

24 April 2020

Our ref: CrL-KS

Committee Secretary  
Legal Affairs and Community Safety Committee Parliament House  
George Street  
Brisbane Qld 4000

By email: [REDACTED]

Dear Committee Secretary

**Corrective Services and Other Legislation Amendment Bill 2020**

Thank you for the opportunity to provide comments on the Corrective Services and Other Legislation Amendment Bill 2020 (**the Bill**). The Queensland Law Society (**QLS**) appreciates the opportunity to provide a submission on the Bill.

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

This response has been compiled by the QLS Criminal Law Committee, whose members have substantial expertise in this area.

We note we have been somewhat constrained in the preparation of this submission due to the availability of our volunteer committee members, which is compounded by the various challenges which have emerged as a result of the COVID-19 pandemic.

As such, an in depth analysis of each of the provisions has not been undertaken and it is possible that there are issues relating to fundamental legislative principles or unintended drafting consequences which we have not identified. We note that the comments made in this submission are not exhaustive and we reserve the right to make further comment on these proposals.

From the outset, we wish to note our appreciation of the opportunity afforded by the Department of Corrective Services to provide our preliminary feedback on these proposals during earlier consultations. Although, we have not provided any comments on a draft bill.

We make the following comments in relation to the proposed amendments:

Clause 20 Amendment of s 173 (Search of staff member)

We support the amendment to section 173 in Clause 20 to allow search of staff members at any time the staff member is at the facility or before entering the facility. We note that the current search powers are limited to before entering a corrective services facility. The

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proposed extension of the power of the chief executive to direct a staff member to leave a corrective services facility if they refuse to submit to a scanning search is also appropriate.

### Clause 53 — Amendment of sch 4 (Dictionary)

We also support the amendments in Schedule 4 to allow the power to touch or move a person's possessions without touching the person to search for contraband (proposed subsection 5). It may also be appropriate to include a power to open and examine (without damaging) in reasonable circumstances.

The proposal to take a scanning search of a person as a non-invasive search option is also supported however to ensure minimal touching of the person, it may be appropriate to amend the proposed definition of *scanning search* (in Clause 53 (2) to:

*A scanning search of a person is a search of the person by electronic or other means that does not require the person to remove the person's clothing but may require ~~another person or an apparatus~~ to touch or come into contact with the person.*

This would seem to be more in line with the examples provided in the Bill, namely:

#### *Examples—*

- *using an electronic apparatus through which a person is required to pass*
- *using a corrective services dog that is trained to detect the scent of a prohibited thing to search a person*

### Clause 21 — Insertion of new section 173A

We have reservations about the proposed new offence to prohibit sexual conduct between staff and offenders.

While acknowledging the purpose and policy intent, the proposed offence is particularly broad in scope, noting the definition of 'intimate relationship' encompasses 'physical expressions of affection' and/or 'the exchange of written or other forms of communications of a sexual or intimate nature'.

Further, the penalty of 100 penalty units or 3 years imprisonment is not insignificant and would apply to an employee of the department, an employee of an engaged service provider or a corrective services officer (Sch 4 of the *Corrective Services Act 2006 (CSA)*). In most other professional circumstances, this would be an employment or conduct issue. We therefore query the appropriateness of it being dealt with as a criminal law issue.

If the proposed offence is progressed, we submit the legislation should expressly exclude the operation of the party provisions in sections 7 and 8 of the Code (Ch 2 Parties to offences) to offenders. This appropriately recognises the power imbalance which may exist.

### Clause 19 — Amendment of s 140 (Forfeiting seized thing)

With respect to the proposed change to section 140 (Forfeiting seized thing), it is not clear what the amendment would achieve, other than it will provide some relief from the administrative burden of storing exhibits. In our view, such provisions carry with them a risk to the integrity of evidence in criminal proceedings.

Therefore, we suggest it might be appropriate for the drafting to be amended to the effect:

New section 140(5)(b)(iii)—


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(iii) if the property has not come into the custody or possession of a public officer in connection with any charge or prosecution – destroying it.

Finally, we note the various minor amendments with respect to the operation of the 'No Body, No Parole' laws. We are unable to comment further on their practical impact at this stage but would emphasise the need to provide for and maintain adequately resourced legal assistance services to provide advice to prisoners impacted by parole decisions particularly where there is the prospect of life detention. QLS has previously raised the inherent flaws in these laws which the Society has historically opposed.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [policy@qls.com.au](mailto:policy@qls.com.au) or by phone on (07) 3842 5930.

Yours faithfully



Luke Murphy  
**President**