

Corrective Services and Other Legislation Amendment Bill 2009

Explanatory Notes

Objectives of the Bill

To amend the *Corrective Services Act 2006* for particular purposes, the *Penalties and Sentences Act 1992* for related purposes, the *Police Power and Responsibilities Act 2000* for a particular purpose and to repeal the *Sporting Bodies Property Holding Act 1975*.

Reasons for the Bill

The *Corrective Services Act 2006* (the Act) came into force on 28 August 2006. Since the commencement of the Act a number of issues have been identified in relation to the interpretation and operation of the Act. As a result, a number of amendments are required. In some cases these amendments are proposed to reflect current policy and business practice in the management of prisons and offenders. In other cases the amendments are of a technical nature to ensure that the legislation achieves its stated objectives.

Resettlement and Reintegration Leave of Absence

The Act provides for certain prisoners to access a range of different kinds of leave of absence. The purpose of leave of absence is to allow a prisoner to remain outside a corrective services facility for a particular purpose. Resettlement leave of absence may be granted by the Queensland Parole Board available to prisoners serving 8 years or more and allows the prisoner to spend up to 12 hours at an approved residence. Reintegration leave of absence is available to prisoners who are subject to a work order and transfer to a work camp as approved by the chief executive. The purpose of both forms of leave is to allow offenders to spend time at an approved residence to assist with their reintegration.

In recent years there has been an increased emphasis within Queensland Corrective Services on the delivery of structured transitional programs and pre-release planning through the Integrated Transitional Support Model.

Through this model prisoners are provided with transitional support and assistance according to their level of reintegration need, assessed re-offending risk and their length of sentence. The program has been developed in light of national and international research and addresses the critical reintegration needs of prisoners returning to the community. The Model includes components delivered in custody and support provided in the community.

With the development of improved pre-release planning and programs resettlement and reintegration leave of absence has become redundant. The issues that these forms of leave of absence were intended to address are now covered in the transitional programs offered by Queensland Corrective Services.

Prisoner Artwork

The Act created an offence of carrying on a business while in prison in section 28. The aim of this provision was to ensure prisoners ceased to engage in business activities. Such activities can put the security of correctional centres at risk and are also offensive to victims.

While in custody many prisoners create artwork and Queensland Corrective Services supports participation in this activity. Prisoners who create large amounts of artwork are not able to store all of it within the corrective services facility and are encouraged to give this artwork to family to keep while they are in prison. In addition to this a Prisoner Artwork program allows for prisoners to donate their artwork for sale by the Government with proceeds shared between approved charities and prisoner amenities funds.

There are concerns that prisoners may be able to arrange for the private sale of their artwork by transferring it to friends or family in the community. Unless these activities are of a sufficiently large scale they would not be classed as a business and therefore contravene section 28. An amendment is required to ensure that transfers of art are closely monitored and that is an offence to privately sell prisoner artwork while a prisoner is in a corrective services facility.

Visitors to a corrective services facility

The Act sets out the process by which a person may be approved to visit a corrective services facility and the conditions under which they can visit: Chapter 4, Part 2. Due to the need to maintain the safety and security of the

facility, access to a facility is tightly controlled and is managed in accordance with the detailed provisions of this Part of the Act.

There are a range of different persons who visit corrective services facilities and the Act provides for different treatment of different types of visitors. This different treatment is based upon the risk each class of visitor is assessed to pose and the purpose of their visit. Personal visitors are subject to an assessment by the chief executive against the factors in s 156 (2). Accredited visitors, which include the Ombudsman and members of the judiciary, are not subject to the same level of scrutiny because of the office they hold and the purpose for which they are visiting.

Since the Act came into force a number of issues have been identified:

- Compliance with the formal requirements in sections 155 and 156 is time consuming and is not possible when urgent access must be facilitated eg to repair a burst water pipe;
- The scrutiny of a visitor's application against their criminal history and whether they have been involved in escapes from prison is not necessary for all visitors who are currently subject to section 156(2);
- The power to suspend access approval does not allow for effective management of visitors who pose a risk to the security and good order of a facility. A power to cancel access and set a period of time during which a new application will not be considered is required; and;
- Biometric scanning to verify identification is used to assist with the processing of visitors. Corrective Services' power to impose this requirement needs to be clarified to ensure that all visitors can be compelled to participate in the system.

Timeframe for parole board decision making

Section 193(5) currently provides that a parole board must decide an application for parole within 120 days. Where a decision is not made before the expiry of 120 days it is deemed to be refused. Due to the increasing complexity of parole decisions this timeframe is no longer suitable. Furthermore, there are concerns that the deemed refusal element of this provision may frustrate the judicial review process by preventing the Supreme Court from considering an application after the 120 days has expired.

Achievement of the objectives

The Bill amends the Act to remove both forms of leave of absence. Prisoners with programs of resettlement leave that have already been approved will be permitted to complete the program. The power to issue individual resettlement leave of absences will be preserved in relation to these programs. No new programs will be able to be approved. Where an order granting reintegration leave of absence has been issued that order continues to have effect. No new orders will be able to be issued.

The Bill proposes an amendment which will prevent prisoners from transferring property in their artwork while they are in custody. Genuine gifts will be allowed with the authorisation of the chief executive. Where the prisoner is not making a gift of the artwork the person will be holding the artwork on the prisoner's behalf and will not be permitted to deal with it. Any sale of this artwork will be a criminal offence as the person would be selling an item which they do not have the right to sell. The person may return the artwork to the prisoner when they no longer wish to store it and the prisoner will be responsible for arranging for the collection. Persons holding artwork on the prisoner's behalf will not be liable for the loss of or damage to, the artwork, other than deliberate damage.

The part of the Act dealing with visitors is being amended to provide for:

- interim access approval where there is a need to allow access before a final decision can be made;
- urgent access approval for the purposes of maintenance;
- an exemption from submitting an application form, and for assessment under section 156(2), for law enforcement, child safety, emergency services officers;
- legal practitioners to apply for access without the need for assessing their application against the factors in s 156(2);
- a power to cancel access approval and set a period of up to 12 months before another application will be considered; and
- the use of biometric scanning as a form of identification and a requirement for all adult visitors to participate in scanning at each visit.

The timeframe for making parole board decisions will be increased from 120 to 180 days. There will no longer be a deemed refusal at this point. Where the parole boards required further information to make a decision

they will be able to defer making a decision until 210 days after the application was received. Prisoners will now be permitted to lodge their parole application 180 days before their parole eligibility date to match the increased time available to parole boards for deciding the application.

Estimated cost for Government Implementation

All costs associated with the implementation of the new Act have been anticipated by Queensland Corrective Services.

Consistency with Fundamental Legislative Principles

The Bill has been drafted with due regard to the Fundamental Legislative Principles (FLPs) as outlined in the *Legislative Standards Act 1992* (the LSA). Section 4(2) of the LSA requires that legislation has sufficient regard to the rights and liberties of individuals.

There may be an argument that the transitional provisions for certain amendments, breach section 4(3)(g) of the LSA in that they provide for retrospective operation.

It is arguable that the Bill may breach the FLPs in that it provides in Division 1A in relation to offences related to dealing in artwork, that there will be an extension of the limitation of time for prosecuting summary offences.

A proceeding for an offence under section 28A may start at any time but, if started more than 1 year after the commission of the offence, must start within 6 months after the offence comes to the complainant's knowledge.

The extension to the limitation of time is justified in that the offence of dealing with prisoner artwork may not be discovered until the prisoner is released. This may be many years after the offence was committed. Without an extension of the limitation of time prisoners and recipients of artwork will be able to escape prosecution.

The amendment to section 209 will ensure that sentences of imprisonment to the rising of the court do not automatically cancel a parole order. The provision currently requires that parole be automatically cancelled when this sentence is imposed. The fact that a sentence to the rising of the court was ordered was not always provided to Queensland Corrective Services as this sentence does not require supervision. Given that there has been inconsistent application of this provision some clarification of its commencement and how it affects past decisions is required.

The amendment will be deemed to have commenced with the Act on 28 August 2006. It will also be provided that past action to automatically cancel a parole order for a sentence of imprisonment to the rising of the court is valid. Equally, where action was not taken to automatically cancel the parole order this will also be deemed valid. This will provide certainty for offenders and ensure that it is not necessary to review past decisions.

For parole board decision making a provision is included to the effect that past decisions made by the parole boards, under both the *Corrective Services Act 2006* and the *Corrective Services Act 2000*, are valid. This will ensure that past decisions to release offenders or refuse parole made more than 120 days after the application was received will not be able to be called into question. This will provide certainty for offenders who have been released to parole where the decision was made more than 120 days after their application was received. However, where a court has made a ruling as to the validity of a parole board decision this will not be affected.

The amendment to prisoner trust accounts also has a retrospective operation. Action taken by the chief executive on or after 20 June 2008 will be taken to be valid as if it were done under the new sections 311 and 311A. This will ensure that action taken by Queensland Corrective Services to manage trust accounts in accordance with the procedure that commenced on 20 June 2008 is valid.

An amendment is being made to section 199 to ensure that prisoners with a parole release date who receive exceptional circumstances parole prior to that date are not then required to be issued with a court ordered parole order. If the prisoner is on exceptional circumstances parole it is unnecessary for another parole order to be issued.

If the prisoner has been returned to custody after having the exceptional circumstances parole suspended or cancelled the prisoner will only be released as determined by a parole board. In making this amendment it is necessary to deem that the parole release date is a parole eligibility date for the purposes of the Act only. This will allow the prisoner to apply for parole if exceptional circumstances parole is cancelled.

This amendment changes the nature of the date set by the court in order to ensure the safety of the community. If the prisoner has been released to parole, which is then cancelled or suspended, the prisoner must have been considered to pose an unacceptable risk to the community. Any subsequent release should only occur once they are assessed by a parole board as being suitable for parole.

Consultation

The Department of the Premier and Cabinet, the Department of Justice and Attorney-General, Queensland Corrective Services, the Queensland Parole Board and the Queensland Law Society were consulted in the preparation of this Bill.

Notes on Provisions

Clause 1 provides that the Act's short title is the *Corrective Services and Other Legislation Amendment Act 2009*.

Clause 2 provides that the Act commences on a day to be fixed by proclamation.

Clause 3 provides that Part 2 and the Schedule amend the *Corrective Services Act 2006*.

Clause 4 amends section 7(4) by inserting an example of when a person is lawfully in another person's custody and refers to being in the custody of a police or prison officer as mentioned in the *Mutual Assistance in Criminal Matters Act 1987* (Cwlth).

Clause 5 amends section 15 by inserting a new subsection (3) clarifying that section 27B *Acts Interpretation Act 1954* does not apply to an information notice given under this section. The *Corrective Services Act 2006* excluded the application of the *Judicial Review Act 1991* to reviews of a prisoner's classification so that a statement of reasons could not be requested. This amendment will ensure that Queensland Corrective Services is not required to comply with the format for written reasons set out in section 27B *Acts Interpretation Act 1954* which is identical to the requirements of a statement of reasons requested under the *Judicial Review Act 1991*. Prisoners will be provided with a document setting out the reasons for the decision but this document will not comply with the formal requirements of section 27B *Acts Interpretation Act 1954*.

Clause 6 inserts a new chapter 2, division 2, part 2, division 1A titled Carrying on a business or dealing in art work. The division will include the existing section 28 Carrying on a business and new provisions restricting how prisoners can deal with art work they create while in a corrective

services facility. A new section 27A defines the terms possession and prisoner's art work for the purposes of the division.

Clause 7 inserts the new sections 28A to 28H in relation to dealing with prisoner art work.

Section 28A restricts how prisoners can deal with their art work.

Subsection (1) provides that while the prisoner is in a corrective services facility they must not sell, give or otherwise dispose of the art work unless allowed to do so under sections 28B, 28C or 28D. It will be an offence if the prisoner does not comply with this provision. Subsection (2) clarifies that subsection (1) does not prevent a prisoner from abandoning or destroying their art work.

The purpose of this section is to limit a prisoner's capacity to give an interest in their art work to another person. Unless approval is given under sections 28B, 28C or 28D the prisoner is not able to transfer property or make a gift of their art work.

Section 28B allows for prisoners to make a gift of their art work. Subsection (1) allows a prisoner to (a) make a gift of their art work with the chief executive's written approval; or (b) donate their art work to the State.

Subsection (2) sets out the factors the chief executive must consider when determining whether to approve a gift under subsection (1)(a). The chief executive must consider (a) the value of the work; (b) the person to whom it is proposed to be given; (c) the prisoner's stated purpose for making the gift; (d) the number of previous gifts made by the prisoner; and (e) any other matter the chief executive considers relevant. The purpose of this provision is to ensure that prisoners do not use their ability to gift art work under this section to facilitate private sales of their art work. The section is intended to be used for genuine gifts, for example as a birthday present for a child of the prisoner.

Section 28C allows a prisoner to give their art work to a person to hold on their behalf. Subsection (1) allows the prisoner to give their art work to a person to hold on their behalf with the chief executive's written approval. Subsection (2) provides that a prisoner may give their art work to the State to hold on their behalf. If the art work is given to a person under this section, the person has possession but does not have any other proprietary interest that enables them to deal with the art work.

Section 28D allows a prisoner to give the art work to the State for the purpose of disposing of the art work as agreed with the prisoner. This

section facilitates the Prisoner Artwork Program operated by Queensland Corrective Services. In this program prisoners entrust their art work to Queensland Corrective Services for sale.

Section 28E makes it an offence for prisoners to ask for, or receive consideration in relation to art work. It will be an offence for a prisoner to ask for, or accept, consideration for (a) giving the art work to a person to hold under section 28C; or (b) delivering the art work to a person to hold under section 28C. The purpose of this provision is to ensure that prisoners can not profit from their art work while in prison. Even though the prisoner can not sell their art work they could ask for payment in return for giving it to a person to hold on their behalf. This offence provision will ensure this kind of conduct is prohibited.

Section 28F describes how a person, other than the State, will hold a prisoner's art work. The provision describes the obligations of the person in relation to art work handed out to be held on the prisoner's behalf.

Subsection (1) provides that a person, other than the State, holding a prisoner's art work on behalf of a prisoner, must not sell, give, give possession of or otherwise dispose of the prisoner's art work unless allowed to do so under subsection (2), (3) or (4). A person who fails to comply with this provision commits an offence. As the person does not have the right to sell the painting, having only been given the right to hold it, they may also be liable to prosecution under the *Criminal Code*.

Subsection (2) provides that the person may give the art work (a) to the prisoner upon discharge or release; or (b) to someone else to hold on the prisoner's behalf if the prisoner consents. The purpose of this provision is to limit the circumstances in which a person may part with possession of the art work.

Subsection (3) establishes the process that applies where a person informs the prisoner that they no longer wish to hold the prisoner's art work. Under paragraph (a) the person may give the art work to a person authorised by the prisoner to hold the art work on the prisoner's behalf, or to a person authorised by the prisoner to collect the art work for delivery to another person to hold on the prisoner's behalf.

Paragraph (b) applies where a prisoner in a corrective services facility does not respond to the person's request to collect the art work. If the person has not received an authority from the prisoner to return the art work within one month of informing the prisoner they no longer wish to hold the art work the person may give the art work to the chief executive.

Subsection (4) allows for the person to dispose of the art work if (a) the prisoner is discharged or released from custody; (b) reasonable efforts are made to locate the prisoner and ask for the art work to be collected; and (c) the art work is not collected within 6 month's of the prisoner's discharge or release.

Subsection (5) provides that the person must not ask for, or accept, consideration for (a) giving the art work to someone else to hold on the prisoner's behalf; (b) giving the art work to a person for delivery to another person to hold on the prisoner's behalf. It will be an offence to ask for consideration in these circumstances. The purpose of this provision is to ensure that persons are not able to profit from possessing prisoner art work. Where a person arranges for delivery to another person to hold the prisoner's art work, asking for reimbursement of actual costs incurred in delivering the art work would not constitute asking for consideration.

Section 28G provides that the prisoner, and not the State, is responsible for collecting art work held on behalf of the prisoner.

Subsection (1) provides that prisoner is responsible for collecting art work held on the prisoner's behalf if (a) the prisoner is discharged or released from custody or (b) the person tells the prisoner they no longer wish to hold the art work.

Subsection (2) clarifies that any expenses incurred by the chief executive in dealing with art work under section 28F(3)(b) may be recovered from the prisoner. This will ensure that costs incurred in collecting art work that the prisoner has failed to arrange to be collected will be met by the prisoner.

Section 28H limits the liability of persons holding art work on behalf of the prisoner.

Subsection (1) provides that a person who receives art work under section 28C will not be liable for (a) loss of the art work or (b) damage to the art work, other than deliberate damage, by the person.

Subsection (2) provides that in relation to art work given to the State under Section 28D, the State is not liable for loss of, or damage to, the art work while it is in the State's possession.

Clause 8 amends section 53 in relation to safety orders. The purpose of this amendment is to ensure that the chief executive has the ability to modify the privileges a prisoner receives while subject to a safety order. A safety order may be issued where there is a risk of a prisoner self harming or harming someone else or it is necessary for the security or good order of

the corrective services facility. Privileges are defined in section 19 *Corrective Services Regulation 2006* and include participation in activities, making phone calls and receiving visits.

Prisoners subject to safety orders may be separated from other prisoners during the period of the order. Whilst accommodated separately it may not be practicable for the prisoner to receive the privileges they would have received whilst accommodated with the general population. Furthermore, it may be necessary to restrict the prisoner's access to certain privileges that may facilitate self harm, the harming other prisoners, or pose a risk to the security and good order of the facility.

Subclause (1) renumbers the existing subsections (4) to (6) as subsections (6) to (8).

Subclause (2) inserts a new subsection (4) and (5). The new subsection (4) states the circumstances in which the chief executive can alter the extent to which a prisoner receives privileges while subject to a safety order.

The new subsection (5) allows the chief executive to state the extent to which a prisoner can receive privileges where subsection (4) applies.

Clause 9 amends section 69 to expand the range of documents that can be relied upon to authorise the transfer of a prisoner to court. The definition of 'attendance authority in subsection 69(4) is amended to include a law list published by a court. For the purposes of the section the law list must include the time, place and purpose of the prisoner's appearance. It is also amended to include what is commonly referred to as a 'letter of production' - a notice from a court advising that the prisoner is required to be present in the court for a particular matter.

Clause 10 amends section 72 by removing references to resettlement leave of absence.

Clause 11 repeals section 74 and chapter 2, part 2, division 8, subdivision 2 as a consequence of the removal of resettlement leave of absence as a form of release.

Clause 12 amends section 85 by removing subsection (2) which allows the Queensland Parole Board to suspend a program of resettlement leave of absence. Subsection (3) is renumbered as subsection (2).

Clause 13 repeals section 86 which requires the chief executive to give the Queensland Parole Board notice about the suspension of an order for resettlement leave of absence.

Clause 14 inserts a new Chapter 2, Part 2, Division 9A which provides for approvals of mutual assistance transfers requested under the *Mutual Assistance in Criminal Matters Act 1987* (Cwlth). Under section 26 of that Act the Commonwealth Attorney-General may request the transfer of a prisoner to a foreign country to give evidence in a proceeding relating to a criminal matter. Similarly, under section 27 a request can be made for the transfer of a prisoner to give assistance in relation to an investigation relating to a criminal matter. Where a prisoner is serving periods of imprisonment for State offences the approval of the State is required for the transfer of the prisoner to a foreign country. Division 9A will give the chief executive and, for offenders on parole, the Queensland Parole Board the authority to approve such transfers.

Section 96A provides for a mutual assistance approval to be granted by the relevant officer.

Subsection (1) allows the relevant entity at the request of the Commonwealth Attorney-General to give approval to a prisoner to travel to a foreign country for the purposes of giving evidence in a proceeding relating to a criminal matter or assisting in relation to an investigation relating to a criminal matter. The relevant officer may also give the directions and impose the conditions that are necessary for the release of the prisoner.

Subsection (2) provides that while a mutual assistance approval is in force the prisoner to whom it relates is authorised to be absent from the chief executive's custody and exempts the prisoner from requirements in this or any other act that would prevent the prisoner from travelling to the foreign country.

Subsection (3) defines the terms 'relevant entity' and 'Commonwealth Act' for the purposes of section 96A.

Section 98B requires the chief executive to give notice to the prisoner of the approval of a mutual assistance leave permit and the conditions relating to the approval.

Section 96C requires that a prisoner who is given a notice under section 96B must comply with the conditions of the mutual assistance approval. It will be an offence for a prisoner to fail to comply with the conditions.

Section 96D provides that time spent under release on a mutual assistance approval counts as time served under the prisoner's period of

imprisonment. This will ensure that the prisoner is not disadvantaged by providing assistance in criminal matters in a foreign jurisdiction.

Clause 15 amends section 155 by creating the concept of a prescribed person for the purpose of seeking access to a corrective services facility.

Subclause (1) amends the heading of section 155 to remove reference to accredited visitors and staff members. The section now refers to particular visitors.

Subclause (2) amends subsection (1) to include the term prescribed person and remove accredited visitor and staff. Persons coming within the definition of 'prescribed person' will not be required to apply for approval to access the facility.

Subclause (3) inserts a new subsection (3) defining a 'prescribed person' to mean:

- (a) an accredited visitor;
- (b) a casual visitor as defined under section 165;
- (c) an emergency services officer;
- (d) an employee of the department in which the *Child Protection Act 1999* is administered;
- (e) an officer or employee of a law enforcement agency; or
- (f) a staff member.

The purpose of this amendment is to remove the formal requirement to submit the approved form before visiting. Accredited visitors, defined in the Schedule to the Act, and staff are currently exempt from this requirement and will continue to be exempt. In addition to those categories of visitor, the amendment will also exempt casual visitors, emergency services officers, employees of the department in which the *Child Protection Act 1999* is administered and officers or employees of a law enforcement agency.

The amendment will not give prescribed persons a right to access a facility; rather it exempts them from the need to submit the approved form to apply for access. Currently, there is no authority for the chief executive to exempt certain visitors from the requirement to comply with section 155. The amendment recognises those classes of visitors from whom a formal application is not required as a result of their profession or the purpose of their visit.

Clause 16 amends section 156 in relation to the decision-making process for access approval.

Subclause (1) repeals the current section 156(3) and inserts a new subsection (3) which provides that legal practitioners are not required to have their application assessed against the factors listed in subsection (2). This section previously applied to police officers and child safety officers who are now defined as prescribed persons exempt from submitting an application form.

Subclause (2) renumbers subsections (7) to (9) as subsections (9) to (11).

Subclause (3) inserts a new subsection (7) providing that when the chief executive refuses to grant an access approval the chief executive can specify the period of time, up to 1 year, during which a further application can not be made.

A new subsection (8) is also inserted providing that in making a decision under subsection (7) the chief executive must consider the effect of the proposed order on a child who accompanies the visitor and whether the child may, unaccompanied by an adult visit the prisoner.

Clause 17 inserts a new section 156A and section 156B.

Section 156A provides for interim access approval to be granted for a personal visitor. An interim access approval process is required due to the length of time required to process a visit application. In order to assess an application against the factors in section 156(2) a criminal history check is conducted for personal visitors. To ensure that a prisoner can maintain contact with his or her family and friends it is necessary to provide for approval to be granted on an interim basis pending the receipt of the criminal history check.

Subsection (1) provides that section 156A applies if a personal visitor applies for access under section 155 and the chief executive has not decided the application under section 156.

Subsection (2) provides that the chief executive may grant access approval on an interim basis until the chief executive decides the application under section 156 if the chief executive is satisfied it is appropriate in the circumstances.

Subsection (3) provides that a personal visit under an interim approval must be a non-contact visit unless it is impracticable having regard to the facilities at the corrective services facility. This provision recognises that until an application has been finally decided, based on the criminal history

information requested, the risk a visitor poses should be managed by allowing only non-contact visits. If the facility does not have non-contact visits facilities consideration will be given to allowing a contact visit.

Subsection (4) allows the chief executive to impose conditions on the access approval.

Subsection (5) provides that the interim access approval has effect until the chief executive decides the application under section 156.

Subsection (6) provides that until a final decision is made the interim access approval is taken to be an access approval. This ensures that other provisions relating to visits and access approvals apply to an interim access approval.

Section 156B provides for the chief executive to grant an urgent access approval for a commercial visitor. This will allow for urgent work to be carried out without the need to comply with formal requirements for assessing visitors set out in section 155.

Subsection (1) sets out the circumstances in which this section applies. The section applies when urgent work is required to be carried out by a tradesperson or technician, the usual visitor who has been granted access approval is not available, and a relevant commercial visitor applies for access under section 155 for performing the work.

Subsection (2) provides that if the chief executive is satisfied that the visitor does not pose an immediate risk to the security and good order of the facility, approval may be given for the visitor to access the facility on an urgent basis to perform the work.

Subsection (3) provides that in deciding whether the visitor poses an immediate risk to the security and good order of the facility the chief executive is not required to consider the factors in section 156(2).

Subsection (4) allows the chief executive to impose conditions on the urgent access approval.

Subsection (5) provides that an urgent access approval has effect for only a single visit to a corrective services facility.

Subsection (6) provides that while the urgent access approval has effect it is taken to be an access approval. This ensures that other provisions relating to visits and access approvals apply to an urgent access approval.

Clause 18 amends section 157 in relation to suspending access approval.

Subclause (1) inserts a new subsection (1A) giving the chief executive the ability to suspend access approval for a visitor if the chief executive reasonably believes it is necessary to do so to preserve the security or good order of the corrective services facility. This allows for access approval to be suspended where information is received that the visitor may be about to do one of things mentioned in subsection (1).

Subclause (2) amends subsection (2)(a) by providing that a suspension of access may be for a period of up to 1 year. This change was necessary given the insertion of subsection (1A). It gives the chief executive the discretion to suspend access for up to 1 year where the visitor engages in conduct mentioned in subsections (1) and (1A).

Subclause (3) amends subsection (4) by changing the reference to subsection (2) to subsection (2)(a).

Clause 19 inserts a new section 157A to allow for an access approval to be amended or revoked. This section will ensure that the chief executive has the power to cancel access approval where a visitor's conduct is particularly serious. The visitor will then be required to reapply for access approval under sections 155 and 156. It is also necessary to ensure that the power to impose conditions, by amending an access approval, is provided to the chief executive. This allows for a visitor's access rights to be modified after they have been approved where further information is received. For example, information may be received that a visitor is an unacceptable risk of introducing prohibited items and may be restricted to non-contact visits.

Subsection (1) provides that the chief executive may amend or revoke a visitor's access approval if satisfied that because of a change in the visitor's circumstances the visitor poses a risk to the security or good order of the facility.

Subsection (2) provides that in making the decision in subsection (1) the chief executive must consider: (a) the effect of the proposed amendment or revocation on a child for whom approval has been given to accompany the visitor to visit the prisoner; and (b) whether the child may, unaccompanied by the adult, visit the prisoner.

Subsection (3) provides a written record of a decision to revoke access approval must be kept.

Subsection (4) provides that a visitor whose access approval is amended or revoked may apply in writing to the chief executive to review the decision.

Subsection (5) provides that the chief executive must reconsider the decision and may confirm or cancel the decision.

Subsection (6) provides that the chief executive must advise the visitor of the reconsidered decision.

Subsection (7) provides that for the purposes of this section, amend means amend a condition of the access approval or impose a condition on it.

Clause 20 amends section 160 to require adult visitors to a corrective services facility to participate in a biometric identification system.

Subclause (1) renumbers subsections (2) to (4) as subsections (3) to (5).

Subclause (2) inserts a new subsection (2) making it a requirement for an adult visitor to a facility with a biometric system installed to submit to the biometric identification procedures for the facility.

Clause 21 amends section 161 in relation to when visitors may be given a direction to leave a corrective services facility.

The clause amends section 161(1)(b) to refer to section 160 (2), (3) and (4) and section 163(2). The amended references to section 160 are a consequential amendment as a result of the renumbering of section 160 and the inclusion of a requirement to participate in the biometric system when visiting a corrective services facility. The reference to section 163(2) will ensure that visitors who fail to comply with a direction given under that section can be directed to leave the corrective services facility.

Clause 22 amends section 162 in relation to the way a visitor must prove their identity when accessing a corrective services facility. The amendment allows the chief executive to keep identifying particulars a visitor gives as proof of their identity.

Clause 23 amends section 180 in relation to how prisoners may apply for parole. An amendment is made to section 180(2)(c) to allow prisoners to apply no earlier than 180 days before their parole eligibility date.

Clause 24 inserts a new section 185A in relation to the parole eligibility date for particular prisoners. This provision converts a parole release date to a parole eligibility date for prisoners who are granted exceptional circumstances parole prior to their parole release date as fixed by a court under the *Penalties and Sentences Act 1992*.

This amendment is necessary to ensure that prisoners who are granted exceptional circumstances parole prior to their parole release date and have that exceptional circumstances parole suspended or cancelled can not be

released until a decision is made by a parole board. As the prisoner has already been released to parole, which has been suspended or cancelled, it is appropriate that any further release be at the discretion of the parole board.

The conversion of the parole release date to a parole eligibility date is only required for the purposes of administering the sentence. The provision expressly states that it does not affect the fact that the prisoner has a parole release date under the *Penalties and Sentences Act 1992*. Prisoners who come within section 185A who are sentenced for further offences will continue to have a parole release date for the purpose of sentencing. This ensures that section 185A does not impact on the sentencing discretion.

Subsection (1) provides that the section applies to prisoners who, before or after the commencement of this section, receive a parole release date; and are granted exceptional circumstances parole prior to that parole release date in relation to the same period of imprisonment.

If a prisoner was sentenced for new offences they would no longer be serving the same period of imprisonment and section 185A would not apply in those circumstances. This is irrespective of whether the duration of the period of imprisonment is increased by the new sentence. This will ensure that section 185A only applies where exceptional circumstances parole is granted after the court fixes a parole release date. If the court fixes another release date, after the offender is released to exceptional circumstances parole, section 185A would not apply.

For example, an offender is sentenced to 12 months' imprisonment on 1 August 2008 with a parole release date of 1 February 2009. On 1 December 2008 the prisoner is granted exceptional circumstances parole. On 22 December 2008 the parole order is suspended by the parole board. On 8 January 2009 the prisoner is sentenced to one month's imprisonment to be served concurrently for further offences and given a parole release date of 1 February 2009. The prisoner must be released on 1 February 2009 in accordance with section 199 as he is no longer serving the same period imprisonment and section 185A does not apply.

Subsection (2) provides that for these prisoners the parole release date is taken to be the parole eligibility date in relation to the same period of imprisonment. This will mean that instead of being entitled to be released to court ordered parole on that day, the prisoner will be eligible to apply to a parole board for release.

Subsection (3) extinguishes any expectation or entitlement that a prisoner had to be released on the parole release date.

Subsection (4) provides that this section does not affect the fact that a parole release date was fixed for the prisoner's period of imprisonment for the purposes of the *Penalties and Sentences Act 1992*.

Clause 25 amends section 193 in relation to decision making by the parole boards. The timeframe for making a decision on a parole application is increased from 120 days to 180 days after it was received. Where a decision is deferred under subsection (2) for further information the board must decide the application within 210 days after it was received. The deemed refusal provision in section 193(5) is repealed.

The purpose of this provision is to increase the time available to parole boards to make a decision. Where this timeframe is exceeded the parole boards will continue to have the jurisdiction to decide the application. This is achieved by the repeal of s 193(5) which acted to exclude the parole boards' jurisdiction once 120 days had elapsed since the application was received. Section 193(5) gave rise to substantial inconvenience for parole boards and prisoners as once 120 days was reached neither the parole board, nor the Supreme Court, could consider the matter.

Clause 26 amends section 199 in relation to the issuing of court ordered parole orders by the chief executive. Under section 199 the chief executive is required to issue a court ordered parole order in accordance with the date fixed by the sentencing court. The only situations in which the chief executive is not required to issue the order are listed in subsection 199(2). This amendment creates an exception to the requirement to issue an order where the prisoner has already been granted exceptional circumstances parole for the same period of imprisonment.

Clause (1) inserts a new subsection 199(5) which provides that section 199(1) does not apply in relation to a prisoner to whom section 185A applies.

Clause 27 amends section 205 which provides the amendment, suspension and cancellation of parole orders by a parole board.

Section 200(2) allows the parole board to impose conditions on a parole order that it considers reasonably necessary to ensure the prisoner's good conduct or to stop the prisoner committing an offence. This provision is used when a parole order is first granted. After the order is granted amendments may be made under section 205. Currently, a parole board can

only amend or remove a condition imposed under section 200(2) but cannot insert a new condition if it is considered necessary for a purpose mentioned in subsection 200(2).

Subclause (1) renumbers section 205(1)(b) as 205(1)(c).

Subclause (2) inserts a new section 205(1)(b). This will allow the parole board to amend a parole order by inserting a condition mentioned in section 200(2) if the board reasonably believes the condition is necessary for a purpose mentioned in the subsection.

Clause 28 amends section 208 in relation to reconsidering a decision to suspend or cancel parole. This section sets out the process by which prisoners are afforded natural justice for decisions to suspend or cancel a parole order. The amendment is being made to clarify how subsection 208(2) should operate.

The intention of section 208(2) is that the prisoner must respond within the 21 day period commencing on receipt of the information notice. If the prisoner complies with section 208(2) the parole board must consider those submissions. It was not intended that the parole board was required to consider the submissions within 21 days of issuing the information notice.

Subclause (1) omits the current section 208(2) and replaces it with a new section 208(2). The new provision clarifies that the parole board must consider all properly made submissions and inform the prisoner, by written notice whether the board has changed its decision, and if so, how.

Subclause (2) inserts a new subsection 208(4) which defines ‘properly made submissions.’ The term is defined to mean written submission given by or for the prisoner to the parole board within 21 days after the information notice inviting the prisoner to make the submissions is given. This will ensure that submissions made by a prisoner’s agent, for example a legal practitioner, come within the definition.

Clause 29 amends section 209 in relation to the automatic cancellation of a parole order. This provision applies to prisoners who are sentenced to a period of imprisonment for an offence committed while they were subject to a parole order. In some cases a sentencing court may decide to sentence an offender to imprisonment until the rising of the court. The period of detention involved in a sentence of “until the court rises” may be very brief and could be as short as a matter of minutes. The intention of this sentence is that when the court rises the offender is free to leave. However, such a sentence is technically a period of imprisonment which could

automatically cancel a parole order. As a result the offender may be required to be returned to custody due to time not served that arises as a result of the automatic cancellation of the parole order.

A new paragraph 209(3)(b)(iv) is inserted to ensure that a parole order is not automatically cancelled when prisoner is sentenced to a period of imprisonment to be served until the court rises.

Clause 30 amends section 217 which relates to the functions of the Queensland Parole Board to remove reference to resettlement leave of absence.

Clause 31 amends section 219 in relation to disqualification for membership of the Queensland Parole Board.

Subclause (1) renumbers paragraphs 219(f) and (g) as 219(g) and (h).

Subclause (2) inserts a new paragraph 219(f) to disqualify a person from membership of the board if they are appointed as, or appointed to act as, a judge of the Supreme or District Court or as a Magistrate.

Clause 32 amends section 233 in relation to disqualification for membership of the regional parole boards. This amendment has the same effect as Clause 31 above.

Clause 33 amends section 292 in relation to official visitor reports. Section 292(b) is amended to require that official visitors provide their reports to the Chief Inspector each month instead of every 3 months.

Clause 34 amends section 311 in relation to prisoner trust funds.

Subclause (1) amends subsection 311(3) to provide that subject to section 311A the chief executive must deposit all amounts received for a prisoner into the prisoner's trust account.

Subclause (2) repeals the current subsection 311(6) and inserts a new subsection 311(6). The new provision states that the chief executive may limit any or all of the following:

- (a) the amount of a single receipt for a prisoner;
- (b) the amount that may be held in a prisoner's account in the prisoner's trust fund;
- (c) the amount a prisoner may spend.

Clause 35 inserts a new section 311A in relation to prisoner trust funds. Currently, the chief executive is required to credit all amounts received for

a prisoner to the prisoner's trust account. The amendment will provide the chief executive with the ability, in certain circumstances, to return deposits, pay the amount to an entity nominated by the prisoner or place funds on hold in the prisoner's trust account.

Prisoner trust accounts are provided to prisoners to allow them to purchase small items while in custody. Remuneration for prisoner employment and other allowances are paid into this account. Friends or relatives may deposit funds into the trust account to enable the prisoner to purchase items available for sale in custody, for example running shoes and toiletries. Prisoner trust accounts are not intended to operate like a private bank account.

This section will ensure that anonymous deposits, or deposits from insufficiently identified donors, will not be credited to a prisoners trust account and made available to the prisoner.

To reduce the risk of prisoners being threatened the chief executive will not be required to credit deposits that are for an excessive amount or will result in an excessive balance in a trust account. These terms will be defined by the chief executive in a procedure issued under section 265.

Subsection (1) provides that the section applies where the chief executive receives an amount for a prisoner and any of the following apply

- (a) the chief executive is not satisfied the donor is sufficiently identified;
- (b) the amount exceeds the allowable receipt amount;
- (c) payment of the amount will result in prisoner having a balance that exceeds the allowable balance for a prisoner trust account.

Subsection (2) provides that the chief executive must return the amount to the donor.

Subsection (3) provides that if despite making reasonable efforts to return the amount to the donor, the chief executive can not return the amount to its donor, the chief executive must, as the chief executive considers appropriate, (a) pay the amount to an entity nominated by the prisoner; (b) keep the amount on hold in the prisoner's account until the prisoner is discharged or released.

Subsection (4) provides that a prisoner can not access an amount held in the prisoner's account under subsection (3)(b), being an amount placed on hold by the chief executive.

Subsection (5) defines the terms allowable balance, allowable receipt amount, donor and prisoner's account.

Clause 36 amends section 320 which sets out which persons are eligible to receive information under section 325 in relation to a prisoner. Currently, a person may only register to receive information about prisoners sentenced for violent or sexual offences. If the prisoner is not sentenced to a period of imprisonment the person is not eligible to register to receive information.

Subsection 320(1) is amended to allow a person to register to receive information in relation to a prisoner who is a supervised dangerous prisoner (sexual offender). This will allow eligible persons to register in relation to offenders on supervision orders under the *Dangerous Prisoners (Sexual Offenders) Act 2003*.

Clause 37 amends section 324 in relation to when the chief executive must remove a person's details from the register. The purpose of this amendment is to ensure that persons who have registered to receive information about a prisoner can continue to receive such information if the prisoner is discharged from custody to a supervision order under the *Dangerous Prisoners (Sexual Offenders) Act 2003* or is released to a probation order. Once the prisoner stops being subject to the supervision order or probation order, the eligible person's details must be removed the register.

Clause 38 amends section 350 in relation to when proceedings for an offence must be commenced. A new subsection (3) is inserted into the provision in relation to when proceedings for an offence under the new sections 28F(1) or (5) must be commenced. These offences relate to dealing with prisoner art work. Prisoners may give their art work to a person to hold on their behalf many years before their release. An offence against the prisoner art work provisions may not be discovered until the prisoner is released. Under the existing section 350 there is a risk that prosecutions for these offences would be out of time. The amendment therefore allows for a prosecution to be commenced more than 1 year after the offence is committed but within 6 months of it coming to the knowledge of the complainant. This will ensure that offences under these sections can be effectively prosecuted.

Clause 39 inserts a new Chapter 7A, Part 4 containing transitional provisions for the *Corrective Services and Other Legislation Amendment Act 2009*.

The transitional provisions ensure that:

- resettlement leave of absence programs approved prior to the commencement of the Bill can continue, but that a new program can not be approved;
- orders granting reintegration leave prior to the commencement of the Bill continue in force but new grants of leave can not be made;
- parole board decisions made since 1 July 2001 that occurred more than 120 days after the application was received are valid;
- anything done, or omitted to be done, in relation to the automatic cancellation of parole for a sentence of imprisonment to the rising of the court under the previous section 209 or the repealed *Corrective Services Act 2000* is valid; and
- previous dealings in relation to prisoner trust accounts in compliance with the new sections 311 and 311A are taken to be valid as if it were carried out under the new provisions.

Section 485 extinguishes expectations that prisoners may have had of being granted resettlement or reintegration leave.

Clause 40 amends schedule 4 (dictionary).

Clause 41 provides that Part 3 of the Bill amends the *Penalties and Sentences Act 1992*.

Clause 42 amends section 4 containing definitions in the *Penalties and Sentences Act 1992*. Reference to resettlement leave within the definition of ‘re-integration program’ is removed.

Clause 43 amends section 174 in relation to resettlement leave of absence and parole for offenders.

Subclause (1) changes the section heading to ‘Parole for offenders.’

Subclause (2) amends section 174(1) to remove reference to resettlement leave program.

Subclause (3) amends section 174(2) to remove reference to the approval of a resettlement leave program.

Subclause (4) amends section 174(2)(a) to remove reference to the approval of a resettlement leave program.

Clause 44 provides that part 4 of the Bill amends the *Police Power and Responsibilities Act 2000*.

The *Corrective Services and Other Legislation Amendment Act 2008* allowed the chief executive (corrective services) to enter into an agency arrangement for the supply of dangerous drugs for the purposes of training drug detection dogs. The chief executive was authorised to possess the drugs but the Commissioner was not authorised to supply the drugs. To ensure that the Commissioner is authorised to supply the drugs an amendment is being made to section 707 of the *Police Powers and Responsibilities Act 2000*.

Clause 45 amends section 707 *Police Powers and Responsibilities Act 2000* by inserting new subsections (3) and (4).

The new subsection (3) provides the Commissioner, Queensland Police Service with an alternative to destroying drug matter used in the commission of a drug offence. Subsection (3) will allow the Commissioner to give the drug matter to the chief executive (corrective services) pursuant to an agency agreement entered into under Chapter 6, Part 13A *Corrective Services Act 2006*. This will authorise the supply of drugs to the chief executive (corrective services) which are then used to train drug detection dogs.

The new subsection (4) clarifies that subsection (3) does not limit the ways the Commissioner may consider are appropriate for disposing of the drug matter.

Clause 46 amends section 713 which provides for when drug matter may be destroyed. Section 713(4) is amended to include a reference to the new section 707(3) which allows the Commissioner to give drug matter to the chief executive (corrective services). This ensures that section 713 does not limit the Commissioner's ability to supply drugs under an arrangement referred to in section 707(3).

Clause 47 repeals the *Sporting Bodies' Property Holding Act 1975 No. 7*.

The schedule contains a number of minor and editorial amendments to the *Corrective Services Act 2006*.