

Corrective Services Bill 2006

Explanatory Notes for Amendments to be moved during consideration in detail by the Honourable Judy Spence MP

Title of the Bill

Corrective Services Bill 2006

Objectives of the Amendments

The amendments are intended to:

- clarify the operation of certain provisions of the Bill; and
- correct technical and drafting matters in the Corrective Services Bill 2006 (the Bill); and
- amend the *Freedom of Information Act 1992* to restrict an offender's access to recordings made for security purposes to ensure the safety of the community and the security of corrective services facilities.

Consistency with Fundamental Legislative Principles

The amendments seek to clarify the operation of certain provisions of the Bill and are consistent with fundamental legislative principles.

The amendments in relation to the *Freedom of Information Act 1992* provide that an offender is not entitled to access recordings, or transcripts of recordings made under the freedom of information regime that are created by the Department of Corrective Services for security purposes.

This may raise issues regarding consistency with Fundamental Legislative Principles in that offenders will not be entitled to receive personal information about themselves. However, it is considered that the public interest in maintaining the security and good order of corrective services facilities outweighs the right of offenders to obtain audio or visual recordings of themselves where the recordings are brought into existence for security purposes.

Although the amendments will not allow offenders or their agents to access recordings through the freedom of information regime, offenders will still retain the ability to request access to recordings by subpoena if the recordings are necessary and relevant to court proceedings.

Consultation

The Office of the Queensland Parliamentary Counsel, the Department of the Premier and Cabinet and the Department of Justice and Attorney-General has been consulted in preparing the amendments.

Notes on Provisions

Amendments 1 and 2 amend clause 181 to clarify the parole eligibility for a prisoner serving a term of imprisonment for life. For example, a prisoner who is serving a term of imprisonment of ten years may be sentenced to a term of imprisonment for life after serving four years of the ten years. The prisoner is eligible for parole on the day after the day that the prisoner has served 15 years from the commencement of the term of imprisonment for life.

Amendment 3 amends clause 184 and provides for the parole eligibility of prisoners not mentioned in clauses 181 to 183.

As stated in clause 207, a prisoner who has had a court ordered parole order cancelled must apply to a regional parole board for any subsequent grant of parole.

The amendment to clause 184 clarifies the parole eligibility date for a prisoner who has had a court ordered parole cancelled. The date that was fixed for the prisoner's release to court ordered parole is the prisoner's parole eligibility date unless a court has fixed a parole eligibility date under the *Penalties and Sentences Act 1992*.

The amendment also clarifies the parole eligibility date for a prisoner who has been ordered to serve imprisonment under section 147(1) (b) or (c) of the *Penalties and Sentences Act 1992*. The prisoner is eligible to apply for parole the day after the day on which the prisoner has served half the period of imprisonment to which the prisoner has been sentenced. unless a parole eligibility date is fixed under the *Penalties and Sentences Act 1992*.

Amendment 5 amends clause 187 to clarify that not all “existing reportable offenders” within the meaning of the *Child Protection (Offender Reporting) Act 2004* must apply to the Queensland Parole Board for parole.

Those prisoners who are existing reportable offenders because they were subject to a reporting order made under section 19 of the *Criminal Law Amendment Act 1945* must apply for parole to the Queensland Parole Board. All other reportable offenders serving less than eight years may apply for parole to a regional parole board.

Amendment 6 corrects a typographical error.

Amendments 7 and 8 amend clause 201 and clarify that an order suspending a parole order for not more than 28 days takes effect from the day the order is made. This is because it is not always possible to give a prisoner a copy of the order because a suspension order can be made when a prisoner fails to report to a corrective services officer as required or if a prisoner absconds.

Amendment 9 amends clause 205 and to remove any doubt makes clear that a parole board is not required to give the prisoner an information notice or reasonable opportunity to be heard if the parole board suspends or cancels the prisoner’s parole order. In practice, it is not usually possible to give a prisoner an opportunity to be heard in relation to a suspension or cancellation of a parole order. This is because a suspension or cancellation order can be made when a prisoner fails to report to a corrective services officer as required, absconds or is preparing to abscond, because the prisoner poses a serious risk of harm to someone or an unacceptable risk of committing an offence. A review provision is contained in clause 208. A prisoner whose parole order has been suspended or cancelled must be given an information notice when they are returned to custody inviting the prisoner to show cause, why the board should change its decision.

Amendment 10, 11 and 12 amend clause 357 and 441 and insert a new clause 431A to provide for the transitional arrangements for post-prison community based release orders amended, suspended or cancelled under the *Corrective Services Act 2000*.

Amendment 13 amends clause 471 that provides for the expiry of the corrective services rules. The rules continued in force as regulations under section 272 of the Act and as such are required to be published. The amendment declares that a number of the rules that contain security information not suitable for publication are not required to be published.

Amendments 14 and 25 amend the *Freedom of Information Act 1992* (FOI Act). Clause 478B amends section 11E of the FOI Act to clarify that the

application of section 11E to offenders extends to the agent of an offender. In addition, it is also made clear that prisoners detained under the *Dangerous Prisoners Sexual Offenders Act 2003* are offenders and therefore not able to access risk assessment documents by making a freedom of information application.

Section 11E of the FOI Act has also been amended to provide that an offender is not entitled to access the following recordings made for security purposes:-

- a telephone call made by an offender from a corrective services facility;
- an audio recording taken in a corrective services facility for the security or good order of the facility;
- a visual recording of a corrective services facility or a part of a corrective services facility.

These recordings are necessary to maintain the security and good order of corrective services facilities. A restriction on access to these recordings through the freedom of information will stop prisoners from demanding access to security and intelligence information used to prevent escapes from custody and to prevent the entry of contraband into corrective services facilities.

Amendment 15 amends clause 488 to clarify that a proper officer of a court must make a record of the order committing the offender into custody and then give a copy of the record to the chief executive.

Amendments 16 to 24 amend clause 493 of the Bill to remove any doubt about the application of Part 9 Division 3 of the *Penalties and Sentences Act 1992*. The amendment makes it clear that the requirement to fix either a parole release date or a parole eligibility date does not apply to suspended sentences, intensive correction orders or orders for imprisonment and probation under section 92(1) (b) of the *Penalties and Sentences Act 1992*.

The amendment also clarifies that when a court fixes a parole release date or parole eligibility date for an offender who is already serving a period of imprisonment, the new date can not be earlier in time than the current parole release date or parole eligibility date. The clause has been amended to include more examples to guide the application of the provisions.

An amendment to section 160G of the *Penalties and Sentences Act 1992* clarifies the courts ability to fix a parole release date. An offender is required to report to a probation and parole office and obtain a copy of the court ordered parole order if the date of sentence is the date fixed as a

prisoner's parole release date. This may occur where a prisoner has spent a significant period in pre-sentence custody on remand for an offence and requires ongoing supervision on parole. The amendment makes clear that a failure to report to a probation and parole office as required, renders the offender unlawfully at large and a warrant may issue for the offender's immediate arrest and return to custody.

Amendments 26 to 29 add the definitions of corrections board and early discharge to the Dictionary and add to the definitions of leave of absence and unlawfully at large.