

Corrective Services Amendment Regulation 2024

Human Rights Certificate

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

In accordance with section 41 of the *Human Rights Act 2019* (HRA), I, Nikki Boyd, Minister for Fire and Disaster Recovery and Minister for Corrective Services, provide this human rights certificate with respect to the *Corrective Services Amendment Regulation 2024* (Amendment Regulation) made under the *Corrective Services Act 2006* (CSA).

In my opinion, the Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the HRA. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

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

In 2018, the Crime and Corruption Commission's *Taskforce Flaxton: An examination of corruption risks and corruption in Queensland's prisons* (Taskforce Flaxton) noted the significant risks associated with contraband entering corrective services facilities.

In 2022, the Women's Safety and Justice Taskforce Report *Hear her Voice – Report Two – Women and girls' experiences across the criminal justice system* recommended (Recommendation 136) that Queensland Corrective Services (QCS) immediately move to introduce the widespread use of non-invasive screening technology to end the practice of removal of clothing searches in all women's correctional facilities.

On 2 June 2023 amendments to the CSA commenced to insert a power for a new type of search to be conducted in corrective services facilities, namely an imaging search. These provisions provide a head of power to enable a trial of x-ray body scanning technology at corrective services facilities to increase opportunities to detect contraband and reduce reliance on other more invasive prisoner search options. The Regulation supports and reflects these amendments made to the CSA to trial the use of x-ray body scanners at Brisbane Women's Correctional Centre in mid-2024. X-ray body scanners are planned for the new Lockyer Valley Correctional Centre that is due to commence commissioning in late 2024.

The Amendment Regulation expands the list of prescribed persons for the purposes of privileged mail to support implementation of the National Redress Scheme following the *Royal Commission into Institutional Responses to Child Sexual Abuse*. The CSA outlines QCS' responsibilities in relation to prisoners' mail, including the authority to open, search and sensor a prisoner's ordinary or privileged mail. The CSA also prescribes the confidentiality of privileged mail as it is an essential protection of prisoners' rights, enabling confidential communication with people outside of the correctional environment.

The Regulation will change the name of the site from Southern Queensland Correctional Centre to Southern Queensland Correctional Complex in acknowledgement of the two corrective services facilities established on the site. This site contains the currently operational Southern Queensland Correctional Centre (female prison) and Lockyer Valley Correctional Centre (male prison). The Lockyer Valley Correctional Centre will commence commissioning in 2024. The Regulation ensures these facilities continue to be appropriately designated as prisons for the purpose of the CSA.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 *Human Rights Act 2019*)

In relation to the Regulation, I consider the following human rights to be relevant:

- Recognition and equality before the law (section 15) and
- Right to privacy and reputation (section 25).

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

Body scanners

(a) The nature of the right

Right to privacy and reputation

The right to privacy has a broad scope, with a focus on preserving personal autonomy and dignity. Section 25(a) of the HRA protects individuals from arbitrary interference with their privacy, family, home or correspondence. The right to privacy protects the individual against interference with their physical and mental integrity, freedom of thought and conscience, legal personality, sexuality, family and home, and individual identity.

To conduct an imaging search, a prisoner's personal information will be recorded. This includes the prisoner's biometric data, the date of the scan and time, the dose of radiation the prisoner received, the cumulative dose of radiation the prisoner has received within a 12-month period, and the scan image that is produced.

An x-ray body scanner takes images of a person's internal and/or external composition. While a physically non-invasive measure, it discloses a detailed image of the individual. The image will be stored and if a prohibited item is identified on a person, the image will be retained on file. This interferes with a person's privacy.

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

The purpose of an imaging search is to prevent the introduction of contraband into a corrective services facility and ensure safety and security in corrective services facilities.

For prisoners, this is a less invasive search option than a removal of clothing search, which is the alternative to an imaging search. This promotes the right to humane treatment when deprived of liberty (section 30 of the HRA).

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

The presence of contraband, or prohibited things, in corrective services facilities poses a significant risk to the security of the facility, officer safety, prisoner safety, health and welfare.

Contraband in correctives services facilities includes illegal items such as drugs, weapons, or prohibited items, such as mobile phones and tobacco. Contraband can 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 initial use of imaging searches will commence at Brisbane Women's Correctional Centre where women prisoners will be searched upon reception and after visits. This will enable identification of contraband concealed on or inside prisoners and provide corrective services officers with the opportunity to intervene prior to it entering the facility. The potential future use of body scanners on staff and visitors prior to entry into a corrective services facility will also identify concealed contraband prior to entry. This provides an opportunity for corrective services officers to intervene and prevent the person from entering the facility. This promotes the safety and security of the facility.

It is anticipated that the use of imaging searches will have a deterrent effect, as concealed contraband will be more easily identified. Preventing contraband from introduction into corrective services facilities improves the safety of all people in this closed environment.

Obtaining an individual's personal information, collected in the image produced by the search, is necessary to prevent the introduction of contraband into corrective services facilities.

(d) Whether there are any less restrictive and reasonably available ways to achieve the purpose of the legislation

There are no less restrictive ways to achieve the outcome of preventing contraband from entering corrective services facilities. The alternative is to subject prisoners to a body search or a removal of clothing search which are processes that are more restrictive on human rights.

The regulation provides protection for the person subject to the search by providing:

- an imaging search must be carried out by at least one corrective services officer, but by no more officers than are reasonably necessary,
- an obligation for the images to be retained securely, and
- requirements that the image produced by an imaging search must not be shared further than necessary, or without the consent of the person that was subject to the search.

In addition to this,

- individuals have the right to refuse an imaging search,
- individuals have the right to request access to their personal information, including the image produced by the search,
- individuals will be advised that their personal information is being collected, as well as the record of the radiation dose received,
- images produced by a scanning search will be managed in accordance with the Queensland Corrective Services Retention and Disposal Schedule authorised under the *Public Records Act 2002*,
- individuals will be advised that their personal information will be handled in accordance with the *Information Privacy Act 2009*,
- imaging searches will be conducted in accordance with obligations under the *Radiation Safety Act 1999* and *Radiation Safety Regulation 2021*, and
- personal information will be stored securely.

Personal information obtained by the imaging search, including the image produced, is directly related to the purpose of collection.

- (e) The balance between the importance of the purpose of the legislation, 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

It is accepted that being subject to an imaging search by an x-ray body scanner impacts on a person's right to privacy. Their personal information is recorded, including in the form of the image produced by the search.

In the alternative, the person can refuse the search and be subject to a more physically invasive removal of clothing search.

The safety of the correctional environment is a priority. Queensland Corrective Services searches all prisoners upon admission to a corrective services facility. Under the CSA staff and visitors may be subject to searches prior to entering a corrective services facility. These measures are taken to prevent the introduction of contraband into corrective services facilities. There are several measures in place to ensure that the right to privacy is protected. This includes ensuring that images produced by an imaging search are stored securely, and retained and destroyed in accordance with obligations under the *Public Records Act 2002*. Additionally, an imaging search is less restrictive than the alternative of a removal of clothing search.

For these reasons, the impact on a person's right to privacy is considered to not limit human rights. Even if the right to privacy is considered limited, this is justified for the reasons above.

Having regard to the importance of achieving the purpose, the nature of the limits to human rights and the protective factors outlined above ensure that the limits are proportionate, the use of x-ray body scanners for an imaging search strikes a fair balance between preserving the right to privacy and the purpose of the subordinate legislation.

- (f) Any other relevant factors

A Privacy Impact Assessment has been conducted.

Privileged mail

Recognition and equality before the law

The right to recognition and equality before the law provides that every person has the right to recognition as a person before the law. Every person also has the right to enjoy their human rights without discrimination.

The Regulation expands the list of prescribed persons for the purposes of *privileged mail* to ensure that prisoners have access to confidential communication with people and organisations outside of the correctional environment. Ensuring prisoners are able to contact and communicate with the Redress Scheme promotes a prisoner's right to equality before the law and equal and effective protection from discrimination.

The expansion of the list of persons for the purposes of *privileged mail* to include a reference to an officer of the Commonwealth Department of Social Services promotes a prisoner's right to privacy by providing for confidential communications with the Commonwealth Department of Social Services.

Conclusion

In my opinion, the subordinate legislation is compatible with human rights under the HR Act because it limits human rights only to the extent that it is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

THE HONOURABLE NIKKI BOYD MP
Minister for Fire and Disaster Recovery and
Minister for Corrective Services

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