 4 hours to take custody of the person.

Subclause (5) defines the terms "person" and "security offence" for the purposes of the clause.

**Power to require name and address**

Clause 105.(1) provides that the clause applies if a corrective services officer finds a person committing an offence against this Bill or finds a person in circumstances that lead, or has information that leads, the officer to reasonably suspect the person has just committed an offence against this Bill.

Subclause (2) provides that the corrective services officer, acting under subclause (1), may require the person to state the person's name and address.

*Example—*

In the first example given under the preceding clause a corrective services officer may require the person to give his or her name and address.

Subclause (3) provides that when making the requirement under subclause (2) the corrective services officer must warn the person it is an offence for the person not to state the person's name or address, unless the person has a reasonable excuse.

Subclause (4) empowers the corrective services officer to require the person to give evidence of the correctness of the stated name or address if the officer reasonably suspects the stated name or address is false.

*Example—*

A corrective services officer may ask the person to produce a driver's licence, or some other current identification, in support of the person's claim relating to their name and address.

Subclause (5) provides that a person must comply with a requirement under subclause (2) or (4), unless the person has a reasonable excuse. The maximum penalty is 40 penalty units or 6 months imprisonment.

The provisions in this matter are new and are considered necessary to provide for identification of persons near prisoners in consideration of several recent successful and unsuccessful attempts to assist prisoners to escape from facilities and courts, and to safeguard the security of prisoners and facilities. This approach is consistent with the statutory responsibility of the chief executive and persons in charge under clauses 188 and 200 of the Bill respectively.

Subclause (6) provides that a person does not commit an offence against subclause (5) if the person was required to state the person's name and address by a corrective services officer who suspected the person had committed an offence against the Bill and the person is not proved to have committed the offence.

## PART 4—SEIZING PROPERTY

### Seizing property

Clause 106.(1) provides that the person in charge may seize something in a prisoner's privileged mail if it may physically harm the person to whom it is addressed or is a prohibited thing.

Subclause (2) provides that a corrective services officer may seize other mail of a prisoner, or anything in the mail, to stop anything that poses a risk to the security or good order of the facility entering or leaving the facility; or anything that appears to be for the purpose of the commission of an offence, or a breach of a court order, entering or leaving the facility.

*Example—*

> This sub-paragraph allows a corrective services officer to prevent a prisoner from receiving a hacksaw blade posted to the prisoner by an associate of the prisoner.

*Example—*

> This sub-paragraph would empower a corrective services officer to prevent a prisoner, who is subject to a restraining order or a non-contact requirement of a domestic violence protection order, from posting threatening mail to the person who was granted the restraining order or domestic violence protection order, in breach of that order.

*Example—*

A corrective services officer may prevent a prisoner receiving, via the post, dangerous drugs.

In relation to paragraph (c), the subclause provides an example of inappropriate correspondence as correspondence by a prisoner who has been convicted of a sexual offence against a child to a child with whom the prisoner had no relationship before being imprisoned.

Subclause (3) provides that during a search a corrective services officer may seize anything found in a corrective services facility, whether or not in a person's possession, that the officer reasonably suspects jeopardises or is likely to jeopardise the security or good order of the facility, the safety of persons in the facility or a prohibited thing found on a prisoner or in a prisoner's possession, unless the prisoner has the person in charge's written consent to possess the thing.

Subclause (4) provides that a corrective services officer must not seize a document to which legal professional privilege attaches.

Subclause (5) requires that the corrective services officer must give a thing seized under this clause to the person in charge as soon as practicable after seizing it.

**Receipt for seized property**

Clause 107.(1) provides that as soon as is reasonably practicable after anything is seized under clause 106, a corrective services officer must give the person a receipt for the thing.

Subclause (2) requires that a receipt must generally describe the thing seized and include any other information required under a regulation.

**Forfeiting seized things**

Clause 108.(1) provides that a thing seized under clause 106 is forfeited to the State if the person in charge decides to forfeit the thing because the person in charge:

(a) can not find its owner after making reasonable inquiries, given the thing's apparent value; or

(b) is unable, after making reasonable efforts, to return it to its owner; or

(c) reasonably believes—

(i) possession of the thing by a prisoner is an offence or breach of discipline; or

(ii) it is necessary to keep the thing to stop it being used to commit an offence; or

(iii) the thing is inherently unsafe.

*Examples—*

1. A paper back novel is found in an area of a corrective services facility that is frequented by prisoners. Correctional authorities attempt to locate the owner of the item but are unsuccessful. In view of the likely minimal value of the item it is forfeited to the State.

2. A audio cassette player is found in a prisoner's cell after the prisoner is discharged. Correctional authorities attempt to contact the prisoner at the address given by the prisoner upon admission. After finding that the prisoner has left that address without leaving a forwarding address, the cassette player is forfeited to the State.

Subclause (2) provides that if the person in charge decides a thing is to be forfeited under subclause (1)(c) the person in charge must inform the owner of the thing of the decision by written notice.

Subclause (3) provides that subclause (2) does not apply if the person in charge cannot find the owner of the thing after making reasonable inquiries, given the thing's apparent value.

Subclause (4) requires that a notice issued under subclause (2) must state the reasons for the decision, that the owner may apply to the chief executive, within 28 days after the notice is given, for the decision to be reviewed and how the owner may apply for the review.

Subclause (5) provides that on the forfeiture of a thing, it becomes the property of the State; and it may be dealt with as the chief executive considers appropriate, including for example, by keeping the thing and applying it for the benefit of prisoners generally; donating the thing to a registered charity; or if the thing is inherently unsafe, destroying it.

Subclause (6) requires that the chief executive must not deal with the thing, unless it is perishable, before the latter of the following happens, 28 days after the thing was seized or, if, within the 28 days, an application has been made under section 39 of the *Justices Act 1886* (power of a court to order the delivery of certain property) in relation to the property—the application, and any appeal against the application, has been decided.

**Review of decision to forfeit**

Clause 109.(1) provides that a person may apply to the chief executive for a review of the person in charge's decision to forfeit a thing seized to the State only within 28 days after notice of the decision was given to the person.

Subclause (2) provides that an application under subclause (1) must be in writing and state in detail the grounds on which the person wants the decision to be reviewed.

Subclause (3) requires that after considering the grounds, the chief executive must confirm the decision or cancel the decision and substitute another decision.

**Returning seized things**

Clause 110.(1) provides that if a thing seized under this part has not been forfeited, the person in charge must return it to its owner at the end of 6 months or, if a proceeding for an offence involving it is started within the 6 months, the proceeding and any appeal from the proceeding.

Subclause (2) requires that despite subclause (1) the person in charge must return the seized thing to its owner immediately the person in charge stops being satisfied its retention as evidence is necessary. In this context "immediately" means as soon as possible.

**Power of court in relation to seized things**

Clause 111. (1) declares that to remove any doubt the *Justices Act 1886*, section 39 (power of court to order delivery of certain property) applies, in addition to this part, to a seized thing.

Subclause (2) provides that when applying *Justices Act 1886*, section 39, the thing is taken not to have become the property of the State.

# PART 5—USE OF FORCE

## *Division 1—Use of reasonable force*

### Authority to use reasonable force

Clause 112.(1) provides that a corrective services officer may use the force, other than lethal force, that is reasonably necessary to:

(a) compel a prisoner to obey an order; or

(b) restrain a prisoner who is attempting or preparing to commit an offence against this Bill or another Act or a breach of discipline; or

(c) restrain a prisoner who is committing an offence against this Bill or another Act or a breach of discipline; or

(d) compel any person who has been lawfully ordered to leave a corrective services facility and who refuses to do so, to leave the facility.

The term "lethal force" is defined in the dictionary.

*Examples—*

1. A prisoner is given a direction by an officer to vacate his cell but refuses to do so. The officer may take hold of the prisoner and remove him from the cell.

2. A visitor to a corrective services facility is advised that they are not permitted to enter the facility and is asked to leave. The visitor refuses to leave. An officer may take hold of the visitor and remove him/her from the facility.

Subclause (2) provides that a corrective services officer may use reasonable force, other than lethal force, only if the officer:

(a) reasonably believes the act or omission permitting the use of reasonable force cannot be stopped in another way; and

(b) gives a clear warning of the intention to use force if the act or omission does not stop; and

(c) gives sufficient time for the warning to be observed; and

(d) attempts to use the force in a way that is unlikely to cause death or grievous bodily harm.

Subclause (3) provides that a corrective services officer need not comply with subclause (2) (b) or (c) if doing so would create a risk of injury to the officer using the force or someone other than the person who is committing the act or omission. The provisions relating to the use of reasonable force are also considered under the section of the Explanatory Notes in relation to fundamental legislative principles.

Subclause (4) provides that the use of force may involve the use of only certain weapons or a corrective services dog under the control of a corrective services dog handler.

*Examples—*

1. Gas Guns (projectile, grenade).
2. Chemical agents (CS—spray, fogger, powder).
3. Riot Control Equipment (Baton, Shield, Helmet, Water hose, Personal safety equipment).
4. Restraint Devices (Handcuffs, Shackles, Body belt, Legcuffs, Cable tie).

It is anticipated that the regulation will provide other supplementary detail in relation to such matters.

### *Division 2 —Use of lethal force*

**Note:** The provisions regarding use of lethal force are considered further under the section of the Explanatory Notes dealing with fundamental legislative principles.

**Training for use of lethal force**

Clause 113. requires the chief executive to ensure that a corrective services officer authorised to use lethal force has been trained to use lethal force in a way that causes the least possible risk of injury to anyone other than the person against whom lethal force is being used.

The term "lethal force" is defined in the dictionary to mean force that is likely to cause death or grievous bodily harm. The term "grievous bodily harm" should be understood to have the meaning corresponding to the definition provided under the Criminal Code:

(a) the loss of a distinct part or an organ of the body; or

(b) serious disfigurement; or

(c) any bodily injury of such a nature that, if left untreated, would endanger or be likely to endanger life, or cause or be likely to cause permanent injury to health;

whether or not treatment is or could have been available.

The provision is designed to ensure that only appropriately trained corrective services officers are authorised to use lethal force.

**Issue, handling and storage of weapons**

Clause 114.(1) provides that the chief executive may authorise an appropriately trained corrective services officer to be issued with, carry, use and store weapons if it is reasonably necessary for the officer to do so to perform functions under this Bill.

Implicit in this provision is the recognition that the chief executive has certain responsibilities under section 60 *Weapons Act 1990* (Qld) (secure storage of weapons) and the *Weapons Regulation 1996* (Qld) relative to the safe handling and storage of weapons.

Subclause (2) provides that any authority issued pursuant to subclause (1) may be subject to conditions imposed by the chief executive. For example, a condition of the use of a rifle would be that the weapon is returned for storage at the conclusion of an officer's shift.

**Use of lethal force**

Clause 115.(1) provides that a corrective services officer may use the lethal force that is reasonably necessary:

(a) to stop a prisoner from escaping or attempting to escape from secure custody, if the officer reasonably suspects the prisoner is likely to cause grievous bodily harm to, or the death of, someone other than the prisoner in the escape or attempted escape; or

*Example—*

A prisoner, in the course of escaping from secure custody, carries a knife and is about to attack an officer who has called upon the prisoner to halt. Subject to clause 116, an authorised corrective services officer may fire on that prisoner. The terms 'secure custody' and 'secure facility' are defined in the dictionary to mean, respectively, a secure facility, a vehicle being used to transport offenders or a court, and a prison with a perimeter fence that is designed to prevent the escape of a prisoner.

(b) to stop a person from helping, or attempting to help a prisoner, to escape from secure custody, if the officer reasonably suspects the person is likely to cause grievous bodily harm to, or the death of, someone other than the person or prisoner in helping or attempting to help the prisoner escape; or

*Example—*

A prisoner who is attempting to escape from secure custody has an armed accomplice outside the perimeter of the prison. The accomplice fires on officers attempting to prevent the prisoner's escape. Subject to clause 116, an authorised corrective services officer may fire on the accomplice.

(c) to stop a prisoner from assaulting or attempting to assault another person, if the officer reasonably suspects the prisoner is likely to cause grievous bodily harm to, or the death of, the other person; or

*Example—*

A prisoner being transported in a corrective services transport vehicle breaks out of the vehicle and flees. The armed prisoner boards a bus and orders the driver to move off or be killed. Subject to clause 116, an authorised corrective services officer may fire on the prisoner.

(d) in an immediate response to a prisoner who has escaped from secure custody, but only if the officer reasonably believes the prisoner is likely to cause grievous bodily harm to, or the death of, someone other than the prisoner in the course of the immediate response.

The expression "immediate response" in (d) is to be understood as meaning 'temporal proximity' or within close geographical location to the site of an escape from secure custody. It is to provide for a situation where a prisoner has escaped from secure custody and is pursued by an officer on to land adjoining the place of secure custody (a "hot pursuit" situation). Subject to clause 116, an authorised officer may fire upon the prisoner.

Subclause (2) provides that lethal force must not be used if there is a foreseeable risk that the lethal force will cause grievous bodily harm to, or the death of, someone other than person at whom the lethal force may be directed.

Subclause (3) states that the use of lethal force may involve the use of weapons, including firearms or a corrective services dog under the control of a corrective services dog handler.

**Requirements for use of lethal force**

Clause 116.(1) provides that a corrective services officer may use lethal force only if the officer reasonably believes the act or omission permitting the use of lethal force can not be stopped in another way; gives a clear warning of the intention to use lethal force if the act or omission does not stop; gives sufficient time for the warning to be observed; and, attempts to use the force in a way that causes the least injury to anyone.

Subclause (2) provides that the officer need not comply with subclause (1) (b), (c) or (d) if it would create a risk of injury to the officer using the force or someone other than the person at whom the lethal force is directed.

**Reporting use of lethal force**

Clause 117. (1) provides that the chief executive must keep a record that details any incident in which a corrective services officer uses lethal force or anyone discharges a firearm, other than for training.

Subclause (2) provides that the chief executive must immediately advise the Minister of an incident mentioned in subclause (1). This provision will also ensure that any exercise of lethal force is open to official scrutiny, for example by official visitors and the Criminal Justice Commission.

# CHAPTER 4—CORRECTIVE SERVICES FACILITIES

## PART 1—ESTABLISHING FACILITIES

### Establishing prisons

Clause 118.(1) provides that the Governor in Council may, by regulation, declare a place to be a prison or assign a name to the prison.

Subclause (2) defines the term "place" for the purposes of this clause to include premises and part of premises.

Under the provisions of the *Acts Interpretation Act 1954* the power in this respect would include the power to alter assigned names and to define prison boundaries.

### Prison amenities

Clause 119. provides that when establishing a new prison, appropriate provision must be made for a meeting place for Aboriginal and Torres Strait Islander prisoners that promotes communication and endorses their indigenous cultural heritage and for such purposes as:

(b) for a prison that accommodates female prisoners—accommodation units that allow prisoners to care for young children; and

(c) visits areas for children visiting their parents; and

(d) crisis support facilities for prisoners who are experiencing an emotional or psychological crises; and

(e) the accommodation and access requirements of older prisoners and prisoners with disabilities.

*Examples—*

1. Cultural issues relating to Aborigines and Torres Strait Islanders.
2. Care of a young child living in a prison with his or her mother.
3. Visiting arrangements for children visiting a mother or father in prison.
4. Need for facilities for female prisoners who may suffer an emotional or psychological crisis.
5. The needs of older and disabled prisoners.

**Establishing community corrective services facilities**

Clause 120.(1) provides that the Minister may, by notice in the Government Gazette, declare a place to be a community corrections centre; a WORC site for a WORC program; a WCC site for a WCC program or assign a name to a community corrections centre; WORC site or a WCC site.

The terms "community corrections centre", "WORC site" and "WCC site" are defined in the dictionary. Under the provisions of the *Acts Interpretation Act 1954* the power in this respect would include the power to alter assigned names and to define facility boundaries.

Subclause (2) defines the term "place" to include premises, part of premises and a vehicle. It allows, for example, a caravan or similar vehicle to be declared a WORC site.

## PART 2—VISITING FACILITIES

**Warning to visitors**

Clause 121. requires the chief executive to ensure that a prominently displayed sign is located at the entrance to a secure facility warning visitors that lethal force may be used against them if they help, or attempt to help, a prisoner to escape.

The term "secure facility" is defined in the dictionary to mean "a prison with a perimeter fence that is designed to prevent the escape of a prisoner". Only appropriately trained and authorised corrective services officers, as required under clause 113 of the Bill, would be able to exercise any use of lethal force. This provision is simply designed to ensure that visitors to secure facilities are given prior notice of the possible consequences of their actions if they help, or attempt to help, a prisoner to escape.

**Entitlement to visits**

Clause 122.(1) provides that a prisoner at a corrective services facility is only entitled to receive a visit from a personal visitor once a week and a legal visitor. The terms "personal visitor" and "legal visitor" are defined in the dictionary.

Subclause (2) provides that the person in charge may allow the prisoner to receive extra visits, including for example:

(a) for a prisoner who is the primary caregiver of a child—a visit from the child to maintain the relationship with the child; or

(b) for an Aboriginal or Torres Strait Islander prisoner—a visit from a relevant elder, respected person or indigenous spiritual healer to ensure appropriate levels of cultural interaction and support.

Subclause (3) provides that the person in charge may allow a prisoner to visit another prisoner in another corrective services facility subject to any conditions considered appropriate by the person in charge.

*Example—*

A female prisoner may be allowed to visit her husband, a prisoner at another facility, on a monthly non-contact basis.

Subclause (4) provides that the person in charge may allow more than 1 personal visitor to visit a prisoner at the same time, if it is within the facility's operational limits. That is, subject to the availability of sufficient resources and space in the visits area at the facility.

**Visits by children**

Clause 123.(1) provides that an unaccompanied child may visit a prisoner if the person in charge considers it is in the child's best interests, even if the child was the complainant in the offence leading to the prisoner's imprisonment or the child is not related to the prisoner. It is anticipated that the regulation will provide supplementary detail to facilitate decision making in this respect.

Subclause (2) defines the term "child" as used in this clause to mean a person under the age, or apparent age, of 17 years.

*Example of when unaccompanied child may visit—*

A child may be granted an unaccompanied visit to his or her parent who is a prisoner if there is no other adult able to accompany the child.

*Examples of when it may be in the child's best interests to visit—*

1. A child's parents may both be prisoners and it is considered necessary to allow the child to make separate, unaccompanied visits.

2. A child may wish to visit his or her parent who is a prisoner but does not want the other parent to be aware of the visit.

**Contact during personal visits**

Clause 124.(1) provides that a personal visit must be a non-contact visit, unless the person in charge otherwise approves.

Subclause (2) provides that in deciding whether to give the approval for a contact visit the person in charge must consider:

(a) the requirements of any court order relating to the prisoner; or

(b) whether the prisoner has previously escaped or attempted to escape from custody; or

(c) whether the prisoner has previously given a positive test sample; or

(d) any information about the prisoner or visitor that indicates a risk to the security or good order of the facility.

The term "positive test sample" is defined in the dictionary.

Subclause (3) provides that during a contact visit a visitor must not engage in sexual activity with a prisoner or behave in a disorderly, indecent, offensive, riotous or violent manner. The term "contact visit" is defined in the dictionary to mean a personal visit during which there is direct contact between the prisoner and visitor.

Subclause (4) provides that if the visitor contravenes subclause (3), a corrective services officer may direct the visitor to leave the facility.

**Requirements before visit**

Clause 125. (1) provides that before visiting a prisoner at a corrective services facility for the first time, a personal visitor must apply, in the approved form, to the person in charge for approval to access the facility.

Subclause (2) empowers the person in charge to grant a personal visitor access to the facility provided the person in charge is satisfied that the visitor does not pose a risk to the security or good order of the facility. Information in this regard may be obtained pursuant to clause 244 of the Bill (Commissioner to provide criminal history).

Subclause (3) provides that the person in charge may impose conditions on a personal visitor's grant of access to the facility.

Subclause (4) provides that a person who is refused access toa corrective services facility may apply to the chief executive to review the decision. This provision is designed to ensure that a person is not unfairly denied access to a corrective services facility.

Subclause (5) provides that prior arrangements must be made by a personal visitor with the person in charge before visiting a facility. Generally, and depending on the corrective services facility concerned, a person in charge may require at least 24 hours prior notice of an intended visit. This time is to ensure that the necessary operational requirements (such as sufficient staff being rostered on duty in the visits area) can be arranged.

**Requirements during visits**

Clause 126.(1) states that the clause applies to a visitor to a corrective services facility.

Subclause (2) provides that a corrective services officer must require the visitor to prove his or her identity, in accordance with criteria prescribed under a regulation, when entering the facility. It is anticipated that the regulation will provide that the following types of identification may be accepted to prove the identity of a visitor to a corrective services facility:

(a) a security identification card issued to any person by the chief executive after a criminal history check and security check;

(b) successful recognition by or compliance with the requirements of any identification system, means or device;

(c) a security identification card issued by a law enforcement agency;

(d) a security identification card issued by the Supreme Court or another State Government entity;

(e) a current driver's licence or passport; or

(f) any three of the following:

(i) a current bank or credit card or bankbook with the person's name and signature;

(ii) a current pension or other social security card;

(iii) a birth certificate;

(iv) a statutory declaration that identifies the person by name and signature, which is signed by a Justice of the Peace or Commissioner for Declarations;

(v) a current medicare card.

Subclause (3) provides that the visitor must display the visitor's pass given to the visitor while in the facility.

Subclause (4) provides that the visitor, other than the following visitors, must sign the visitors' book:

(a) a corrective services officer who works at the facility;

(b) an employee of the department or of an engaged service provider who works at the facility;

(c) a child accompanying a visitor.

Subclause (5) provides that a corrective services officer may require the visitor to submit to a scanning search and, if the visit is to be a contact visit, a general search. The terms "scanning search" and "general search" are defined in the dictionary.

Subclause (6) provides that if the visitor does not submit to a general search when required under subclause (5) the person in charge may revoke the approval for the visit to be a contact visit.

Subclause (7) provides that the duration of a personal visit is to be decided by the person in charge. The term "personal visit" is defined in the dictionary.

Subclause (8) provides that a corrective services officer may give a visitor a direction that the officer considers reasonably necessary for the security or good order of the facility or a person's safety.

Subclause (9) provides that a visitor must comply with a direction given under subclause (8), unless the visitor has a reasonable excuse. The maximum penalty in this regard is 40 penalty units. A penalty is currently provided for under the *Corrective Services Act 1988* for the same offence, although while the monetary penalty is unchanged the current imprisonment penalty has been removed.

Subclause (10) provides that if the visitor fails to comply with a requirement or direction under this clause a corrective services officer may direct the visitor to leave the facility. If the visitor fails to leave the facility, a corrective services officer may remove the visitor from the facility , using reasonable and necessary force.

Subclause (11) states that subclause (10) applies in addition to any penalty imposed for a contravention of subclause (9). This provision is provided for clarification purposes.

**Proof of identity**

Clause 127. (1) empowers the chief executive to keep a fingerprint, palm print, footprint, toe print, eye print or voiceprint offered by a visitor in support of proof of their identity.

Such records would be relevant for the purposes of the anticipated regulation regarding proof of visitor identification by successful recognition by, or compliance with, the requirements of any identification system, means or device (see under clause 126 (2) of the Bill).

Subclause (2) provides that the chief executive must not give anyone a copy of the fingerprint, palm print, footprint, toe print, eye print or voiceprint, unless required to do so by a court order.

This provision is designed to protect the privacy interests of visitors and to ensure that any print offered and taken is not misused.

**Suspending visits**

Clause 128.(1) provides that the person in charge may suspend a visitor from entering the facility for a period of up to 3 months if the visitor:

(a) fails to comply with a lawful and reasonable direction by a corrective services officer; or

(b) breaches a condition imposed on the grant of access by the person in charge; or

(c) is charged with an offence allegedly committed in a corrective services facility.

Subclause (2) provides a review mechanism for a person whose access to a facility is suspended. The suspended visitor may apply to the chief executive to review the decision.

**Monitoring visits**

Clause 129. provides that a corrective services officer may make audiovisual recordings of, and monitor, a personal visit.

**Accredited visitors**

Clause 130.(1) provides that an accredited visitor may visit a prisoner or any part of a corrective services facility for carrying out the functions of the visitor's office or function.

Subclause (2) defines the term "accredited visitor" as used in this clause.

**Law enforcement visits**

Clause 131.(1) states that this clause applies if an employee of a law enforcement agency wants to visit a prisoner. The term "law enforcement agency" is defined in the dictionary.

Subclause (2) provides that the prisoner may either refuse to see the employee or agree to see the employee, but refuse to answer any of the employee's questions. This provision is designed to provide protection for a prisoner against self-incrimination.

Subclause (3) provides that the employee must be allowed to interview the prisoner out of the hearing, but not out of sight, of a corrective services officer.

**Legal visitors**

Clause 132. provides that a prisoner's legal visitor must be allowed to interview the prisoner out of the hearing, but not out of the sight, of a corrective services officer.

# CHAPTER 5—POST-PRISON COMMUNITY BASED RELEASE

NOTE: In this chapter:

"Queensland board" means the Queensland Community Corrections Board;

"Regional board" means a regional community corrections board;

"Corrections board" means the Queensland Community Corrections Board or a regional community corrections board.

"Post-prison community based release order" means a release to work order, home detention order or parole order, including an exceptional circumstances parole order.

## PART 1—ORDERS

### Who may apply for exceptional circumstances parole order

Clause 133. provides that any prisoner may apply for an exceptional circumstances parole order.

*Example—*

The Bill does not limit the reasons for which a prisoner may apply for exceptional circumstances parole. The board considering the application has absolute discretion to determine whether the circumstances of the application warrant the prisoner being released at a time earlier than he or she is eligible for post-prison community based release.

For instance, irrespective of the prisoner's period of imprisonment, a prisoner—

(i) who develops a terminal illness with a short life expectancy; or

(ii) who is the sole carer of a spouse who contracts a chronic disease requiring constant attention,

may be granted an exceptional circumstances parole order.

**Who may apply for other post-prison community based release orders**

Clause 134.(1) provides that a prisoner may apply for a post-prison community based release order, other than an exceptional circumstances parole order, if the prisoner was sentenced to a period of imprisonment for an offence committed before the commencement of this clause or of more than 2 years for an offence committed after the commencement of this clause.

*Examples—*

1. A prisoner sentenced to more than 2 years imprisonment before or after the commencement of this Bill may apply for consideration for post-prison community based release either when the prisoner has served one-half of the imprisonment or at the time recommended by the court when sentencing the prisoner.

2. A prisoner sentenced to 2 years imprisonment or less before the commencement of this Bill is eligible to apply for consideration for post-prison community based release either when the prisoner has served one-half of the imprisonment or at the time recommended by the court when sentencing the prisoner.

3. A prisoner sentenced to 2 years imprisonment or less after the commencement of this Bill is not eligible to apply for post-prison community based release. The prisoner may be granted conditional release under clause 76 of the Bill.

However a prisoner mentioned above may not apply if:

(a) the prisoner is on remand;

*Examples—*

1. If a prisoner is detained in custody solely as a result of a court ordering that the prisoner be remanded in custody in relation to an offence, a board must not grant a post-prison community based release order.

2. If a prisoner is serving a period of imprisonment and is eligible to be granted a post-prison community based order and a court has ordered that the prisoner be remanded in custody in relation to an offence, a board must not grant a release to work order.

3. If a prisoner is serving a period of imprisonment and is eligible to be granted a post-prison community based order and a court has granted the prisoner bail in relation to an offence, whether or not the prisoner has entered into bail, a board may grant a post-prison community based release order.

(b) a prisoner is detained for an indefinite period for contempt;

(c) a prisoner is serving an indefinite sentence for a violent offence imposed under Part 10 of the *Penalties and Sentences Act 1992*.

*Example—*

Part 10 of the *Penalties and Sentences Act 1992* provides that a court may impose upon an offender, convicted of an offence involving the fact of or attempt to use or counselling or procuring to use violence against the person, or an offence of sodomy, carnal knowledge of a girl under 16, abuse of an intellectually impaired person, sexual assault or rape for which the offender may be sentenced to life imprisonment, an indefinite sentence instead of a definite sentence.

(d) for a release to work or home detention order--a prisoner being detained by a warrant or order issued under the Commonwealth *Migration Act 1958*;

*Example—*

A prisoner who is to be deported as an unlawful non-citizen and a warrant or order directing that the prisoner be held in custody has been issued by the Commonwealth department responsible for the *Migration Act 1958* may not be granted release to work or home detention. The prisoner may however, be granted parole or exceptional circumstances parole.

Subclause (2) provides that a prisoner can not reapply for post-prison community based release:

(a) within the time determined by a board under clause 140 (4) when the prisoner's last application was refused unless the board approves that the application may be made; or

(b) if an appeal has been lodged against the prisoner's conviction, or the sentence imposed, in relation to the period of imprisonment for which the prisoner is seeking release and the appeal has not been determined.

*Example—*

The prisoner may lodge an appeal against the severity or the Attorney-General may lodge an appeal against the inadequacy of the prisoner's sentence.

**When order starts**

Clause 135.(1) provides that an exceptional circumstances parole order may start at anytime.

*Example—*

A corrections board may grant an exceptional circumstances parole order to a prisoner to commence at any time before the prisoner is eligible to be released on another post-prison community based order.

Subclause (2) provides the times at which a post-prison community based release order may commence.

*Examples*

1. If a person is convicted on more than 1 count of murder at the same time, is convicted of murder and another offence of murder is taken into account or had previously been convicted of murder the person must be sentenced to life imprisonment. When sentencing the person the court may order that the person must not be released on post-prison community based release until the person has served 20 years or more imprisonment. If the court does not make such an order the person is eligible to be released on post-prison community based release when the person has served 20 years imprisonment.

2. A person convicted of a single count of murder is eligible to be released on post-prison community based release when the person has served 15 years imprisonment.

3. A person convicted of an offence mentioned in the schedule to the *Penalties and Sentences Act 1992*, for example Rape, and sentenced to 10 years imprisonment must not be released on post-prison community based release until the person has served 8 years imprisonment.

4. A person convicted of an offence mentioned in the schedule to the *Penalties and Sentences Act 1992*, for example Rape, and sentenced to 20 years imprisonment must not be released on post-prison community based release until the person has served 15 years imprisonment.

5. A person convicted of a sexual offence committed upon or in relation to a child under the age of 16 years may be found by the court to require care, supervision and control in an institution either in their own interests or for the protection of others. The court may direct that the person be detained for a fixed period or during her Majesty's pleasure. If the person is ordered to be detained for a fixed period the person must not be released on post-prison community based release until the person has served one-half of the fixed period.

6. A person serving a period of imprisonment imposed for an offence committed before the commencement of this Bill or a period of imprisonment of more than 2 years imposed for an offence committed after the commencement of this Bill must not be released on post-prison community based release until the person has served one-half of the period of imprisonment.

Subclause (3) provides that subclause (2) is subject to the provisions of the *Penalties and Sentences Act 1992*, section 157 which enables a court to recommend that a prisoner be eligible for release after serving part of the sentence imposed by the court.

**Which corrections board to hear and decide application**

Clause 136.(1) provides that the Queensland board may hear and decide an application for a post-prison community based release order by a prisoner mentioned in clause 135 who:

(a) is serving a period of imprisonment of 8 years or more; or

(b) is serving a period of imprisonment for an offence of a sexual nature committed on a child under 16 years and who is required by a court under the *Criminal Law Amendment Act 1945*, section 19 to disclose his or her address for a set period; or

(c) is accommodated at, or lawfully absent from, a corrective services facility in an area of the State for which a regional board is not established.

Subclause (2) provides that a regional board may hear and decide any other application for a post-prison community based release order, including an exceptional circumstances parole order, by a prisoner accommodated at, or lawfully absent from, a corrective services facility in an area of the State for which the regional board is established.

*Example—*

A prisoner, serving 5 years imprisonment, accommodated at Townsville Correctional Centre is granted leave of absence to undergo medical treatment at the Princess Alexandra Hospital in Brisbane. An application submitted by the prisoner for post-prison community based release must be considered by the Townsville Regional Community Corrections Board.

Subclause (3) provides that in deciding the jurisdiction of a board, the execution of a warrant of commitment is not to be taken into account if the default period for the non-payment of a fine or restitution is made cumulative to a period of imprisonment.

*Examples—*

1. A prisoner is sentenced to a period of imprisonment for 7 years 11 months. While serving this sentence a warrant of commitment with a default period of 2 months cumulative is executed on the prisoner. The prisoner's period of imprisonment is now 8 years 1 month. This clause means that any application by the prisoner for post-prison community based release must be dealt with by the relevant regional community corrections board.

2. A prisoner is sentenced to a period of imprisonment for 2 years. While serving this sentence a warrant of commitment with a default period of 2 months cumulative is executed on the prisoner. The prisoner's period of imprisonment is now 2 years 2 months. Notwithstanding the provisions of subclause (2) the prisoner can not be granted post-prison community based release.

## Appearing before corrections board

Clause 137.(1) provides that a prisoner may apply to a regional community corrections board to appear or be represented by an agent before the board in relation to the prisoner's application for a post-prison community based release order.

Subclause (2) provides that a prisoner may apply to the Queensland board to be represented by an agent before the board in relation to the prisoner's application for a post-prison community based release order.

Subclause (3) provides where the prisoner's application is to be heard by the Queensland board, the Queensland board may require a regional board to hear the prisoner's representations and to make a recommendation to the Queensland board on the prisoner's suitability for a post-prison community based release order.

*Example—*

The Queensland board may consider it necessary for a prisoner, applying to the Queensland board for post-prison community based release and located in the far north of the State, to answer specific questions and for the prisoner's reactions to the questions to be gauged. It is not economically reasonable to have the prisoner escorted to Brisbane, nor for the Queensland board to travel to the prisoner's location. The Queensland board would require the regional board located in the far north to grant leave for the prisoner to appear before the regional board and answer the specific questions. The regional board would, after hearing the prisoner, provide a report to the Queensland board on the prisoner's appearance and include a recommendation on what action should be taken in relation to the prisoner's application.

Subclause (4) provides that if a prisoner is appearing before a regional board a corrective services officer present at the meeting may be directed by the president to leave and remain out of hearing of the meeting.

*Example—*

The board may consider that the prisoner will more readily respond to questions in the absence of the officer escorting the prisoner.

Subclause (5) provides that if a prisoner, appearing before a regional board insults a member of the board or disrupts the board meeting may direct a corrective services officer to remove the prisoner from the meeting.

Subclause (6) provides that a board may hear and decide an application by a prisoner for post-prison community based release in the event that the prisoner or agent fails to appear before the board.

Subclause (7) provides that a prisoner's agent can not be a lawyer. Meetings of corrections boards are conducted in a non-adversarial manner.

**When application for release lapses**

Clause 138. provides that, between the time the application is made and the application is decided by a board, a prisoner's application for post-prison community based release lapses if the prisoner is sentenced to a further term of imprisonment.

**Corrections board not bound by sentencing court's recommendation**

Clause 139. provides that a corrections board is not bound by a recommendation of the court that sentenced a prisoner if the board receives information that was not before the court at the time of sentencing and, after considering the information, the board considers that the prisoner is not suitable for release at the time recommended by the court.

*Examples—*

1. The board may receive advice that the prisoner has failed to undertake a program aimed at addressing the prisoner's offending behaviour.
2. The board may receive advice that the prisoner's release plan is unacceptable, for instance a prisoner convicted of a sexual offence against a child may have nominated as the proposed residence on release, a home in which children live.

**Decision of corrections board**

Clause 140.(1) provides that a board when considering a prisoner's application for post-prison community based release must either grant or refuse the application.

Subclause (2) provides that a board may defer making a decision until such time as the board has obtained any additional information it requires.

*Example—*

A board may consider it necessary to have the prisoner psychiatrically examined or to consider a further report on the prisoner's institutional performance.

Subclause (3) provides that where a prisoner has been released on a post-prison community based order in relation to a period of imprisonment and the order is subsequently cancelled, the prisoner may again apply for, and be granted, post-prison community based release in relation to the same period of imprisonment.

Subclause (4) provides that where a board refuses to grant an application for post-prison community based release the board must:

(a) determine a time, of not more than 6 months, within which a further application for post-prison community based release will not be considered; and

(b) give the applicant written reasons for the refusal. The provisions of the *Acts Interpretation Act 1954*, section 27B apply to the written reasons to be given by the board.

*Example—*

If a board refuses an application by a prisoner for post-prison community based release the board must advise the prisoner, in writing, that the board will not consider a further application for a stated period of up to 6 months. The reasons for the refusal must set out the findings on material questions of fact and refer to the evidence or other material on which those findings were based.

Subclause (5) provides that if a board has not decided a prisoner's application within 120 days of the board receiving it, the application is taken to have been refused by the board. In these circumstances subclause (4) would apply.

**Types of post-prison community based release orders**

Clause 141.(1) provides that a corrections board may release a prisoner on post-prison community based release by a release to work order, home detention order, parole order, including where the board determines that exceptional circumstances exist.

*Example—*

Post-prison community based release incorporates the orders mentioned which, at the sole discretion of the corrections board considering the application, may be granted in any combination as a staged release process. A board considering an application from a prisoner serving a short sentence may not consider it necessary that the prisoner undergo all forms of release and may, for instance, release the prisoner directly on parole. Were the prisoner serving a long sentence the board may consider it necessary that the prisoner undergo a fully staged release. In that case the prisoner may be required to undergo a period of release to work, followed by a period on home detention before being released on parole.

Subclause (2) provides that a prisoner, granted a post-prison community based release order, must be given a copy of the order.

Subclause (3) provides that the copy of the release to work or home detention order must be kept in the prisoner's possession for the duration of the order and must be produced at the request of a corrective services officer or a police officer.

**Conditions for release to work orders**

Clause 142.(1) provides that a release to work order may contain conditions aimed at ensuring the prisoner is of good conduct, preventing the prisoner from committing further offences, helping the prisoner's reintegration into the community, and requiring the prisoner to perform community service .

*Example—*

The following conditions are placed on all release to work orders;

(1) that the prisoner not commit an offence;

(2) that the prisoner be of good behaviour and conduct during the period of release to work;

(3) that the prisoner abstain from the consumption of alcohol or non-prescribed drugs;

(4) that the prisoner abstain from gambling;

(5) that the prisoner attend courses, programs, meetings, counselling, and any other activities at such places and at such times as directed by a corrective services officer.

The board granting the order may also place conditions on the order which may include for instance that the prisoner:

(1) have no contact with the victim of the prisoner's offence;

(2) (eg. if convicted of misappropriation) not secure employment which involves direct access to the prisoner's employer's financial affairs.

(3) be granted reintegration leave for (period of leave) at (place of leave) from (date/s of leave).

(4) perform community service 2 days per week during periods of unemployment.

Subclause (2) requires a prisoner to comply with the conditions of a release to work order.

## Conditions for home detention orders

Clause 143.(1) provides that a home detention order may contain conditions aimed at ensuring the prisoner is of good conduct, preventing the prisoner from committing further offences and requiring that the prisoner carry out a corrective services officer's lawful instructions.

*Example—*

The following conditions are placed on all home detention orders;

The prisoner shall:

(1) reside at (a nominated residence)and not change this residence without the prior approval of a corrective services officer;

(2) permit access to a corrective services officer to the place of residence named in the order at any time when access is requested by the officer on official business;

(3) report to a corrective services officer at (nominated office) on the day of release on home detention or as directed by the officer;

(4) report in person to a corrective services officer at any time as directed by the officer;

(5) carry out the lawful instructions of a corrective services officer;

(6) be of good behaviour and conduct during the period of home detention;

(7) attend courses, programs, meetings, counselling, and any other activities at such places and at such times as directed by a corrective services officer;

(8) undertake employment and/or education or training as approved by a corrective services officer;

(9) notify a corrective services officer; of any change in employment, education or training status within 24 hours of the change occurring;

(10) retain this copy of the home detention order at all times, and produce it on demand to a corrective services officer or police officer; and

The prisoner shall not:

(11) commit an offence;

(12) depart the place of residence named in this order without the prior written approval of a corrective services officer;

(13) change the place of residence named in this order without the prior approval of a corrective services officer;

(14) have any contact with the press or other media without the prior approval of a corrective services officer;

(15) consume or use alcohol or illegal drugs.

The board granting the order may also place conditions on the order which may include for instance that the prisoner:

(1) have no contact with the victim of the prisoner's offence;

(2) (eg. if convicted of misappropriation) not secure employment which involves direct access to the employer's financial affairs.

Subclause (2) provides that a home detention order must not contain a condition that a prisoner perform community service.

Subclause (3) requires a prisoner to comply with the conditions of a home detention order.

**Conditions for parole orders**

Clause 144.(1) provides that the following conditions must be placed on a parole order, that the prisoner:

(a) be under the supervision of a corrective services officer for a period decided by the board, not extending beyond the prisoner's period of imprisonment or, in the case of a prisoner referred to in clause 135 (2)(d), for the period the prisoner was ordered to be detained;

(b) carry out the lawful instructions of the corrective services officer;

(c) report and receive visits as directed by the corrective services officer;

(d) notify the corrective services officer within 48 hours of any change of address or employment during the parole period;

(e) not commit an offence.

Subclause (2) provides that a parole order may contain conditions aimed at ensuring the prisoner is of good conduct and preventing the prisoner from committing a further offence.

*Example—*

That the prisoner attend courses, programs, meetings, counselling, and any other activities at such places and at such times as directed by a corrective services officer;

Subclause (3) provides that a parole order must not contain a condition that a prisoner perform community service.

Subclause (4) requires a prisoner to comply with the conditions of a parole order.

**Expenses of prisoner on release to work or home detention**

Clause 145.(1) provides that this clause applies to a prisoner on release to work or home detention only.

Subclause (2) provides that the chief executive may provide financial or other assistance to a prisoner, granted release to work or home detention.

*Example—*

A prisoner may be given money to purchase a meal or travel vouchers to enable the prisoner to seek employment.

Subclause (3) requires that a prisoner must return any unused financial assistance provided under subclause (2).

**Travelling from home while on home detention**

Clause 146.(1) provides that a prisoner on home detention must not leave the prisoner's residence except for certain purposes.

*Example—*

1. To undertake a program required under the prisoner's home detention order or a court order;
2. To purchase food items or collect a social security benefit;
3. To seek employment;
4. For medical or health treatment;
5. To attend a family gathering;

Subclause (2) requires that a prisoner on home detention to obtain permission from a corrective services officer to leave the prisoner's residence for a purpose specified in subclause (1).

Subclause (3) provides that permission given under subclause (6) must be by way of a written pass stating the conditions under which a prisoner is permitted to be absent from the prisoner's residence.

*Example—*

A pass may stipulate the route the prisoner must take to attend the prisoner's employment, and the time the prisoner may leave, and must return to, the prisoner's residence.

## Travelling interstate while on home detention

Clause 147.(1) provides that the chief executive may grant a prisoner on home detention leave to travel interstate for a period of not more than 7 days.

*Example—*

A prisoner on home detention may be permitted to attend the funeral of a close relative being held interstate.

Subclause (2) enables the chief executive to place conditions on the leave order.

*Example—*

That the prisoner report to the nearest corrective services office on arrival in and before departure from the State in which the leave is taken.

## Travelling intestate or overseas while on parole

Clause 148.(1) provides that this clause applies only to a prisoner released on parole.

Subclause (2) provides that the chief executive may grant a prisoner on parole leave to travel interstate for a period of not more than 7 days.

*Example—*

To enable the prisoner to attend an immediate family function. All costs associated with the prisoner's travel are borne by the prisoner.

Subclause (3) provides that the community corrections board which granted a prisoner parole may grant the prisoner leave to travel interstate for a period of more than 7 days.

*Example—*

To enable the prisoner to provide assistance to a family member undergoing temporary hardship. All costs associated with the prisoner's travel are borne by the prisoner. The *Parole Orders (Transfer) Act 1984* provides for a prisoner's parole order to be registered in another State if the prisoner has been permitted to reside permanently in that State.

Subclause (4) provides that the Queensland board may grant a prisoner on parole leave to travel overseas for a stated period for compassionate purposes in exceptional circumstances.

*Example—*

To attend the funeral of an immediate family member. All costs associated with the prisoner's travel are borne by the prisoner.

Subclause (5) provides that a regional board cannot grant overseas leave to a prisoner on parole even if it granted the prisoner parole.

Subclause (6) enables the chief executive or the Queensland board to place conditions on the leave granted under this clause.

*Example—*

1. That the prisoner reside at a particular address.
2. That the prisoner report to his supervising officer within 24 hours of returning to Queensland.
3. That the prisoner be permitted to be absent for 14 days.
4. That, while absent in another State. the prisoner report to the community corrections office nearest to the prisoner's residence in that State.

**Suspension of order by chief executive**

Clause 149.(1) empowers the chief executive to suspend a post-prison community based release order for a period of up to 28 days if the chief executive believes on reasonable grounds that a prisoner has failed to comply with the order or poses a serious and immediate risk of self harm or harm to another person. The chief executive would use this power only in circumstances where, in the interests of community safety, it is necessary to return the prisoner to custody immediately.

*Example—*

> The wife of a prisoner on parole may report that the prisoner has made threats that he intends to kill her. The chief executive may suspend the prisoner's parole order pending an investigation into the threats.

Subclause (2) allows the chief executive, when an order has been suspended under subclause (1), to issue a warrant for the prisoner's arrest.

Subclause (3) provides that the warrant may be issued to all corrective services officers and may be executed by any of them.

Subclause (4) provides that when arrested the prisoner must be taken to a prison to be kept there for the suspension period.

Subclause (5) provides that on immediately on suspending the order, the chief executive must give written notice to the community corrections board which granted the order.

Subclause (6) requires the chief executive to provide such further reports in relation to the circumstances of the suspension of the prisoner's parole as the board requests.

Subclause (7) enables a board to cancel a suspension order made by the chief executive at any time before it expires. If the board cancels the chief executive's order and the warrant has not been executed, the board must require the chief executive to withdraw the warrant.

*Example—*

> Following the receipt by the board of the chief executive's advice in relation to the suspension of the parole order of the prisoner referred to in the example under subclause (1) the board requests that advice be sought from police on the circumstances of the allegations. Police advice indicates that the couple are separated and the allegations are a malicious attempt by the prisoner's wife to have him returned to custody to ensure she retains custody of their children. The board may decide to cancel the order suspending the prisoner's parole. The prisoner would then be released to resume parole supervision.

**Amendment, suspension or cancellation of order by corrections board**

Clause 150.(1) provides that a community corrections board may amend, suspend or cancel a post-prison community based order granted by the board at any time after the prisoner is released if the board reasonably believes that the prisoner has contravened the order or poses a serious risk of harm to themselves or someone else; or amend or cancel the order at any time after the order is made if the board receives information that, had it been received before the order was made, would have resulted in the board making a different order or no order.

*Examples—*

1. A prisoner, having been granted parole, admits to having feelings of frustration and failure to cope with community living. A board may amend the parole order requiring the prisoner to undergo specific psychological counselling and undertake a life skills program.

2. A prisoner serving a period of imprisonment for an offence of rape, having been granted parole, is charged with a further offence of rape alleged to have been committed after the prisoner was released on parole. Police have advised that the evidence against the prisoner is overwhelming. The Board may form the view that the need to protect the community overrides the prisoner's presumption of innocence and that the prisoner's parole should be suspended. The board may suspend the parole order until such time as the charge of rape has been dealt with.

3. A prisoner, having been granted parole, is awaiting release and commits a prisoner offence by assaulting another prisoner. A board may cancel the parole order. The prisoner may then be advised that the prisoner's application for post-prison community based release was refused.

Subclause (2) enables a board to issue a warrant for the arrest of a prisoner whose order has been suspended or cancelled under subclause (1). The warrant may be signed by a member or the secretary of the board, a Stipendiary Magistrate to issue a warrant for the arrest of a prisoner whose order has been suspended or cancelled under subclause (1) on the application of a board or a member of the board.

*Example—*

A warrant issued under the circumstances in (b) is necessary to extradite a Queensland prisoner, whose post-prison community based order has been suspended or cancelled, who is located in another State. A warrant issued by a board can not be used for this purpose.

Subclause (3) provides that the warrant may be issued to all corrective services officers and may be executed by any of them.

Subclause (4) provides that when a prisoner is arrested on a warrant issued under subclause (2) the prisoner must be taken to a prison and:

(a) if the order is suspended—kept there for the period of the suspension; or

(b) if the order is cancelled—serve the unexpired portion of the period of imprisonment to which the prisoner was sentenced.

Subclause (5) provides that a board must give an information notice to a prisoner if the order is amended—immediately after amending it or if the order is suspended or cancelled—on the prisoner's return to prison.

Subclause (6) provides that a board must consider all written submissions made within the 21 days provided for in the information notice, and notify the prisoner of the board's decision regarding the amendment, suspension or cancellation order.

Subclause (7) provides that, if the board changes its decision, the changed decision has effect.

Subclause (8) provides definitions for the terms "corrections board", information notice" and "suspend" as used in this clause.

**Cancellation of parole order by further imprisonment**

Clause 151.(1) provides that a prisoner's parole order is automatically cancelled if the prisoner is convicted of an offence, committed in Queensland or elsewhere during the parole period, and is sentenced to a term of imprisonment.

Subclause (2) provides that the parole order of a prisoner referred to in subclause (1) is cancelled whether or not the parole period has expired.

Subclause (3) provides the circumstances in which a prisoner may be detained in prison without being taken to have been sentenced to a term of imprisonment. The parole order of a prisoner detained in these circumstances is not cancelled under subclause (1).

*Examples—*

1. Imprisonment in default of payment of a fine or failure to make restitution.
2. A term of imprisonment ordered to be served by way of an intensive correction order.
3. A wholly suspended period of imprisonment.

Subclause (4) enables a board to issue a warrant for the arrest of a prisoner whose order has been cancelled under subclause (1). The warrant may be signed by a member or the secretary of the board; or a Stipendiary Magistrate to issue a warrant for the arrest of a prisoner whose order has been cancelled under subclause (1) on the application of a board or a member of the board.

*Example—*

A warrant issued under the circumstances in (b) is necessary to extradite a Queensland prisoner on parole who is sentenced to a term of imprisonment in another State. A warrant issued by a board can not be used for this purpose.

Subclause (5) provides that the warrant may be issued to all corrective services officers and may be executed by any of them.

Subclause (6) provides that when a prisoner is arrested on a warrant issued the prisoner must be taken to a prison to serve the unexpired portion of the period of imprisonment to which the prisoner was sentenced.

Subclause (7) provides a definition for the term "corrections board" used in this clause.

**Effect of cancellation of parole order**

Clause 152.(1) provides that this clause applies when a prisoner's parole order is cancelled under clause 150 or 151.

Subclause (2) provides that when a prisoner's parole order is cancelled the period from the day the prisoner is released on parole to the day before the prisoner contravened the order which led to the cancellation of the order, or the board cancelled the order, under clause 150 or the prisoner committed the offence which led to the cancellation of the order under clause 151, counts as time served in relation to the prisoner's period of imprisonment.

*Example—*

A prisoner is sentenced to 6 years imprisonment to commence on 15 June 2000 which will expire on 14 June 2006. The prisoner is released on parole on 15 June 2003. On 30 June 2005 the prisoner is convicted of an offence committed on 15 June 2004 and sentenced to imprisonment.

The 4 year period from 15 June 2000 (the day the sentence commenced) to 14 June 2004 (the day before the commission of the new offence) is taken to be time served in relation to the 6 years imprisonment. This 4 year period incorporates 3 years in custody and 1 year on parole. The 1 year period from 15 June 2003 to 14 June 2004 is commonly referred to as "street time".

The 380 day period from 15 June 2004 (the day the offence was committed) to 29 June 2005 (the day before the prisoner was returned to prison) is not counted as time served in relation to the 6 years imprisonment. Effectively the prisoner has served 4 years imprisonment and now has to serve the remaining 2 years imprisonment.

The prisoner's period of imprisonment will now expire on 30 June 2007.

Subclause (3) provides that the Queensland board may order that a prisoner, whose parole order has been cancelled, serve only a part of the unexpired period of imprisonment.

*Example—*

Referring to the example given under subclause (1) the Queensland board may order that the prisoner serve 18 months of the remaining 2 years imprisonment. The prisoner's period of imprisonment would then expire on 30 December 2006.

Subclause (4) provides that a regional board cannot make an order under subclause (3) even if it granted the parole order.

**Prisoner on release taken to be still serving sentence**

Clause 153. provides that, notwithstanding that a prisoner has been granted a post-prison community based release order, the prisoner remains a prisoner undergoing the sentence imposed.

**Discharge after parole**

Clause 154. provides that when a prisoner is released on parole and the parole period has expired, without either a corrections board cancelling the order or the order being cancelled under clause 151, the prisoner is taken to have served the period of imprisonment imposed by the court and can no longer be held in custody or supervised in relation to it.

**Reviewing regional board's decision to refuse application**

Clause 155.(1) provides that this clause applies to a prisoner who has, on 3 or more occasions, applied to a regional board for a post-prison community based release order in relation to the same period of imprisonment and the applications have been refused.

Subclause (2) provides that the prisoner may apply, in the approved form, to the Queensland board for a review of the regional board's last refusal.

Subclause (3) provides that an application under subclause (2) must be lodged with the secretary of the regional board which last refused the prisoner's application for post-prison community based release within 7 days of the prisoner receiving the written notice of refusal.

Subclause (4) prescribes the documents which the secretary of the regional board must send to the secretary of the Queensland board with the prisoner's application for review.

Subclause (5) provides that upon reviewing the documents mentioned in subclause (4) the Queensland board may confirm the decision to refuse the application or set aside the decision and make any order the regional board could have made.

*Example—*

The Queensland board could set aside a decision of a regional board to refuse a prisoner's application for post-prison community based release and grant the prisoner release on home detention.

# PART 2—CORRECTIONS BOARDS

## *Division 1—Queensland Community Corrections Boards*

### Establishment of Queensland board

Clause 156. establishes the Queensland Community Corrections Board.

### Functions of Queensland board

Clause 157. provides the functions of the Queensland board.

*Example—*

1. To decide prisoners' applications for post-prison community based release;
2. To decide whether to release information to a person in relation to a prisoner, convicted of a sexual offence, who is required by a court to disclose his or her address for a set period.

**Membership of Queensland board**

Clause 158.(1) provides the qualifications for the president, deputy president and other appointed members of the Queensland board.

*Example—*

The Queensland board consists of the president and deputy president, 5 other members at least 1 of whom must be an Aborigine or Torres Strait Islander, at least 2 of whom must be women and at least 1 of whom must be a registered medical practitioner or psychologist, known as "appointed members", appointed by the Governor in Council, and the chief executive who is a member *ex officio*.

Subclause (2) provides that the chief executive may appoint a public service officer from the Department of Corrective Services to represent the chief executive if, for any reason, the chief executive is unable to attend a meeting of the Queensland board.

*Example—*

If the chief executive is unable, through work commitments, to attend meetings of the Queensland board the chief executive may appoint a departmental officer to be a member for a specific period or until the appointment is rescinded. The person so appointed may participate and vote at a meeting of the board.

Subclause (3) provides that the Governor in Council may end an appointed member's appointment at any time.

Subclause (4) provides that it is not necessary for reasons to be given for ending an appointed member's appointment.

**Disqualification from membership of Queensland board**

Clause 159. provides that the following persons are not qualified to be, or continue to be, an appointed member of the Queensland board:

(a) a doctor, volunteer or official visitor appointed under the Bill;

(b) a public service officer;

(c) an engaged service provider or its employees;

(d) a full-time member, officer or employee of a State instrumentality.

*Example—*

A person who is a part-time member of a board or tribunal established under another Act may be appointed as a member of the Queensland board.

**Term of member's appointment**

Clause 160.(1) provides that an appointed member of the Queensland board may be appointed for a period of up to 3 years.

Subclause (2) provides that if a new appointed member has not been appointed before the expiry of a current appointed member's term, the current appointed member, if still qualified for membership, may continue to hold office until the new appointed member is appointed.

Subclause (3) provides that an appointed member, if still qualified to be a member, may be reappointed as a member of the Queensland board.

**Remuneration of members**

Clause 161. provides for an appointed member of the Queensland board to be paid fees, allowances and expenses decided by the Governor in Council.

*Example—*

> Members of the Queensland board, other than the chief executive or a person appointed by the chief executive as the chief executive's representative, are paid a fee for attendance at a meeting of the board and may be paid a special assignment fee for undertaking other duties associated with their membership according to the scale of fees set by the Department of Employment, Training and Industrial Relations for Government Boards. Members may also be paid travelling allowance, mileage etc.

**Vacation of member's office**

Clause 162. provides that an appointed member's office becomes vacant if the member resigns, is no longer qualified to be a member or the Governor in Council ends the members appointment.

*Example—*

The Governor in Council may end the appointment of an appointed member at any time for any reason.

**Secretary of Queensland board**

Clause 163. provides for the appointment by the chief executive of a public service officer to be the secretary of the Queensland board. In the absence of the secretary, a person may act as secretary of the board as provided for in the *Acts Interpretation Act 1954*, section 25.

**Meetings of Queensland board**

Clause 164.(1) provides that the Queensland board must meet as often as necessary to exercise its powers and discharge its functions.

Subclause (2) provides that the president, or in the president's absence, the deputy president may convene a meeting of the board at any time.

Subclause (3) provides that if both the president and deputy president are unable to attend a meeting of the Queensland board the secretary may convene a meeting of the board to consider whether the board should meet to exercise its powers in relation to the amendment, suspension or cancellation of a post-prison community based.

*Example—*

> If, when neither the president nor deputy president of the board is available, a report is received by the secretary advising that a prisoner on parole has threatened to kill his wife and, in the view of the corrective services officer supervising the prisoner, the threat is serious, the secretary may convene a meeting by contacting at least 4 members of the board. The members contacted may decide that a meeting should be held to consider the report. The meeting may be held by telephone conference or by the secretary contacting members individually to consider the matter.

Subclause (4) provides for a meeting of the board to be held were 1 or all of the members communicate by way of, for example, telephone or video link-up.

Subclause (5) provides that a member who takes part in a meeting under subclause (4) is taken to be present at the meeting.

Subclause (6) provides that a quorum at a meeting is 4 members.

Subclause (7) provides that the president, or in the president's absence, the deputy president is the chairperson at a meeting of the Queensland board.

Subclause (8) provides that the chairperson must decide all questions of law arising out of any matter before the board.

*Example—*

> The chairperson may determine a finding of fact in relation to the preparation of a statement of reasons for purposes of the *Judicial Review Act 1991*.If a question of law arises at a meeting called by the secretary the matter giving rise to the question must be deferred until the president or deputy president is present at a meeting as chairperson.

Subclause (9) provides that a decision of the board must be by majority vote of the members present.

Subclause (10) provides that the chairperson has a deliberative and a casting vote.

Subclause (11) provides for the board may conduct its meetings as considered appropriate.

**Attendance of corrective services officers or employees at Queensland board meetings**

Clause 165. provides for the attendance of a corrective services officer or an employee of the department or an engaged service provider at a meeting of the board at the request of the secretary, to give advice or information to the board in relation to any matter relating to the granting or supervision of a post-prison community based order.

*Examples—*

1. The board may be considering calling upon a prisoner to show cause why the prisoner's parole order should not be cancelled and requires advice from the corrective services officer who supervises the prisoner in relation to the prisoner's response to parole supervision.
2. The board, when considering a prisoner's application for post-prison community based release, may require that a psychologist who has counselled the prisoner to attend the board meeting to discuss the prisoner's case.

**Attendance of board member at regional board meetings**

Clause 166.(1) provides that a member of the Queensland board, nominated by the board, may attend and participate in a meeting of a regional board.

Subclause (2) provides that the board member attending a regional board meeting can not vote at the meeting.

**Guidelines**

Clause 167.(1) enables the Minister to make guidelines to the Queensland board in relation to the policy to be followed by the board.

*Examples—*

1. In relation to the release of a prisoner on a post-prison community based release order a guideline may be issued that, wherever possible, prisoners should be phased back into the community in a staged process of decreasingly-restrictive supervision. Staged release includes release to work, home detention and parole in any combination which best suits the assessed needs of the prisoner.

2. In relation to a prisoner granted home detention a guideline may be issued that the Board must be satisfied that the householder or person in charge of the prisoner's nominated address has agreed to accommodate the prisoner for the purposes of home detention and will allow normal supervision access by a corrective services officer.

Subclause (2) enables the Board, in consultation with the chief executive, to make guidelines to the regional boards.

*Example—*

The guidelines issued to the regional boards would normally closely follow the relevant guidelines made by the Minister to the Queensland board. However, they could include a guideline in relation to the content of a regional board's annual report prepared under clause 180 or the manner in which a regional board should exercise its discretion in deciding whether to grant leave to a prisoner to appear before it. Consultation with the chief executive is to ensure that a guideline does not conflict with operational matters at a corrective services facility.

Annual report of Queensland board

Clause 168.(1) provides that the Queensland board must give to the Minister a report regarding post-prison community based release orders and its activities in the preceding financial year. The report must include details of the regional boards' activities for the same period and the effectiveness of each regional board.

Subclause (2) requires that the report provided under subclause (1) states the number of persons released on each post-prison community based release order and the number of persons returned to prison following the cancellation or suspension of such orders.

Subclause (3) provides that the report must be given to the Minister on or before the 30 September after the financial year it relates to.

**Special reports**

Clause 169. provides that when requested by the Minister the Queensland board must provide a report on any matter relating to the operation of the Bill with respect to post-prison community based release orders or the Queensland board or regional boards.

***Division 2 —Regional community corrections boards***

**Establishment of regional boards**

Clause 170. provides the mechanism for the establishment and naming of a regional community corrections board in a particular area of the State. There are currently 6 regional boards throughout the State. Three are located in the south-east corner, 1 at Rockhampton, 1 at Townsville and 1 outside Mareeba. Each board is responsible for a particular part of the State.

*Example—*

The North Queensland Regional Community Corrections Board, located outside Mareeba, is responsible for that part of the State north of latitude 18 degrees south.

**Functions of regional boards**

Clause 171. provides the functions of a regional board.

*Example—*

To decide prisoners' applications for post-prison community based release.

**Membership of regional boards**

Clause 172.(1) provides the qualifications for the president, deputy president and other members of a regional board appointed by the Governor in Council.

*Example—*

The board consists of the president and deputy president, a public service officer from the Department of Corrective Services nominated by the chief executive and 4 other members at least 1 of whom must be an Aborigine or Torres Strait Islander, at least 1 of whom must be a woman and at least 1 of whom must be a registered medical practitioner or psychologist.

Subclause (2) provides that the Governor in Council may end a member's appointment at any time.

Subclause (3) provides that it is not necessary for reasons to be given for ending a member's appointment.

**Disqualification from membership of regional boards**

Clause 173. provides that the following persons are not qualified to be, or continue to be, a member of a regional board:

(a) a doctor, volunteer or official visitor appointed under the Bill;

(b) a public service officer, other than the member nominated by the chief executive or a doctor;

(c) a person appointed or employed under the *Police Service Administration Act 1990, Criminal Justice Act 1989* or *Director of Public Prosecutions Act 1984;*

(d) an engaged service provider or its employees;

**Term of member's appointment**

Clause 174.(1) provides that a member of a regional board may be appointed for a term of up to 3 years.

Subclause (2) provides that if a new member has not been appointed before the expiry of a member's term, the member, if still qualified for membership, may continue to hold office until the new member is appointed.

Subclause (3) provides that a member, if still qualified for membership, may be reappointed.

**Remuneration of members**

Clause 175. provides for members of a regional board to be paid fees, allowances and expenses determined by the Governor in Council.

*Example—*

Members of the board are paid a fee for attendance at a meeting of the board according to the scale of fees set by the Department of Employment, Training and Industrial Relations for government boards. Members may also be paid travelling allowance, mileage etc.

**Vacation of member's office**

Clause 176. provides that a regional board member's office becomes vacant if the member resigns, is no longer qualified to be a member or the Governor in Council ends the member's appointment.

**Secretary of regional boards**

Clause 177. provides for the appointment by the chief executive of a public service officer to be the secretary of a regional board. In the absence of the secretary, a person may act as secretary of the board as provided for in the *Acts Interpretation Act 1954*, section 25.

**Meetings of regional boards**

Clause 178.(1) provides that a regional board must meet as often as necessary to exercise its powers and discharge its functions.

Subclause (2) provides that the president, or in the president's absence, the deputy president may convene a meeting of the board at any time.

Subclause (3) provides that if both the president and deputy president are unable to attend a meeting of a regional board the secretary may convene a meeting of the board to consider whether the board should meet to exercise its powers in relation to the amendment, suspension or cancellation of a post-prison community based.

*Example—*

> If, when neither the president nor deputy president of the board is available, a report is received by the secretary advising that a prisoner on parole has threatened to kill his wife and, in the view of the corrective services officer supervising the prisoner, the threat is serious, the secretary may convene a meeting by contacting at least 4 members of the board. The members contacted may decide that a meeting should be held to consider the report. The meeting may be held by telephone conference or by the secretary contacting members individually to consider the matter.

Subclause (4) provides that regional board must only meet in the area of the State for which it was established.

*Example—*

> In the example given under clause 170 the North Queensland Regional Community Corrections Board can only meet in, and consider matters arising in, that part of the State north of latitude 18 degrees south.

Subclause (5) provides for a meeting of the board to be held where 1 or all of the members communicate by way of, for example, telephone or video link-up.

Subclause (6) provides that a member who takes part in a meeting under subclause (4) is taken to be present at the meeting.

Subclause (7) provides that a quorum at a meeting is 4 members.

Subclause (8) provides that the president, or in the president's absence, the deputy president is the chairperson at a meeting of the Queensland board.

Subclause (9) provides that the chairperson must decide all questions of law arising out of any matter before the board.

*Example—*

> The chairperson may determine a finding of fact in relation to the preparation of a statement of reasons for purposes of the *Judicial Review Act 1991*.If a question of law arises at a meeting called by the secretary the matter giving rise to the question must be deferred until the president or deputy president is present at a meeting as chairperson.

Subclause (10) provides that a decision of the board must be by majority vote of the members present.

Subclause (11) provides that the chairperson has a deliberative and a casting vote.

Subclause (12) provides that the board may conduct its meetings as considered appropriate.

**Attendance of corrective services officer at regional board meetings**

Clause 179. provides for the attendance of a corrective services officer or an employee of the department or an engaged service provider at a meeting of regional board at the request of the secretary, to give advice or information to the board in relation to any matter relating to the granting or supervision of a post-prison community based order.

*Examples—*

1. The board may be considering calling upon a prisoner to show cause why the prisoner's parole order should not be cancelled and requires advice from the corrective services officer who supervises the prisoner in relation to the prisoner's response to parole supervision.

2. The board, when considering a prisoner's application for post-prison community based release, may require that a psychologist who has counselled the prisoner to attend the board meeting to discuss the prisoner's case.

**Annual reports of regional boards**

Clause 180.(1) provides that a regional board must submit an annual report to the Queensland board containing detail required by a guideline, if issued, by the Queensland board under clause 167(2)(b).

Subclause (2) provides that the report must be given to the Queensland board within 14 days after the end of the financial year.

Subclause (3) provides that, where the Queensland board is required to give a report to the Minister under clause 169, a regional board must provide any information requested by the Queensland board necessary for the preparation of the report.

***Division 3—Powers of corrections boards***

**General powers of corrections boards**

Clause 181. provides a corrections board with the power necessary to perform its functions.

**Powers of corrections board to require attendance**

Clause 182. (1) provides that a corrections board may issue an attendance notice to a person requiring the person to attend a board meeting at a stated time and place to give the board relevant information or a specified document containing relevant information.

Subclause (2) provides that a document requires to be produced under subclause (1) may be inspected and copied by the board.

Subclause (3) requires that a person served with an attendance notice under subclause (1) must;

(a) attend the board meeting at the stated time and place, unless the person has a reasonable excuse;

(b) give the relevant information required, unless the person has a reasonable excuse;

(c) produce a specified document, unless the person has a reasonable excuse.

The subclause provides a maximum penalty of 10 penalty units if a person fails to comply with this subclause.

Subclause (4) provides that it is a reasonable excuse for a person to fail to comply with subclause (3) if , by giving the relevant information or document, the person might tend to incriminate himself or herself.

Subclause (5) provides that a person required to attend a board meeting must be paid reasonable costs incurred by their attendance.

*Example—*

Public transport costs.

Subclause (6) defines "relevant information" to mean information regarding a prisoner's application for a post-prison community based release order or a prisoner's post-prison community based release order

## PART 3—GENERAL

### Legal proceedings

Clause 183. provides that a legal proceedings commenced against members of a community corrections board is to be under the name of the board, for example, the Brisbane Regional Community Corrections Board.

### Corrective services officers subject to direction of board

Clause 184. provides that in relation to a post-prison community based release order applying to a prisoner, a corrective services officer is subject to the directions of the board that made the order.

*Example—*

The corrective services officer assigned by the chief executive to supervise a prisoner on parole must provide a report to the board in relation to the prisoner's progress on parole when requested by the board.

**Chief executive must prepare and give reports to board**

Clause 185. provides that if asked to do so by a board, the chief executive must prepare and give to the board any report on, and information about, a prisoner's application for post-prison community based release, a prisoner or a post-prison community based release order.

*Example—*

A board may request any information it considers is relevant to its consideration of a prisoner's application for post-prison community based release, leave of absence or the prisoner's response to post-prison community based release. For instance, a report in relation to the circumstances of the family with whom the prisoner intends to reside if granted post-prison community based release or a report in relation to the persons with whom the prisoner is associating while on parole. The chief executive must comply with the board's request.

**Invalidity of acts**

Clause 186. provides that an act, proceeding or decision of a corrections board is not invalid because of a defect in the qualification, membership or appointment of a member of or a vacancy on the board.

*Example—*

If a board makes a decision to release a prisoner on parole and it is subsequently discovered that 1 of the members present was not qualified to be a member at the time the decision was made the parole order remains valid.

**Authentication of document**

Clause 187. provides that a document issued by a community corrections board under a provision of the Bill is authentic if it is made or signed by the president of the board or the secretary of the board, acting at the president's direction.

*Example—*

The signature of the president or secretary of a board on a parole order is sufficient to authenticate the parole order.

# CHAPTER 6—ADMINISTRATION

## PART 1—THE CHIEF EXECUTIVE

### Functions and powers of chief executive

Clause 188.(1) provides that, subject to any direction of the Minister, the chief executive is responsible for—

(a) the security and management of all corrective services facilities; and

(b) the safe custody and welfare of all prisoners; and

(c) the supervision of offenders in the community.

*Examples—*

1. The chief executive is responsible for all corrective services facilities defined in the dictionary which includes all prisons and community corrections centres.

2. The chief executive is responsible for ensuring that the security of a prison is maintained and that the conditions of prisoners meets appropriate standards and that relevant rehabilitation programs are provided.

3. The chief executive is responsible for ensuring that sufficient resources are provided for the management of offenders undergoing court imposed community supervision.

The chief executive is also subject to the provisions of section 54 of the *Public Service Act 1996* in relation to directions by the Minister.

Subclause (2) gives the chief executive the power to fulfill the role of the chief executive as provided for under this Bill and any other Act, for example the *Penalties and Sentences Act 1992* and the *Public Service Act 1996*. The subclause also gives to the chief executive the powers of a person in charge of a corrective services facility, provided in Part 3 of this Chapter and a corrective services officer, provided in Part 4 of this Chapter.

The chief executive has the authority under the *Public Service Act 1996*, section 57, to delegate the chief executive's powers to an appropriately qualified person.

*Examples—*

1. The chief executive may delegate the power to classify a prisoner under clause 12 of the Bill.

2. The chief executive may delegate the power to grant leave of absence to a prisoner under clause 58 of the Bill.

Any exercise of the power of delegation would be undertaken in accordance with section 27 A of the *Acts Interpretation Act 1954.*

**Policies and procedures**

Clause 189.(1) provides that the chief executive must make administrative policies and procedures to facilitate the effective and efficient management of corrective services.

*Example—*

Policy and procedures manuals are maintained in respect of custodial corrections and community corrections and provide the day to day operational processes of these areas of corrective services.

Subclause (2) provides that the policies and procedures must take into account the special needs of offenders.

*Example—*

The policies and procedures relating to transfer of prisoners must have regard to the Royal Commission into Aboriginal Deaths in Custody recommendation that Aboriginal and Torres Strait Islander prisoners be located as close as possible to their homes or place of family support.

Subclause (3) provides that the policies and procedures must be available for inspection by anyone, free of charge. Copies of the relevant policies and procedures will be available at various facilities and copies of all policies and procedures will be available at the department's headquarters.

Subclause (4) provides that where a policy or procedure contains information relating to security matters or matters to do with the maintenance of good order of a facility, that policy or procedure need not be made available for inspection by the public or a prisoner.

*Example—*

A procedure to be followed in the event of an escape from a facility should not be open to inspection.

**Services and programs to help offenders**

Clause 190.(1) provides the areas for which the chief executive must establish services or programs.

*Examples—*

1. To ensure that the medical needs of prisoners are adequately catered for.
2. To assist prisoners to rehabilitate and be absorbed into the community and remain crime free.
3. To provide education and training to prisoners to enable them to acquire new skills to use when released without the need to commit crimes.
4. To provide relevant programs to prisoners, for instance domestic violence counselling, to strengthen their family and community ties.
5. To provide similar programs to offenders undergoing court imposed community supervision.

Subclause (2) requires that services and programs must take account of the special needs of offenders and provides the example that, whenever possible, female doctors must be appointed to corrective services facilities for female prisoners.

**Monitoring devices**

Clause 191. enables the chief executive to require an offender to wear a device that monitors the offender's location. The clause gives as examples a prisoner on resettlement leave of absence or a prisoner on a post-prison community based release order, at the request of a community corrections board, being required to wear a monitoring device.

**Declaration of an emergency**

Clause 192.(1) provides that the chief executive may, with the Minister's approval, declare that an emergency exists at a prison. The declaration must be for a specified time, not exceeding 3 days, and can only be made when the chief executive reasonably believes that a situation exists that threatens or is likely to threaten the security or good order of the prison or the safety of any person in the prison.

*Example—*

Where a riot at a prison has caused substantial damage to the structure of the prison and fears are held that a mass escape could occur.

Subclause (2) provides that, unless revoked or extended, a declaration of emergency lapses at the expiration of the specified time under subclause (1).

Subclause (3) provides the powers that may be exercised by the chief executive during an emergency.

*Examples—*

1. Entry to the prison may be restricted to essential services and all work undertaken by prisoners in workshops may be stopped.
2. A prisoner's visits, access to a telephone or sporting activities may be withheld.
3. The chief executive may call upon the commissioner of police to provide police officers who can be authorised to perform the functions or exercise the powers of a corrective services officer under the direction of the senior police officer present.

Subclause (4) defines the term "prison" for the purposes of this clause. It can include part of a prison, allowing the declaration of an emergency to be confined to a particular part of a prison, for example the maximum security unit.

**Commissioner to provide police**

Clause 193.(1) provides that the chief executive may request the police commissioner to provide police officers to assist the chief executive to discharge the chief executive's functions provided for under the Bill.

*Examples—*

1. In the event of a declaration of an emergency at a prison.
2. In the event of industrial action by custodial staff at a corrective services facility.

Subclause (2) provides that the police commissioner must comply with a request made under subclause (1).

**Community service**

Clause 194.(1) empowers the chief executive to declare an activity to be community service for the purposes of this Bill or the *Penalties and Sentences Act 1992.*

*Examples—*

1. A project undertaken by prisoners participating in the WORC program.
2. Work beautifying an area undertaken by an offender ordered to perform community service by a court.

Subclause (2) provides that the chief executive may appoint a person to be a community service supervisor to supervise offenders, for instance to supervise an offender referred to in example 2 above.

Subclause (3) provides the circumstances in which a community service supervisor may cease to hold office.

*Examples—*

1. At the end of the supervisor's term of appointment.
2. If the supervisor resigns.

### Approved forms

Clause 195.(1) provides that the chief executive may approve the forms to be used under the Bill. Part 8 of the *Statutory Instruments Act 1992* applies to forms approved under this clause.

Subclause (2) provides that, where the Bill makes provision for the use of an instrument or order, the instrument or order must be in a form approved by the chief executive.

## PART 2—ENGAGED SERVICE PROVIDERS

### Engaging service providers

Clause 196.(1) empowers the chief executive to authorise in writing an entity, known as an "engaged service provider", to perform an office holder's functions. The term "office holder" is defined under subclause (6).

Previously, the *Corrective Services (Administration) Act 1988* provided a specific power to engage private service providers to perform corrective services functions. Under the Bill, in line with general government policy to utilise both private and public sectors in the delivery of corrective services, the power to engage service providers to undertake particular office holder's functions is derived from provisions such as Part 12 of the *Acts Interpretation Act 1954* and Part 5, Division 2 of the *Public Service Act 1996*.

Subclause (2) provides that an engaged service provider authorised under subclause (1) is taken to have the same powers as the office holder, including a power of delegation, other than the power to authorise an engaged service provider under subclause (1).

A similar provision to this is contained in the *Corrective Services (Administration) Act 1988*. Any exercise of the power of delegation would need to be undertaken in accordance with section 27 A of the *Acts Interpretation Act 1954*.

Subclause (3) empowers the chief executive to give an authorisation under subclause (1) in accordance with stated conditions, including for example, a condition:

(a) that a particular power only be exercised subject to a decision by the chief executive. The Bill provides an example in this regard, that a condition may require the engaged service provider to get the chief executive's consent before delegating a particular power; or

(b) imposing particular duties on the engaged service provider's employees. The Bill provides as one example in this regard, that a condition may require the engaged service provider to ensure its employees receive the training required by the chief executive. The Bill provides as another example, that a condition may require the engaged service provider to ensure its employees are subject to a code of conduct equivalent to the code of conduct, approved under the *Public Sector Ethics Act 1994*, for the Department of Corrective Services.

Subclause (4) ensures that the chief executive is not relieved of the obligation to ensure that the functions exercised by an authorised engaged service provider are properly performed.

Subclause (5) provides that laws pertaining to an office holder apply to the engaged service provider as if the service provider were the office holder.

Subclause (6) defines the terms "entity", "function" and "office holder" as used in this clause.

**Acts applying to engaged service providers**

Clause 197. provides that the *Freedom of Information Act 1992*, the *Judicial Review Act 1991* and the *Parliamentary Commissioner Act 1974* apply to an engaged service provider authorised under clause 196 of this Bill.

*Example—*

A prisoner aggrieved by a decision made by an engaged service provider may seek a statutory order of review of the decision.

**Review of engaged service provider**

Clause 198.(1) provides that the chief executive may appoint an appropriately qualified person to review an engaged service provider's performance of authorised functions.

Subclause (2) provides the matters to which an engaged service provider must allow unlimited access to the person appointed under subclause (1).

Subclause (3) provides that the person appointed under subclause (1) must provide a report to the chief executive on a review of an engaged service provider's performance.

The chief executive would take appropriate action to ensure that the independence of persons appointed under this clause would be maintained, in accordance with the findings of the 1999 Queensland Corrective Services Review (*Corrections in the Balance* 1999).

## PART 3—PERSONS IN CHARGE

**Appointing persons in charge**

Clause 199. empowers the chief executive to appoint an appropriately qualified person to be the person in charge of a corrective services facility. The person would perform the functions of a person in charge of a corrective services facility provided under the Bill.

**Functions and powers of persons in charge**

Clause 200.(1) provides that, subject to any direction of the chief executive, a person in charge of a corrective services facility is responsible for—

(a) the security and management of the facility to which they are appointed; and

(b) the safe custody and welfare of prisoners in the facility.

Subclause (2) gives the person in charge the power to fulfill their role as provided for under this Bill and any other Act, for example the *Penalties and Sentences Act 1992* and the *Bail Act 1980.* The subclause also gives the person in charge the powers of a corrective services officer.

Subclause (3) provides the person in charge of a corrective services facility with the authority to delegate their powers under the Bill to an appropriately qualified person.

Any exercise of the power in this regard would be undertaken in accordance with section 27 A of the *Acts Interpretation Act 1954.*

## PART 4—CORRECTIVE SERVICES OFFICERS

**Appointing corrective services officers**

Clause 201. empowers the chief executive to appoint a public service officer or another appropriately qualified person as a corrective services officer to perform the functions of a corrective services officer. This provision will also allow for the temporary appointment of persons, who are not public service officers or employees appointed under the *Public Service Act 1996,* to undertake a function which may require some or all powers of a corrective services officer.

*Examples—*

1. A person may be appointed as a corrective services officer to undertake custodial duties at a corrective services facility.

2. An officer of a law enforcement agency may be required to be appointed on a temporary basis as a corrective services officer in order to escort a prisoner to a place for the purpose of clause 55 (Removal of prisoner for law enforcement purposes).

3. A community person may be appointed on a temporary basis as a corrective services officer while he or she is supervising a prisoner who is undertaking community service under clause 58(1)(a) (community service leave of absence).

**Powers of corrective services officers**

Clause 202.(1) provides that the powers of a corrective services officer are as given under the Bill or another Act, for example the *Penalties and Sentences Act 1982*. The exercise of such power is subject to the direction of the chief executive.

Subclause (2) provides that the powers of a corrective services officer may be limited by a regulation, a condition of the officer's appointment or by a written notice to the officer from the chief executive.

**Identity cards for corrective services officers**

Clause 203.(1) provides that each corrective services officer must be issued with an identity card.

Subclause (2) provides the format for identity cards.

Subclause (3) states this clause does not prevent the giving of a single identity card to a person for the purposes of this Bill or another Act.

*Example—*

An identity card issued by the chief executive may allow the holder access to the Brisbane Magistrates Court.

**Surrender of equipment**

Clause 204.(1) provides that a corrective services officer who ceases to be a corrective services officer must return any weapon or firearm issued to them in their capacity as a corrective services officer immediately after cessation, unless they have a reasonable excuse for not doing so. The clause also provides for a maximum penalty of 20 penalty units for failing to return a weapon or firearm. The penalty provision increases that currently provided in the *Corrective Services (Administration) Act 1988* from 10 to 20 penalty units which is commensurate with the nature of the items when compared to those in subclause (2).

Subclause (2) provides that a corrective services officer who ceases to be a corrective services officer must return their identity card and anything else issued to them in their capacity as a corrective services officer within 7 days after cessation, unless they have a reasonable excuse for not doing so. The clause also provides for a maximum penalty of 10 penalty units for failing to return an issued item other than a weapon or firearm. The same penalty provision is currently provided in the *Corrective Services (Administration) Act 1988.*

**Corrective services dogs and dog handlers**

Clause 205. empowers the chief executive to certify a corrective services officer as a corrective services dog handler or a dog as a corrective services dog in order for the officer and dog to undertake duties required under the Bill.

**Use of corrective services dogs**

Clause 206.(1) provides for the situations in which a corrective services dog may be used.

*Examples—*

1. Searching for drugs.
2. Searching for an escaped prisoner.
3. Restraining a prisoner involved in a confrontation with corrective services officers.

Subclause (2) provides that subclause (1) (c) to (e) apply subject to the requirements in relation to the use of force (chapter 3, part 5).

**Corrective services dog may accompany officer**

Clause 207.(1) provides that when a corrective services dog is under the control of a dog handler, the dog and the handler may enter a place that a dog would normally be excluded from entering.

*Example—*

This provision could be used to allow a corrective services dog, when searching for an escaped prisoner, to enter a public building.

Subclause (2) provides that subclause (1) applies despite the provisions of any other Act or law.

**Application of laws**

Clause 208.(1) provides that a corrective services dog or dog handler when discharging official duties are exempt from any local law made by, for instance, a city or shire council.

*Example—*

> Under local law a dog is required to be on a leash when in a public place. It may be necessary for a corrective services dog to be released in a public place in pursuit of an escaping prisoner.

Subclause (2) refers to the *Animals Protection Act 1925*, section 4(3) which effectively provides that a person, who kills or attempts to kill a dog which, in a public place is causing danger or injury to that or any other person, is not liable to any action for killing or attempting to kill the dog. The provisions of this subclause ensure that a person who kills or injures a corrective services dog discharging official duties is not immune from prosecution under the provisions of the Bill. The Bill provides that a prisoner, or other person, who kills or injures a corrective services dog has committed an offence under clause 94, or an offence under clause 99 of the Bill, respectively.

## PART 5—DOCTORS

**Doctors**

Clause 209.(1) provides that the chief executive must appoint at least 1 registered medical practitioner as a doctor for each prison. The clause also provides that the chief executive may appoint a registered medical practitioner as a doctor for a community corrections centre or a WORC or WCC site.

Subclause (2) provides that a doctor, appointed under subclause (1), who is not employed under the *Public Service Act 1996* is entitled to remuneration, allowances and expenses approved by the chief executive.

**Doctor's functions**

Clause 210. prescribes the functions of a doctor appointed to a corrective services facility.

*Examples—*

1. A doctor may be requested to provide a medical report on a prisoner, seeking exceptional circumstances parole, who claims that the corrective services facility is unable to provide adequate medical treatment.

2. Conducting a body search of a prisoner when authorised under clause 28 of the Bill.

# PART 6—OFFICIAL VISITORS

**Appointing official visitors**

Clause 211.(1) provides that the chief executive may appoint an appropriately qualified person as an official visitor to a corrective services facility for a period of up to 3 years. The power to appoint an official visitor to a corrective services facility is discretionary. This enables the chief executive to appoint an official visitor to a facility in which the prisoners do not have access to community review and investigative processes or there are alternative review and investigative processes.

*Examples—*

1. An official visitor is not appointed to a corrective services facility owned and operated by an Aboriginal or Torres Strait Islander community. Such communities have their own system of investigating complaints by prisoners residing in the facilities.

2. An official visitor is not appointed to small community operated corrective services facilities in which prisoners, who have been granted a release to work order, reside. Such prisoners have relatively free access to the community and are not restricted in their access to the Parliamentary Commissioner for Administrative Investigation and lawyers.

Subclause (2) provides that:

(a) if 2 or more official visitors are appointed to a facility, at least 1 is to be a lawyer; and

(b) if there is a significant proportion of Aboriginal or Torres Strait Islander prisoners at a facility, at least 1 of the official visitors is to be an Aborigine or Torres Strait Islander; and

(c) at least 1 of the official visitors at a women's facility is to be a woman.

Subclause (3) provides that an employee of the public service or an employee of an engaged service provider must not be appointed as an official visitor.

Subclause (4) provides for an official visitor to receive remuneration, allowances and expenses approved by the chief executive.

Subclause (5) provides the circumstances in which an official visitor may be dismissed by the chief executive.

*Examples—*

1. If the official visitor is convicted of an indictable offence.
2. If the official visitor fails to perform their functions under the Bill.
3. If the official visitor solicits business or acts improperly in a matter in which the official visitor's personal interest conflicts with the public interest.
4. If the official visitor does anything which the chief executive considers warrants their dismissal.

**Frequency of official visits**

Clause 212.(1) provides the frequency with which an official visitor must visit the facility to which they are appointed.

Subclause (2) provides that an official visitor must provide immediate advice to the person in charge if unable to visit the facility at the scheduled time.

**Asking to see official visitor**

Clause 213.(1) provides that a prisoner's request to see an official visitor must be recorded in a register and the official visitor must be advised of the request when they next visit the facility.

Subclause (2) provides that a prisoner is not obliged to disclose and must not be asked to disclose their reason for requesting to see an official visitor.

**Official visitor's function**

Clause 214.(1) provides the circumstances in which an official visitor may investigate a prisoner's complaint.

*Examples—*

1. An official visitor may investigate a complaint relating to an act or omission by the chief executive, the person in charge of the corrective services facility or a corrective services officer appointed to the facility by a prisoner at the facility to which the official visitor is appointed.

2. A prisoner may lodge a complaint about the accuracy of the prisoner's private property record. The official visitor may investigate to determine whether there is any substance to the prisoner's complaint.

Subclause (2) provides the circumstances in which an official visitor must not investigate a prisoner's complaint.

*Examples—*

1. An official visitor must not investigate a complaint by a prisoner at a corrective services facility other than the facility to which the official visitor is appointed.

2. An official visitor must not investigate a complaint by a prisoner relating to the decision of a community corrections board.

3. An official visitor must not investigate a complaint by a prisoner with whom the official visitor has had a prior professional or personal relationship.

4. An official visitor must not investigate a complaint by a prisoner which the official visitor reasonably suspects involves official misconduct, unless the complaint has been referred to the Criminal Justice Commission and the CJC's chief officer of complaints has advised that the CJC does not intend to investigate the complaint.

5. An official visitor must not investigate a complaint by a prisoner relating to a matter currently before a court or tribunal.

6. An official visitor must not investigate a complaint by a prisoner that can be more appropriately dealt with by another person or agency.

7. An official visitor must not investigate a complaint by a prisoner if the official visitor's personal interest in the prisoner conflicts with the public interest.

8. An official visitor must not investigate a complaint by a prisoner that the official visitor believes to be frivolous or vexatious.

Subclause (3) requires that an official visitor act impartially when investigating a prisoner's complaint.

Subclause (4) enables an official visitor to refer a prisoner's complaint to another official visitor appointed to the same corrective services facility, provided that the other official visitor agrees to investigate the complaint and no significant delay will occur.

Subclause (5) provides that an official visitor, upon completion of an investigation of a complaint, may make a recommendation to the person in charge of the facility.

Subclause (6) provides that an official visitor, upon completion of the investigation of a complaint, must immediately advise the prisoner:

(a) whether a recommendation has been made to the person in charge of the facility; and

(b) if a recommendation has been made—the terms of the recommendation but without disclosing confidential information.

Subclause (7) declares that to remove any doubt the person in charge is not bound by a recommendation made under subclause (5). The subclause further declares that an official visitor can not overrule a decision about which a complaint has been made.

**Official visitor's powers**

Clause 215.(1) provides the access entitlements of an official visitor to the facility to which they are appointed:

(a) an official visitor may enter the facility at any time except when a declaration of emergency is in force at the facility;

(b) an official visitor may have access to a place where a prisoner, relevant to the matter under investigation, may be interviewed out of the hearing of other persons;

(c) an official visitor may inspect and copy any document kept under the Bill relevant to the matter under investigation other than a document to which legal professional privilege applies.

Subclause (2) provides that assistance must be provided to an official visitor to help the official visitor to exercise a power given under the Bill.

*Example—*

Assistance must be provided to an official visitor in locating a file, a document on a file or information stored in a computer.

**Official visitor's reports**

Clause 216. provides that an official visitor must provide a report to the chief executive:

(a) in relation to an investigation—at the request of the chief executive;

(b) at least every 3 months summarising the number and types of complaints investigated.

## PART 7—CHAPLAINS, ELDERS, RESPECTED PERSONS AND SPIRITUAL HEALERS

**Appointing chaplains**

Clause 217.(1) empowers the chief executive to appoint a chaplain, nominated by a religious group, for a corrective services facility.

Subclause (2) provides that the regulation may prescribe the functions of an appointed chaplain. It is anticipated that the Regulation will provide that in relation to the duties and functions of a chaplain appointed to a corrective services facility:

(a) a chaplain may, at all reasonable times but except during a declared emergency, access all areas of a facility subject to any direction by a corrective services officer;

(b) only a chaplain authorised by the State Chaplaincy Board may conduct religious services or ceremonies within a facility;

(c) only a chaplain authorised by the State Chaplaincy Board may introduce altar/communion wine into a facility for religious observance;

(d) a prisoner, including a prisoner undergoing any form of segregation, is to have access to a chaplain or elder, respected person or indigenous spiritual healer, or another religious or spiritual representative if the latter is requested by the prisoner;

(e) any visit by a religious or spiritual representative referred to in paragraph (d) must be co-ordinated through the chaplain and approved by the person in charge;

(f) the person in charge, in consultation with a chaplain, must approve all religious publications, materials and equipment for circulation within a facility;

(g) the privacy of pastoral discussions between a prisoner and a chaplain, elder, respected person or indigenous spiritual healer must be respected;

(h) any activity conducted within a facility by a chaplain, elder, respected person or indigenous spiritual healer must be undertaken in such a way that does not jeopardise the security or good order of the facility.

It is also anticipated that the regulation will provide that a chaplain appointed to the transferring and receiving prison may be required to act as an independent scrutineer of involuntary transfers of prisoners.

**Appointing elders, respected persons and spiritual healers**

Clause 218. empowers the chief executive to appoint an Aboriginal or Torres Strait Islander elder, respected person or indigenous spiritual healer for a corrective services facility.

It is anticipated that the regulation will provide that elders, respected persons and indigenous spiritual healers may make arrangements regarding the person's access and activities within the corrective services facility directly with the person in charge.

## PART 8—INSPECTORS

**Appointing inspectors**

Clause 219.(1) provides that the chief executive may appoint an appropriately qualified person as an inspector.

Subclause (2) provides that the function of an inspector is to investigate an incident.

The term "incident" is defined in the dictionary.

*Examples—*

1. The death of a prisoner at a corrective services facility.

2. The escape of a prisoner.

Subclause (3) provides that at least 2 inspectors must be appointed to investigate each incident.

Subclause (4) provides that at least 1 of the inspectors appointed under subclause (1) must not be an employee of the Department of Corrective Services or an employee of the engaged service provider that administers the facility at which the incident occurred. If the incident involves an Aboriginal or Torres Strait Islander prisoner, 1 of the inspectors must be an Aborigine or Torres Strait Islander.

The provisions for a minimum of 2 inspectors, 1 internal and 1 external, is made in consideration of the findings of the 1993 Public Sector Management Commission review of the Queensland Corrective Services Commission (PSMC 1993, p. 231).

*Example*

One inspector may be a corrections practitioner and the other an appropriately knowledgeable independent person.

## Appointment conditions

Clause 220.(1) provides that an inspector holds the appointment on the conditions stated in the instrument of appointment.

Subclause (2) provides for an inspector, who is not a public service officer, to receive remuneration, allowances and expenses as determined by the chief executive.

Subclause (3) provides the circumstances in which an inspector may cease to hold office.

*Examples—*

1. At the end of the inspector's term of appointment.

2. If the inspector's appointment is subject to his/her holding a particular office and he/she ceases to hold that office.

3. The inspector resigns.

Subclause (4) provides that the instrument of appointment of an inspector must state the incident to be investigated and the powers under the Bill which the inspector may exercise.

**Inspector's powers generally**

Clause 221.(1) provides the access entitlements of an inspector to the facility at which the incident occurred:

(a) an inspector may enter the facility at any time except when a declaration of emergency is in force at the facility; or

(b) an inspector may interview any prisoner; or

(c) an inspector may have access to a place where a prisoner, relevant to the matter under investigation, may be interviewed out of the hearing of other persons; or

(d) an inspector may inspect and copy any document kept under the Bill relevant to the matter under investigation other than a document to which legal professional privilege applies.

Subclause (2) provides that assistance must be provided to an inspector to help the inspector to exercise a power given under the Bill.

*Example—*

Assistance must be provided to an inspector in locating a file, a document on a file or information stored in a computer.

**Inspector's power to require information**

Clause 222.(1) provides that this clause applies if an inspector is investigating an incident and the inspector reasonably believes a person performing a function under the Bill may be able to give information about the offence or death.

Subclause (2) provides that an inspector may require the person to give information about a matter referred to in subclause (1).

Subclause (3) provides that when making the requirement, the inspector must warn the person that it is an offence for the person not to give the requested information unless the person has a reasonable excuse.

Subclause (4) provides that the person must give the information, unless the person has a reasonable excuse. The maximum penalty is 40 penalty units or 6 months imprisonment.

Subclause (5) provides that it is a reasonable excuse for an individual to fail to give the requested information required under subclause (2) if giving the information might tend to incriminate the individual.

**Inspector's reports**

Clause 223. provides that the inspectors appointed to investigate an incident must provide a written report to the chief executive containing the results of the investigation and any recommendations relating to the findings.

## PART 9—VOLUNTEERS

**Authorising volunteers**

Clause 224.(1) empowers the chief executive to authorise in writing a person (known as a "volunteer") to perform unpaid volunteer work for the welfare of prisoners or unpaid supervision of offenders undergoing court orders requiring supervision.

*Examples—*

1. A social work student, as practical experience, may be authorised to provide supervised counselling services to prisoners.

2. Where an offender, ordered by a court to perform community service, lives in a remote area with no community corrections office nearby, the chief executive may authorise a resident of the area eg. a police officer, to be a volunteer to supervise the offender while they perform the community service.

Subclause (2) provides that a person, authorised by the chief executive to be a volunteer must:

(a) comply with any condition in the authorisation; and

(b) if authorised as a volunteer at a corrective services facility, must comply with any direction given by a corrective services officer relating to the security or good order of the facility.

Subclause (3) provides that the chief executive may approve the volunteer's expenses.

*Example—*

Meal and mileage allowance.

# PART 10—CORRECTIVE SERVICES ADVISORY COUNCIL

## Establishment of advisory council

Clause 225.(1) establishes the Corrective Services Advisory Council.

Subclause (2) provides that the advisory council reports directly to the Minister.

## Functions and powers of advisory council

Clause 226.(1) provides that the function of the advisory council is to advise the Minister of community views about corrective services generally and the department’s policies and procedures, and examine and make recommendations on particular issues at the request of the Minister. The advisory council is to be broadly representative of the stakeholder groups in corrective services.

Subclause (2) provides that in performing its function the advisory council should seek to contribute to a culture of openness and transparency in corrective services management

Subclause (3) gives the advisory council the necessary powers to fulfill its role as provided for under this Bill.

## Composition

Clause 227.(1) provides that the advisory council shall consist of:

(a) the chief executive; and

(b) not more than 9 other persons, known as "appointed members", appointed by the Minister.

Subclause (2) provides that the appointed members of the advisory council may include people with business, legal and advocacy issues and employee relations expertise, people of Aboriginal and Torres Strait Islander descent and correctional staff representatives.

Subclause (3) provides that the Minister must appoint 1 member to be the chairperson of the advisory council.

**Term of appointment**

Clause 228.(1) provides that as near as practicable to one-half of the initial advisory council appointed members to be appointed are to be appointed for a term of 18 months.

Subclause (2) provides that the remaining appointed members are to be appointed for a period of not more than 3 years.

*Example—*

> Subclauses (1) and (2) will give the Minister the discretion to appoint a number of new members of the advisory council every 18 months.

Subclause (3) provides that an appointed member must not be appointed for more than 2 terms, whether consecutive or not.

Subclause (4) enables the Minister to end the appointment of an appointed member at any time.

Subclause (5) provides that it is not necessary for reasons to be given for ending an appointed member's appointment.

**Conditions of appointment**

Clause 229.(1) provides that the Minister may decide, from time to time, the conditions that are to be placed on the appointment of an appointed member of the advisory council.

Subclause (2) provides that an appointed member of the advisory council is not entitled to any remuneration, or allowances for participating in advisory council meetings.

Subclause (3) provides however that the Minister may approve the expenses reasonably incurred by an appointed member of the advisory council in attending a meeting be paid and, if appropriate, paid in advance.

*Example—*

The cost of travel to and from, and accommodation costs while attending, an advisory council meeting.

### Meetings

Clause 230.(1) provides that, subject to subclause (2), advisory council meetings are to be held at least 4 and not more than 6 times per year at times and places chosen by the Minister.

Subclause (2) provides that the Minister may ask the advisory council to meet more frequently to deal with particular issues.

*Example—*

The advisory council may need to hold an additional meeting to consider the introduction of a new industry at a corrective services facility.

## PART 11—PRISONERS OF THE COURT

### Prisoners in proper officer of the court’s custody

Clause 231.(1) provides that a person, required to surrender into the custody of a court, must surrender into the custody of the proper officer of the court. The term "proper officer of the court" is defined in the dictionary.

Subclause (2) provides that a prisoner of a court is in the custody of the proper officer of the court until:

(a) released on bail; or

(b) discharged from lawful custody; or

(c) otherwise dealt with as the court directs.

Subclause (3) vests a proper officer of the court with the powers of a person in charge of a secure facility necessary for the discharge of the proper officer's functions.

*Example—*

A proper officer may give a prisoner a direction and the prisoner must comply with the direction.

Subclause (4) empowers a proper officer to request the chief executive or the commissioner of the police service to provide officers to assist the proper officer in the discharge of the proper officer's functions.

*Example—*

> Corrective services officers are employed in supervising the cells attached to the Supreme and District Courts Complex in Brisbane.

Subclause (5) provides that the chief executive or commissioner of the police service must comply with a request made under subclause (4).

Subclause (6) provides a proper officer with the power of delegation. Any exercise of the power of delegation would need to be in accordance with section 27 A of the *Acts Interpretation Act 1954*.

**Court cells**

Clause 232.(1) provides that a person who is not a prisoner of a court may be detained in a court cell if the person is lawfully in custody to attend before a court, person or tribunal.

Subclause (2) provides that a person mentioned in subclause (1) is in the custody of the proper officer of the court while detained in a court cell.

Subclause (3) provides that the proper officer of the court is responsible for the management, security and good order of a court cell.

Subclause (4) defines the term "court cell" for the purposes of this clause as a place attached to or near the court where a prisoner of the court is detained that is not a corrective services facility.

## PART 12—PROPERTY

### *Division 1—Prisoner's money*

**Prisoners trust fund to be kept**

Clause 233.(1) provides that the chief executive must establish a trust fund for prisoners' money.

Subclause (2) provides that any money received by a prisoner during the course of their imprisonment must be paid into the prisoner's account within the trust fund.

*Example—*

> Money forwarded to a prisoner by family or friends to be used to purchase toiletry items etc., remuneration earned by the prisoner for work performed at the corrective services facility or wages paid to a prisoner while on release to work.

Subclause (3) provides that the chief executive must, at the request of the Public Trustee, pay to the Trustee, money in a prisoner's account in accordance with Part 7 of the *Public Trustee Act 1978.*

*Example—*

> The Public Trustee can administer the estate of a prisoner serving life imprisonment, an indefinite sentence or 3 years or more imprisonment.

Subclause (4) allows a prisoner to spend money in the prisoner's account with the chief executive's approval.

*Examples—*

1. Purchase of items from the canteen—toiletries, underclothing, coffee etc.
2. A prisoner may send money, surplus to their needs, to assist a family member.

Subclause (5) empowers the chief executive to impose limits on the amount a prisoner may spend. This provision is used primarily to minimise possible criminal activity and to ensure a prisoner has sufficient funds to meet their immediate needs on discharge or release.

Subclause (6) provides that the chief executive must pay to a prisoner the balance of funds in the prisoner's account at the time of discharge or release.

**Trust account records**

Clause 234. requires a proper account of a prisoner's money to be kept by the chief executive.

**Payments to prisoner’s account**

Clause 235. allows the chief executive to pay amounts into a prisoner's account, for example to enable a prisoner to purchase essential toiletry items for personal use, or as prescribed by regulation.

**Deductions from prisoner's account**

Clause 236. empowers the chief executive to deduct money from a prisoner's account for a number of specified purposes or as prescribed by regulation.

*Examples—*

1. Tuition fees for a prisoner wishes to attend a higher educational institution.
2. Payment to cover damage to a building or equipment caused by a prisoner.

It is anticipated that the regulation will provide that the chief executive may make deductions from a prisoner's account within the trust fund for the following purposes, subject to the availability of funds in the account:

(a) prisoner telephone calls made through the Arunta or other approved telephone system and standard postage charges;

(b) prisoner purchases made through corrective services facility canteen or other process in place for the regular purchase by prisoners of items including tobacco, toiletries and food stuffs;

(c) prisoner television hire;

(d) to help a prisoner, granted a community work order, to undertake approved reintegration leave.

**Investment of prisoners trust fund**

Clause 237.(1) allows the chief executive to invest amounts held in the prisoners trust fund in a financial institution.

Subclause (2) requires that any interest earned on the investment is to be used for the general benefit of prisoners and that the chief executive report annually to the Minister on the application of the interest.

*Example—*

Sporting equipment, educational and reading materials.

**Remuneration for prisoners**

Clause 238.(1) provides that the chief executive may approve that a particular activity or program attract remuneration and allows the chief executive to set the rate of remuneration payment to a prisoner undertaking an approved activity or program.

Subclause (2) requires the chief executive to review the adequacy of remuneration rates at least annually.

Subclause (3) provides that the chief executive may withhold all or part of remuneration payable to the prisoner if the prisoner has not diligently undertaken the activity or program or has refused to participate in a work activity.

***Division 2—Other property of prisoner***

**Bringing property into facility**

Clause 239.(1) provides that the person in charge of a corrective services facility may allow a prisoner's personal property to enter the facility.

Subclause (2) provides that the person in charge may impose conditions about the property, including for example:

(a) a condition limiting the property's use; or

(b) a condition that the property be safe for use.

Subclause (3) provides that a prisoner must pay any costs associated with ensuring that the prisoner's property is safe to use.

Subclause (4) provides that if the prisoner mentioned in subclause (3) fails to pay the costs, the person in charge may refuse to allow the property to enter the facility.

Subclause (5) provides that an regulation may be made about the property a prisoner may keep. It is anticipated that the regulation will provide that the volume of a prisoner's private property permitted to enter a corrective services facility, excluding consumable items, legal documents and approved educational material and equipment, not exceed .25 cubic metres.

Subclause (6) requires the person in charge of the facility to record the description, receipt and movement of a prisoner's personal property.

**Effect of escape on property**

Clause 240.(1) provides that a prisoner who escapes is deemed to have abandoned any personal property held in a corrective services facility and the property is forfeited to the State.

Subclause (2) empowers the person in charge of the facility to dispose of or destroy the property referred to in subclause (1). Any disposal or destruction of the property is to be undertaken with the consent of the chief executive. A prisoner will be informed of this provision upon admission in accordance with clause 11.

## PART 13—COMPENSATION

**Compensation for loss or damage of property**

Clause 241.(1) provides that a person may claim compensation from the State for the loss of or damage to the person's property if the person was in the chief executive's custody and the property was lost or damaged while stored by the chief executive or being transported by the chief executive between corrective services facilities.

Subclause (2) provides that the person mentioned in subclause (1) may apply to the chief executive for payment of an amount by the State for the loss or damage.

Subclause (3) provides that the application for compensation mentioned in subclause (2) is to be decided by the chief executive.

Subclause (4) provides that the chief executive may approve the payment of an amount in compensation only if satisfied that payment is justified in all the circumstances.

Subclause (5) provides a definition of the term "property" for the purposes of this clause.

## PART 14—INFORMATION

**Concerned persons**

Clause 242.(1) provides that the chief executive must establish a register of concerned persons.

Subclause (2) describes the persons who may apply to be registered as a concerned person.

Subclause (3) provides that a registered concerned person may nominate a victims support agency or another person to receive information on the person's behalf.

Subclause (4) enables the chief executive to release information to a concerned person and provides for the type of information which may be released.

*Examples—*

1. The location and classification of the prisoner.
2. The eligibility dates for and actual dates of post-prison community based release.
3. The death or escape of or other exceptional events relating to the prisoner.

Subclause (5) enables the chief executive to give information to an agency or person if one is nominated by the concerned person under subclause (3).

**Confidential information**

Clause 243.(1) provides that this clause applies to a person who:

(a) is performing or has performed a function under this Bill or the *Corrective Services Act 1988* or the *Corrective Services (Administration) Act 1988* or is otherwise engaged in the administration of this Bill or the *Corrective Services Act 1988* or the *Corrective Services (Administration) Act 1988*; or

(b) has obtained confidential information from a person mentioned in (a).

The term "confidential information" is defined in the dictionary.

Subclause (2) provides that a person referred to in subclause (1) must not disclose confidential information to anyone else except as provided for in subclause (3). The subclause also provides a maximum penalty for unauthorised disclosure is 100 penalty units or 2 years imprisonment. The penalty is unchanged from the provisions of the *Corrective Services Act 1988*.

Subclause (3) provides the circumstances in which a person may release confidential information.

*Example—*

A psychiatric report in relation to a prisoner who has been transferred to another State.

**Commissioner to provide criminal history**

Clause 244.(1) provides that for purposes of the Bill and the *Penalties and Sentences Act 1992* the chief executive may request the commissioner of the police service to provide a report about the criminal history of an offender, a person performing a function under the Bill or a visitor to a corrective services facility.

*Examples—*

1. The chief executive may request the official police criminal history of a person sentenced to imprisonment or ordered to undergo a community based order.

2. The chief executive may request that a check be conducted to determine whether a person applying for a position in the department has a criminal history.

3. The chief executive may request that a check be conducted to determine whether a person seeking to visit a prisoner or a corrective services facility has a criminal history.

Subclause (2) requires the commissioner to give the chief executive a written report about the criminal history of persons mentioned in subclause (1) that is either in the commissioner's possession or that the commissioner can access through arrangements with the police service of another State.

*Example—*

The commissioner must provide, in addition to the criminal history of offences committed in Queensland by a person, the criminal history of offences committed by the person in other States.

Subclause (3) provides that the chief executive may give information contained in a report provided under subclause (2) to:

(a) the person in charge of an institution (including in another State) to which a prisoner is, or is to be, transferred under the Bill or the *Prisoners (Interstate Transfer) Act 1982*; or

(b) a person in another State for the transfer of a prisoner's parole order under the *Parole Orders (Transfer) Act 1984*; or

(c) a proper authority for the purpose of the *Penalties and Sentences Act 1992*, section 136; or

(d) a corrections board.

*Examples—*

1. The offence details of a prisoner transferred to the John Oxley Memorial Hospital for treatment of a psychiatric disorder.

2. The *Parole Orders (Transfer) Act 1984* provides that all documents, which would normally include a criminal history, that were before a community corrections board which granted parole to a prisoner must be sent to the State to which a request for the transfer of the parole order is sent.

3. Where an offender on a community based order is permitted to reside in another State the *Penalties and Sentences Act 1992*, section 136 provides that a copy of the order and other relevant documents and information, which would normally include a criminal history, be forwarded to the proper authority in that State.

Subclause (4) provides that the information in the report may include a reference to, or a disclosure of, a conviction referred to in the *Criminal law (Rehabilitation of Offenders) Act 1986*, section 6. Section 6 of that Act provides for the non-disclosure of some convictions after a certain period.

Subclause (5) defines the term "criminal history" for the purpose of this clause.

**Pre-sentence reports**

Clause 245.(1) provides that the chief executive must, when required by a court, arrange for a corrective services officer to prepare a report in relation to a person who has been convicted of an offence. This report, known as a "pre-sentence report" may be used by the court to assist in determining an appropriate sentence. The report may make recommendations, for instance, that a person is or is not suitable to be granted a community based order. The report would normally be prepared by an officer employed to supervise offenders in the community.

Subclause (2) provides that if the court which requires a pre-sentence report in relation to a convicted person grants the person bail, it must order the person to report to a nominated corrective services officer or office within a stated time, for the purposes of preparation of the report.

Subclause (3) provides that a pre-sentence report must be given to the court, if in writing in triplicate, within 28 days of the court directing the report be prepared.

Subclause (4) provides that a copy of the pre-sentence report must be given to the prosecution and the convicted person's legal representatives.

Subclause (5) provides that a copy of the pre-sentence report is given to the prosecution and the convicted person's legal representatives in sufficient time before the sentencing proceedings to enable both parties to consider and respond to the report.

Subclause (6) provides that the court may order that all or a part of the report not be shown to the convicted person.

*Example—*

> The report may contain information provided by the victim of the offence which, if disclosed to the convicted person, could place the victim in jeopardy.

Subclause (7) provides that the copy of the pre-sentence report given to the prosecution and the convicted person's legal representatives must be returned to the court before the end of the sentencing proceedings.

Subclause (8) provides that a report, purporting to be a pre-sentence report made by a corrective services officer, is evidence of the matters contained in the report.

Subclause (9) provides that an objection must not be taken or allowed to the evidence contained in the pre-sentence report on the ground that it is hearsay.

## PART 15—LEGAL PROVISIONS

### Royal prerogative of mercy etc. not affected

Clause 246.(1) provides that the provisions of the Bill do not affect the royal prerogative of mercy.

Section 11 A of the *Constitution Act 1867* provides that the Governor is the representative of the Queen in the State. As a consequence, the Governor possesses certain powers known as the Royal Prerogatives which include the power to be able to grant a pardon or remission of a sentence. The royal prerogative of mercy was previously preserved by the *Corrective Services*

*Act 1988*, section 205. It is also preserved in the Commonwealth and in the other States and Territories.

*Example—*

> The Governor may grant remission of a prisoner's sentence, either wholly or in part, to mark a special occasion. In 1982 prisoners were granted up to 70 days remission to mark the Queen's visit to Australia.

Subclause (2) provides that nothing in the Bill should be interpreted as overriding any authority or jurisdiction that a court, judge or justice may possess under another Act or law unless specifically provided for in the Bill.

**Interpretation of warrant**

Clause 247.(1) enables the chief executive to apply to a Supreme Court judge for an interpretation of the content of a warrant committing a person into custody.

Subclause (2) provides that the judge's interpretation of the warrant may be used by the chief executive to give effect to the warrant.

Subclause (3) provides that an appeal can not be made against the judge's interpretation.

**Execution of warrant by corrective services officer**

Clause 248. allows a warrant issued by a court which requires police officers to convey a person, before the court, to a corrective services facility to be executed by a corrective services officer.

*Example—*

> A corrective services officer may take custody of a person at the court and convey the person to a corrective services facility.

**Protection from liability**

Clause 249.(1) provides that an official does not incur civil liability for an act done, or omission made, honestly and without negligence under this Bill.

Subclause (2) provides that subject to an official acting honestly and without negligence any civil liability incurred for an act or omission attaches to the State.

Subclause (3) defines the term "official" for the purpose of this clause.

**Proceedings for offences**

Clause 250.(1) provides that a proceeding for an offence against the Bill, other than an offence of unlawful assembly, riot or mutiny, is a summary proceeding under the *Justices Act 1886*.

Subclause (2) provides the time frame for commencement of proceedings taken under subclause (1).

**Evidentiary aids**

Clause 251.(1) provides that subclauses (2) to (7) apply to a proceedings under this Bill or another Act.

Subclause (2) provides that a party to the proceedings must give reasonable notice of at least 7 days, if the party requires proof of the appointment of a person appointed under this Bill or the power given to an appointed person.

Subclause (3) provides specific matters for which a certificate, signed by the chief executive, is evidence of the matter.

*Example—*

That a person is, or was at a particular time, a prisoner.

Subclause (4) provides that a certificate signed by a secretary of a corrections board recording a decision of the board is evidence of the decision.

Subclause (5) provides that a signature purporting to be the signature of an appointed person is evidence of the person's signature.

Subclause (6) provides that in a complaint starting the proceeding, a statement that the offence in the complaint came to the complainant's knowledge on a stated day is evidence of the matter.

Subclause (7) provides a definition of the term "appointed person" for the purposes of this clause.

# PART 16—MISCELLANEOUS

**Review of Act**

Clause 252. provides that the Minister must review the efficacy and efficiency of this Bill within 5 years of its commencement.

**Exemption from tolls**

Clause 253. provides that a vehicle used for transporting prisoners is not required to pay a toll imposed for the use of a road, bridge or ferry.

**Regulation-making power**

Clause 254.(1) empowers the Governor in Council to make regulations for the purposes of the Bill.

Subclause (2) provides that a regulation made under subclause (1) may prescribe offences and penalties for a breach of a regulation, privileges and fees payable for purposes under the Bill.

In relation to privileges it is anticipated that the regulation will prescribe, for example, that where a prisoner has tested positive for the consumption or use of a prohibited substance the prisoner may forfeit some or all of the following privileges for a period no greater than 7 days:

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

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

(c) associating with another prisoner;

(d) use of or access to television, radio, audio cassette or compact disc players or computers, whether for personal use or for use as a member of a group;

(e) use of or access to musical instruments, whether for personal use or for use as a member of a group;

(f) use of or access to library facilities;

(g) purchasing goods other than essential toiletries or writing materials;

(h) use of or access to the prisoner's private property;

(i) receiving a contact personal visit;

(j) access to leave of absence other than for compassionate reasons, medical, dental or optical treatment.

# CHAPTER 7—TRANSITIONAL PROVISIONS

## PART 1—CONTINUATION OF REGIONAL BOARDS

### Continuation of regional community corrections boards

Clause 255. provides that a regional community corrections board established under section 143 of the *Corrective Services Act 1988* and in existence immediately before the repeal of that Act is taken to have been established under clause 170 of this Bill.

## PART 2—CONTINUING APPOINTMENTS

### Conditions of continuing appointments

Clause 256. provides that an appointment continued under this part continues until the end of the term of the appointment, if any, and on the conditions of the appointment that are not inconsistent with this Bill.

### General manager of a prison

Clause 257. provides that a person, who immediately before the commencement of this section was a general manager of a prison is taken to be a person in charge of the prison.

**Manager of a community corrections centre**

Clause 258. provides that a person, who immediately before the commencement of this section held an appointment as a manager of a community corrections centre continues to hold the appointment as the person in charge of the centre.

**Correctional officers**

Clause 259. provides that a person, who immediately before the commencement of this section was appointed as:

(a) a custodial correctional officer;

(b) a community correctional officer;

(c) a special correctional officer;

(d) a corrective services officer,

continues to hold the appointment as a corrective services officer.

**Doctors**

Clause 260. provides that a person, who immediately before the commencement of this section was a medical officer to a prison is taken to be a doctor to the prison.

**Chaplains**

Clause 261. provides that a person, who immediately before the commencement of this section was a chaplain to a prison or community corrections centre, continues to be a chaplain to the prison or community corrections centre.

**Official visitors**

Clause 262. provides that a person, who immediately before the commencement of this section was an official visitor to a prison or community corrections centre, continues to be an official visitor to the prison or community corrections centre.

**Inspectors**

Clause 263. provides that a person, who immediately before the commencement of this section was an inspector, continues to be an inspector.

**Corrective Services Advisory Council members**

Clause 264. provides that a person, who immediately before the commencement of this section was a member of a Corrective Services Advisory Council, continues to hold the appointment as a member of the council.

**Board members**

Clause 265.(1) provides that a person, who immediately before the commencement of this section was a member of the Queensland Community Corrections Board, continues to be a member of the board.

Subclause (2) provides that a person, who immediately before the commencement of this section was the president or deputy president of the Queensland Community Corrections Board, continues to be the president or deputy president of the board.

Subclause (3) provides that a person, who immediately before the commencement of this section was the secretary to the Queensland Community Corrections Board, continues to be the secretary of the board.

Subclause (4) provides that a person, who immediately before the commencement of this section was a member of a regional community corrections board, continues to be a member of the board.

Subclause (5) provides that a person, who immediately before the commencement of this section was the president or deputy president of a regional community corrections board, continues to be the president or deputy president of the board.

Subclause (6) provides that a person, who immediately before the commencement of this section was the secretary to a regional community corrections board, continues to be the secretary of the board.

**Volunteers**

Clause 266. provides that a person, who immediately before the commencement of this section was a volunteer, continues to be a volunteer.

## PART 3—OTHER TRANSITIONAL PROVISIONS

**References in Acts or documents**

Clause 267. provides that in an Act or document:

(a) a reference to the *Corrective Services Act 1988*, or the *Corrective Services (Administration) Act 1988* may, if permitted by the context, be taken to be a reference to this Bill;

(b) a reference to the general manager of a prison is taken to be a reference to the person in charge of the prison;

(c) a reference to a manager of a community corrections centre is taken to be a reference to the person in charge of the centre;

(d) a reference to a general manager of the WORC program is taken to be a reference to the person in charge of WORC sites; and

(e) a reference to a custodial correctional officer, a community correctional officer; a special correctional officer, and a supervisor is taken to be a reference to a corrective services officer.

**Authorities**

Clause 268.(1) provides that this clause applies to an authority:

(a) that was made under a provision of the repealed Acts (that is, the *Corrective Services Act 1988* and the *Corrective Services (Administration) Act 1988*); and

(b) in relation to which there is a corresponding provision under this Bill; and

(c) that was in force immediately before the commencement of this clause.

Subclause (2) provides that an authority mentioned in subclause (1) continues in force with any changes necessary to make it consistent with, and to adapt its operation to the provisions of, this Bill.

Subclause (3) defines the term "authority" as used in this clause.

**Custody of prisoners**

Clause 269. provides that a prisoner in a person's custody under the *Corrective Services Act 1988* remains a prisoner in the person's custody under this Bill.

**Corrective services facilities**

Clause 270.(1) provides that any place declared to be a prison or a community corrections centre pursuant to the *Corrective Services Act 1988,* sections 11 or 12 respectively and which was a prison or a community corrections centre immediately before the commencement of this clause, continues to be a prison or a community corrections centre as if it had been declared to be a prison or a community corrections centre under this Bill.

Subclause (2) provides that the assignment of a name to a prison or a community corrections centre pursuant to the *Corrective Services Act 1988,* sections 11 or 12 respectively and which was in force immediately before the commencement of this clause, continues to be the name of the prison or the community corrections centre as if it had been assigned under this Bill.

Subclause (3) provides that the definition of the limits of a prison or a community corrections centre pursuant to the *Corrective Services Act 1988,* sections 11 or 12 respectively and which was in force immediately before the commencement of this clause, continues to be the definition of the limits of the prison or the community corrections centre as if it had been defined under this Bill.

**WORC and WCC Programs**

Clause 271.(1) provides for the continuation of the WORC Program, approved as an approved compulsory program in existence under the *Corrective Services Act 1988,*immediately before the commencement of this section, continues in existence under this Act as the WORC Program.

Subclause (2) provides for the continuation of the WCC Program, approved as an approved compulsory program in existence under the *Corrective Services Act 1988,* immediately before the commencement of this section, continues in existence under this Act as the WCC Program.

**Regulations and rules**

Clause 272.(1) provides that the *Corrective Services Regulation 1989* and the *Corrective Services (Establishment of Prisons) Regulation 1992* continue and may be amended or repealed as if they had been made under this Bill.

Subclause (2) provides that the corrective services rules made under the *Corrective Services (Administration) Act 1988,* section 20 continue in force as regulations and may be amended or repealed as if they had been made under this Bill.

Subclause (3) provides that the instruments mentioned in subclauses (1) and (2) must be read with any changes necessary to ensure their consistency with this Bill and to adapt their operation with the provisions of this Bill.

*Example—*

> Where a corrective services rule is inconsistent with a provision of the Bill or Regulation the latter prevails and the former, to the extent of the inconsistency, is invalid.

Subclause (4) provides that this clause expires 1 year after it commences. This will enable the current instruments to continue in force pending the promulgation of new regulations under this Bill.

**Proceedings**

Clause 273. provides that proceedings, including a proceeding for a breach of discipline, started before the commencement of this clause under a provision of the repealed Acts (that is, the *Corrective Services Act 1988* and the *Corrective Services (Administration) Act 1988*), and pending at the date of the repeal, may be continued as if they had been started under the corresponding provision of this Bill.

**Prisoners trust fund**

Clause 274.(1) provides that the prisoners trust fund established under the *Corrective Services Act 1988* continues in existence as the prisoners trust fund required to be kept by the chief executive under clause 233(1)

Subclause (2) provides that an amount in the prisoners trust fund to the credit of a prisoner becomes the amount in the prisoners account in the fund.

## CHAPTER 8—REPEALS

**Repeals**

Clause 275. repeals the *Corrective Services Act 1988* and the *Corrective Services (Administration) Act 1988*.

## CHAPTER 9—CONSEQUENTIAL AMENDMENTS

**Consequential amendments**

Clause 276. refers to Schedule 2 of this Bill which provides for consequential amendments to be made to other Acts as a result of this Bill.