Corrective Services (Emerging Technologies and Security) and Other Legislation Amendment Bill 2022

Explanatory Notes

Short title

The short title of the Bill is the Corrective Services (Emerging Technologies and Security) and Other Legislation Amendment Bill 2022.

Policy objectives and the reasons for them

The main objectives of the Bill are to:

- Modernise emergency response powers to facilitate better responses to situations that threaten the health and safety of prisoners, detainees, corrective services officers (CSOs), detention centre staff, or other people at a corrective services facility or youth detention centre.
- Criminalise the use of drones over corrective services facilities and youth detention centres, and entry onto rooftops and other restricted areas of corrective services facilities to address evolving behaviour that presents new risks to the safety of custodial facilities.
- Provide clear authority to use x-ray body scanners, closed circuit television (CCTV), body-worn cameras and other emerging technologies to maintain safety and monitor threats within the closed correctional environment.
- Enhance information sharing powers to promote prisoner health and wellbeing, support frontline service delivery and interagency collaboration.
- Update the prisoner security classification framework to better align with corrective services facility infrastructure and appropriately respond to risk.
- Clarify sentence calculation issues, enable the effective operation of the Official Visitor Scheme, and support the delivery of prisoner health services provided by Queensland Health (QH) by updating out-dated terminology within the *Corrective Services Act 2006* (CSA).

<u>Modernising the emergency response framework</u>

Significant recent emergencies including bushfires, floods and the COVID-19 public health emergency have presented serious and unprecedented risks to the safety and security of the correctional and youth detention environments in Queensland.

It is vital that there are appropriate tools to support an effective response to such risks in corrective services facilities and youth detention centres to ensure the health and safety of prisoners, detainees, CSOs, detention centre staff and other people at a facility. This includes ensuring legislation authorises actions taken to mitigate the potential impacts of an emergency situation.

The existing emergency provisions of the CSA (section 268) were developed to respond to short-term emergencies that occur at a prison, such as riots or a loss of control event. Section 268 currently allows the chief executive to declare an emergency, with the Minister's approval, if they reasonably believe a situation exists at a prison that threatens, or is likely to threaten, the security or good order of the prison or the safety of a prisoner or another person in the prison. A declaration is limited to a maximum of three days but can been re-made. While a declaration is in force, the chief executive has certain powers, including restricting any activity, or access to, the prison.

Currently the CSA does not appropriately anticipate other types of emergencies, such as natural disasters that may cause an emergency from outside of a prison, emergencies at other types of corrective services facilities (including a community corrections centre (the Helana Jones Centre) and work camps), health emergencies, or emergency situations that may eventuate for a prolonged period of time.

The *Youth Justice Act 1992* (YJA) does not provide a legislative framework to respond in the event of an emergency at a youth detention centre or include safeguards that must be considered and addressed as part of an emergency response.

The COVID-19 public health emergency significantly tested the response frameworks in existing legislation. Temporary amendments were made to the CSA and the YJA to mitigate the impacts of the pandemic, triggering consideration of the need for more permanent measures to respond to future emergencies. Temporary amendments to the YJA ceased on 30 April 2022. Temporary amendments to the CSA will cease on 31 October 2023.

To address the need for a more modern and fit for purpose emergency response framework within these closed environments, the Bill amends the CSA and YJA to support potential future emergency responses at corrective services facilities and youth detention centres, or when youth detention services are significantly impacted.

<u>Criminalising evolving behaviours putting corrective services facilities and youth detention centres at risk</u>

The correctional environment has experienced an increase of emerging behaviours that present a significant risk to the safety and security of corrective services facilities and youth detention centres. It is therefore important that a strong deterrent and appropriate penalties are in place to prevent future activities.

Restricted area offence

Prisoners gaining access to a rooftop and other restricted areas is a consistent issue across corrective services facilities and demonstrates that the existing penalties are insufficient at deterring prisoners from engaging in this behaviour.

In addition to risking the safety of those involved, this behaviour causes a significant disruption to frontline operations, can have broader implications for the safety and security of corrective services facilities, including the need for centre-wide lockdowns as part of an incident response, and erodes community confidence in the correctional system.

Unlawful use of drones offence

Similarly, the growing use of drones is an emerging threat that places the safety and security of corrective services facilities and youth detention centres at risk both in Queensland and across Australia.

Drones are prescribed as a prohibited item under section 123 of the CSA, however there is no provision within the CSA or the YJA to restrict or prevent a drone being flown in the airspace above a custodial facility.

The incidence of inappropriate drone use in the airspace above custodial facilities continues to occur, presenting four main threats – dropping of contraband, surveillance of grounds (taking photographs as well as video imagery of secure infrastructure), weaponising of drones or creating a nuisance or distraction. Due to these significant risks, each sighting of a drone results in the facility going into lockdown while a search for contraband, or the drone, is conducted.

While additional anti-drone technology has been deployed by Queensland Corrective Services (QCS) and continues to be explored at facilities across the State in accordance with the *Queensland Drones Strategy*, drone activity continues, supporting the need for further deterrent action to adequately regulate and enforce the use of drones above facilities to protect the safety and security of the correctional environment.

Use of x-ray body scanners and other emerging technologies

To protect the safety of CSOs, prisoners and visitors, ensure the security of the correctional environment, detect prohibited items from entering centres, and prevent corruption and other crime, it is vital that the correctional environment can adopt or trial new or emerging technologies, and that the use of existing (and new) technology within the closed environment is clearly authorised.

X-ray body scanners – imaging search

The introduction of a new imaging search type creates a clear head of power to support a trial and any future roll-out of x-ray body scanning technology at corrective services facilities.

The opportunity to use x-ray body scanners in the correctional environment provides a less invasive means of detecting and preventing the introduction of contraband into facilities.

The new search type supports the implementation of recommendation 20 of the *Crime and Corruption Commission's Taskforce Flaxton – An examination of corruption risks and corruption in Queensland prisons* (Taskforce Flaxton), by granting broader powers to search staff (and visitors), whilst also supporting the Government's response to recommendation 136 of the Women's Safety and Justice Taskforce Report 2.

Surveillance devices

The use of technology such as CCTV, body worn cameras, and audio recording devices is imperative to maintain CSO and prisoner safety. Surveillance devices enable QCS to

collect, evaluate, and analyse information to identify and manage risk, respond to or investigate emergency incidents, support a breach hearing or review, prosecute an offence, and deter prisoners and visitors from attempting to breach security requirements. While some technology such as CCTV has been used within the correctional environment for some time, the use of devices such as body worn cameras is relatively new.

The Bill provides a clear head of power to authorise use of a prescribed surveillance device at a corrective services facility to monitor and record activity in and around a facility.

Enhancing information sharing

CSOs work closely with partner agencies to safely manage prisoners and offenders according to their individual risk and needs, ensure the safety and security of the correctional environment, and support broader community safety by stopping crime. This requires a level of sharing of confidential information, including proactively where appropriate.

While the CSA allows for information sharing, the existing provisions can be improved to support front line service delivery and interagency collaboration. The amendments to these provisions in the Bill aim to provide frontline CSOs with improved legislative guidance on what they are and are not able to disclose in key areas of service delivery, to ensure the efficient and effective operation of the correctional system across the following areas.

Supporting prisoner and offender health and welfare

While information sharing is already occurring under section 341 of the CSA, the Bill provides key enhancements to the legislation to guide frontline CSOs' decision making.

Enhanced information sharing provisions support QCS' frontline partnership with QH to deliver primary health care and mental health services and respond to commentary from coronial inquests about opportunities to improve information sharing, supporting better outcomes for prisoners and their families.

Supporting law enforcement and protecting intelligence

Taskforce Flaxton recognised that an effective prison intelligence function is a fundamental part of dynamic security within the correctional environment. In 2020, a QCS Intelligence Review (the Review) was completed. The Review found that within QCS, there is a tendency for under-sharing with external agencies. Intelligence dissemination is often undertaken because of a request rather than being a proactive disclosure.

Amendments to clarify that proactive sharing can occur with law enforcement agencies and ensure stronger protection of any information received from state, territory and Commonwealth law enforcement partners aim to encourage greater sharing of intelligence that can stop crime and keep the community safe.

Information sharing with corrections agencies in other jurisdictions

There are circumstances where another corrections agency may request information from a former prisoner or offender's file to support their management in that jurisdiction. For example, under the *Returning Offenders (Management and Information) Act 2015* (NZ) a New Zealand citizen who has been sentenced to more than one year in an overseas prison and released from detention before returning to New Zealand, may be subject to supervision by corrections upon their arrival in New Zealand. In addition, in the United Kingdom a violent offender order can be made by a court for a person convicted of an offence outside of the United Kingdom, under the *Criminal Justice and Immigration Act 2008* (UK), providing for ongoing reporting obligations.

Amendments aim to clearly authorise the sharing of information with a corrections agency interstate or overseas to support effective supervision and management of those offenders (as authorised by law) and keep the community safe.

Updating the prisoner security classification framework

Queensland's prisoner security classification framework has been in place since the introduction of the CSA in 2006. However, the correctional environment in which it operates has been subject to significant change, system pressures and reform, including through increasing prisoner numbers.

Amendments to the prisoner security classification will ensure the framework aligns with the existing physical infrastructure of the custodial environment in Queensland and appropriately responds to risk.

Other amendments

Other amendments included in the Bill aim to increase community safety, streamline processes to increase efficiencies, remove redundant provisions and update out-dated terminology.

Achievement of policy objectives

The Bill achieves these objectives by amendments which include:

Modernising the emergency response framework

Amendments to the CSA

The Bill replaces section 268 of the CSA with a new emergency response framework. The new framework will better equip QCS to be agile, dynamic and responsive to internal and external, and short or long-term emergency situations that threaten the health and safety of prisoners, CSOs or other people at a corrective services facility.

The Bill provides for the following amendments to the existing framework:

- Makes permanent the reference to 'corrective services facility' rather than 'prison'.

- Provides for various types of declarations of emergency to respond to different threats.
- Clarifies the ability of the chief executive to restrict movement to a facility, refuse entry to a facility, quarantine or isolate prisoners, and limit or withhold privileges depending on the emergency situation.
- Provides that a declaration of emergency must be published.

New safeguards have been built into these amendments including that prior to making a declaration, the chief executive must take reasonable steps to consult with the state disaster coordinator (or if the state disaster coordinator is not a police officer, the Commissioner of the Queensland Police Service) and the Commissioner of the Queensland Fire and Emergency Service for an emergency relating to a disaster, the Chief Health Officer for a public health emergency, or the chief executive of a department or other agency that has a function of co-ordinating the State's response for other types of emergencies. An amendment is also included in section 271 to provide that a decision by the chief executive to declare an emergency cannot be delegated. These provisions will operate in addition to existing safeguards, including that a declaration must be approved by the Minister.

The new emergency response framework will commence on 1 November 2023, upon the expiry of the temporary COVID-19 measures in Chapter 6, Part 15A of the CSA, which is due to occur on 31 October 2023.

Amendments to the YJA

The Bill provides for detainees to be relocated from a disaster-affected youth detention centre to an alternative temporary detention centre by:

- Enabling the chief executive to declare a youth detention centre to be disaster-affected and declare an alternative location (or locations) as a temporary youth detention centre, for a period of up to seven days (the declaration may be extended up to a total of 21 days from the initial declaration).
- Requiring the chief executive to select the most suitable place from amongst the options available. In doing so, the chief executive must consider the purpose for which the place is ordinarily used, compliance with the youth justice principles and the human rights of detainees and the broader community, facilities at the site, planning considerations that might apply to the site, the ability to deliver or procure specialist programs and services, and any impact (including land use impacts) on the local community.
- Enabling the Governor in Council to make a regulation to declare a temporary youth detention centre for a specified period, which may be longer than the initial 21 days under a declaration made by the chief executive. This power is to be used where a disaster-affected youth detention centre has been impacted in such a way that it will not be able to safely or securely operate for an extended period.

The Bill extends the range of staffing options for youth detention centres during a declared emergency (such as an epidemic or a flood event) by:

- Enabling the chief executive to appoint appropriately qualified persons who are not public service employees as temporary detention centre employees, to provide

assistance at a youth detention centre in the event that the established youth justice workforce is impacted by the emergency (the preference will be for public service employees, ensuring the *Public Service Act 2008* and the Public Service Code of Conduct apply, but this may not always be possible). The chief executive will also be able to delegate functions and powers to temporary detention centre employees.

- Enabling the chief executive to delegate their functions and powers to an appropriately qualified public service employee, including the ability to delegate functions and powers to appropriately qualified emergency staff members who are appointed on a temporary basis under the *Public Service Act 2008*.

The Bill enables restorative justice conferences to be conducted remotely during a declared emergency. The Bill provides that the usual requirement for participants to physically *sign* an agreement will be satisfied if the convenor *notes* the consent of the participants on the agreement. The Bill also provides that the requirement for participants to *immediately* be given copies will be satisfied if the convenor *promptly* gives the copy.

Criminalising evolving behaviours putting custodial facilities at risk

Restricted area offence

The Bill creates a new offence in section 124 of the CSA, prohibiting a prisoner, without a reasonable excuse, from being in a restricted area of a corrective services facility. The maximum penalty is two years imprisonment.

A restricted area of a corrective services facility has been defined to mean the roof of a corrective services facility or another area prescribed by regulation. This will allow the flexibility to prescribe other areas, such as staff only areas, with a sufficient level of detail.

As an additional safeguard the Bill requires the prosecution to establish a prisoner was given sufficient warning that an area prescribed by regulation is a restricted area for the offence, unless the area is controlled by a CSO. Sufficient warning includes, but is not limited to, a notice displayed identifying the area as restricted, information provided during prisoner induction or a direction not to access the area given to a prisoner by a CSO. This provides that a prisoner's conduct is only captured by the offence if they have been made aware the area is a restricted area and they have not been otherwise granted access to the area (because a CSO controls access to the area or they have been suitably informed of this).

Unlawful use of drones offence

The Bill introduces new offences prohibiting the unlawful use of a drone around a corrective services facility or youth detention centre and recognises that a person could be remotely piloting the drone from a location other than at the facility or centre. The maximum penalty is prescribed as 100 penalty units, or two years imprisonment.

The new offence prohibits the use, or attempted use, of drones at, or above all corrective services facilities and youth detention centres, including the land on which these are located, without a reasonable excuse.

The offence does not apply when the use of the drone has been approved by the relevant chief executive, the drone is being used by an officer of a law enforcement agency or emergency service to carry out an official function, or the person is acting on behalf of, or under the direction of, an officer of a law enforcement agency or emergency service.

Use of x-ray body scanners and other emerging technologies

The Bill amends the CSA to support the future use of x-ray body scanners in corrective services facilities and provide clear authority for the use of surveillance devices, such as CCTV and body worn cameras, to record and monitor activities within corrective services facilities.

X-ray body scanners – imaging search

The Bill creates the head of power to support a trial of x-ray body scanners and future roll out of body scan technology at corrective services facilities to detect contraband. The Bill inserts a definition for 'imaging search' into schedule 4 of the CSA. The imaging search definition provides that electronic images will be produced by a method of scanning a person, including by use of ionising or non-ionising radiation. Any device to be used to conduct an imaging search must be prescribed by regulation.

The new power to conduct an 'imaging search' is inserted into current sections 32 (search of accommodated child), 33 (power to search) which relates to search of prisoners, 159 (search of visitor) and 173 (search of staff member).

The Bill provides requirements for conducting imaging searches under a revised section 175A. This includes that an imaging search may require a person to remove their outer garments (defined to mean an overcoat, jacket, jumper, hat or other item that can be removed without exposing an inner garment), require another person or an apparatus prescribed by regulation to come into contact with the person, and require the person to temporarily hold a position or to move as directed.

A regulation may prescribe additional limitations on the use of imaging searches, for example the maximum number of times a person may be searched in a stated period, and other procedures relating to imaging searches, including for the use, storage and destruction of any images produced by the scan.

The new head of power is subject to any other regulation or laws governing use of such technology, including requirements under the *Radiation Safety Act 1999* (RSA) and Radiation Safety Regulation 2021. Body scanning technology may only be used by QCS if these other stringent regulatory requirements are met.

For consistency with the structure of these amendments, definitions of general and scanning searches have been revised in schedule 4 and all requirements for these searches have been moved to section 175A, alongside the new requirements for imaging searches.

Surveillance devices

The Bill provides the chief executive with a clear head of power to authorise use of a prescribed surveillance device at a corrective services facility to monitor and record

activity in and around a facility. In authorising the use of a surveillance device, the chief executive must be satisfied that use of the device will enhance one or more of the prescribed matters, including the safety of persons, the security of facilities, preventing corruption and detecting contraband.

The authorisation must include requirements about the use, storage and destruction of recordings made by a surveillance device and must not authorise the covert use of a surveillance. In authorising the use of a prescribed surveillance device, the chief executive must have regard to the privacy of prisoners, CSOs and visitors to the facility.

The Bill does not limit the use of a surveillance device at a corrective services facility, including the covert use of a surveillance device, under another provision of the CSA or another Act such as, for example, the use of a surveillance device by warrant under the *Police Powers and Responsibilities Act 2000*.

The types of surveillance devices authorised for use will be prescribed in regulation. A transitional provision has been included to provide for the section to apply to surveillance devices currently being used in corrective services facilities, for example, CCTV and body worn cameras, from commencement of the new provision (on proclamation).

Enhancing information sharing

The Bill includes amendments to the information sharing provisions in the CSA to promote prisoner wellbeing, support frontline service delivery and enhance interagency collaboration.

Supporting prisoner and offender health and welfare

The Bill provides clear authority to share confidential information to support the health and welfare of prisoners.

The Bill amends section 341 to clarify that confidential information about a prisoner can proactively be shared with a health practitioner, if the person disclosing the information reasonably believes the disclosure is relevant for the care, treatment or rehabilitation of the prisoner. This amendment applies to all prisoners, as defined in schedule 4, including a prisoner who is released to parole or a prisoner being transferred between corrective services facilities.

The Bill also amends section 341 to expressly provide that confidential information about the condition of the person to whom the information relates is able to be communicated in general terms. For example, a CSO could advise a prisoner's family that the prisoner is in the detention unit or in transit to a hospital. This amendment applies only to prisoners in custody and does not include prisoners released to parole.

Supporting law enforcement and protecting intelligence

The Bill provides clear authority to proactively share information with law enforcement agencies to support frontline staff to stop crime and keep the community safe.

The Bill amends section 341 to clarify that confidential information is able to be shared with a law enforcement agency, for a function of the agency.

Further, the Bill provides that if an informed person obtains or has access to sensitive information from a law enforcement agency or sensitive information in the possession of a law enforcement agency that the chief executive has accessed under an arrangement with the agency, the person must not disclose the information or make a record of the information other than as authorised. A maximum penalty of 100 penalty units or 2 years imprisonment will exist if the informed person discloses or makes a record other than in the authorised circumstances.

Information sharing with corrections agencies in other jurisdictions

The Bill clarifies that a prisoner or offender's information can be shared with another state or foreign corrections agency, to support the ongoing detention, reporting, supervision or management of that offender in the other jurisdiction.

Updating the prisoner security classification framework

The Bill amends the prisoner security classification framework to better respond to individual risk and align with correctional infrastructure.

The Bill removes 'maximum' as a classification level and requires a prisoner with a 'high' classification to be accommodated in a secure facility as defined in schedule 4, being generally, a prison with a perimeter fence, or other security measures, that are designed to prevent the escape of a prisoner.

Amendments are made to enable risk sub-categories to be established within the prisoner security classification framework and prescribed in regulation, expand matters the chief executive considers when deciding a prisoner's classification, and amend classification review periods to be event-based or at a prisoner's request.

Other amendments

Other amendments are made to clarify sentence calculation issues, support the effective operation of the Official Visitor Scheme, and support the delivery of prisoner health services provided by QH by updating out-dated terminology and provisions within the CSA.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving most of the policy objectives.

It would be possible for the Department of Children, Youth Justice and Multicultural Affairs to rely on common law emergency powers and the department's duty of care to children and staff in detention centres, rather than proceed with statutory powers in relation to temporary youth detention centres or temporary youth detention employees.

Legislation is preferable because it will provide clarity and certainty, facilitate timely decision-making that takes into account all relevant factors, which would be highly problematic in a crisis relying on the common law alone. It will also place clear and transparent obligations on the youth justice chief executive, both in relation to the original decisions (to establish a temporary centre or appoint temporary staff) and ongoing, to ensure the best interests of children, staff and the community are met to the greatest extent practicable in the circumstances.

Estimated cost for government implementation

There are no anticipated costs to government in implementing the Bill. The Bill creates heads of power to provide for the future roll out of emerging technologies.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. Potential inconsistencies with fundamental legislative principles under the *Legislative Standards Act 1992* (LSA) are addressed below. The following provisions of the LSA are of particular relevance to the Bill.

Section 4(3)(a) of the LSA states that whether the legislation has sufficient regard to rights and liberties of individuals under section 4(2)(a) depends on whether the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

Section 4(3)(c) states that whether the legislation has sufficient regard to the rights and liberties of individuals under section 4(2)(a) depends on whether the legislation allows the delegation of administrative power only in appropriate cases and to appropriate persons.

Section 4(4)(a) of the LSA states that whether a Bill has sufficient regard to the institution of Parliament under section 4(2)(b) depends on whether the Bill allows the delegation of legislative power only in appropriate cases and to appropriate persons.

<u>Modernising the emergency response framework</u>

Amendments to the CSA

The QCS chief executive will have the power to declare an emergency. During a declaration of emergency, the chief executive has clear authority to restrict activities in

and access to corrective services facilities, limit or withhold prisoner privileges, transfer or isolate prisoners, and screen individuals entering a facility.

While the above administrative powers of the chief executive may be considered to be inconsistent with the rights and liberties of individuals (section 4(2)(a)), it is considered justified because the enhanced powers are intended to protect the health and safety of prisoners, CSOs or other people at a corrective services facility from the harm that could result from the emergency situation, which is an appropriate case for power to be delegated. The function rests with the chief executive, who reports to the Minister and holds statutory responsibility for the operation of the corrective services facilities in Queensland. This is an appropriate person to make these decisions, noting the Bill includes an amendment to restrict the chief executive from delegating this power further.

There are also numerous safeguards in place to limit the impact that actions taken under a declaration will have on individual rights and liberties. The power to declare an emergency is:

- subject to the Minister's approval,
- for a specific duration,
- limited to instances where the chief executive reasonably believes a situation exists that threatens the security or good order of a corrective services facility, or the health or safety of a prisoner or another person in the facility,
- limited to circumstances where the situation justifies making a declaration,
- subject to consideration of relevant human rights under the *Human Rights Act 2019*, and
- subject to publication on the department's website.

The powers that can be exercised under a declaration are also sufficiently defined in the legislation and linked back to what is necessary in the context of the emergency.

This amendment therefore has sufficient regard to the rights and liberties of individuals, consistent with section 4(3) of the LSA.

Amendments to the YJA

The declaration of a place as a temporary youth detention centre may infringe on the rights and liberties of those who own or operate the selected site. The Bill does not seek to infringe on the rights of persons who own or operate any place that may be considered suitable as a temporary youth detention centre. If a place is identified, the chief executive will be required to negotiate the use of the land with the owner and any other impacted parties, such as the operator at the place.

Any declaration of a temporary youth detention centre will be subject to Ministerial approval, and the chief executive has a positive obligation to notify other government agencies, oversight bodies and key legal stakeholders to advise that a declaration of a temporary youth detention centre has been made. A declaration must also be published in the Government Gazette, as soon as practicable. These mechanisms will ensure that the use of any exercise of administrative powers will be subject to appropriate scrutiny and public accountability.

Section 262 of the YJA provides that a youth detention centre may only be established by regulation. New section 301G raises potential fundamental legislative principles issues, as it enables the chief executive to declare a temporary youth detention centre, with the approval of the Minister.

The Bill is considered to have sufficient regard to the institution of Parliament as it allows for the delegation of legislative powers to the chief executive, who is a statutory appointment who reports to the Minister and holds statutory responsibility for the operation of the youth detention centres in Queensland. The Bill contains several safeguards to ensure appropriate accountability for any decisions made by the chief executive in choosing to declare a temporary detention centre. The existing independent oversight bodies will perform their usual functions at any temporary youth detention centre to ensure an appropriate level of accountability is maintained. The ability to declare a temporary youth detention centre is also limited to a maximum duration of 21 days.

The Bill also provides for the Governor in Council to declare a temporary youth detention centre if one is needed for longer than the initial 21 days following the emergency. This is considered necessary to respond urgently to the emergency and considered to have sufficient regard to the institution of Parliament. The Bill provides for the making of a regulation in accordance with the process for declaring a permanent youth detention centre. The Bill does not interfere with any of the existing requirements relating to subordinate legislation and any regulation made would be subject to review by the Legislative Assembly and the relevant Parliamentary Committee in the ordinary way.

The Bill amends section 312 of the YJA to enable the chief executive to delegate functions and powers to appropriately qualified public service employees. The current delegation power in section 312 is limited to public sector officers. The extension of the delegation power will support appropriately qualified public service employees to undertake particular functions or powers in the event of an emergency.

This amended delegation power would also have effect outside emergencies, as it is the generic delegation provision in the YJA. It will ensure consistency with other legislation such as the *Public Service Act 2008* (PSA) and the *Child Protection Act 1999*.

It is considered that these amendments have sufficient regard to the rights and liberties of individuals as:

- the delegation of functions and powers is only able to be made where the person is appropriately qualified to perform them, and
- the functions and powers can only be exercised by public service employees who are appointed under the PSA, subject to the requirements of the Code of Conduct and the *Public Sector Ethics Act 1994*.

The Bill also provides for the chief executive to appoint and delegate functions and powers to appropriately qualified non-public service employees as temporary detention centre employees under new section 301D and 301E. This provision would facilitate rapid deployment of people outside of the public service with appropriate skills and expertise, such as interstate youth justice workers, potentially through operational

protocols with their usual employer. The Bill is considered to have sufficient regard to the rights and liberties of individuals as:

- where delegation is permitted, the chief executive may only delegate to a person who is appropriately qualified to carry out the function or power; and
- temporary detention centre employees are taken to be a detention centre employee under the YJA, which requires them to comply with requirements under the Act and the Youth Justice Regulation 2016, including the charter of youth justice principles.

Criminalising evolving behaviours that put safety at risk

The Bill introduces new offences. The first offence relates to being in a restricted area of a corrective services facility. The second offence relates to the operation of a drone at a corrective services facility or youth detention centre. The third offence relates to unlawful disclosure or recording of sensitive law enforcement information. All offences hold a maximum penalty of 2 years imprisonment, with the drone offence and disclosure of sensitive law enforcement information offence also including a maximum penalty of 100 penalty units.

The new offences are considered to be consistent with fundamental legislative principles in sections 4(2) and 4(3) of the LSA.

Restricted area offence

A prisoner accessing a restricted area within a corrective services facility, for example a rooftop, presents significant risk to the prisoner, to other prisoners, to CSOs, the security of facilities, and undermines community confidence in the correctional system. Introducing an explicit offence for a prisoner being in a restricted area reflects the level of risk such actions carry. The maximum penalty is consistent with that applied to other equivalent prisoner offences within section 124 of the CSA.

Further, while the above powers may be considered to be inconsistent with the institution of Parliament (section 4(2)(b)), the power to identify further restricted areas through the regulation is considered appropriate as this allows the flexibility to prescribe other areas, such as staff only areas, with a sufficient level of detail and enables further parliamentary scrutiny of any future restricted areas which the restricted area offence may be expanded to include.

The Bill requires the prosecution to establish a prisoner was given sufficient warning that an area prescribed by regulation is a restricted area for the offence, unless the area is controlled by a CSO. This provides that a prisoner's conduct is only captured by the offence if they have been made aware the area is a restricted area and they have not been otherwise granted access to the area (because a CSO controls access to the area or they have been suitably informed of this).

Unlawful use of drones offence

Drones are prescribed as a prohibited item under section 123 of the CSA; there is no provision, however, in the CSA or YJA to restrict or prevent a drone being flown in the airspace above a custodial facility.

While additional anti-drone technology has been deployed by QCS and continues to be explored at facilities across the State in accordance with the *Queensland Drones Strategy*, the incidence of inappropriate drone activity in the airspace above custodial facilities continues to occur, supporting the need for further deterrent action to protect the safety and security of the correctional environment.

The new offence reflects the serious threat which the operation of a drone has to the safety and security of a corrective services facility or youth detention centre, which is not limited to the threat of contraband entry.

The maximum penalty aligns with the penalty for a person taking or attempting to take a prohibited thing into a corrective services facility (section 128), the penalty for a person entering or attempting to enter a facility without the chief executive's approval (section 130) or photographing a prisoner without approval (section 132) under the CSA. The penalty further aligns with the penalty provisions of other States pertaining to drone usage above corrective services facilities in New South Wales, Victoria and South Australia.

Unlawful recording or disclosure of sensitive law enforcement information

In recent years, QCS intelligence expectations have increased, resulting in a high demand for intelligence advice and support from both internal and external stakeholders. This includes sharing and receiving sensitive law enforcement information, including human source and witness protection information and intelligence data.

A QCS Intelligence Review highlighted the need for QCS to explore ways to improve intelligence capability of the agency. This includes enhancing information-sharing with law enforcement stakeholders and a need to provide these partner agencies with reassurance that QCS has measures in place to ensure sensitive information is appropriately stored, handled and protected from disclosure.

The new offence reflects the seriousness of unlawfully recording or disclosing sensitive law enforcement information. The maximum penalty aligns to the existing penalty under section 341 of the CSA for disclosing confidential information, a maximum of 100 penalty units or 2 years imprisonment.

Use of x-ray body scanners and other emerging technologies

The Bill introduces a new imaging search and enables the chief executive to authorise the use of a prescribed device to monitor and record activity in and around a corrective services facility.

X-ray body scanners – imaging search

As with any search, these new powers impact on the privacy of the person being searched and may be considered inconsistent with the fundamental legislative principle relating to rights and liberties of individuals (section 4(2)(a)).

To the extent to which the authority to conduct an imaging search may be inconsistent, it is considered justified. An imaging search is considered a less invasive and more detailed search in comparison to other legislated search methods. Such searches balance CSO and prisoner safety, the security of the correctional environment, and the dignity and privacy of persons being searched. The use of searches on prisoners, CSOs and visitors is necessary given the closed nature of the correctional environment, the need to mitigate the introduction of contraband into corrective services facilities and the need to deter CSOs from engaging in corrupt behaviour.

Any potential inconsistency is considered to be appropriate as searches are a necessary tool to prevent the introduction of contraband into the closed custodial environment. There are also a number of safeguards in place prescribing how a search is to occur. The CSOs conducting searches also complete training to ensure searches are conducted appropriately.

The Bill allows a regulation to prescribe the type of device which can be used for an imaging search. This represents a delegation of a legislative power and may be considered to be inconsistent with the institution of Parliament (section 4(2)(b)). A device cannot be used for an imaging search unless it is prescribed in regulation. Including a regulation making power under the CSA to prescribe the type of device for imaging search provides flexibility to adapt to future emerging technology and ensures an appropriate level of parliamentary scrutiny is maintained. As described above, a regulation may also further prescribe limitations on the use of an apparatus or device or the conduct of imaging searches, including the use, storage and destruction of images produced by an imaging search. This is considered appropriate to capture different requirements associated with a prescribed device and safeguard the use of devices.

Surveillance devices

A new explicit power for the chief executive to authorise the use of a prescribed surveillance device to monitor or record activity in and around a corrective services facility may impact on the privacy of the person being monitored and be considered to be inconsistent with the fundamental legislative principle of rights and liberties of individuals (section 4(2)(a)).

The broad authorisation and use of electronic surveillance devices within the closed correctional environment is considered justified to protect the safety of CSOs, prisoners and visitors, ensure the security of the correctional environment, detect prohibited items from entering centres, and prevent corruption and crime. It is also vital that the correctional environment can adopt or trial new or emerging technologies, and that the use of existing (and new) technology within the closed environment is clearly authorised and regulated.

In authorising the use of a prescribed surveillance device, the chief executive must be satisfied the use of the device will enhance one or more of the matters as prescribed in the Bill, and the authorisation must include requirements about the use, storage and destruction of recordings made by a surveillance device. The chief executive must also have regard to the privacy of prisoners, CSOs and visitors. The chief executive reports to the Minister and is responsible for the operation of the corrective services facilities in Queensland. Covert surveillance devices are not permitted to be authorised under the provision.

Each corrective services facility already has clear signage notifying prisoners, staff and visitors that they are under audio and visual surveillance while on the premises. This signage provides that recorded material will only be accessed by persons authorised to do so and will be handled in accordance with the *Information Privacy Act 2009* and CSA (section 341).

Further, the ability to prescribe a device by regulation is a delegation of legislative power and may be considered to be inconsistent with the institution of Parliament (section 4(2)(b)). Creating a regulation making power for a device to be prescribed provides flexibility in being able to adapt to future emerging technology and ensures an appropriate level of parliamentary scrutiny is maintained.

Enhancing Information sharing

The Bill includes amendments that support appropriate information sharing with law enforcement agencies, other corrective services agencies, and in specific instances where sharing of information will support a prisoner's care, treatment or rehabilitation. The amendments aim to provide frontline CSOs with improved legislative guidance on what they are and are not able to disclose in key areas of service delivery, to ensure the efficient and effective operation of the correctional system.

This disclosure of information may be considered inconsistent with rights and liberties of individuals (section 4(2)(a)) given the amendments enable the disclosure of private or confidential information without requiring the person's consent. In this instance, the disclosure of private or confidential information for these purposes is considered justified to promote prisoner health and wellbeing, support frontline service delivery and interagency collaboration in line with the purpose of the CSA. The provisions also support the safety and security of corrective services facilities and the safety of the broader community.

Updating the prisoner security classification framework

The Bill includes amendments to the current prisoner security classification framework to ensure the framework aligns with the existing infrastructure of the custodial environment in Queensland and appropriately responds to risk.

The Bill will replace the current statutory 12 month review period for all prisoners with a high security classification with a new power to enable a prisoner with a high security classification to request their classification be reviewed every 12 months. In addition, a prisoner held on in detention under a civil order is no longer entitled to a review of their high security classification.

While the amendments could be considered to be inconsistent with the rights and liberties of individuals, these changes are considered consistent with the principles of natural justice (section (4)(3)(b) of LSA). For a prisoner detained on a civil order, the court has already made a determination that the person is a significant risk to the community and that they require detention beyond their criminal sentence of imprisonment. Because of this, these prisoners are detained in secure facilities and are not eligible for placement in a low security facility. For other prisoners with a high security classification, they are still able to have their classification reviewed, albeit at their request, every 12 months. To further support the principles of natural justice, a mandatory (administrative) security classification review must occur every three years for a prisoner who has held a high security classification for three years and has not requested a review during that period. The Bill also now provides that the chief executive may review a prisoner's security classification at any time.

A further amendment creates a regulation making power for risk sub-categories, representing a delegation of legislative power which may be considered to be inconsistent with the institution of Parliament (section 4(2)(b)). However, this is considered appropriate. The risk sub-categories sit within the updated 'high' and 'low' prisoner security classification framework and are intended to respond to risk and provide greater meaning to a prisoner security classification status. The ability to prescribe risk sub-categories by regulation allows the flexibility to prescribe a variety of risk sub-categories across corrective services facilities and enables further parliamentary scrutiny of any future risk sub-category. For example, a risk sub-category could be applicable to all facilities or limited to a specific facility or type of facility. Any risk sub-category imposed on a prisoner will also be subject to existing review and reconsideration processes under the CSA.

Consultation

Consultation on amendments to the CSA and YJA was conducted separately and included the following stakeholders. Relevant stakeholders were consulted on both sets of amendments.

A consultation draft of the Bill was provided to the following stakeholders: Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd, Aboriginal and Torres Strait Islander Women's Legal Service North Queensland, Australian Workers Union, Bar Association of Queensland, Civil Aviation Safety Authority, Community and Public Sector Union, Crime and Corruption Commission, District Court of Queensland, Health Services Union, Legal Aid Queensland, Magistrates Court of Queensland, Office of Queensland Health Ombudsman, Office of the Director of Public Prosecutions, Office of the Information Privacy Commissioner, Office of the Public Advocate, Office of the Queensland Ombudsman, Parole Board Queensland, PeakCare, President of the Children's Court of Queensland, Prisoners' Legal Service, Queensland Aboriginal and Torres Strait Islander Child Protection Peak, Queensland Advocacy Incorporated, Queensland Council for Civil Liberties, Queensland Court of Appeal, Queensland Family and Child Commission, Queensland Homicide Victims' Support Group, Queensland Human Rights Commission, Queensland Indigenous Family Violence Legal Service, Queensland Law Society, Queensland Nurses and Midwives Union, Queensland Ombudsman, Queensland Police Union of Employees, Queensland Public Guardian, Queensland Teachers Union, Sisters Inside Inc., Supreme Court of

Queensland, Together Union, United Workers Union, Women's Legal Service Queensland, YFS Legal and the Youth Advocacy Centre.

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

Consistency with legislation of other jurisdictions

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

Modernising the emergency response framework

A jurisdictional scan of emergency response legislation for corrections and youth justice in other jurisdictions, and for emergencies in other portfolios was conducted when considering an appropriate model for the Queensland correctional and youth detention environment. Varied approaches to the length of declarations, powers of the chief executive, extension by regulation powers were researched, analysed and informed the changes to the framework as proposed within the Bill.

Criminalising evolving behaviours putting corrective services facilities at risk

Unlawful use of drones offence

In developing the new unlawful use of drone offences, consideration was given to comparable offences already introduced in Victoria (section 32A of the *Corrections Act 1986)*, New South Wales (NSW) (section 253FA and 253FB of the *Crimes (Administration of Sentences) Act 1999* and section 37CB of the *Children (Detention Centres) Act 1987),* and South Australia (section 97A and 97B of the *Correctional Services Act 1982)*. In particular, each jurisdiction has enacted the offence with a similar maximum penalty of 2 years imprisonment.

Use of x-ray body scanners and other emerging technologies

X-ray body scanners – imaging search

A jurisdictional scan of both national and international legislation was conducted with NSW (Crimes (Administration of Sentences) Regulation 2014 (NSW)) and Canada (*Corrections and Conditional Release Act 1992* (section 51)) having legislated broad heads of power for the use of x-ray body scanners within the correctional environment. Other jurisdictions, including Victoria and the United Kingdom, are exploring the technology but were yet to legislate at the time of developing the Bill.

Sections 44(3A)(c), 44(3B) and (3C) of the *Aviation Transport Security Act 2004* (Cth) were also analysed to determine the guidelines and safeguards in place for body scanning equipment used for the screening of a person at an airport. These mechanisms were considered in developing the provisions contained within the Bill.

Updating the prisoner security classification framework

The legislative classification framework in NSW was considered in the development of the modernised classification framework for the correctional environment in Queensland. The NSW classification framework is closely aligned with prison infrastructure, with categories of classification largely dependent on the type of facility where a prisoner is accommodated (i.e. a secure facility including towers or electronic surveillance equipment). The NSW classification framework also includes further options to recognise specific risks, including escape-risk, length of imprisonment (i.e. life imprisonment) and national security interest.

The NSW classification framework is largely contained within the Crimes (Administration of Sentences) Regulation 2014, with a very broad head of power sitting within the *Crimes (Administration of Sentences) Act 1999*.

Notes on provisions

Part 1 Preliminary

1 Short title

Clause 1 states that, when enacted, the Bill will be cited as the *Corrective Services (Emerging Technologies and Security) and Other Legislation Amendment Act 2022*.

2 Commencement

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

Subclause (1) provides that clause 19 which contains the new provision to authorise the use of a prescribed surveillance device at a corrective services facility, and clause 35, an associated transitional provision will commence on a date to be fixed by proclamation.

Subclause (2) provides that clauses related to the new declaration of emergency framework under the *Corrective Services Act 2006* will commence on 1 November 2023. This is to provide for the expiry of the temporary COVID-19 measures contained in chapter 6, part 15A, which expire on 31 October 2023.

Part 2 Amendment of Corrective Services Act 2006

3 Act amended

Clause 3 states that this part amends the *Corrective Services Act 2006* (CSA).

Note – See also the amendments in schedule 1.

4 Amendment of s 12 (Prisoner security classification)

Clause 4 amends the framework for deciding a prisoner's security classification under section 12.

Subclauses (1) and (2) omit 'maximum' as an available prisoner security classification. This means that when a prisoner is admitted to a corrective services facility, unless on remand, the chief executive must classify the prisoner in either a low or high security classification. On admission, a prisoner on remand can only receive a high security classification.

Subclause (3) inserts a head of power to prescribe 'risk sub-categories' by regulation. In addition to a security classification of low or high, the chief executive may also classify a prisoner into one or more of the prescribed risk sub-categories. The creation of risk sub-categories is intended to provide an additional layer of assessment of risk to enhance the management of prisoners.

Subclause (4) inserts additional considerations the chief executive must have regard to when deciding a prisoner's security classification, or risk sub-category. These additional considerations are the length of time remaining on a prisoner's sentence and information or advice about the prisoner received from a law enforcement agency, as defined in schedule 4. These matters may significantly influence a prisoner's security classification. For example, a prisoner who is nearing the end of their sentence may benefit from a lower security classification to support their reintegration into the community.

Subclause (5) inserts additional considerations the chief executive may have regard to when considering a prisoner's security classification, or risk sub-category. These discretionary considerations are any matter that is relevant to the security and good order of a corrective services facility or the welfare or safe custody of prisoners. This is intended to expressly allow for consideration of more unique or extraordinary matters when deciding a prisoner's security classification so long as they are relevant to the prescribed factors.

Subclause (5) requires that a prisoner with a high security classification must be detained in a secure facility, as defined in schedule 4. It further provides that a prisoner with a low security classification may be detained in a low custody facility. The decision to detain a prisoner classified as low in a low custody facility is intended to remain discretionary. There are several considerations to determine suitability for placement in a low custody facility that may go beyond a prisoner's security classification. These include best interest considerations, such as proximity to family supports for the prisoner, accessibility and safety issues, or where placement is otherwise prohibited under the CSA (i.e. section 68A).

A 'low custody facility' is defined for this section. Low custody facilities include, for example, the Helana Jones Centre, Numinbah Correctional Centre, Palen Creek Correctional Centre, Capricornia Correctional Centre Farm, Townsville Correctional Centre Farms, and the Lotus Glen Correctional Centre Farm.

Subclause (6) renumbers subsection (1A) to (6) consequential to the amendment to section 12.

5 Amendment of s 13 (Reviewing prisoner's security classification)

Clause 5 amends the triggers for when a prisoner's security classification, including any risk sub-category, is reviewed under section 13.

Subclause (1) replaces existing subsections 13(1) and (2) with new provisions guiding when a prisoner's security classification is reviewed.

The chief executive will have the discretion to review a prisoner's security classification at any time. This review could be of the prisoner's high or low security classification, or be limited to a review of a risk sub-category only.

Unless the prisoner is on remand and not serving a sentence for another offence, the review of a prisoner's high security classification is required in two circumstances. The chief executive must review the classification if either the prisoner requests the review

and their classification has not been reviewed for 12 months, or the prisoner has been classified as high for the previous three years without a review in that time.

There is no requirement to review the security classification of prisoners on prescribed orders who are classified as high. This includes a prisoner subject to a continuing or interim detention order under the *Dangerous Prisoners (Sexual Offenders) Act 2003*. Such orders are subject to legislative timeframes and regular review by a court.

Subclause (2) is consequential to the amendment in clause 4.

Subclause (3) renumbers subsections as a consequence of subsections inserted by subclause (1).

6 Amendment of s 19 (Effect of prisoner's security classification)

Clause 6 amends section 19 to enable the chief executive to make different arrangements for the management of prisoners with different risk sub-categories in addition to different security classifications.

7 Amendment of s 21 (Medical examination or treatment)

Clause 7 amends section 21 to reflect current health service delivery to prisoners by removing outdated provisions and updating terminology where appropriate.

The amendment recognises that since 2008, and in accordance with current Administrative Arrangement Orders, Queensland Health has been responsible for the delivery of prisoner health services in all corrective services facilities operated by Queensland Corrective Services.

Subclause (1) removes the power for a doctor to direct a prisoner to submit to a medical examination or treatment, or for the use of force in the carrying out of a directed examination.

There are other legislative mechanisms contained in the *Public Health Act 2005* and the *Mental Health Act 2016* which provide the legislative framework necessary for health practitioners to utilise when treating or examining a patient. The powers under the CSA are therefore duplicative and can be omitted.

Subclauses (2) to (5) replace references to 'doctor' and 'psychologist' with 'health practitioner' where appropriate. A definition of 'health practitioner' is inserted into schedule 4 under clause 36.

Subclauses (6) and (7) are consequential to the amendment in subclause (1).

8 Amendment of s 32 (Search of accommodated child)

Clause 8 enables the chief executive to require a child accommodated in a corrective services facility with a female parent to submit to an imaging search. A definition of 'imaging search' is inserted in schedule 4 under clause 36. The requirements for conducting an imaging search are stated in clause 20.

9 Amendment of s 33 (Power to search)

Clause 9 enables the chief executive or a corrective services officer in prescribed circumstances to require a prisoner to submit to an imaging search. A definition of 'imaging search' is inserted in schedule 4 under clause 36. The requirements for conducting an imaging search are stated in clause 20.

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

Clause 10 replaces references to 'doctor' and 'nurse' in section 39 with 'health practitioner', consistent with the amendments in clause 7.

Subclause (2) is consequential to the amendment.

11 Amendment of s 60 (Maximum security order)

Clause 11 is consequential to the amendment in clause 4.

12 Amendment of s 108 (Discharge or release)

Clause 12 is consequential to the amendment in clause 36 (definition of 'discharge').

13 Amendment of s 112 (Arresting prisoner unlawfully at large)

Clause 13 clarifies the application of section 112 to prisoners who have left lawful custody in error by inserting a new definition of 'unlawfully absent'. This provides for a circumstance where a prisoner is mistakenly, unlawfully or otherwise incorrectly discharged or released before the prisoner's discharge day or release day, including from the custody of Queensland Corrective Services, police or a court. Existing subsection 112(4) will not apply to a prisoner who is unlawfully absent.

14 Amendment of s 124 (Other offences)

Clause 14 inserts a new offence and a definition of 'restricted area' of a corrective services facility into section 124. Offences in section 124 apply only to prisoners.

Subclause (1) makes it an offence for a prisoner to be in a restricted area of a corrective services facility without a reasonable excuse. The maximum penalty for the offence is 2 years imprisonment, consistent with other offences under section 124.

A corrective services facility is defined in the schedule 4 dictionary. This includes a prison, a community corrections centre (Helana Jones Centre), or a work camp.

Subclause (2) defines restricted areas to include the roof of a facility, or any other part of the facility prescribed by regulation.

Subclause (3) provides that if a prescribed restricted area is not controlled by a corrective services officer, the chief executive must ensure prisoners at the facility are given sufficient warning that it is a restricted area.

This warning could include, but is not limited to, for example, a sign displayed on a barrier fence, a notice placed on a door that enters into a movement control station, information about 'no go' areas provided to prisoners when admitted to a facility via an induction process, or a verbal or written direction by a corrective service officer that a prisoner is not allowed in another accommodation unit that is not their own.

The creation of the new offence does not prevent the chief executive or a corrective services officer from managing prisoner movement within a corrective services facility. For example, prohibiting certain areas from prisoner access without prescribing a restricted area or treating behaviour as a breach of discipline matter under the CSA.

15 Insertion of new s 132A

Clause 15 creates a new offence for the unlawful use of drones around corrective services facilities.

Subsection (1) provides that a person (the operator) must not operate, or attempt to operate, a drone at a corrective services facility, inclusive of the land on which the facility is located, without a reasonable excuse. The maximum penalty is 100 penalty units or 2 years imprisonment.

A corrective services facility is defined in schedule 4. This includes a prison, a community corrections centre (Helana Jones Centre), or a work camp. Prisons, inclusive of the lot of land, are declared under schedule 1 of the Corrective Services Regulation 2017. Other corrective services facilities may be declared by gazette notice.

Subsection (2) provides circumstances where the operation of a drone at a corrective services facility is not an offence. The offence will not apply if the operation of the drone has been approved by the chief executive, the operator is an officer, or person acting on behalf of an officer, or a law enforcement agency or emergency service carrying out their functions.

Subsection (3) provides that the offence applies to the operation of a drone regardless of the location of the operator. This is intended to recognise that the operator of the drone may be remotely piloting the drone from a location not in the vicinity of the corrective services facility.

Subsection (4) defines 'at' a corrective services facility to include the airspace above a facility and inserts definitions of 'drone' 'emergency service', 'officer, 'rural fire brigade' and 'state emergency service' for the purposes of the new offence.

16 Amendment of s 159 (Search of visitor)

Clause 16 enables the chief executive to require an accredited or other visitor to submit to an imaging search before entering, and extends existing subsection 159(3) to a visitor (not an accredited visitor) who refuses to submit to an imaging search.

A definition of 'imaging search' is inserted in schedule 4 under clause 36. The requirements for conducting an imaging search are stated in clause 20.

17 Amendment of s 169 (Professional visitor)

Clause 17 omits the reference to a 'doctor' or 'psychologist', consistent with the amendments in clause 7.

18 Amendment of s 173 (Search of staff member)

Clause 18 enables the chief executive to require a staff member at a corrective services facility to submit to an imaging search, and extends existing subsection 173(2) to a staff member who refuses to submit to an imaging search.

A definition of 'imaging search' is inserted in schedule 4 under clause 36. The requirements for conducting an imaging search are stated in clause 20.

19 Insertion of new ch 4, part 3A

Clause 19 inserts a new section 173A (Electronic surveillance of corrective services facilities) to provide a clear head of power for the authorisation of surveillance devices within a corrective services facility. This section commences on proclamation.

Subsection (1) clarifies that the chief executive may authorise the use of a prescribed surveillance device at a corrective services facility to monitor and record activity in and around the facility. The chief executive can make an authorisation only if satisfied the use is likely to enhance one or more of the following factors: the safety of prisoners, corrective services officers, visitors to the facility and the community, or the maintenance of security and good order at the facility, or the prevention of intimidation, corruption, and the commission of other offences at the facility, or the detection of prohibited things entering or leaving the facility.

An authorisation may be made for all corrective services facilities or a singular facility.

Subsection (2) provides that in authorising the use of a prescribed device the chief executive must have regard to privacy of prisoners, corrective services officers and visitors to the facility.

Subsection (3) provides that an authorisation must include requirements about the use, storage and destruction of recordings made by a prescribed device and that the chief executive must not authorise covert use of a surveillance device.

In authorising the use of a surveillance devise, other legislative safeguards, including the *Information Privacy Act 2009* and the *Human Rights Act 2019* will also apply.

Subsection (4) clarifies that a surveillance device is covertly used if the device is deliberately hidden from view or is disguised to look like another type of device.

Subsection (5) provides further clarification of the application of new section 173A in relation to other CSA provisions or Acts.

Subsection (6) defines terms for the section, including that a 'prescribed surveillance device' means a surveillance device prescribed by regulation. Devices such as closed circuit television and body worn cameras could be prescribed by regulation.

20 Replacement of ch 4, pt 5 (Scanning searches)

Clause 20 replaces part 5 (Scanning searches), section 175A (Conducting scanning searches of persons) with a new part 5 (Powers and limitations for searches), section 175A (Conducting searches).

New section 175A consolidates requirements for conducting existing general and scanning searches (in subclauses (2)(a), (2)(b), (2)(c) and (3)), including from schedule 4, and inserts requirements for a new type of search, an 'imaging search'. All three search types are defined in schedule 4 as amended in clause 36.

The insertion of a new 'imaging search' provides a head of power to support a trial of x-ray body scanners and future roll out of this technology at corrective services facilities to detect contraband.

Subsection (1) provides that a corrective services officer conducting an imaging search must ensure, as far as reasonably practicable, the way the person is searched causes minimal embarrassment to the person, and that reasonable care is given to minimise any physical contact with the person.

Subsection (2)(d) provides that a corrective services officer conducting an imaging search may require a person to remove their outer garments (such as an overcoat, jacket, jumper, hat or other item that can be removed without exposing an inner garment as defined in the schedule 4 dictionary), require another person or an apparatus to come into contact with the person, or require the person to temporarily hold a position or to move as directed.

Subsection (4) states that a corrective services officer must only use an imaging search apparatus or device prescribed by regulation.

Subsection (5) provides that a regulation may prescribe additional limitations on the use of an imaging search apparatus or device, for example the maximum number of times a person may be searched in a stated period, or procedures relating to the use, storage and destruction of any images produced by an imaging search.

Requirements relating to the use of x-ray scanning technology under the *Radiation Safety Act 1999* and Radiation Safety Regulation 2021 will also apply.

21 Amendment of s 176 (Applying for an exceptional circumstances parole order)

Clause 21 is consequential to the amendment in clause 22.

22 Insertion of new s 176C

Clause 22 clarifies that a prisoner detained on remand may not apply for exceptional circumstances parole. This amendment addresses a potential anomaly in the CSA and upholds the court's discretion to grant bail.

23 Amendment of s 194 (Types of parole orders granted by parole board)

Clause 23 is consequential to the amendment in clause 22.

24 Insertion of new ch 6, pt 2, div 1, hdg

Clause 24 inserts a new Division 1 (General functions and powers) heading, consequential to the amendment in clause 28.

25 Insertion of new ch 6, pt 2, div 2 hdg

Clause 25 inserts a new Division 2 (Particular powers and obligations) heading, consequential to the amendment in clause 28.

26 Omission of s 268 (Declaration of emergency)

Clause 26 removes section 268, consequential to the amendment in clause 28.

27 Amendment of s 271 (Delegations of functions of chief executive)

Clause 27 amends section 271(1) to prohibit the delegation of the chief executive's power to declare an emergency or temporary corrective services facility under new section 271B (Declaration of emergency).

28 Insertion of new ch 6, pt 2, div 3

Clause 28 inserts a new Division 3 (Declaration of emergency) after section 271 providing for a new emergency declaration framework. This division commences on 1 November 2023 following expiry of the COVID-19 temporary measures in chapter 6, part 15A of the CSA on 31 October 2023.

New section 271A provides definitions for the division. It includes a specific definition of a 'corrective services facility' to include a part of a facility.

New section 271B inserts a head of power for the chief executive to declare an emergency.

Subsection (1) provides the threshold for when a declaration can be made. The chief executive must reasonably believe a situation exists that is likely to threaten the security or good order of a corrective services facility, or the health or safety of a prisoner or another person at a corrective services facility. Further, the chief executive must be satisfied the situation justifies making a declaration.

Situations that could trigger consideration of an emergency declaration include events occurring at a facility, such as a riot or loss of control event, situations external to a facility, including natural disasters such as bushfires or floods, or health situations, such as the spread of communicable disease.

Subsection (2) provides an additional instance when a declaration of emergency can be made. This is when a public health emergency declaration under section 319(2) of the *Public Health Act 2005* has been made and the chief executive (Queensland Corrective Services) is satisfied the public health emergency may affect the health or safety of a prisoner or another person at a corrective services facility.

Subsection (3) authorises the chief executive to make a declaration of emergency for a stated period if the threshold in subsections (1) or (2) are met. These periods are subject to limitations set out in subsection (8). It is intended for a declaration of emergency to be able to apply to one corrective services facility, or multiple facilities depending on the nature of the situation.

The chief executive may also declare a place to be a temporary corrective services facility. A temporary corrective services facility can only be declared for the duration of the declaration of emergency.

Subsection (4) provides that the chief executive may only make an emergency declaration if the Minister approves.

Subsection (5) requires the chief executive to take reasonable steps to consult with various commissioners, coordinators, chief executives, or the chief health officer prior to declaring an emergency, depending on the nature of the emergency. Consultation under subsection (5) is intended to inform any steps taken under an emergency declaration with relevant expertise.

Subsection (6) provides that failure to consult under section 271B(5) does not invalidate a declaration made under section 271B.

Subsection (7) requires the chief executive to ensure that the stated period for the declaration is no longer than is reasonably necessary given the emergency.

Subsection (8) specifies the maximum period a declaration of emergency can be made for, as follows.

Subsection (8)(a) provides that a declaration relating to a public health emergency must not be longer than 21 days. This timeframe accounts for the potential for a public health emergency to be declared under the *Public Health Act 2005*, which initially allows for a declaration of up to 7 days but for that declaration to be extended by regulation for up to 14 days at a time (totalling an initial 21 days). While the Bill provides for a declaration to be made for up to 21 days for corrective services facilities, subsection (10) provides that a declaration can only continue if the public health declaration is extended.

Subsection (8)(b) provides that a declaration relating to a disaster must not be longer than 14 days. This is aligned with a disaster situation declaration under the *Disaster*

Management Act 2003. It is not the intention of this section that a disaster situation declaration must first be invoked before a declaration relating to a disaster can be made.

Subsection (8)(c) provides that a declaration relating to a risk to the health of any person at a corrective services facility, including prisoners, that does not relate to a public health emergency must not be longer than 7 days. For example, this could include a declaration to address a risk of the spread of a communicable disease.

Subsection (8)(d) provides that a declaration relating to any other emergency situation must not be longer than 3 days. For example, this could capture a situation internal to a facility, such as a riot or loss of control event.

Subsection (9) requires a declaration to cease at the end of the stated period unless it is sooner revoked by the chief executive. This is not intended to limit the ability for a new declaration of emergency to be made if the threshold is met.

Subsection (10) provides that if a public health emergency declaration exists and the public health emergency ends, that a declaration made under subsection (8) also ends, irrespective of the stated period of the emergency declaration.

Subsection (11) inserts definitions for the section relying upon definitions within the *Hospital and Health Boards Act 2011,* the *Disaster Management Act 2003,*and the *Public Health Act 2005*.

New section 271C provides the chief executive with the necessary powers to make directions during a declaration of emergency. These powers, such as restricting access to a facility, isolating prisoners or withholding prisoner privileges are intended to be used only to the extent necessary because of the declared emergency.

These directions can only be made if the chief executive has declared an emergency under section 271B. They are intended to be able to be changed as needed throughout the stated period for the emergency, as the situation changes.

New section 271D inserts requirements for the publication of a declaration of emergency and prescribes the information that must be published, including the reasons for making the declaration.

29 Amendment of s 272 (Engaging service provider)

Clause 29 omits the reference to a ‘doctor appointed to a prison’ as doctors are no longer appointed to corrective services facilities.

30 Amendment of s 285 (Appointing official visitor)

Clause 30 removes the limit on the reappointment of an official visitor. To be reappointed, the chief executive must be satisfied the person continues to be appropriately qualified, and that the reappointment is likely to benefit a corrective services facility or prisoners of a facility. This includes official visitors who have previously been appointed but had reached the maximum limit on their appointment term.

31 Insertion of new s 340A

Clause 31 inserts new section 340A to protect sensitive law enforcement information from unauthorised disclosure. This section applies to information received before or after the commencement of the section.

Subsection (1) provides that the new section applies to sensitive law enforcement information that the chief executive has obtained from a law enforcement agency or accessed under an arrangement with the agency. For example, a memorandum of understanding or data sharing agreement.

Subsection (2) requires that a person who has accessed information under subsection (1) must not disclose sensitive law enforcement information to another person or make a record of the information, other than as authorised under subsection (3). Unauthorised disclosure is an offence, with a maximum penalty of 100 penalty units or 2 years imprisonment.

Subsection (3) prescribes the limited circumstances when sensitive law enforcement information may be disclosed or a record made of the information. These circumstances are for the purpose for which the information was given to the chief executive, with approval of the law enforcement agency that provided the information, or if the use or disclosure is likely to prevent a serious threat to a person's life, health or safety.

Subsection (4) defines 'sensitive law enforcement information'. This definition refers to exempt information contained in schedule 3, section 10 of the *Right to Information Act 2009*.

'Law enforcement agency' is defined in the schedule 4 dictionary and includes, but is not limited to, the police, Crime and Corruption Commission, the Australian Security Intelligence Organisation, or Australian Border Force.

32 Amendment of s 341 (Confidential information)

Clause 32 amends section 341 to provide for additional circumstances when confidential information can be shared.

Subclause (1) is consequential to the amendment in clause 31.

Subclause (2) inserts additional circumstances where confidential information can be shared.

New subsection 341(3)(g) provides that confidential information about a prisoner can be shared with a health practitioner, if the person disclosing the information reasonably believes the disclosure is relevant for the care, treatment or rehabilitation of the prisoner. For example, this could include proactive disclosure of information to support the co-ordinated care of a person with Queensland Health. This amendment applies to all prisoners, as defined in the schedule 4 dictionary, including a prisoner who is released to parole, or a prisoner being transferred between corrective services facilities.

New subsection 341(3)(h) provides that confidential information about the condition of a prisoner can be disclosed to another person. This information can only be disclosed if it is expressed in general terms. An example of general terms includes disclosure by a corrective services officer that a prisoner is in the detention unit or in transit to a hospital. This amendment does not include information about a prisoner released on parole or under a *Dangerous Prisoners (Sexual Offenders) Act 2003* supervision or interim supervision order.

New subsection 341(3)(i) provides that confidential information about an offender can be disclosed to a corrective services agency of another jurisdiction, including in another Australian jurisdiction or foreign country. The disclosure must be relevant to support the supervision or management of that offender in that State or country. For example, such disclosure could include where a prisoner has been discharged from the custody of Queensland Corrective Services and has returned to New Zealand or the United Kingdom. Both countries have arrangements in place for certain offenders to be subject to supervision or reporting requirements upon return from overseas. 'Offender' is defined in the schedule 4 dictionary and includes a prisoner.

New subsection 341(j) provides that confidential information can be shared with a law enforcement agency to enable a function of that agency. For example, this could include proactive disclosure of intelligence information and data with external law enforcement agencies.

Subclause (3) limits the application of new subsection 341(3)(h).

Subclause (4) defines corrective service for the purpose of new subsection 341(3)(i).

Subclause (5) renumbers subsection (3A) and (4) consequential to the amendments in this clause.

33 Amendment of s 351 (Evidentiary aids)

Clause 33 omits the reference to 'doctor' in section 351(7)(g) as doctors are no longer appointed to corrective services facilities.

34 Insertion of new ch 7A, pt 16

Clause 34 inserts transitional provisions for the Bill.

New section 490ZF provides transitional provisions for clauses 4 and 13.

Subsection (1) provides that any prisoner with a security classification of 'maximum' immediately before commencement is automatically re-classified as 'high' without the need for a security classification review to occur.

Subsection (2) provides that if a prisoner with a security classification of 'maximum' was subject to a maximum security order made under section 60 at the time of commencement, the maximum security order does not cease when the prisoner is automatically re-classified as high.

Subsection (3) clarifies that the transitional provisions do not prevent the chief executive changing or reviewing a prisoner's security classification, or maximum security order under the CSA.

New section 490ZG provides transitional provisions in relation to clause 13. Amended section 112 applies to a prisoner sentenced or detained prior to commencement of the provision. However, this only applies to a prisoner absence that occurs after commencement.

35 Insertion of new s 490ZH

Clause 35 inserts new section 490ZH to provide a transitional provision in relation to clause 19, to commence by proclamation. The section applies if a prescribed surveillance device is in use at a facility immediately before commencement. From commencement, the use of the prescribed surveillance device is taken to be authorised by the chief executive.

36 Amendment of sch 4 (Dictionary)

Clause 36 amends dictionary definitions in schedule 4.

Subclause (1) omits the definition of 'corrective services facility', 'general search' and 'scanning search'. These definitions are replaced under subclause (2).

Subclause (2) replaces the definition of 'corrective services facility' as a consequential amendment to clause 28.

Subclause (2) replaces definitions of 'general search' and 'scanning search' and inserts a new definition of 'imaging search' as a consequential amendment to clause 20.

Subclause (2) inserts a definition of 'health practitioner'. This definition refers to the definition of 'registered health practitioner' under section 5 of the Health Practitioner Regulation National Law (Qld). This ensures that health practitioners performing functions under the CSA are appropriately registered.

Subclause (2) moves the definition of 'release day' from section 111 to schedule 4.

Subclause (2) inserts a definition of 'risk sub-category' as a consequential amendment to clauses 4 to 6.

Subclause (3) is consequential to the amendment in clause 32.

Subclause (4) clarifies the definition of 'discharge' by removing the reference to unconditional release.

Discharge is the process by which a person has completed their period of detention or sentence of imprisonment, without a further period to be served on parole in the community. Unlike a parole release decision (an administrative decision), a prisoner discharged can only return to the lawful custody of the chief executive by a decision of a court, such as a decision to detain a person on remand, the imposition of a suspended

term of imprisonment, or a sentence of imprisonment for reoffending. However, a prisoner's discharge may not always be 'unconditional' as they could, for example, be discharged from custody onto another court order, such as a suspended sentence (the condition being not to reoffend), on bail (this could have various conditions), a probation order (this has various conditions), or a supervision order under the *Dangerous Prisoners (Sexual Offenders) Act 2003*.

Part 3 Amendment of Corrective Services Regulation 2017

37 Regulation amended

Clause 37 states that this part amends the Corrective Services Regulation 2017.

Note – see also amendments in schedule 1 of the Bill.

38 Amendment of s 19 (Prohibited things–Act, s 123)

Clause 38 is consequential to the amendment in clause 15.

39 Replacement of s 48 (Apparatus for scanning search–Act, sch 4, definition *scanning search*)

Clause 39 is consequential to the amendments relating to 'scanning search' in clauses 20 and 36.

Part 4 Amendment of Police Powers and Responsibilities Act 2000

40 Act amended

Clause 40 amends the *Police Powers and Responsibilities Act 2000* (PPRA).

41 Amendment of s 366 (Arrest of escapees etc.)

Clause 41 amends section 366 of the *PPRA* as a consequential amendment to clause 13.

42 Amendment of s 797 (Helping during declaration of emergency under Corrective Services Act 2006)

Clause 42 is consequential to the amendments in clauses 26 and 28.

Part 5 Amendment of Youth Justice Act 1992

43 Act amended

Clause 43 provides that Part 5 amends the *Youth Justice Act 1992* (YJA).

44 Amendment of s 59E (Proper officer of a court may ask for help to perform functions)

Clause 44 corrects a minor drafting error in the YJA which was identified in the course of drafting new section 301S(2)(d) (clause 48).

45 Amendment of s 263A (Recordings in detention centres and use of body-worn cameras)

Clause 45 is consequential to clause 51 which inserts definitions of 'law enforcement agency' and 'public guardian' into the dictionary at schedule 4. The term law enforcement agency is used in new section 279A and public guardian is used in new section 301S.

46 Insertion of new s 279A

Clause 46 creates a new offence, prohibiting the use of a drone at, or above, a youth detention centre, without reasonable excuse. The Bill includes appropriate exceptions, for example, where the use is approved by the chief executive.

Detention centres are established by prescribing the street address of the land in the Youth Justice Regulation 2016. The prohibition will apply on or above the land at the prescribed addresses.

47 Amendment of s 297D (Definitions for division)

Clause 47 is consequential to clause 51 which inserts a definition of 'public guardian' into the dictionary. The term public guardian is used in new section 301S.

48 Insertion of new part 9A

Clause 48 inserts new Part 9A (Provisions for declared emergencies and disasters), sections 301B to 301S, into the YJA.

New section 301B provides definitions for the provisions in new Part 9A.

New section 301C of the YJA provides alternative means for complying with requirements relating to restorative justice conference agreements made during a declared emergency.

The Bill recognises the restorative and reintegrative benefits of in-person attendance at restorative justice conferences by limiting the use of these alternative means to emergency periods, where it was not possible because of the emergency for one or more of the persons entitled to participate, and who chose to participate, to attend in person.

Section 36(2) of the YJA provides that a conference agreement must be signed by specified participants. Section 36(4) requires that a copy of the agreement must immediately be given to each person who signed the agreement. While these provisions do not expressly prohibit the convening of conferences other than in person, they mean such conferences are only convened in extraordinary circumstances and when there is reliable technology available and a departmental officer at each location, so that compliance can be assured. In practice, conferences other than in person are only

usually convened when the child is in detention and the other participants are some distance away, but in a departmental facility with reliable email or facsimile facilities.

In an emergency period, travel may not be possible for some people for long periods. It may, therefore, be in the interests of all participants for the conference to be held via an audio or audiovisual link rather than to delay the conference until all participants can be in the same place, even if one or more participants are at home or in a remote community.

The Bill provides that the requirement under section 36(2) (agreement to be signed) will be taken to be satisfied if the convenor notes on the agreement that the person has consented to the terms in the agreement. The Bill also provides that the requirement under section 36(4) (copy of agreement to be immediately given to each person who signed) will be taken to have been complied with if the copy is given '*promptly*'. This means the convenor could, for example, post a copy of the agreement to an address provided by the participant as soon as practicable after the conference, and the agreement would be valid.

New section 301C defines 'audio link' as facilities, including a telephone, that enable reasonably contemporaneous and continuous audio communication between persons at different places. 'Audiovisual link' is defined as facilities that enable reasonably contemporaneous and continuous audio and visual communications between persons at different places.

New section 301D enables the chief executive to appoint an appropriately qualified person as a temporary detention centre employee during an emergency period. The chief executive may only make such appointment, if he or she considers it is reasonably necessary for:

- security and management of a detention centre; and
- safety custody and wellbeing of children detained at a detention centre.

The appointee would not have to be a public service employee, as is normally the case for detention centre employees (see YJA schedule 4, definition of 'detention centre employee'). New sections 301D(3) and (4) provide that temporary detention centre employees would instead be appointed under the YJA, under terms and conditions provided for under the Act or decided by the chief executive.

New sections 301D(5) and (6) provide that an appointment may not be for longer than the emergency period, and may end earlier if revoked or an earlier date is stated in the instrument of appointment. The chief executive must revoke an appointment where it is no longer reasonably necessary.

New section 301E provides that a temporary detention centre employee is taken to be a 'detention centre employee' under the YJA. This will ensure that such employees are obliged to comply with all requirements for detention centre employees under the YJA and Youth Justice Regulation 2016. It also ensures that safeguards applying to detention centre employees will apply to temporary detention centre employees, including the requirement to complete approved physical intervention training before being authorised to use reasonable force (see section 16(5) of the Youth Justice Regulation 2016).

The provisions at new section 301E mirror previous temporary emergency powers in former section 264A of the YJA. That section was inserted by the *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020* and expired on 30 April 2022.

New section 301E(2) enables the chief executive to delegate his or her powers under the YJA to a temporary detention centre employee who is appropriately qualified to exercise those powers. These provisions provide the flexibility to enable the best possible arrangements for the continued safe functioning of a detention centre during a declared emergency.

New division 4 provides powers to enable appropriate actions to be taken when detention centres are impacted by disasters. Subdivision 1 provides for a temporary youth detention centre to be declared by the chief executive, with the approval of the Minister. Subdivision 2 provides for a temporary youth detention centre to be declared by regulation.

The effect of subdivisions 1 and 2 is that if a temporary youth detention centre is required with great urgency, it can be established under subdivision 1; but if it is required for more than 21 days, it must be established under subdivision 2, by regulation, with increased transparency and scrutiny by the Parliament.

New section 301F provides a definition of 'adversely affected'. The definition limits the power to establish a temporary detention centre to the intended purpose of enabling responses to the impact of genuine emergencies.

New section 301G enables the chief executive, with the approval of the Minister, to make a written 'temporary detention centre declaration' for a specified duration. The chief executive may only make a declaration if satisfied that the conditions outlined in new section 301F (When is detention centre adversely affected by disaster) have been met.

New section 301H requires the chief executive to select the most suitable available place for the temporary centre, and specifies the matters that must be considered. (Note that new section 301R requires a regular review of the declaration, with reference to the matters mentioned in section 301H.)

A broad range of factors must be considered, so that the most suitable available place is selected in the circumstances. For example, the chief executive must consider the extent to which it will be possible at the place to comply with the youth justice principles in relation to each detainee, and the extent to which the place is compatible with the human rights of detainees, staff, and the community.

New section 301I makes provisions for the notification of a disaster-affected declaration, in both an immediate and easily accessible way (departmental website) and as a permanent record (the gazette). However, given the nature of a disaster, the Bill provides that a declaration will be valid even if notice has not been published in the gazette.

New section 301J provides for the duration of a temporary detention centre declaration. The declaration commences when it is published on the department's website or via

alternative means. If a declaration is not extended under new section 301K it will end after 7 days. If it is extended or further extended, it will end when the period of the extension or further extension ends, up to a maximum of 21 days. In either case, it can be revoked earlier.

New section 301K provides for a temporary detention centre declaration to be extended, if the permanent detention centre continues to be adversely affected by a disaster. This need not be the same disaster – for example, a cyclone disaster may lead to a flooding disaster, or a flooding disaster may lead to a contamination disaster.

An extension may be for up to 7 days, provided that the total duration of the declaration does not exceed 21 days. Any extension must be written and notified in the same way as an initial declaration.

New section 301L requires a declaration to be revoked if the permanent centre is no longer adversely affected by a disaster and the temporary centre is no longer needed. It would be expected that in most cases, as soon as the permanent centre is no longer affected then the temporary centre will no longer be needed, but if, for example, the orderly transition of detainees and staff back to the permanent centre takes some days, the temporary centre will continue to be needed.

New section 301M enables the chief executive to declare a different place to be a temporary detention centre if a more suitable option is found. This power is discretionary and might not be used if, for example, the new option is identified only a short time before the permanent centre is expected to be operational.

Subdivision 2 provides for temporary youth detention centres to be declared by regulation.

New section 301N provides that a regulation may declare one or more places as a temporary detention centre. A regulation may only be made if the Minister is satisfied the place is the most suitable available options, having regard to the matters at new section 301H.

New section 301O provides that a regulation must be recommended to the Governor in Council to specify another place as a temporary detention centre, if it is more suitable than the existing temporary detention centre and it is appropriate in the circumstances to relocate the temporary centre. New options will be identified through the regular reviews conducted under new section 301R.

What is appropriate in the circumstances will be informed by the youth justice principles and the *Human Rights Act 2019*, and discussions with stakeholders and oversight bodies. A move may not be appropriate if the alternative option is only marginally better and the benefit would be outweighed by the adverse impact on children of the uncertainty and upheaval of the move; or if the alternative option is substantively better, but work to restore the disaster-affected permanent centre is almost complete.

New section 301P provides that the Minister must recommend that a regulation to declare a temporary detention centre ends, if satisfied that the disaster-affected detention centre is no longer disaster-affected and the temporary detention centre is no

longer needed for the detention of children.

New section 301Q provides that for the purposes of the YJA, a temporary detention centre is taken to be the disaster-affected detention centre named in the declaration or regulation.

New section 301Q(3) provides that the chief executive must carry out their responsibilities in relation to the management of a detention centre and the provision of programs and services in the temporary centre, to the greatest extent practicable in the circumstances.

New section 301R requires the chief executive to regularly review a temporary detention centre. The frequency of these considerations will be determined by what is reasonable in the circumstances. While a temporary detention centre declaration is in place this will need to initially be at least once every 7 days, to enable conditions to be met for any extension or further extension. If a temporary detention centre has been established by regulation, a review schedule appropriate to the expected duration of the declaration will be established so that, if appropriate, a timely recommendation can be provided to the Minister that the original regulation would be revoked.

New section 301S requires particular entities to be notified in writing about a temporary detention centre. This is intended to ensure the safety, wellbeing and human rights of children by facilitating the continuity of all relevant services and oversight functions, and that planning matters and land use impacts are appropriately addressed.

49 Amendment of s 312 (Delegation)

Clause 49 amends section 312 of the YJA to allow delegation of the chief executive's powers under that Act to an appropriately qualified public service *employee* (see *Acts Interpretation Act 1954* schedule 1 and *Public Service Act 2008* section 9), rather than a public service *officer* (see *Act Interpretation Act 1954* schedule 1 and *Public Service Act 2008* sections 8, 110, and 119). As a general rule, only permanent appointees, senior executives, and chief executives are public service officers.

This amendment will enable the chief executive to delegate their powers to appropriately qualified general employees, fixed term temporary employees and casual employees, including delegating functions and powers to appropriately qualified public service employees who are engaged under the *Public Service Act 2008* on a temporary basis to assist in the event of an emergency at a youth detention centre.

This provision is necessary to facilitate the efficient and effective operation of youth detention centres in emergencies, but it will also facilitate the efficient and effective administration of the YJA outside emergencies. This will bring the YJA into line with contemporary and comparable legislation such as the *Public Service Act 2008* and the *Child Protection Act 1999*.

Clause 49 also omits section 312(2) of the YJA to remove the definition of 'appropriately qualified' from the Act. The definition in schedule 1 of the *Acts Interpretation Act 1954* will apply.

50 Insertion of new pt 11, div 20

Clause 50 inserts a transitional provision to provide certainty in the event that an emergency is taking place on commencement.

51 Amendment of sch 4 (Dictionary)

Clause 51 amends schedule 4 of the YJA to include new definitions.

Part 6 Legislation amended

52 Legislation amended

Schedule 1 Other amendments

Schedule 1 provides for minor and consequential amendments to the *Corrective Services Act 2006,* Corrective Services Regulation 2017, *Inspector of Detention Services Act 2022*, *Justice and Other Information Disclosure Act 2008*, Medicines and Poisons (Medicines) Regulation 2021, *Mental Health Act 2016*, *Penalties and Sentences Act 1992*, and *Public Guardian Act 2014*.

These amendments include to the definitions of 'youth detention centre' in several Acts to ensure temporary centres are covered by those Acts.