

Corrective Services Regulation 2017

Explanatory notes for SL 2017 No. 176

Made under the

Corrective Services Act 2006

General Outline

Short Title

Corrective Services Regulation 2017

Authorising law

Section 355 of the *Corrective Services Act 2006* (CSA) allows for the Governor in Council to make regulations under the CSA.

Policy objectives and the reasons for them

The purpose of the CSA is community safety and crime prevention through the humane containment, supervision and rehabilitation of offenders.

The *Corrective Services Regulation 2006* (repealed Regulation) was due to expire on 1 September 2016 however approval was obtained for an exemption from expiry for one year under section 56A(1)(b) of the *Statutory Instruments Act 1992*. The exemption was granted on the grounds that the CSA was under review. The Queensland Parole System Review and Government response were released on 16 February 2017.

The *Corrective Services Regulation 2017* (remade Regulation) has been remade in substantially the same form as the repealed Regulation with amendments made to improve operational practice, reflect changes to legislation and other minor amendments. The remade Regulation has been redrafted to reflect current drafting practice, which means many of the sections have been re-worded.

Achievement of policy objectives

Separate confinement

In line with the repealed Regulation, section 4(d) of the remade Regulation requires the chief executive to ensure a prisoner undergoing separate confinement is given the opportunity to exercise, in the fresh air, for at least two daylight hours a day. The remade Regulation has been amended to allow for an exception on the basis of advice received

from a doctor or nurse that it would not be in the health interests of a prisoner to exercise for a stated period or indefinitely. This may be the case if the prisoner is in hospital or subject to other medical treatment. The remade Regulation requires the chief executive to keep a record of this advice.

Safety order for Aboriginal or Torres Strait Islander prisoner

Section 53 of the CSA allows for a safety order to be made if there is a risk of a prisoner harming himself, herself or someone else, or being harmed by someone else, or if a safety order is necessary for the security and good order of the corrective services facility. During the period of a safety order a prisoner may be accommodated separately from other prisoners. Under section 57 of the CSA if a safety order is made for a prisoner, a doctor or nurse must examine the prisoner for any health concerns.

Consistent with the repealed Regulation the remade Regulation requires the chief executive to inform an elder, respected person or Indigenous spirit healer if appointed to the corrective services facility, as well as the person nominated by the prisoner as the prisoner's contact person.

Under the remade Regulation the chief executive will also be required inform a 'cultural liaison officer' about the making of the order (section 8(1)(a)) and ask the officer to visit the prisoner (section 8(2)). The repealed Regulation required the chief executive to inform 'an Aboriginal or Torres Strait Islander health worker'. The position prescribed in the repealed Regulation is not available in all correctional centres. The remade Regulation better reflects available services and supports the cultural safety of an Aboriginal or Torres Strait Islander prisoner who is subject to a safety order.

Requirements for search requiring the removal of clothing

Under the repealed Regulation a corrective services officer could require a prisoner to hold his or her arms in the air and stand with his or her legs apart. The remade Regulation amends section 9(4) to add that a corrective services officer may also require the prisoner to lean forward.

This amendment aligns with the *Police Powers and Responsibilities Act 2000*, which gives police the power to conduct a search requiring the removal of clothing and prescribes what a police officer conducting a search may require a person to do during the search. In addition to requiring a person to hold his or her arms in the air or stand with his or her legs apart, a police officer may also require an individual to bend forward to enable a visual examination to be made.

The remade Regulation has also been amended (section 9(5)) to require that when a corrective services officer is carrying out a search requiring the removal of a prisoner's clothing, the officer must comply with the administrative procedures for searches requiring the removal of clothing. The procedures will be published and available on the Queensland Corrective Services website.

Dealing with recording of search

Consistent with the repealed Regulation, section 10 of the remade Regulation sets out approved persons who may be shown a recording of a search requiring the removal of

clothing. The remade Regulation has been amended to remove the term “police officer” and insert the term “officer of a law enforcement agency”. “Officer of a law enforcement agency” is defined in the CSA and includes “police officer” within its definition.

Declaration of corresponding laws

Section 15 of the remade Regulation has amended the references to corresponding laws from other jurisdictions where required.

Maximum security order

Section 16 of the remade Regulation requires that if the chief executive knows, or reasonably believes, that a prisoner has a mental health condition or intellectual disability, the chief executive must notify a health practitioner before making a maximum security order in relation to the prisoner.

The repealed Regulation required that if the chief executive knows that a prisoner has been diagnosed as having a psychiatric disorder, or assessed as having an intellectual disability, then the prisoner must not be classified as maximum security prior to being examined by a doctor or psychologist respectively and considering the assessment of the doctor or psychologist.

Under the CSA a maximum security classification is required to make a maximum security order and accommodate a prisoner in a maximum security unit. While an assessment was pending relevant prisoners were accommodated in detention units. Detention units are not appropriate for the management of a prisoner who should be classified as maximum, given the immediate and serious risks they pose to the safety of staff and other prisoners.

The remade Regulation links the notification with the making of a maximum security order rather than maximum security classification. This better aligns with the CSA since the placement of a prisoner in a maximum security unit is made by way of a maximum security order.

The remade Regulation broadens the scope of the section to include prisoners where there is a reasonable belief about the existence of a mental health condition or intellectual disability, rather than an assessed or diagnosed condition as required by the repealed Regulation.

The remade Regulation ensures that a health practitioner (defined in the *Mental Health Act 2016*) is notified about an individual who will be subject to a maximum security order, who may have a mental health condition or intellectual disability, but does not delay the placement of the prisoner in a maximum security unit.

Section 16 will be supported by procedures relating to the operation of maximum security units to enable the relevant health practitioner to access the prisoner and conduct an assessment, if the health practitioner determines an assessment is required.

Privileged mail

Section 17 of the remade Regulation provides a list of persons who are prescribed as privileged for the purposes of sending mail in and out of correctional centres. This is consistent with the repealed Regulation but has been amended to:

- add 'the health ombudsman', established under the *Health Ombudsman Act 2013*.
- replace 'delegate' of the chief executive with 'nominee'. 'Delegate' is defined in section 271 of the CSA to mean an employee, engaged service provider or corrective services officer. This amendment will clarify that the provision may apply to external individuals or organisations not listed in the Regulation to send or receive privileged mail.
- replace 'the ombudsman', with 'the ombudsman, established under the *Ombudsman Act 2001*'.

Prescribed officers of the secretariat

The *Corrective Services (Parole Board) Amendment Act 2017* amended the CSA. The CSA now contains reference to certain functions which can be performed by 'an officer of the secretariat prescribed by regulation'. Section 48 of the remade Regulation prescribes officers of the Parole Board Queensland Secretariat.

Correctional centre land

Schedule 1 of the remade Regulation lists the name and place of prisons in Queensland. On 22 August 2016, a parcel of land that was previously part of Numinbah Correctional Centre was transferred to the Department of National Parks, Sport and Racing and is now part of Lamington National Park. On 16 March 2017, a parcel of land that was previously part of Townsville Correctional Centre was sold to Lendlease Communities (Townsville) Pty Ltd.

Schedule 1 of the CSR has been amended as follows:

- Numinbah Correctional Centre - lot 21 on SP244410.
- Townsville Correctional Centre - lot 56 on Crown Plan EP1573, lot 57 on SP277218, and lots 74 to 78 on Crown Plan E124236.

Consistency with policy objectives of authorising law

The remade Regulation is consistent with the policy objectives of the CSA.

Inconsistency with policy objectives of other legislation

There is no inconsistency with the policy objectives of other legislation.

Benefits and costs of implementation

The costs associated with the implementation of this Regulation will be met within existing resources.

Consistency with fundamental legislative principles

The *Corrective Services Regulation 2017* is consistent with the fundamental legislative principles as defined in Section 4 of the *Legislative Standards Act 1992*.

Consultation

The changes meet an agency-assessed exclusion category and accordingly do not require consultation with the Office of Best Practice Regulation, Queensland Productivity Commission.