CORRECTIVE SERVICES (EMERGING TECHNOLOGIES AND SECURITY) AND OTHER LEGISLATION AMENDMENT Bill 2022

Statement of Compatibility

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

In accordance with section 38 of the *Human Rights Act 2019*, I, Mark Ryan, Minister for Police and Corrective Services and Minister for Fire and Emergency Services make this statement of compatibility with respect to the Corrective Services (Emerging Technologies and Security) and Other Legislation Amendment Bill 2022.

In my opinion, the Corrective Services (Emerging Technologies and Security) and Other Legislation Amendment Bill 2022 is compatible with the human rights protected by the *Human Rights Act 2019* (HRA).

I base my opinion on the reasons outlined in this statement.

Overview of the Bill

The Bill aims to ensure the safety and security of the correctional and youth justice systems through amendments that:

- 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).

Human Rights Issues

Human rights engaged (including rights that are promoted and/or limited) by the Bill include:

- the right to recognition and equality before the law (section 15 of the HRA),
- the right to life (section 16 of the HRA),
- the right to protection from cruel, inhuman or degrading treatment (section 17(b) of the HRA),
- the right to protection from medical or scientific experimentation or treatment without consent (section 17(c) HRA),
- the right to freedom from forced work (section 18 of the HRA),
- the right to freedom of movement (section 19 of the HRA),
- the right to freedom of association (section 22(2) of the HRA),
- the right to privacy and reputation (section 25 of the HRA),
- the right to protection of families and children (section 26 of the HRA),
- the cultural rights of Aboriginal and Torres Strait Islander peoples (section 28 of the HRA),
- the right to liberty and security of person (section 29 of the HRA),
- the right to humane treatment when deprived of liberty (section 30(1) of the HRA),
- the rights of children in criminal proceedings (section 33 of the HRA),
- the right to education (section 36 of the HRA), and
- the right to health services (section 37 of the HRA).

The human rights implications for amendments in the Bill that engage human rights are considered with respect to each amendment as follows.

Modernising the emergency response framework

To address the need for a more modern and fit for purpose emergency response framework within the closed corrective services and youth detention environments, the Bill amends the CSA and *Youth Justice Act 1992* (YJA) to support potential future emergency responses at corrective services facilities and youth detention centres, or when youth detention services are significantly impacted. The human rights impact of amendments to each Act are dealt with separately as follows.

Amendments to the CSA

The Bill replaces section 268 of the CSA with a new emergency response framework. The new emergency response framework will better equip Queensland Corrective Services (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.

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

Human rights engaged by the amendments to the emergency powers framework include:

- the right to recognition as a person before the law (section 15(1) HRA),
- the right to protection from cruel, inhuman or degrading treatment (section 17(b) of the HRA),
- the right to freedom of movement (section 19 of the HRA),
- the right to freedom of association (section 22(2) of the HRA),
- the right to protection of families (section 26(1) HRA),
- the right to cultural rights of Aboriginal people and Torres Strait Islander peoples (section 28 of the HRA),
- the right to humane treatment while deprived of liberty (section 30(1) of the HRA), and
- the right to be tried in person (section 32(2)(d) of the HRA).

Limitations to human rights associated with these amendments flow from the impacts of measures that can be put in place under a declaration, provided for under new section 271C, many of which are already in place under the currently enacted framework. The amendments specify additional measures that can be put in place and provide that these impacts can apply to prisoners at any corrective services facility, in response to new types of emergency situations and for an extended period, thereby increasing the extent of potential limitations already associated with the existing framework. This analysis considers only those limitations that go beyond the existing framework.

Right to recognition as a person before the law (section 15(1) HRA)

Section 15(1) of the HRA recognises that humanity means that every individual has a legal personality. It means that everyone has legal ability, for example, to enter into transactions to buy and sell, to operate a bank account, and to access government services.

The amendments to the emergency powers under the CSA provide a clear head of power to refuse entry by any person to corrective services facilities. That may result in disruption to prisoner's access to legal visits and attendance at court, particularly in person attendance or visits, thereby limiting this aspect of the right.

Right to protection from cruel, inhuman or degrading treatment (section 17(b) of the HRA)

Section 17 of the HRA prohibits three distinct types of conduct: torture; cruel, inhuman or degrading treatment or punishment; and medical or scientific experimentation or treatment without consent. Only the protection from cruel, inhuman or degrading treatment is engaged by the amendments to emergency powers framework under the CSA, and so the other aspects of the right under section 17 are not addressed in this section.

Section 17(b) of the HRA imposes both negative and positive obligations on the State. The negative obligation prevents the State from carrying out acts that amount to cruel, inhuman or degrading treatment. The positive obligation requires the State to adopt safeguards and mechanisms to ensure that cruel, inhuman or degrading treatment or punishment does not occur (or, at the very least, that there are few or no opportunities for it to occur without detection). The right protects the principle of dignity – the innate value of all human beings.

Cruel and inhuman treatment involves a high degree of suffering, though not necessarily intentionally inflicted. Degrading treatment is focused less on severity of suffering but on humiliation (which is a subjective test). For conduct to amount to cruel, inhuman or degrading treatment or punishment, it need not involve physical pain and can include acts that cause both physical and mental suffering. Treatment or punishment that humiliates or debases a person, causes fear, anguish or a sense of inferiority, or is capable of possibly breaking moral or physical resistance or driving a person to act against their will or conscience, can be cruel, inhuman or degrading.

The amendments to the emergency powers under the CSA provide a clear head of power for additional measures to be put in place under an emergency declaration that could include longer periods of isolation for prisoners, alone, or in groups, to protect against the spread of disease, or to respond to another type of emergency. The amendments limit this right only where such isolation goes on for an extended period beyond the short period already permitted in the CSA.

Right to freedom of movement (section 19 of the HRA)

Section 19 of the HRA provides that every person lawfully within Queensland has the right to move freely within Queensland, enter or leave Queensland, and choose where they live. This means that a person cannot be arbitrarily forced to remain in, or move to or from, a particular place.

The amendments to the emergency powers under the CSA allow for additional measures to be put in place under an emergency declaration including the restriction of movement within a facility to the extent necessary because of the emergency.

This limits the freedom of movement of prisoners, staff and visitors to facilities, beyond restrictions inherent in a corrective services facility. This includes for example, where visitors are restricted from entry, either generally or due to being symptomatic in response to a health situation, or areas of a facility are restricted from access, including due to damage. Limitations could also flow from restrictions of movement within the centre, for example between areas or as a result of isolation or quarantine requirements. This could include impacts on prisoner privileges, such as attending an activity, course or program.

Right to freedom of association (section 22(2) of the HRA)

Section 22(2) of the HRA protects the rights of individuals to join together with others to formally pursue a common interest, such as political groups, sporting groups, professional clubs, non-government organisations and trade unions. It includes the freedom to choose between existing organisations or to form new ones.

The amendments allow for additional measures to be put in place under an emergency declaration which may impact on associations between prisoners, and on a prisoner's association with people external to the facility, such as restrictions on receiving a contact visit, restricting movement within a facility, or isolating prisoners to prevent the spread of disease.

Right to protection of families (section 26(1) of the HRA)

Section 26(1) of the HRA recognises that families are the fundamental group unit of society and entitles families to protection by society and the State. The meaning of families is broad and recognises that families take many forms and accommodates the various social and cultural groups in Queensland whose understanding of family may differ. Cultural, religious and other traditions will be relevant when considering whether a group of persons constitutes a 'family'.

The amendments to the emergency powers framework under the CSA allow for additional measures to be put in place under an emergency declaration that limit access to correctional facilities and prisoner privileges which may impact on family members having contact with a prisoner.

Right to cultural rights of Aboriginal peoples and Torres Strait Islander peoples (section 28 of the HRA)

Section 28 of the HRA recognises the special importance of human rights for Aboriginal peoples and Torres Strait Islander peoples, and explicitly protects their distinct cultural rights as Australia's first people. The core value underpinning the various cultural rights protected under section 28 is recognition and respect for the identity of Aboriginal peoples and Torres Strait Islander peoples, both as individuals and in common with their communities.

The amendments allow for additional measures to be put in place under an emergency declaration that restrict movement, visitor access and activities at facilities. This could include contact visits with cultural visitors and activities that would result in a limitation of this right.

Right to humane treatment while deprived of liberty (section 30(1) of the HRA)

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

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

The amendments allow for additional measures to be put in place under an emergency declaration that limit the right to humane treatment when deprived of liberty to the extent that prisoners are isolated to mitigate the risks of emergencies. Such measures may be considered inhumane in a corrective services facility if for a prolonged or sustained period.

Right to be tried in person (section 32(2)(b) and (d) of the HRA)

Section 32(2)(b) and (d) of the HRA ensure that a person who has been charged with a criminal offence is entitled without discrimination to minimum guarantees of (b) adequate time and facilities to prepare the person's defence (including communication with a lawyer or advisor) and (d) to be tried in person.

The amendments to the emergency powers allow for additional measures to be put in place under an emergency declaration that may result in disruption to prisoner's access to legal visits and attendance at court, particularly in person attendance or visits, thereby limiting this aspect of the right.

Consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 Human Rights Act 2019)

(a) the nature of the right

As noted above.

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

The purpose of the limitations on human rights outlined above is to mitigate, and where possible eliminate, significant threats to the health and safety of prisoners, CSOs or other visitors as well as maintain the security or good order of a corrective services facility. These threats can include the spread of infectious and deadly disease, bushfires or flooding. These are all situations which have the potential to cause significant harm to individuals, or threaten the security of the correctional environment, which in turn can put people at risk of serious harm.

The purpose of the limitation notably promotes other human rights including the right to life (section 16) through threat mitigation, and the right to security (section 29) through protection of prisoners, CSOs, and other persons at a corrective services facility from dangers to their health and welfare.

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

QCS has faced multiple emergency situations in recent years that have presented a significant threat to the safety and security of corrective services facilities. These situations have included bushfires in 2019 which led to two low custody facilities (the Numinbah and Palen Creek Correctional Centres) being evacuated for the first time in the known history of QCS, the COVID-19 public health emergency and flooding in early 2022, which resulted in various centres being isolated by rising flood waters at various times.

In these situations, QCS has put measures in place including restricting access to visitors and restricting movement within facilities that, as outlined above, can limit human rights. These measures, now clearly provided for under the Bill, have been essential to ensuring the safety of staff, prisoners and any visitors in response to these emergencies.

For example, it is accepted that the closed prison environment is highly susceptible to the spread of transmissible disease and the severity of disease when contracted. This is largely due to the proximity of people, limited ability to socially distance and the inherent characteristics

of the prison population (such as the ageing population and portion of prisoners with comorbidities). This was a key driver behind the need for measures such as those enabled by the Bill to be put in place to mitigate the impacts of COVID-19 in Queensland's corrective services facilities. These measures, based on advice from the Chief Health Officer, proved successful in limiting the spread of COVID-19 amongst prisoners and CSOs, and the risk of significant harm. Prior to the roll out of COVID-19 vaccinations and the opening of Queensland's border in late 2021, these measures had resulted in no cases of COVID-19 amongst Queensland's prisoner cohort.

As another example, natural disasters have the potential to cause substantial damage to a facility or require the evacuation of a facility, particularly a work camp, farm or low custody facility, which are often intentionally located outside urban centres. Powers to transfer all prisoners at once to another facility or restrict movement within a facility could be essential measures to ensure the health and safety of people at the facility.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

Significant legislative safeguards have been built into the Bill to ensure that the limits on human rights are the least necessary to achieve the purpose of limiting the impacts of emergencies to the health and safety of prisoners, CSOs, and other persons at a corrective services facility.

The legislative safeguards include:

- the discretion to make a declaration is subject to a high threshold, the chief executive must:
  - reasonably believe that a situation exists that is likely to threaten the security or good order of a facility or the health or safety of a prisoner or another person at a facility, and
  - be satisfied the situation justifies the making of a declaration,
- the power for the chief executive to make an emergency declaration cannot be delegated,
- making a declaration of emergency is subject to the approval of the Minister,
- the chief executive is required to consult with other department heads, including the Commissioner of the Queensland Police Service, Commissioner of Queensland Fire Service or Chief Health Officer where the emergency relates to a disaster or public health emergency,
- there are strict maximum durations for the emergency declaration to reflect the risks of each type of emergency (i.e. 7 days for an emergency relating to a risk to a person's health, 14 days for an emergency that relates to a disaster that threatens a facility, 21 days for an emergency that relates to a public health emergency and the existing provision for 3 days for all other emergencies),
- the chief executive is required to ensure the declaration is no longer than is reasonably necessary given the emergency,
- if the emergency declaration is made in response to a public health emergency, the declaration lapses if the public health emergency declaration made under the *Public Health Act 2005* ceases,
- a prisoner's privileges can only be limited where the chief executive reasonably believes that it will not be practicable to provide for the privilege because of the emergency,
- other limitations are to be put in place only to the extent necessary because of the emergency,
- a new requirement to publish a declaration with information specified on what is required to be published, including reasons for making the declaration, and

- all decisions to make a declaration, and any directions made under a declaration are still subject to the HRA.

There is no less restrictive, but equally effective, way to mitigate the threats that emergency situations present to the health and safety of prisoners, CSOs and others. Accordingly, the limits imposed on human rights by the amendments are necessary to achieve their purposes.

Consideration was given to some alternatives within the overall emergency declaration framework. However, none of those alternatives would achieve the purpose of mitigating the impacts of emergencies to the welfare and safety of prisoners, CSOs and other persons at a corrective services facility to the same extent.

The main alternative considered was a shorter timeframe for an emergency declaration to be in place. The timeframes have been prescribed to address the nature of the different types of emergencies. Shorter timeframes than those prescribed would not provide the necessary flexibility to adequately respond to each different type of emergency.

The Bill provides for an emergency declaration to be made in response to a public health emergency for up to 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, this declaration could only continue if the public health declaration is extended.

This timeframe allows for a longer-term declaration to be made in only the most extreme cases of health emergencies, with the flexibility for directions to be changed as the situation evolves without compromising the overall response. Any shorter timeframe would not provide this necessary flexibility and put the effectiveness of the response at risk.

A shorter timeframe of up to 14 days for disasters was considered necessary to align with the timeframe for an emergency declaration under the *Disaster Management Act 2003* and account for the potential for a disaster response and post-disaster management to take up to that amount of time.

For health emergencies without a public health emergency declaration made under the *Public Health Act 2005*, a maximum timeframe of up to 7 days is necessary to account for the need to monitor change in the situation over that period. A shorter timeframe would not provide the necessary flexibility to account for the spread of infection as symptoms could be delayed.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On one side of the scales, powers invoked during an emergency could impact on a number of human rights, particularly for those detained in a corrective services facility. These limitations could include access to visits from family and friends, which is an important protective factor for a prisoner's rehabilitation, access to other visitors including lawyers, official visitors or others which provide essential services to prisoners, or the isolation of prisoners from others to

protect their health and safety. Given these impacts, it is essential to ensure limitations are only put in place to the extent that is absolutely necessary to respond to the emergency.

On the other side of the scales, the amendments have been designed to respond to situations that can threaten the lives of those at a corrective services facility, including the spread of deadly diseases or disaster situations. The Bill provides for specific measures to be authorised in response to these situations based on experience of similar events and the steps that have been successful in mitigating these threats. There are also necessary safeguards in place, including strict maximum timeframes to ensure the extent of any limitations do not exceed those that are necessary to achieve the purpose.

For these reasons, the limitations are considered justified and the amendments are compatible with human rights.

(f) <u>any other relevant factors</u>

N/A.

<u>Amendments to the YJA</u>

Declaration of temporary youth detention centres

In the event of an extraordinary emergency that makes a detention centre unsafe, the common law allows and requires the Government to move children and staff to a safe place, notwithstanding any statutory provision to the contrary. However, there is no clear framework guiding this decision-making, or providing transparency and certainty for children, their families, staff, service providers, oversight entities, or other stakeholders.

The amendments to the YJA provide this framework.

Section 16 of the HRA states that every person has the right to life.

The power to declare a temporary youth detention centre promotes the right to life. It does so by establishing a clear legislative framework to ensure that where an emergency occurs, and a youth detention centre can no longer operate safely, appropriate measures can be taken to accommodate detainees in another safe and secure location as quickly as possible.

It is acknowledged that the declaration of a temporary youth detention centre may result in other impacts on human rights. However, the overarching intention of the proposed amendments is to ensure the protection of the right to life for detainees, the youth justice workforce and any other person who may be impacted in a disaster that results in a youth detention centre no longer being able to operate safely and securely.

Section 17 of the HRA states that a person must not be tortured or treated in a way that is cruel, inhuman, or degrading. The Bill seeks to promote this human right by ensuring that detainees are not held in a youth detention centre that, because of a disaster, is no longer considered safe to operate.

The Bill places positive obligations on the chief executive to consider various matters when determining a suitable place for a temporary detention centre. These considerations are

intended to support the right to protection from torture and cruel inhuman or degrading treatment.

While not all places may be able to ensure that the same standard of programs and support services can continue in a new temporary detention centre (such as the continued provision of education standards in the short-term), these rights must be balanced against the need to provide a safe and secure location for young people. In selecting the place, consideration must be given to how services can be provided; and once a temporary centre is established, there is a positive obligation on the chief executive to deliver programs and services to the greatest extent practicable in the circumstances.

Existing oversight and complaints mechanisms will continue to apply to any temporary detention centre and staff, and relevant oversight bodies will be notified when a declaration is made. These safeguards will ensure the rights of detainees are protected and any issues can be reported and acted upon.

Section 26 of the HRA recognises that families are the fundamental unit of society and are entitled to protection. The declaration of a temporary detention centre may engage this right, as the transfer of a detainee to a new centre may have an impact on the ability of a family member to visit a detainee. However, section 26 also provides that every child has the right, without discrimination, to the protection that is in their best interest as a child, and in some circumstances the need to transfer the detainee to a safe environment will justify the limitation on contact with family.

It is important to note that the Bill does not explicitly exclude a family member, visitor, or other person from attending a temporary detention centre. Once it is safe to do so, the chief executive will make appropriate arrangements to provide for family members and visitors to visit detainees at the temporary detention centre.

Section 29 of the HRA states that every person has the right to liberty and security. This right is engaged by the Bill, as the amendments relate to the management of security of young people in a state-run facility. The amendments support the right to liberty and security by ensuring that all detainees are detained in a safe and secure facility to the greatest extent possible, including through the transfer of detainees to another site that may not be a purpose-built youth detention centre. The amendments also promote the rights of staff and visitors by ensuring they are not required to attend a youth detention centre that is disaster-affected and no longer able to operate safely and securely.

Emergency staff, temporary detention centre employees

As for the declaration of temporary youth detention centres, in the event of an extraordinary emergency that makes a significant proportion of the youth detention workforce unavailable, the common law allows and requires the Government to bring in the best alternative staff available in the circumstances, notwithstanding any statutory provision to the contrary. However, there is no clear framework guiding this decision-making, or providing transparency and certainty for children, their families, staff, service providers, oversight entities, or other stakeholders.

The amendments to the YJA provide this framework.

Section 16 of the HRA states that every person has the right to life. The amendments to provide for the appointment and delegation of powers to temporary emergency employees support this right by providing for the continued safe and secure operation of youth detention centres with minimal disruption. The amendments only permit the appointment of temporary youth detention centre employees during a declared emergency and only if the chief executive is satisfied the appointment is reasonably necessary for the security and management of a detention centre, and the safe custody and wellbeing of detained children.

Restorative Justice Conferences

The amendments protect the right to life by providing alternative means of complying with requirements for restorative justice conference agreements (section 16 of the HRA). This enables a person whose health and wellbeing may be put at risk by physical attendance at a conference to attend via audio or audio-visual link.

Section 33(3) of the HRA provides that a child who has been convicted of an offence must be treated in a way that is appropriate for the child's age. The YJA provides for children to engage in restorative justice processes, which are recognised as an effective, evidence-based justice process for children.

The amendments do not limit this right, as they provide for an alternative method for compliance with the YJA that is appropriate for children. In practice, the convenor will ensure all child participants in a conference (regardless of whether they have been convicted and regardless of whether they are the offender, the victim, or another participant) fully understand what is happening and are treated in a way that is appropriate for the child's age in all other respects.

Consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 Human Rights Act 2019)

Consideration has been given to whether limitations to the following human rights engaged by the amendments to the YJA for a declaration of youth detention centres and appointment of temporary detention centre employees are considered justified:

- the right to humane treatment while deprived of liberty (section 30(1) of the HRA),
- the rights of children in criminal proceedings (section 33 of the HRA),
- the right to education (section 36 of the HRA), and
- the right to health services (section 37 of the HRA).

(a) the nature of the right.

The HRA states that:

- a child who has been convicted of an offence must be treated in a way that is appropriate for the child's age (section 30(3)),
- children in the criminal process are entitled to special protections on the basis of their age and an accused children must not be detained with adults and must be brought to trial as quickly as possible (section 33),

- every child has the right to have access to primary and secondary education appropriate to their needs (section 36), and
- every person has the right to access health services without discrimination (section 37).

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

The Bill provides for the transfer of children to a temporary youth detention centre when an existing youth detention centre is disaster-affected and no longer capable of safely operating, which may result in the human rights of detainees being limited due to the temporary facilities, and the health and education programs and services able to be delivered at the temporary centre, not being of the standard expected of a permanent centre.

The Bill also provides for the appointment of temporary detention centre employees in an emergency, who may be less experienced and not as well trained as the established detention centre workforce.

However, temporary facilities and temporary staff would be used in an emergency without the provisions, under common law, if they were necessary for the safety and wellbeing of the vulnerable children detained in detention centres. Although the provisions embed these limitations in legislation, they do not create the limitations.

The provisions provide a clear and transparent framework for decision-making in emergencies to ensure that the limitations on human rights are the minimum that can be justified in the circumstances.

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

These limitations are inevitable given the provisions will only apply in strictly limited circumstances, i.e., during disasters or emergencies.

If a youth detention centre is an unsafe place for children and staff, the provisions limit human rights, as they permit the transfer of detention centre operations to the most suitable available option or the appointment of appropriately qualified, but perhaps, less experienced staff. However, the Bill limits human rights only to the extent required to achieve the purpose of ensuring the health and safety of detainees and staff. These limitations are, therefore, considered justified in the circumstances.

The Bill places positive obligations on the chief executive to select the most suitable place for a temporary detention centre, from among the options available, having regard to an extensive list of factors including human rights of children and staff, and of individuals in the community; the youth justice principles; the programs and services children are likely to require; and the facilities at the site for accommodation and the delivery of programs and services.

In addition, the chief executive must provide for the safe custody, health and wellbeing of detained children and promote their social, cultural and educational development to the greatest extent practicable in the circumstances.

Further, the chief executive must regularly review the temporary facility and other possible options, and revoke the declaration as soon as it is no longer required or there is a better option available.

In these ways, the limitations – which are necessary to achieve the purpose of keeping children and staff safe during a disaster or emergency - are mitigated to the greatest extent possible.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill.

The alternative approach is to not enact the Bill, and rely on common law emergency powers and the department's duty of care to children and staff.

The Bill is more compatible with human rights because:

- it allows actions that may limit human rights only when justified,
- it provides clarity and certainty, facilitating timely decision-making that takes into account all relevant factors, and
- it places clear and transparent obligations on the chief executive, both in relation to the original and ongoing decisions (to establish a temporary centre or appoint temporary staff) that promote human rights.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, the importance of the purpose of the Bill to allow for the establishment of temporary detention centres and appointment of temporary detention centre employees during disasters and emergencies outweighs the potential limitations on the rights of children in the criminal process, education, and health services.

(f) any other relevant factors

N/A.

Criminalising evolving behaviours putting corrective services facilities at risk

Restricted area offence

Prisoners gaining access to a rooftop, or 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.

The Bill includes a new offence, where a prisoner accesses or remains in a restricted area of a corrective services facility, without a reasonable excuse. The new offence is subject to a maximum penalty of 2 years imprisonment, in line with other prison offences under section 124 of the CSA. Restricted areas are defined to include the roof of the facility, or another part of a facility prescribed by regulation.

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

The new offence engages the right to freedom of movement under section 19 of the HRA.

Right to freedom of movement (section 19 of the HRA)

Section 19 of the HRA ensures every person lawfully within Queensland has the right to move freely within Queensland and to enter and leave it, and has the freedom to choose where to live. Relevant to this amendment, the right to move freely within Queensland means that a person cannot be arbitrarily forced to remain in, or move to or from, a particular place. The right includes freedom from physical and procedural barriers.

As recognised under section 3(2) of the CSA, certain human entitlements are necessarily diminished as a result of a court imposing a sentence of imprisonment. Any custodial sentence imposed or decision to remand a person intro custody inherently restricts on a prisoner's freedom of movement under section 19 of the HRA.

Consideration has therefore been given to whether the new restricted area offence restricts movement beyond what is inherent in the custodial environment. It is considered that there is no additional limitation on this right imposed by this amendment. The restricted area captured by the proposed offence is limited to rooftops, which are inherently restricted for prisoners to access in all facilities.

Further consideration of any limitations imposed by areas prescribed by regulation would be required through the development of the required human rights certificate. However, it is also considered that such areas would not limit the right, as areas are likely to be areas that a prisoner is already restricted from, such as staff only areas.

If a part of a corrective services facility is prescribed by regulation, and access is not controlled by a CSO, the chief executive must ensure prisoners are given warning that the part is a restricted area by ensuring certain actions are taken. Such actions may include that a notice is displayed to identify that an area is restricted, that prisoners are informed when they are admitted to the facility that they must not enter a restricted area without permission and they are given sufficient information to identify the restricted area, or a CSO gives the prisoner a direction that they must not access the part during particular times.

As the right is not considered to be limited by the amendment in the Bill, further analysis of the factors set out in section 13 of the HRA is not required.

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 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 Bill inserts a new type of search into the CSA, namely an imaging search. This creates a new head of power to support a trial of and any future use of x-ray body scanning technology at corrective services facilities to detect contraband. The amendment allows the use of x-ray body scanners by providing discretion for imaging searches to be performed on prisoners, visitors, staff and children accommodated with prisoners.

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.

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

Human rights engaged by the amendment to introduce a new imaging search include:

- the right to protection from cruel, inhuman or degrading treatment (section 17(b) of the HRA),
- the right to privacy (section 25(a) of the HRA), and
- the right to humane treatment while deprived of liberty (section 30(1) of the HRA).

It is acknowledged that the full nature and extent of limitations on human rights presented by providing a head of power for imaging searches will turn on the specific device prescribed by regulation for the search, and its capability, including the nature of images produced or storage capability. While the potential limitations have been considered and explored in this statement, further consideration would be required in developing the necessary regulation and human rights certificate for prescribing a device.

Humane treatment (sections 17(b) and 30(1) of the HRA)

Section 17 of the HRA prohibits three distinct types of conduct: torture; cruel, inhuman or degrading treatment or punishment; and medical or scientific experimentation or treatment without consent. Only the protection from cruel, inhuman and degrading treatment is engaged by the amendments to allow the use of x-ray body scanners for prisoners, visitors, CSOs and children accommodated with a prisoner. Consequently, the other aspects of the right under section 17 are not addressed in this section.

Section 17(b) of the HRA imposes both negative and positive obligations on the State. The negative obligation prevents the State from carrying out acts that amount to cruel, inhuman or degrading treatment. The positive obligation requires the State to adopt safeguards and mechanisms to ensure that cruel, inhuman or degrading treatment or punishment does not occur (or, at the very least, that there are few or no opportunities for it to occur without detection). The right protects the principle of dignity – the innate value of all human beings.

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

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

Generally, these rights are engaged and should be considered in the development of search procedures for prisoners detained in a corrective services facility. Consideration has therefore been given to whether provision for imaging searches using x-ray body scanning technology places a limitation on these rights. The imaging search is non-invasive and occurs with minimal contact or impact on the person being searched. It is not considered that this treatment reaches a threshold that would limit either section 17(b) or 30(1) of the HRA. Therefore, this amendment is considered not to limit these rights.

Right to privacy (section 25(a) of the HRA)

Section 25(a) of the HRA protects individuals from arbitrary interference with their privacy, family, home or correspondence. The right is very broad and covers privacy in the narrow sense (for example, personal information, data collection and correspondence), and also in a broader sense (interference with physical or mental integrity, freedom of thought and conscience, legal personality, individual identity, sexuality, family and home).

The amendment engages the right to privacy because an x-ray body scanner may take images of the internal and/or external composition of the person being scanned. While it is a physically non-invasive search measure, it is acknowledged that it does disclose a different characteristic of personal information to current scanning devices and practice. The search also produces an image which can, dependent on the technology used, be stored or reviewed, thereby increasing the extent of the interference with a person's privacy.

The right to privacy includes internal limitations. The protection against interference with privacy, family, home or correspondence is limited to *unlawful* or *arbitrary* interference. The notion of arbitrary interference extends to those interferences which may be lawful, but are unreasonable, unnecessary and disproportionate to the aim sought.

Because questions of proportionality arise when considering justification of limits on human rights under section 13 of the HR Act, it is convenient to consider these questions below (under headings (b) – (e)) before making a determination as to whether any limitation on the right to privacy will be arbitrary.

Consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 Human Rights Act 2019)

(a) the nature of the right

As noted above.

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

Use of x-ray body scanning technology aims to reduce instances of contraband making its way into corrective services facilities, thereby improving the safety and security of the correctional environment for prisoners, CSOs and visitors.

The introduction of a power to use imaging searches also promotes human rights for prisoners by providing for a less restrictive method for searching than personally invasive methods such as removal of clothing searches and body searches. This promotes the right to humane treatment while deprived of liberty (section 30(1) of the HRA) for prisoners.

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

The Taskforce Flaxton report recognised that the presence of contraband in corrective services facilities poses a significant threat to institutional security, officer safety, public safety, and prisoner safety, health and welfare. Despite existing search efforts, including personal searches (i.e. pat downs), scanning devices (i.e. ion scanning device), and other detection methods including metal detectors, contraband remains prevalent within the correctional environment. In 2021-22, there were 4,255 incidents of contraband discovery within corrective services facilities.

Contraband in correctives services facilities includes illegal items such as drugs, weapons, or items prohibited in the area being monitored, such as mobile phones and tobacco. Contraband could be hidden in or under clothing, under the tongue, in body cavities, or in the stomach. X-ray body scanners are designed to detect non-metallic objects both inside as well as outside a person's body, something standard prison searching equipment and processes cannot deliver.

The option to use this technology for searches aims to increase the detection of contraband where items are hidden inside a body, thereby minimising opportunities for contraband to be introduced in this way, contributing to the improved safety of corrective services facilities. The impact on privacy therefore helps to achieve the purpose of the limitation.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

A number of safeguards ensure that the limits on human rights are the least necessary to achieve the purpose of detecting contraband and improving safety in the correctional environment. These safeguards include:

- legislated requirements to ensure that a search causes minimal embarrassment and minimal physical contact with the person,
- only devices prescribed by regulation can be used to conduct an imaging search, providing for additional parliamentary oversight and human rights consideration of any particular technology chosen for this approach,
- the provision enables limitations for the use of this technology to be prescribed by regulation (i.e. the maximum number of times a person may be searched using a particular device within a stated period, dose constraints for children and/or pregnant women, a register to monitor annual exposure limits, and requirements for the use, storage and destruction of any images produced by the search),
- this search methodology is discretionary, and alternative search options can be considered where an imaging search is not appropriate in the circumstances,
- the agency is required to comply with the *Radiation Safety Act 1999* and Radiation Safety Regulation 2021 in respect to the deployment and use of x-ray body scan technology within the correctional environment,
- the agency is also required to comply with the *Information Privacy Act 2009* (IPA), including the information privacy principles with regard to any images produced by a search, and
- decisions made under the new search type must be made with consideration of the HRA.

There is no less restrictive, but equally effective, way to achieve the purpose of the amendment. Other search methods which have less of an impact on individual privacy are already in use with corrective services facilities but are unable to detect contraband in areas of a person's body that can be detected by an x-ray body scanner.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On one side of the scales, it is accepted that x-ray scanners do impact on a person's right to privacy. It is also acknowledged that the extent of this limitation may vary depending on the nature of the device prescribed and the manner in which, if at all, images are to be stored. The nature of this private information is sensitive and should therefore be safeguarded.

On the other side, the entry of prohibited items into a corrective services facility poses a significant risk within a confined environment. The presence of contraband can increase the risk of harm to individuals and steps should therefore be taken to mitigate its presence. The option to use x-ray body scanning technology presents an opportunity to increase detection of these items, which in turn aims to increase safety by minimising their introduction. This is necessary because other search methods which have less of an impact on privacy are not capable of detecting non-metallic objects inside the body. This search method also does this in a way that is proportionate to individual privacy, as it is as minimally invasive as possible to achieve the aim sort. The amendments also provide for sufficient safeguards to minimise the impact on individual privacy.

For these reasons, the impact on a person's right to privacy presented by this amendment is considered to not be arbitrary, so it is considered that this amendment does not limit human rights. However, even if the right is considered limited, the limitation is considered justified for the above reasons.

(f) any other relevant factors

A jurisdictional scan of both national and international legislation was conducted with New South Wales (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) was 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.

Surveillance devices

The Bill provides the QCS chief executive with a clear head of power to authorise the 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 chief executive must have regard to the privacy of prisoners, CSOs and visitors in making any authorisation. 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.

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 this Act or another Act. For example, this may include the use of a surveillance device under a surveillance warrant under the *Police Powers and Responsibilities Act 2000*, chapter 12.

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

Human rights relevant to the Bill (Part 2, Division 2 and 3 Human Rights Act 2019)
Human rights engaged by the amendment to authorise the use of electronic surveillance devices in corrective services facilities include:

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

Right to privacy (section 25 of the HRA)

Section 25(a) of the HRA protects individuals from arbitrary interference with their privacy, family, home or correspondence. The right is very broad and covers privacy in the narrow sense (for example, personal information, data collection and correspondence), and also in a broader sense (interference with physical or mental integrity, freedom of thought and conscience, legal personality, individual identity, sexuality, family and home).

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

However, consideration must be given to whether this interference with privacy amounts to a limitation of the right. The protection against interference with privacy, family, home or correspondence is limited to *unlawful* or *arbitrary* interference. The notion of arbitrary interference extends to those interferences which may be lawful, but are unreasonable, unnecessary and disproportionate to the aim sought.

Because questions of proportionality arise when considering justification of limits on human rights under section 13 of the HR Act, it is convenient to consider these questions below (under headings (b) – (e)) before making a determination as to whether any interference on the right to privacy will be arbitrary, and subsequently whether the right is limited.

Right to humane treatment while deprived of liberty (section 30(1) of the HRA)

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

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

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

However, compatibility with this right must be considered carefully when authorising use of surveillance devices to monitor intimate activities, such as a removal of clothing search. Although it is noted that section 9 and 10 of the Corrective Services Regulation 2017 (CSR) already provides for strict safeguards for the monitoring, recording and use of recordings of removal of clothing searches. Still, use of surveillance devices in the context of more intimate activities, if authorised, would limit this right and so must be justified with regard to the factors set out in section 13 of the HRA.

As discussed further below, limitations must also be balanced against the role surveillance technology plays in promoting the right to humane treatment under section 30(1) of the HRA as a source for monitoring the treatment of prisoners within an otherwise closed environment.

Consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 Human Rights Act 2019)

(a) the nature of the right

As noted above.

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

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

Inherent in this is the role that surveillance technology plays in safeguarding prisoners, by providing an objective source of evidence about how prisoners are treated within what is otherwise a closed environment. This includes providing a mechanism for footage of an incident to be reviewed after the fact, supporting the humane treatment of prisoners.

As such the use of surveillance technology promotes rights including the right to life (section 16) the right to security of person (section 29(2) and the right to humane treatment while deprived of liberty) section 30(1).

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

Section 263 of the CSA makes the chief executive responsible for the security and management of all corrective services facilities.

CCTV is a staple security measure in high security facilities across Australia and other similar jurisdictions. It serves a critical purpose in monitoring prisoner behaviour, monitoring the perimeter and forming evidence post-incident for investigations. Body worn cameras not only provide vital, contextual evidence when investigating incidents, but they serve as a deterrent to anti-social behaviour and assaults.

Inherent in the use of this technology is the capture of footage of private, or in some cases intimate activities or images of those involved. Further, the storage of this footage is a necessary further limitation on these rights to ensure the evidence is available to be reviewed after an incident by both internal and external review authorities. The limitations therefore help to achieve the intended purpose.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

A number of safeguards ensure that the limits on human rights introduced by this amendment are the least necessary to ensure the safety of prisoners, CSOs and visitors at corrective services facilities.

These safeguards include:

- to make an authorisation, the chief executive must be satisfied that use of the device will enhance an exhaustive list of prescribed matters, including the safety of persons, the security of facilities, preventing corruption and detecting contraband,
- the chief executive must have regard to the privacy of prisoners, CSOs and visitors in making any authorisation,
- any authorisation of a prescribed surveillance device must include requirements about the use, storage and destruction of recordings made by a device,
- only devices prescribed by regulation can be authorised, providing for additional parliamentary oversight and human rights consideration of any particular technology,
- a covert surveillance device may not be used (i.e. a device which is deliberately hidden from view or disguised to look like another type of device),
- any use of a prescribed surveillance device is subject to the restrictions and obligations under section 52 of the CSA which regulates recording and monitoring prisoner communications,
- the decision to authorise use of a device is subject to the HRA,
- QCS is also required to comply with the IPA, including the information privacy principles with regard to use of prescribed devices,
- section 341 of the CSA provides an offence for unauthorised disclosure of any confidential information, such as information obtained through use of a surveillance device,
- sections 9 and 10 of the CSR include restrictions on the recording of and use of recording of a search of a prisoner requiring the removal of clothing, and
- 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 person's authorised to do so and will be handled in accordance with the IPA and CSA (section 341).

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

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

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

On the other side, the use of surveillance technology within the correctional environment is an essential safety precaution necessary to ensure the safety of persons within that environment.

Corrective services facilities are also a closed environment, and the use of electronic surveillance plays a key role in promoting human rights as a source of truth for the treatment of prisoners.

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

(f) any other relevant factors

N/A.

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 the broader community by preventing 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 inter-agency 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 key areas.

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

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

The amendments to information sharing powers under the CSA engage the right to privacy under section 25(a) of the HRA.

Section 25(a) of the HRA protects individuals from arbitrary interference with their privacy, family, home or correspondence. The right is very broad and covers privacy in the narrow sense (for example, personal information, data collection and correspondence), and also in a broader sense (interference with physical or mental integrity, freedom of thought and conscience, legal personality, individual identity, sexuality, family and home).

The amendments provide for additional instances where an informed person may share confidential information about a person without being required to obtain their consent, therefore interfering with the right to privacy.

The right to privacy includes internal limitations. The protection against interference with privacy, family, home or correspondence is limited to unlawful or arbitrary interference. The notion of arbitrary interference extends to those interferences which may be lawful, but are unreasonable, unnecessary and disproportionate to the aim sought.

Because questions of proportionality arise when considering justification of limits on human rights under section 13 of the HRA, it is convenient to consider these questions below (under

headings (b) – (e)) before making a determination as to whether any limitation on the right to privacy will be arbitrary.

As each of the amendments are made for a different purpose, the proportionality of each is analysed separately below.

Supporting the health care, rehabilitation and treatment of a prisoner

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 of the CSA, including a prisoner who is released to parole or a prisoner being transferred between corrective services facilities.

Consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 Human Rights Act 2019)

(a) the nature of the right

As noted above.

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

The purpose of the limitation on the right to privacy is to improve health and wellbeing outcomes for prisoners. This goal is in line with QCS' positive obligation to support the health and wellbeing of prisoners under the CSA and their access to health services in line with the HRA. The amendment promotes the right to life (section 16) in addition to access to health care services (section 37).

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

The Australian Institute of Health and Welfare notes that the prison population is highly disadvantaged in terms of health and welfare, with higher health care needs than the wider population. People who spend time in prison experience higher rates of homelessness, unemployment, mental health disorders, chronic physical disease, communicable disease, tobacco smoking, high-risk alcohol consumption, and illicit use of drugs than the general population, all factors that influence health and wellbeing outcomes.

The QCS chief executive's functions include a requirement to establish or facilitate programs or services to support the health and wellbeing of prisoners (section 266(1)(b) of the CSA). QCS previously held responsibility for delivering health services to persons in custody, but since 2008, this responsibility has sat with QH. Strengthened information sharing powers between the two entities can ensure QCS continues to meet these obligations.

In the custodial setting, QCS may possess confidential information about a prisoner that is critical to their healthcare, treatment and rehabilitation, that could assist a health practitioner treating the prisoner in provide adequate care. This could include information about whether a

prisoner may be diverting medication, being impacted by other prisoners. This could also include information about a prisoner's risk that could be relevant to a health practitioner's treatment decisions.

While a prisoner is released on parole, or subject to a supervision order under the *Dangerous Prisoners (Sexual Offenders) Act 2003*, greater information sharing with community-based health practitioners or forensic psychiatrists or specialists treating a prisoner can assist in supporting the prisoner's rehabilitation and ensure broader community safety.

In these instances, a clear authority to be able disclose information that is considered relevant to healthcare, treatment and rehabilitation to a health practitioner treating a prisoner has the real opportunity to improve health and wellbeing outcomes.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

A number of safeguards have been built into the Bill to ensure that the limits on human rights are the least necessary to achieve the purpose of the amendment.

These safeguards include:

- the information sharing is limited to a health practitioner,
- the information sharing must be believed to be relevant for the care, treatment or rehabilitation of the prisoner, meaning not all confidential information can be shared,
- the ability to share information is limited to a prisoner (i.e. does not include community-based sentences),
- section 341 of the CSA provides that it is an offence to disclose confidential information beyond what is authorised by the Act,
- the amendment does not require reciprocal information sharing, and
- decisions made under the provision must be made with consideration of the HRA.

There is no less restrictive, but equally effective, way to achieve the purposes of supporting the overall health and wellbeing of prisoners in the State's care or custody. Accordingly, the limits imposed on human rights by the ability to proactive share information requirements are necessary to achieve their purposes.

The alternative would be to rely on prisoner consent for the provision of this information. While prisoner consent is preferred in the first instance, this may not always be possible. For example, a prisoner may not have capacity to provide consent (i.e. unconscious), or may be unwilling to disclose the information (such as where they are suspected of ingesting contraband). Requiring consent would not be as effective in achieving the intended outcome.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On one side of the scales, a prisoner has a right to privacy, however this right is only limited where arbitrarily or unlawfully impacted. Information about a prisoner held by QCS can include details of a very sensitive nature, and any disclosure of such should be safeguarded.

On the other side, QCS may hold information about a prisoner that they are unwilling or unable to share that could improve the quality of healthcare and ultimate improve their overall health and wellbeing. There are also safeguards in place to ensure such disclosures do not interfere

with a prisoner's right to privacy beyond what would be necessary and proportionate to achieving this purpose.

Accordingly, the impact on a person's privacy enabled by the amendment is not considered to be arbitrary, and so it is not considered to limit human rights. However, even if it was considered to limit the human right, the limitations are considered justified.

(f) any other relevant factors

N/A.

Providing the general status of a prisoner

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 provide information 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 onto parole or subject to a supervision order under the *Dangerous Prisoners (Sexual Offenders) Act 2003*.

Consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 Human Rights Act 2019)

(a) the nature of the right

As noted above.

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

The purpose of the limitation enabled by this amendment is to support the wellbeing of prisoners and those with an interest in the prisoner's wellbeing.

The amendment promotes a number of rights including protection of families and children (section 26), cultural rights – generally (section 27) and cultural rights of Aboriginal peoples and Torres Strait Islander peoples (section 28).

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

The correctional environment is a closed environment. There are a number of situations where a prisoner may not be able to directly communicate to persons within their support network (i.e. family). A prisoner may be in transit to hospital following an incident, a centre may have been locked-down to respond to a significant event, or the person may be temporarily unable to communicate due to a live incident. Such a scenario, without contact, could create anxiety and stress in others about the prisoner's health and wellbeing.

Clear legislative guidance for frontline staff about the ability to provide information including whether a prisoner is safe or well, or being treated, or in transit to hospital would empower staff in disclosing this general information, without contravening the CSA. This provides the opportunity to reassure a person and can also alleviate the pressure on a prisoner to get in contact with these people after the event.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

A number of safeguards have been built into the Bill to ensure that the limits on human rights are the least necessary to achieve the purpose. These safeguards include:

- the information must be communicated in general terms to significantly limit the potential extent of any limitation on privacy,
- the provision is limited to prisoners in QCS custody, given the additional responsibility QCS has for ensuring their safety and security within the closed custodial environment,
- existing protections for disclosure of information to eligible persons under the CSA (i.e. victims of crime) will also apply to any disclosure,
- section 341 of the CSA includes an offence to disclose confidential information beyond what is authorised,
- decisions made under the provision must be made with consideration of the HRA.

There is no less restrictive, but equally effective, way to achieve the purposes of disclosing information about the status of a prisoner in general terms. Accordingly, the limits imposed on human rights by the sharing requirements are necessary to achieve their purposes.

The alternative would be to rely on prisoner consent for provision of this information. While prisoner consent is preferred in the first instance, this may not always be possible. For example, the prisoner may not have capacity to provide consent (i.e. unconscious or in transit), and this would limit the effectiveness of the purpose of the amendment, which includes the wellbeing of those outside the corrective services facility who are unable to communicate with the prisoner at that time.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On one side of the scales, the amendment clarifies an authority to disclose private information about prisoners to another person without their consent. This does interfere with a prisoner's privacy. However, such a disclosure is limited to information about a prisoner's condition, and can only be described in general terms, limiting the extent of the limitation to a prisoner's privacy. Still, such disclosures must not be arbitrary.

On the other side, the sharing of information relating to the condition of a prisoner can support their wellbeing, along with the wellbeing of a person asking after them. There are also safeguards in place to ensure such disclosures to not exceed what is necessary to achieve that purpose.

Accordingly, the impact on a person's privacy enabled by the amendment is not considered to be arbitrary, and so it is not considered to limit human rights. However, even if it was considered to limit the human right, the limitations are considered justified.

(f) any other relevant factors

N/A.

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 prevent 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.

Consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 Human Rights Act 2019)

(a) the nature of the right

As noted above.

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

The impact of the amendment to provide clear legislative authority for the proactive sharing of confidential information with a law enforcement agency impacts a person's right to privacy with an aim to improve opportunities to prevent crime. This serves a broader purpose of keeping the correctional environment and the community, including victims of crime, safe and is consistent with a free and democratic society based on human dignity, equality and freedom.

The amendment promotes the right to security of person (section 29) and in some circumstances (i.e. where there may be a threat to another individual) the right to life (section 16).

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

The correctional system manages a multitude of security risks such as contraband, gangs, violent extremism, violence, including domestic and family violence, and the risk of escapes. These risks can also impact the broader community.

For this reason, safety and security of the correctional system is underpinned by evidence-based, effective intelligence. QCS has a key role within the broader criminal justice system in assisting in the prevention of crime, including through the rehabilitation of offenders and the proactive sharing of information with law enforcement.

QCS has access to private information that can be key to preventing crime, including information about who a prisoner is contacting, including where this is in circumvention of a domestic and family violence order or information about who an offender is associating with.

Proactively sharing this information with law enforcement increases the chance that the information can inform law enforcement strategies to prevent the commission of crime. The limitation on privacy therefore helps to achieve the purpose.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

A number of safeguards have been built into the Bill to ensure that the limits on human rights are the least necessary to achieve the purpose of the amendment. These safeguards include:

- the sharing of information is limited to law enforcement agencies,
- law enforcement agencies are prescribed in the CSA and includes, but is not limited to, the police, Crime and Corruption Commission, the Australian Security Intelligence Organisation, or Australian Border Force,
- the purpose of sharing the information must relate to a function of the agency,
- the unauthorised disclosure of information offence under section 341 of the CSA applies to the recipient of the information, and
- decisions made under the provision must be made in accordance with the HRA and IPA.

There is no less restrictive, but equally effective, way to achieve the purposes of disclosing information to a law enforcement agency. Accordingly, the limits imposed on human rights by the proactive sharing requirements are necessary to achieve their purposes.

The less restrictive alternative would be to rely on existing provisions including the consent of a person for provision of this information. However, given that existing provisions are not explicit and the nature of information supplied to a law enforcement agency, it is unlikely that a person would provide consent, and so the purpose of the limitation would not be achieved.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On one side of the scales, a person has a right to privacy, however privacy is only limited where arbitrarily or unlawfully impacted. Private information about a person obtained by QCS should however be protected against arbitrary disclosures.

On the other side, the proactive sharing of information with law enforcement as clearly authorised by the Bill has the potential to greatly assist in the prevention of crime, including violence, and improve safety in the correctional environment and the broader community. There are also safeguards in place to protect against arbitrary disclosures of information.

Accordingly, the impact on a person's privacy enabled by the amendment is not considered to be arbitrary, and so it is not considered to limit human rights. However, even if it was considered to limit the human right, the limitations are considered justified.

(f) any other relevant factors

N/A.

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 reporting, supervision or management of a prisoner in this place.

Consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 Human Rights Act 2019)

(a) the nature of the right

As noted above.

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

The purpose of the limitation is to support the effective reporting, supervision, management or reintegration of a prisoner or offender in the instance that they re-locate to another state, territory or overseas jurisdiction, where there is a risk to community safety. Ensuring the equivalent corrections agency has access to reliable information about the prisoner or offender supports cross jurisdictional rehabilitation, crime prevention and keeps the broader community safe.

The amendment promotes the right to security of person (section 29) and in some circumstances (i.e. where there is a threat to another individual) the right to life (section 16).

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

Offenders (inclusive of prisoners) managed by QCS do not always stay in Queensland. When offenders relocate, including when removed or deported from Australia to another country after the completion of their custodial sentence in Australia, a receiving jurisdiction may still hold concerns about the individual.

For example, New Zealand has the *Returning Offenders (Management and Information) Act 2015*. Under this Act, a New Zealand citizen who has been sentenced to more than one year in an overseas prison and who have been 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 UK, under the *Criminal Justice and Immigration Act 2008* (UK), providing for ongoing reporting obligations. Confidential information about the prisoner or offender held by QCS, including any rehabilitation activities that were undertaken, risk assessments or other such information, assists the receiving jurisdiction in considering the risk profile of the person, and determine what risk mitigation strategies might be appropriate. This may include eligibility of a person to be considered for an order or reporting requirement under such schemes, and if relevant, the effective ongoing supervision, reporting or management of the individual in that place.

Allowing for information to be shared will therefore help to achieve the purpose of ensuring effective reporting, supervision or reintegration of prisoners and offenders no longer under the management of QCS, but where there continues to be a risk to community safety.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

A number of safeguards have been built into the Bill to ensure that the limits on human rights are the least necessary to achieve the purpose of the amendment. These safeguards include:

- the information can only be disclosed to a corrective services of another State or foreign country (i.e. another entity who will likely operate under confidential information legislative requirements),
- the information must relate to a prisoner or offender and be relevant to support the supervision or management of that prisoner or offender in that place,
- section 341 of the CSA currently includes an offence to disclose confidential information beyond what is authorised by the Act,
- the amendment does not require reciprocal information sharing, and
- decisions made under the provision must be made with consideration of the HRA.

There is no less restrictive, but equally effective, way in which to achieve the purpose of this amendment. Accordingly, the limits imposed on human rights by the ability to share information for this reason are necessary to achieve their purposes.

The alternative would be to rely on individual to consent for provision of this information or use existing section 341(3)(e)(ii) (disclosure is in the public interest). However, given the nature of information, and the potential consequence for the offender of information being shared (a potential court order or extended reporting requirement), an offender could be unlikely to consent to the disclosure of this information. Further, disclosure in the public interest has a special meaning, which is not necessarily appropriate for information sharing to achieve this purpose.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On one side of the scales, an offender has a right to privacy, however privacy is only limited where arbitrarily or unlawfully impacted. Information held by QCS about offenders, including information relevant to their management is and should be kept confidential and only disclosed in limited and necessary circumstances.

On the other side, the sharing of information to a corrective services agency of another State or foreign country can improve the effectiveness of supervision and management of that offender which can benefit them, victims of crime and the broader community. There are also safeguards in place to ensuring any disclosure of information in accordance with this amendment is necessary to achieve the purpose.

Accordingly, the impact on a person's privacy enabled by the amendment is not considered to be arbitrary, and so it is not considered to limit human rights. However, even if it was considered to limit the human right, the limitations are considered justified.

(f) any other relevant factors

The amendment supports the Memorandum of Cooperation between the Department of Corrections of New Zealand and the Australian State Corrective Services Authorities Concerning the Sharing of Information about Deported Offenders, of which Queensland is a signatory. On 28 February 2015, the New Zealand and Australian Prime Ministers agreed at their Annual Leaders' Meeting that such an arrangement be progressed by officials as a matter of priority.

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 of the CSA, 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 as 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.

Human rights relevant to the Bill (Part 2, Division 2 and 3 Human Rights Act 2019)
These amendments engage the following rights under the HRA:

- the right to humane treatment while deprived of liberty (section 30(1) of the HRA), and
- the right to health services (section 37 of the HRA).

The following analysis considers whether the amendments limit human rights beyond the existing prisoner classification framework.

Right to humane treatment while deprived of liberty (section 30(1) of the HRA)

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

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

Amending prisoner classification framework

In general, it is acknowledged that a decision about how to manage a prisoner within a corrective services facility, such as classification, can engage this right. Especially where decisions impact on a prisoner's placement or arrangements for their detention. Due regard should therefore be had to the right to humane treatment. Although generally, the management of prisoners according to their risk is an inherent feature of the correctional environment and is not necessarily a limitation on human rights.

It is also acknowledged that generally, the outcome of a classification decision can limit human rights to a greater or lesser extent. For example, a classification of low can limit human rights less because it can allow for placement in a low custody facility, where a prisoner's limitations are less than a secure facility.

However, the amendments to simplify the framework to remove maximum and revise the review periods for classification decisions under the CSA do not increase the limitations on human rights and instead continue similar limitations present within the existing framework. This is largely because the amendments will not change existing classifications, other than moving the small number of prisoners with a maximum classification to a high classification. Review periods will also not change, beyond a shift from automatic 12 months reviews to discretion to review at any time with a requirement to review at 12 months if requested by the prisoner. This is also not considered to limit human rights further.

Instead, the simplification of the framework for classification may enhance a prisoner's human rights including right to equal access and treatment before the law (section 15 HRA) by improving clarity and making the framework for classification and review more accessible and digestible.

For these reasons, these amendments to the framework are not considered to limit human rights.

Addition of prisoner risk sub-categories

The other aspect of the framework amended through the Bill is the introduction of a regulation making power for risk sub-categories of classification. If prescribed, risk sub-categories can promote the right to humane treatment by providing additional options for progression through categories of risk within the high category, demonstrating steps toward rehabilitation for the purposes of parole decisions and in management decisions.

The management of prisoners according to their risk is an inherent feature of the correctional environment and not necessarily a limitation on human rights. It is therefore considered that this amendment does not limit this human right.

Further, the question of whether any of the specific risk sub-categories did limit human rights would be required to be considered anew through the development of a regulation, and the accompanying regulation and human rights certificate would still consider the full implications of any risk sub-categories in detail.

These amendments are therefore considered to be compatible with human rights.

Updating health practitioner provisions

The Bill includes several minor amendments to reflect the current provision of health services to prisoners by QH. These amendments remove outdated provisions and replace references to

'doctor,' 'nurse' and 'psychologist' with registered health practitioner where appropriate. The change in terminology is consistent with QH being responsible for health service delivery to prisoners and best placed to determine what discipline of clinician is best placed to provide particular services or advice. The Bill inserts a definition of registered health practitioner into Schedule 4, referencing section 5 of the Health Practitioner Regulation National Law (Queensland).

The Bill removes the power for a doctor to direct a prisoner to submit to a medical examination, or for the use of force in the carrying out of a directed examination. The Bill omits these provisions as there are other legislative mechanisms contained in the *Public Health Act 2005* and the *Mental Health Act 2016*. These Acts provide the legislative frameworks necessary for registered health practitioners to utilise when treating or examining a prisoner without consent and provide the necessary safeguards.

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

These amendments **promote** the following rights under the HRA:

- the right to protection from being subjected to medical or scientific experimentation or treatment without consent (section 17(c) of the HRA),
- the right to humane treatment while deprived of liberty (section 30(1) of the HRA), and
- the right to health services (section 37 of the HRA).

These amendments do not limit any human rights.

Right to protection from medical or scientific experimentation or treatment without consent (section 17(c) of the HRA)

Section 17(c) of the HRA ensures a person is not subjected to medical or scientific experimentation or treatment without the person's full, free and informed consent. This right expands on Article 7 of the International Covenant on Civil and Political Rights by providing that informed consent must be given for medical treatment.

Right to humane treatment while deprived of liberty (section 30(1) of the HRA)

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

The amendments promote the protection from medical treatment without consent section 17(c) HRA) and the right to humane treatment (section 30(1)) by removing existing provisions which can enable a doctor to require a prisoner to submit to medical examination or treatment. This supports a prisoner to have agency in their healthcare decisions.

Right to access health services (section 37 HRA)

Section 37 of the HRA refers to the right to access a variety of goods, facilities and services necessary for a person to be healthy. This recognises that a person's capacity for full health can

be limited by biological, environmental and socio-economic factors, and by an individual's personal choices.

The right as set out in the HRA has two limbs: the first provides for the right to access health services without discrimination and the second provides that a person must not be refused medicate treatment that is immediately necessary to save their life or to prevent serious impairment.

While the right to health services in the HRA is narrowly drafted, the right to health has been interpreted in international jurisprudence as encompassing the key elements of availability, accessibility, acceptability and adequacy.

The amendments to replace references to 'doctor,' 'nurse' and 'psychologist' with registered health practitioner where appropriate promote the accessibility and adequacy of health services provided to prisoners under the HRA by providing additional choice and flexibility for the functions to be performed by the most appropriately qualified physician in each circumstance.

Reappointment of official visitors

The Bill amends section 285 of the CSA to enable an Official Visitor (OV) to be reappointed beyond the current two-term limit, in certain circumstances.

OVs play an important role in the accountability of Queensland's correctional system by ensuring a regular, accessible, independent program of visitation to corrective services facilities to assist prisoners to manage and resolve their complaints. There are currently 11 Community OVs, 9 Legal OVs and 3 Aboriginal and Torres Strait Islander OVs.

OVs are trusted and treated with respect by prisoners. They are an independent presence on the ground, visible to prisoners and provide an opportunity for individual advocacy and informal resolution of issues for a prisoner. OVs provide complaint reports and review findings to QCS and are empowered to make non-binding recommendations to the QCS Commissioner.

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

This amendment **promotes** the following human rights under the HRA:

- the right to cultural rights of Aboriginal people and Torres Strait Islander peoples (section 28 of the HRA), and
- the right to humane treatment while deprived of liberty (section 30(1) of the HRA).

This amendment does not limit any human rights.

Cultural rights of Aboriginal and Torres Strait Islander peoples section 28 of the HRA)

Section 28 of the HRA recognises the special importance of human rights for Aboriginal peoples and Torres Strait Islander peoples, and explicitly protects their distinct cultural rights as Australia's first people. The core value underpinning the various cultural rights protected under section 28 of the HRA is recognition and respect for the identity of Aboriginal peoples and Torres Strait Islander peoples, both as individuals and in common with their communities.

Section 286 of the CSA requires at least one OV who is an Aboriginal or Torres Strait Islander person to be appointed to visit a corrective services facility if a significant proportion of

prisoners are Aboriginal or Torres Strait Islander prisoners. Noting the overrepresentation of First Nations peoples in custody across Queensland, the amendment to allow an OV to be reappointed beyond the current term limit supports the adequate representation of Aboriginal peoples and Torres Strait Islander peoples in OV roles across the state, thereby promoting this right.

Right to humane treatment while deprived of liberty (section 30(1) of the HRA)

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

The OV scheme is an essential oversight mechanism supporting the promotion of humane and fair treatment for prisoners. The amendment to allow an OV to be re-appointed beyond their current term limit, promotes this right further by ensuring qualified OVs can remain on in the role, thereby ensuring the scheme can continue to provide a vital contribution to the oversight of the custodial environment.

Conclusion

In my opinion, the Corrective Services (Emerging Technologies and Security) and Other Legislation Amendment Bill 2022, is compatible with human rights under the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

MARK RYAN
MINISTER FOR POLICE AND CORRECTIVE SERVICES
AND MINISTER FOR FIRE AND EMERGENCY SERVICES