Correctional Services Bill 2014

Issues in relation to scope and drafting

North Australian Aboriginal Justice Agency and the Central Australian Aboriginal Legal Service

NAAJA and CAALAS are pleased with a number of improvements made to version 19 of the Correctional Services Bill (**the Bill**) as compared to earlier versions.

Notwithstanding this, we raise significant concerns with the proposed Bill, including:

- Provisions concerning the use of inmates' money by the Commissioner and the type of fees that will be charged and circumstances in which the Commissioner will use an inmate's money to pay for programs, services and items used by the inmate;
- Changes to the current repatriation system that will likely see a large number of Aboriginal adults and juveniles stranded in Darwin and Alice Springs after their release from custody (whilst this change may be more directed to operational changes, the Bill and an absence of guidance around repatriations is a concern);
- Power given to the Commissioner to direct an inmate to work. This is too broad, and potentially establishes a system of forced labour. It also does not provide for circumstances where a person might be injured or otherwise incapable of working.
- breadth of the power conferred on the superintendent of a detention centre with the new, proposed changes to s. 154 of the Youth Justices Act to accommodate a youth in a correctional centre for up to 72 hours without a court order, much broader than the present s. 154 of the Act;
- Provisions concerning legal representatives' access to the prison and communication with prisoners. We are particularly concerned by the provisions conferring power on Correctional Officers to intercept legally privileged mail in some circumstances. Greater protections need to be put in place;
- The abilities to provide health care and administer medication without consent are hugely concerning and abhorrent to modern understandings of human rights; these sections require alteration and greater qualification.
- Operation of the proposed administrative home detention scheme, including the absence of review and appeal mechanisms; and
- The broad range of non-custodial orders, including bonds and community-based orders, that will enliven the Commissioner's discretion to require a non-custodial offender to use a monitoring device. These significant intrusions on an individual's liberty should be reserved for high risk, serious offenders.

We also note our disappointment in relation to the rushed and poorly planned consultation process undertaken by the government in relation to this significant legislation. Previous comments have been made at significant inconvenience and time investment in relation to outdated versions of the Bill.

Clause	Comments	Recommendations/notes
Objects	There is no objects clause in the Bill. An objects clause essentially operates as a statement of the legislature's intention. It can therefore play an important role in the statutory construction process. It may operate as 'an aid to the construction of words of legislation' and can provide 'practical content to abstract terms such as 'reasonable', 'justification' and satisfactory' (Pearce and Geddes, 2011, p. 157). In the context of this particular Bill, an objects clause would assist in determining the scope of terms such as 'appropriate', 'reasonably necessary' and 'practicable', which frequently qualify the exercise of powers.	Accordingly, it is critical that objects such as the rehabilitation of prisoners, and ensuring a secure, safe and humane environment for prisoners are explicitly set out in the objects clause. This will assist in ensuring that these objectives are taken into account when determining the scope and nature of powers, functions and duties set out in the legislation. We note that an objects clause was included in an earlier version of the Bill. We understand the rationale for removing the clause is to minimize references to provisions which can be interpreted in favour of prisoners where disputes arise.
Chapter 2 – Correctional services administration		
15 – Community correctional facilities	The Bill does not specify what community correctional facilities are and how they will operate in the current regime.	
Part 2.3 - Official Visitors	Sections 26, 28: It is imperative that official visitors are independent of the Government of the day and able to raise issues without fear of offending Government (and potentially being excluded from visiting a facility or terminated). Section 31: states that an official visitor must not 'interfere' or 'give instructions about' the control or management of inmates. This section is overly broad (i.e. what constitutes 'interference' – does a suggestion, observation or opinion constitute 'interference') and potentially places the official visitor in a vulnerable position.	Official visitors should report to Parliament (s.30) as opposed to the Minister for Correctional Services or the Commissioner, or the Minister for Correctional Services and the Commissioner should be required to table the reports in Parliament. Section 31 should be deleted
Part 2.4 – Visitors	An explanation is required as to who section 33 (Volunteers) will likely cover? Is it the Elders Visiting Program? Is it religious groups/individuals?	This Part should include provisions about the Elders Visiting Program, including appointment, functions, and frequency of visits, as well as how sections apply to them as distinct from visitors generally.

Clause	Comments	Recommendations/notes
Chapter 3 – Custodial correctional facilities		
Subdivision 1 – General Matters	Unlike equivalent legislative scheme in other states and territories, there is no minimum human rights protections included in the Bill. We also note that important statutory protections including access to adequate food and exercise have been removed. It is critical that basic prisoner rights are embedded in the legislation. There is nothing in this Subdivision which addresses the provision of services to assist in the rehabilitation of inmates. We presume this is an oversight, and urge that it be remedied. The only mention of 'rehabilitation' in the entire Bill is in the context of a person harming a Correctional Services dog. A person can be ordered to pay for the reasonable costs incurred for the 'treatment, care, rehabilitation and retraining' of the dog (s. 191 (4)).	We propose that a section be inserted at the start of Subdivision 1 modelled on section 12 of the *Corrections Management Act* 2007 (ACT): **S 12 Correctional centres—minimum living conditions** (1) To protect the human rights of detainees at correctional centres, the director-general must ensure, as far as practicable, that conditions at correctional centres meet at least the following minimum standards: (a) detainees must have access to sufficient food and drink to avoid hunger and poor nourishment; (b) detainees must have access to sufficient suitable clothing that does not degrade or humiliate detainees; (c) detainees must have access to suitable facilities for personal hygiene; (d) detainees must have suitable accommodation and bedding for sleeping in reasonable privacy and comfort; (e) detainees must have reasonable access to the open air and exercise; (f) detainees must have reasonable access to telephone, mail and other facilities for communicating with people in the community; (g) detainees must have reasonable opportunities to receive visits from family members, accredited people and others; *Note* ***Family member*** and ***accredited person*** are defined in the dictionary. (h) detainees must have reasonable opportunities to communicate with their lawyers; (i) detainees must have reasonable access to news and education services and facilities to maintain contact with society; (j) detainees must have access to suitable health services

Clause	Comments	Recommendations/notes
		and health facilities; (k) detainees must have reasonable opportunities for religious, spiritual and cultural observances. **Example—par (k)** observances and practices relating to religious or spiritual beliefs, including indigenous spiritual beliefs *Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132). (2) Chapter 6 (Living conditions at correctional centres) applies in relation to correctional centres.
Proposed inclusion:	Section 91 of the current *Prisons (Correctional Services) Act* contained an important protection that has not been included in the Bill. Section 91 requires that inmates are informed of their rights, duties, responsibilities and liabilities in general terms and in a manner the inmate can understand. In our view, this is particularly important given the significant consequences of misconduct in a correctional centre, and the language and cultural barriers that many Aboriginal inmates face.	Section 91 of the current *Prisons (Correctional Services) Act* should be included in the Bill.
S. 35(3) – permission for dogs to use force on person	S. 35(3) permits the use of force by dogs when it is lawful and the handler considers it 'reasonably necessary'. The 2006 Report by Human Rights Watch, *Cruel and Degrading: The Use of Dogs for Cell Extractions in U.S. Prisons*, notes that 'there is a pervasive view within corrections that the use of dogs for cell extractions is not a necessary or appropriate option because there are always better and equally effective alternatives. There is also a sense that there is something inherently wrong or distasteful in using an animal for this purpose'. It therefore concludes that, 'it is difficult to conceive of situations in which the use of an attack dog for a cell extraction could ever pass the tests of necessity and proportionality'. Whilst it is not clear from the Bill in what circumstances the use of force by a dog will be used, this critique of dogs in cell extraction scenarios would be equally applicable to other relevant situations in the prison. It should be noted further that the current arrangements and resources for prison staff	Section 35(3) should be deleted.

Clause	Comments	Recommendations/notes
	and specialized teams provide capability for people, rather than dogs, to operate prisons and control any disturbances.	
S. 40 – Separation of classes of prisoners	S. 40(a) states that sentenced inmates are kept separate from other inmates. Subsection (c) states that youth prisoners are kept separate from adult inmates. However, this is pre-empted by the phrase, 'to the extent it is practicable'. These words have the effect of making the sub-sections meaningless, and create the possibility that youth prisoners under 18 years of age will be housed in the same vicinity as adult inmates.	An explanation is sought as how sentenced inmates will be kept separate from other inmates at the Darwin Correctional Precinct, as well as youth prisoners
S. 41 – Separation of prisoner	S. 41 confers broad discretion on the General Manager to separate a prisoner from other prisoners. We note that, under earlier versions of the Bill, it was proposed that this power would be conferred on the Commissioner. There are no legislative safeguards around the treatment of a segregated prisoner.	The power to separate a prisoner from other prisoners should be conferred on the Commissioner, rather than on the General Manager, or there should be a requirement for the General Manager to notify the Commissioner of the exercise of the power. All instances of segregation, and the reason for the segregation, should be recorded, consistent with the Revised Standard Guidelines for Corrections in Australia. The prisoner should be entitled to know the reason for the segregation decision. There should also be legislative safeguards around the treatment of a segregated prisoner, particularly around access to adequate food and exercise and protecting against the further deprivation of rights or privileges.
S. 50 – Conducting an intimate search	S. 50 sets out the procedures to be followed in conducting an intimate search. The provision contemplates that an intimate search may not be conducted by an authorised examiner of the same sex. Section 50(4) does not clearly specify that a correctional officer assisting because the prisoner does not submit to the search must be of the same sex.	The starting point should be that both the authorised examiner and the correctional officer assisting the authorised examiner should be the same sex as the prisoner, unless it is not reasonably practicable. If it is not reasonably practicable

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	We note also that the term 'authorised examiner' isn't defined.	
Subdivision 5 – Work	Section 54 allows the Commissioner to direct an inmate to work. This is too broad, and establishes a system of forced labour. It does not provide for circumstances where a person might be injured or otherwise incapable of working.	The Commissioner's ability to direct an inmate to work should be subject to limitations including that a prisoner should not be forced to work against their will or in circumstances where they are physically or otherwise incapable of working.
Subdivision 6 - Children	Section 57 gives the Commissioner a discretion to consent to a child residing with an inmate in the correctional centre if certain conditions are met. It is important that where the Commissioner declines to provide this consent, or where the Commissioner revokes previously given consent, that a fair and transparent review process is in place. Section 58 gives the Commissioner a power to deduct amounts from money held in the trust for the inmate to meet the expenses associated with the care of a child.	There should be a clear process for seeking review of a Commissioner's decision to refuse to permit, or to revoke permission, for a child or children to be accommodated with an inmate. Trust money should be preserved to assist the inmate with her reintegration into the community post-release. If this provision is retained, it suffers from many of the problems suffers from, as outlined below.

Clause	Comments	Recommendations/notes
Subdivision 8 - Release	Section 63 proposes to cease the current practice of prisoners being repatriated to their home community or place of arrest following their release from custody. It proposes to replace the current system with a 'user pay' model where the Commissioner may deduct from money held on the inmate's behalf their repatriation costs. This proposal does not make provision for: (a) young people who are not in a position to have money whilst they are in custody, (b) adults who are not working or not in a position to work and who do not have money to pay for their repatriation, or (c) persons from remote communities who are arrested in their home community and transported in custody to a major centre such as Darwin. The short term financial saving of removing the current practice of paid repatriations will be a false economy. The evidence is clear that a person released from prison is at greatest risk of returning to custody within the first two weeks of their release. This proposal will have significant follow-through consequences - a large number of people will be released from custody and will remain in Darwin and Alice Springs instead of returning home (especially given that alcohol and other substances are more difficult to access in many regional and remote communities than the major centres. They will be at increased risk of not returning home and reintegrating into the community, and of engaging in negative behaviours and returning to custody.	Section 63 should be amended such that the current system of repatriations is maintained. Alternatively, the system should be reviewed in consultation with stakeholders to strengthen and improve the repatriation system rather than moving to a 'user-pays' system which has the potential to see a lot of people not returning home, and an increase in reoffending upon release. If the repatriation system is changed there should be an insertion in the Youth Justice Act to require Corrections to facilitate repatriations for youth detainees.
Division 2 - Youth	Section 64 appears to apply to a youth sentenced to imprisonment (as opposed to detention) by a Court. The section would allow, at a later time, the Commissioner to decide that 'in the best interests of the youth' that they will permit them to be transferred from prison to a detention centre to serve out the remainder of their sentence. If, however the section means that all youth will be initially be held in adult prison and only transferred to youth detention if later determined, we strongly oppose this provision.	There should be a clearly stated presumption at the commencement of Division 2 that young people will be held in juvenile detention unless exceptional circumstances require otherwise.

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	Section 65 and the proposed repeal and insertion of a new s. 154 of the *Youth Justice Act* removes judicial oversight as now exists in the current s.154 of the *Youth Justice Act*. The current s.154 criteria is 'an emergency situation', which is a much higher threshold. There are also tighter time limitations on a transfer, requiring court approval and extension. Our concern with s66 is that it is administrative and can occur at the broad discretion of the Superintendent or Commissioner. We understand that transferring detainees to the Correctional Precinct for up to 3 days without judicial oversight will allow for detainees to be transferred for periods such as weekends, when staff numbers are low and when it is more difficult to manage youth detainees. Allowing youth detainees to be transferred to adult prison for up to 3 days without judicial oversight raises serious concerns: • possibility of institutionalisation of a young person • familiarise young person with the adult prison, and create impression that this is the place they are destined for • artificial impression to what adult prison is like (they will be kept separate) • reverse incentive based structure of the youth detention centre (young people may use it to play games or be heroes)	Section 66 should retain a higher threshold and state that only in an emergency situation and by reason of operational necessity may a young person be transferred to an adult correctional centre. Section 154 should continue to require an application to be made to a Magistrate for the transfer of a youth detainee to an adult-based correctional facility.
Division 3 – Misconduct	Division 3 replaces the current panel of members to conduct a hearing involving misconduct of an inmate with the powers vested in a single officer. We are concerned that vesting power in a single officer may lead to prejudice and individual bias. Section 72 allows for prisoners to represent themselves of, if in the opinion of the General Manager, another prisoner to represent them. There is no provision for informing prisoners of this process. Further, if discretion is with the General Manager (rather than a superintendant or designated person) then this can create issues concerning access to information and access to the General Manager's consideration. The Bill does not set out the process in relation to the recording of information for misconduct proceedings. To ensure accountability, it is important that the process is	The present panel should be retained. Misconduct proceedings must be recorded in all cases, with documentation signed and verified by the presiding officers. This will re-enforce the application of s. 71 (5) (b) for the proceedings to be conducted in accordance with natural justice. An explanation of the decision should be in writing,

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	recorded adequately. An explanation of the decision in relation to the misconduct is provided verbally to the inmate (s 73 (3)).	unless otherwise recorded.
	We commend the government on explicitly providing that the 'rule of natural justice' apply to the conduct of misconduct proceedings. However, we are concerned by the failure to specifically provide that prisoners should not be precluded from accessing legal representation and interpreters. Section 71 provides for a quasi-legal process, including the giving of evidence and the examination and cross-examination of witnesses. Despite this, s. 72(4) specifically provides that 'the prisoner is not entitled to representation by a legal practitioner'. No provision is made for interpreters.	Provision must be made for legal assistance to inmates facing misconduct proceedings. Section 71 sets out a quasi-legal process and it is essential that inmates have access to legal advice and representation and interpreters to avoid the misconduct proceedings process being simply a 'kangaroo court.' Section 32(6) of the current *Prisons (Correctional Services) Act* provides that a prisoner must be permitted to use an interpreter at misconduct proceedings if he or she requests one. This provision should be retained.
73- Misconduct proceedings decision	Section 73(2) provides that the decision maker must give written notice of the decision to the prisoner and the General Manager 'as soon as practicable' after the conclusion of the misconduct proceedings. Having regard to the right to obtain a 'verbal explanation' of the decision from a correctional officer (s. 73(3)) and the right to request review of the decision under s. 74, we assume that the written notice of the decision is intended to mean written notice of the decision and the reasons for the decision. To avoid doubt, s. 73(2) should explicitly provide that the decision maker is to provide written notice of the decision and the reasons for the decision. Importantly, s. 73(3) recognises that a prisoner may not be able to read the written decision. It provides that a prisoner is entitled to a verbal explanation of the decision. We support this provision, and consider that it should be further strengthened to include a right to a verbal explanation through an interpreter.	Section. 73(2) should explicitly provide that the decision maker is to provide written notice of the decision *and the reasons for the decision*. Section 73 should further provide that the verbal explanation provided under s. 73(3) is to be given through an interpreter, if required.

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S. 78 – penalties	Section 78 lists the prescribed penalties in relation to misconduct. In practice, an inmate may receive additional penalties not part of a misconduct process but related to the misconduct allegation (for example, a Commissioner's direction may stipulate that an inmate found with contraband receives the penalty of one year loss of privileges and a medium classification rating).	As the misconduct process allows for an appeal mechanism it is important that *all* penalties, whether they are part of the misconduct process or another process, be dealt with as part of the misconduct process if they relate to the same incident. A section should be included in the Bill that all penalties relating to misconduct must, where possible, be dealt with as part of the one proceeding.
Division 4 – Health care for prisoners Access to health care, s. 82(2)	We are concerned that the definition of "appropriate health care" in section 82 may not equate to the comprehensive standard recommended by the Royal College of Australian General Practitioners (RCAGP). This concern is compounded by the qualifying phrase "to the extent practicable" in s 83. We are also concerned with the possible interpretation of the phrase: "access to health care that is comparable with that available to persons in the general community in the same part of the Territory." Taken literally, this would phrase would mean that a Correctional facility located in an area in which, for example, there is no available dialysis unit or chemotherapy, would not be obliged under the Bill to ensure access to those treatments.	The Bill should clearly provide "flexible systems" recommended in the RCAGP's *Standards for health services in Australian prisons* publication. The *Bettering the Evaluation and Care of Health* study shows average consultation times in Australian general practice are around 14 minutes. Patients in prison are more likely to need longer consultation times. Allowing inmates to consult in person with health practitioners only "to the extent practicable" may conflict with this standard. The section should be changed to read: "access to health care that is comparable with that available to persons in the general community in the Territory." This change will clarify that inmates are entitled to sufficient standards of health care to meet their needs.
	Informed patient consent and interpreter use	A provision should be inserted requiring the

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		Commissioner or CEO Health to provide interpreters to assist health professionals to understand their patients' problems and to assist patients to understand the medical information and recommendations they are given.
Ss. 84 and 89 – Health information	There is nothing in sections 84 or 89 requiring the CEO Health or Commissioner to obtain an inmate's consent before transferring his or her personal health information to the Commissioner or an authorised person. We do not consider that Correctional Services should have access to all health information about a prisoner. – It is reasonable to require an assessment to be conducted and a report provided by a medical practitioner, but they should not have access to a full health record.	A provision should be inserted requiring patient consent for the transferring of their health information inside or outside the prison. Access to health information should be based on a request for a health assessment and/or report model. The proposed model for obtaining health information about a prisoner is unnecessarily broad and intrusive.
S. 92 – Consent	Medical examination and the provision of medical treatment without the patient's consent may violate the patient's bodily integrity as well as the guidelines in the World Health Organisation (WHO) *Guide to essentials in prison health*. The UN *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment* suggested that medical intervention without consent in the prison context may amount to torture.	Inmate should be able to refuse medical examinations and treatment (provided he or she is 'competent', acting out of own free will, and not creating a risk to others – WHO guidelines).
S. 93 – Consent	The same comments and recommendations that apply to s 92 also apply to the administration of medication without consent in s 93.	
Part 3.2 – Visits and Communication	We agree with the "reasonableness" test in section 96 and consider that this is sufficient as regards legal visits (which would usually include that visits be booked in advance). In relation to section 96, we do not consider that legal visits be at a reasonable time 'by appointment with the General Manager'. The pressing nature of some legal communications means that this requirement will be impracticable.	There should be no requirement that visits be 'by prior arrangement with General Manager of the Centre'. The 'reasonableness' requirement is sufficient.

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	Sections 98 and 99 provide a very broad discretion for the Commissioner and General Manager to prohibit a person from visiting a prisoner (for the General Manager, the test is whether it is 'appropriate'). There are special circumstances that may apply. For example, a family member who is not precluded by other laws from contacting or visiting a prisoner may wish to visit a prisoner to inform the prisoner about a close family member who has passed away. Under the proposed scheme, the family member may be prevented from doing so only because the visitor was previously a prisoner themselves, if ex-prisoners constitute a class of visitors precluded from entering the prison. There should be discretion to allow a visit in special circumstances, such as this. Given the strict controls around recording of conversations and visuals (s. 102) there should be more discretion or more openness to accepting visitors, or at least clear guidance and review mechanisms to allow visitors to visit prisoners	There should be a reference to Commissioner's directions or guidelines to provide guidance around this, and a review mechanism to consider the special circumstances of a visitor request.
	Section 104 (3) allows the General Manager to prohibit a priority /legal telephone call	An explanation is sought as to what might constitute circumstances which should prevent an inmate from making a priority/legal telephone call.
Part 3.3 – Leave permits	It is not clear whether leave includes leave to attend a funeral. If leave does include leave to attend a funeral, we would urge the rules of natural justice (excluded under s.116) to apply and that decisions to refuse leave be able to be reviewed s.117.	If leave does include leave to attend a funeral, we would urge the rules of natural justice (excluded under s.116) to apply and that decisions to refuse leave be able to be reviewed s.117.
Administrative home detention permits	In relation to s. 132(3): • offenders under mandatory terms of imprisonment for a sentence under Part 3, Div6A of the Sentencing Act should be eligible for administrative home detention. This is an unnecessary rule, because concerns about the risk such offenders may pose to the community are already addressed by s133 of the proposed bill. • youth inmates should be able to considered, in appropriate cases, for administrative home detention through additions to the Bill and/or	

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	corresponding insertions in the Youth Justice Act. We note that provisions relating to revocation of administrative home detention no longer appear in Division 5. It is imperative in the interests of justice and accountability that an inmate have an opportunity to seek appeal or review of a decision to revoke.	The discretion of the Commissioner to revoke administrative home detention should include a requirement to provide written reasons for revocation to the inmate, as well as an opportunity for the inmate to respond within a set period to the decision to revoke. Provisions should be included in the Bill to provide criteria around the exercise of the discretion to make, vary or revoke an administrative detention order as well as to appeal or review a decision to revoke. A provision should also be included that an inmate be informed of this right in a manner that he or she can understand.
Part 3.4 – Maintaining security and good order – use of force	Sections 137, 138 and 140 are the main sections, which allow an officer to use force. We are concerned that there is no check on the exercise of the power under s. 140(2), other than compliance with the Commissioner's Directions which are not publicly available.	A clearly set out record should be kept of instances where force is used and made publicly available including to prisoners upon entering a Correctional facility.
S. 144 -	Section 144 (3) allows officers to confiscate a prohibited item. However, all that is required is for the officer to have a 'reasonable belief' that the item is prohibited and should be confiscated. There is no explanation as to the process to be followed (including the disposal and/or appeals or avenues for the inmate to contest the confiscation).	The process for dealing with the confiscation of prohibited items should be clarified by legislation, regulation or guidelines.
Section 147 – search of vehicles	Section 147 relates to searches of vehicles. It provides broad powers such as in relation to opening a locked vehicle, detaining the vehicle, directing a person to get out of a	If public car parks are required to be on Corrections land then personal property within a vehicle should

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	vehicle. The Act does not state what a 'prohibited item' is. However, if a personal property item in a vehicle is parked at a Correctional facility and is found to have what constitutes a 'prohibited item,' this can constitute an offence. There are also use of force provisions which also raise concerns. If there are issues in relation to drugs, this is adequately covered by other sections.	remain the personal property of that person and not subject to the search and use of force provisions in the Act.
Division 2 – Searches, confiscation and confiscated things	Sections 155 - 157 make provision for inspecting protected / legal items. We oppose provisions in relation to opening, searching and reading of mail from or to a legal practitioner. Privileged material should only be opened and read in exceptional circumstances. We are concerned that this section is very broad and does not provide sufficient guidance to Correctional staff in relation to the limited circumstances in which privileged information should be read. For example, the definition of a 'legal item' is too narrow. It should be sufficient that the item is to/from a legal practitioner; it is not necessary to further specify that an item must be subject to client/legal privilege to constitute a legal item. If the proposed definition is retained, a correctional officer will be required to determine whether an item purports to be an item covered by client/legal privilege. This is inappropriate and unnecessary. The fact that an item purports to be to or from a legal practitioner should be sufficient. Whilst we appreciate that the underlying purpose of these provisions is to protect against the abuse of the client/lawyer relationship in a manner which would jeopardise the security of the prison, an overly protective response is not warranted. he Northern Territory Law Society is the regulator of the legal profession and is the appropriate body to be referred instances where practitioners are alleged to have breached their professional duties. For legal items, the Minister 'may' nominate a legal practitioner to be the nominated examiner (s. 156 (2)). This power should not be discretionary; the Minister should have a	The protections around the opening, searching and reading of mail from or to legal practitioners need to be strengthened, as per our comments.

Clause	Comments	Recommendations/notes
	duty to nominate a legal practitioner as the nominated examiner. . Where mail from or to a legal practitioner is inspected, there is no protection on the use information / contents of the inspected by the General Manager. We are concerned about confidentiality of an inspected item. Further, there is no involvement of the legal profession and its regulatory body, the NT Law Society. There is no requirement to inform the legal practitioner who sent the mail as to the occurrence of their mail being opened, read, and then provided to the prisoner.	
Administrative matters	Section 161 is very broad and allows for the Commissioner to use inmate's money held in trust, and to charge a fee. The Commissioner's cover letter states that this power is to charge for 'non-essential' services and programs. However, the legislation is broader than this and allows for inmate's money held in trust to be charged for a fee to 'recover the costs incurred by the Territory in relation to the prisoner' (s. 161 (1) (a)). The 'reasonable and proportionate' limit on fees allows the Commissioner to charge a fee which can be a significant amount (considering the particular expenses of maintaining prisoners). A number of questions arise: how are these expenses determined? What accountability measures will be put in place in relation to this process? Also, how is consent dealt with in relation to using inmate's money held in trust? How will inmates be informed in relation to their money held in trust? How will this affect the availability of programs and inmate eligibility for programs?	This Division should be rewritten to be consistent with the stated intent in the Commissioner's letter to charge for 'non-essential' services and programs.
	S. 167 gives the Commissioner the ability to approve a monitoring device for 'offenders who are subject to monitoring orders'. 'Monitoring orders' include home detention orders, community custody orders, community based orders, parole orders, and orders under ss.11,13 or 40 of the *Sentencing Act*. We oppose the use of monitoring devices for low level offenders such as those sentenced to s.11 without conviction bonds, s.13 bonds and community based orders.	The use of monitoring devices should be restricted to offenders sentenced to home detention orders, community custody orders, suspended sentences and parole orders.

Clause	Comments	Recommendations/notes
	Monitoring devices can set some offenders up to fail, particularly low-level offenders with limited literacy and numeracy skills and from disadvantaged backgrounds who may struggle to comply with particularly onerous supervision conditions. Monitoring devices are also a significant constraint on a person's liberty that should be restricted to those sentenced to high end orders such as home detention orders, community custody orders, suspended sentences and parole orders.	
S. 175 – Nothing to pass to or from prisoner	In relation to s.175, NAAJA and CAALAS staff, including those who work in the prison, and other employees from NGOs, are open to significant penalties for acting in good faith and providing a service (for example, delivering an education session and providing an information sheet about an educational topic). NAAJA and CAALAS staff who have cause to speak to clients or potential clients, or who wish to send or give documents to clients and potential clients will need to seek and obtain this approval. This will be an administrative nightmare (for example, whilst it is stated that the General Manager can delegate the authority to approve powers that relate to this section to Officers in practice there are no clear understandings as to who has such delegation and how these delegations are exercised sufficiently to provide protection. If there is a dispute as to a particular incident all liability is on the non-Corrections staff member with significant penalties, including if conduct is done with good faith or a reasonable service is provided). Section 175 (4) exempts legal practitioners from the offence of passing a thing to an inmate if the thing is a 'legal item.' This leaves significant uncertainty as to what is a 'legal item' (particularly given the narrow definition of a legal item) and also fails to protect NAAJA and CAALAS employees who are not legal practitioners but acting in the course of their employment with CAALAS or NAAJA.	A provision should be included to exempt employees from possible offences under the Act whilst acting in good faith in the course of their employment. Legal practitioners are exempt for 'legal items'. However, the definition of 'legal item' is very narrow, and fails to protect non-legal practitioners working for or with legal aid services acting in the course of their employment.
	S.176 is unnecessary and overly broad in that all that is required is an intent that it '*may* come into the possession of a prisoner' for an offence to occur and strict liability applies.	Section 176(1)(c) should include a requirement that the person 'does so with the intention that the thing will come into the possession of a prisoner'.

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	This section applies to all things (there are exemptions, such as a legal item for a legal practitioner) and is not just prohibited items. Because of the breadth of the provision, quite benign actions, such as a a visitor accidently leaving a pen at a visiting area , could be captured due to the breadth of 'may.'	
	S.177 is unnecessarily broad in its present form.. If a person is visiting and simply communicates with a prisoner who is not the prisoner they have booked to see, they commit a strict liability offence and are liable to 2 years imprisonment. Scenarios that could constitute an offence include: • NGO worker walking through the prison and saying hello to other prisoners walking by • legal practitioner visiting a prisoner and talking about a matter which is not subject to legal professional privilege (and therefore does not attract the exemption of s. 177 (3) (b)) – the discussion topic may be the football. • visitor seeing someone they know at the prison but who is not subject of the visit and the prisoner approaches them for a casual chat.	In the absence of a clear reason why s.177 is necessary, it should be removed.
S. 186 – Obstructing an officer	S. 186 – The term'obstruct' is not defined. This means that this offence could potentially capture an overly broad range of circumstances. For example, A legal practitioner or any other person questioning the application of a rule or direction by a Correctional Officer could potentially be interpreted as 'obstructing' that Officer.	In the absence of a clear reason why s.186 is necessary, it should be removed.
S. 188 – Confidentiality of information	S.188 provides that a person commits an offence if the person obtains information and discloses that information. Strict liability applies (s. 188 (2)). Whilst exceptions are set out, this section is too broad. It allows a scenario such that if a prisoner discloses information about a corrections officer acting potentially against their powers and if that information is disclosed further, the person who discloses that information further is subject to 200 penalty units or 2 years imprisonment.	In the absence of a clear reason why s.188 is necessary, it should be removed.

Clause	Comments	Recommendations/notes
	S.197 deals with protection from liability. It does not adequately deal with the services of an NGO in the performance of its functions and/or legal practitioners. Why aren't legal practitioners included or NGO staff or non-Corrections staff providing a service to Corrections?	NGO staff including NAAJA and CAALAS staff are not adequately covered in the legislation (for example, they are not covered as a legal practitioner nor with the protected item provisions).

Additional concerns

Potential for discrimination on basis of race, disability or access to treatment programs

The Bill gives additional powers to the Commissioner to draw from inmate's money held in trust for expenses incurred on behalf of the inmate. The move towards a user-pays system in relation to accessing services and programs creates the potential for certain inmates able to access cash to benefit and have opportunities over other inmates. Some inmates, because of disability, race or an inability to access treatment programs can be disadvantaged. An example of disadvantage may include an inmate who is unable to access a treatment program, and as a result is unable to gain a classification required to access the sentenced to a job program, so in turn cannot work to build an income and access services and programs available as part of the user-pays system. There has not been an articulated position to date as to how the potential for discrimination on the basis of race, disability or access to treatment programs will be dealt with.

Similarly, the Bill creates opportunities for some inmates to access administrative home detention. Some inmates, particularly Aboriginal inmates, will not able to access administrative home detention and may therefore be indirectly discriminated against in this new regime. It is important that a move towards administrative home detention is accompanied by dedicated resources for supported accommodation so that all inmates who would otherwise be eligible for administrative home detention are able to access it.