

CORRECTIVE SERVICES AMENDMENT REGULATION (NO. 1) 2014

Explanatory notes for SL 2014 No. 40

made under the

Corrective Services Act 2006

General Outline

Short title

Corrective Services Amendment Regulation (No. 1) 2014

Authorising law

Sections 96, 123(1), 149, 273, 317(5), and 355 of the *Corrective Services Act 2006* (the Act)

Policy objectives and the reasons for them

Section 96 of the Act provides that a regulation may declare a law of another State to be a corresponding law for the purpose of prisoner interstate leave of absence. Currently the Western Australian *Prisons Regulations 1982* recognises the Act as a corresponding law for interstate leave of absence for Western Australian prisoners. However, the *Corrective Services Regulation 2006* (the Regulation) does not list the Western Australian *Prisons Regulations 1982*. Consequently, prisoners from Queensland cannot participate in interstate leave of absence to Western Australia. This is an irregularity. The amendment will ensure that Queensland legislation recognises all corresponding laws for the purposes of interstate leave of absence.

Section 45 of the Act provides that a corrective services officer, authorised by the chief executive, may open, search and censor a prisoner's ordinary mail. It also outlines the restrictions and controls on when an authorised corrective services officer can open and search a prisoner's privileged mail. Section 18 of the Regulation lists the persons with which mail sent to, or by constitutes privileged mail for the purposes of the Act. The Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) was established to inquire into how institutions with a responsibility for children have managed and responded to allegations and instances of child sexual abuse. Prisoners incarcerated in Queensland's corrective services facilities are invited to take part in the inquiry. The Chairperson of the Royal Commission has requested correspondence between the Royal Commission and prisoners be kept

confidential. The amendment will include the Chairperson of the Royal Commission in the list of persons that prisoners can send or receive privileged mail.

Section 123 (1) of the Act provides that a regulation may prescribe a thing to be a prohibited thing in a corrective services facility. Section 123 of the Act makes it an offence for a prisoner to (or attempt to) make, possess, conceal or knowingly consume a prohibited thing. Furthermore, section 128 of the Act makes it an offence for a person to take (or attempt to take) a prohibited thing into a corrective services facility or give a prohibited thing to a prisoner. From 5 May 2014 Queensland Corrective Services (QCS) intends to implement a tobacco and smoke free corrective services facilities policy, with the overall purpose of:

- improving health outcomes for prisoners and staff;
- reducing the harm associated with tobacco use and eliminating the risks associated with exposure to second-hand smoke for non-smoking staff, prisoners and visitors; and
- providing a healthy work environment.

Consistent with this policy objective, the Regulation will include smoking products and smokeless tobacco products (as defined under the *Tobacco and Other Smoking Products Act 1998*) as prohibited things.

Section 317(5) of the Act states a regulation may be made about the property a prisoner may keep in a corrective services facility, including the amount of property a prisoner may keep. Section 45 of the Regulation provides that a prisoner may keep property in a corrective services facility if the property does not exceed a total value and volume. Section 45(2)(a) of the Regulation lists tobacco as an example of a consumable thing that need not be taken into account when determining the total value of the prisoner's property. In line with QCS' tobacco and smoke free policy, the reference to tobacco as an example of a consumable thing in section 45(2)(a) of the Regulation is to be removed.

Section 273 of the Act identifies those Acts including the *Right to Information Act 2009* and *Information Privacy Act 2009*, Chapter 3; *Crime and Misconduct Act 2001* and the *Ombudsman Act 2001* that apply to engaged service providers. The section also provides that a regulation may prescribe a specified office of an engaged service provider for the purposes of section 273. It has been identified that the person in charge of Southern Queensland Correctional Centre should also be listed as a specified office for the purposes of the above named Acts in the Regulation. The reference to the person in charge of Borallon Correctional Centre as a specified office is to be removed as the centre is currently vacant.

Finally, section 149 of the Act provides that a regulation may declare a place to be a prison and assign a name to a prison. The Regulation includes a current list of places that are prisons. In 2012 Darling Downs Correctional Centre was permanently decommissioned and is no longer available for use as a correctional facility. Consequently, it has been removed from the list.

Achievement of policy objectives

The policy objectives are achieved by amending the Regulation, as stated above, to facilitate the interstate leave of absences for Queensland prisoners to and from Western Australia; include the Chairperson of the Royal Commission in the privileged mail list; ensure prisoners, correctional staff and visitors to corrective services facilities are not exposed to the harms associated with smoking products and smokeless tobacco products whilst on QCS corrective services facilities; include the person in charge of Southern Queensland Correctional Centre as a specified office for the purposes of section 273 of the Act; and maintain a current and up to date list of places that are a prison.

Consistency with policy objectives of authorising law

The amendments to the Regulation are consistent with the main objectives of the Act.

Inconsistency with policy objectives of other legislation

The Regulation is consistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

There are no alternative ways in which the objectives could be achieved.

Benefits and costs of implementation

Since the implementation of the Act, there have been a limited number of prisoner applications for interstate leave of absence received and/or approved. It is the responsibility of the State in which the prisoner is accommodated to meet associated costs as a result of approving the leave of absence request. Section 83 of the Act provides that the Chief Executive is responsible for authorising money or other goods as considered necessary to meet the prisoner's requirements while on leave. Due to the historically low number of applications received concerning other jurisdictions, it is anticipated that the costs of including Western Australia in this process will be minimal and met within existing budget resources.

The implementation of the amendments to include smoking products and smokeless tobacco products as prohibited things in corrective services facilities will not incur costs to the government. However the broader QCS policy of tobacco and smoke free corrective services facilities, which includes providing cessation support programs for prisoners and correctional staff, will incur costs to government. There are significant health benefits to prisoners, staff and visitors with the implementation of a smoke and tobacco free corrective services policy.

There are no costs anticipated from the implementation of the other amendments.

Consistency with Fundamental Legislative Principles

It is arguable the amendments to the regulation to include smoking products and smokeless tobacco products as prohibited things do not have sufficient regard to the rights and liberties of individuals as required by the *Legislative Standards Act 1992*. The proposed amendments impact on prisoners, staff and visitors in corrective services facilities by restricting an individual's liberty with regards to choosing to smoke in a corrective services facility.

The infringement on an individual's liberty is balanced by the *Work Health and Safety Act 2011* obligations on QCS as an employer to address and control potential hazards in the workplace. Recent studies have identified that the harmful effects of environmental tobacco smoke may only be effectively addressed by eliminating smoking. QCS considers that a tobacco and smoke free policy for corrective services facilities is the only effective means to ensure environmental tobacco smoke is eliminated from the workplace.

Smoking within corrective services facilities poses a fire risk. Prohibiting smoking products will reduce this risk and thereby contribute to the safety and security of the correctional system and the people therein.

In general it has been noted and accepted by the former Scrutiny of Legislation Committee that while prisoners have rights, they are not entitled to the same rights and liberties as other people due to the constraints of the correctional environment, the need to protect the safety and security of the correctional system and the people therein, together with the need to protect the wider community.

Consultation

The Department of Corrective Services, Western Australia, Department of Health and the Office of Best Practice Regulation of the Queensland Competition Authority were consulted.

Due to the technical nature of the proposed amendments, no other consultation has occurred with community stakeholders and organisations.