

Summary offences and Other Acts Amendment Bill 2006

Explanatory Notes

General Outline

Objective of the Legislation

The objective of the *Summary Offences and Other Acts Amendment Bill 2006* (the Bill) is to amend the:

- *Summary Offences Act 2005* to:
 - strengthen existing anti-graffiti laws by banning the sale of spray paint cans to minors (persons aged 17 years and under). The amendments will require retail outlets to display prohibition signs and for employers to take standard prevention measures towards their employees who sell spray paint cans. The amendments will also provide offences relating to sellers generally and to employers and employees in specific circumstances; and
 - prohibit persons, in trade or commerce, from providing a service in Queensland or elsewhere of informing another person, by sending a message over the internet, or by a SMS text message or by any other message that may be heard, read or otherwise viewed by a person using a mobile phone, of the location of a police traffic enforcement site for the purpose of, or that has the effect of, enabling the other person to avoid, or be prepared for, a check made at the site;
- *Domestic and Family Violence Protection Act 1989* to amend the Schedule “Dictionary” to include a definition of “officer-in-charge” and to amend the definition of “holding cell”;
- *Police Powers and Responsibilities Act 2000* (the PPRA) to:
 - empower police to stop, detain and search persons and vehicles and seize evidence of an offence under the proposed section 23B

“Sale of spray paint to minors” and section 23C “When employee of seller liable” of the *Summary Offences Act*;

- amend section 43 “Unlawful supply of smoking implements to children” to remove any doubt that the section applies to “minors”;
- insert a new section 43A “Unlawful sale of spray paint to minors”. The new section is parallel to section 43 “Unlawful supply of smoking products to children” of the PPRA;
- omit section 608 “Expiry of ss 604-607” that provides that sections 604 to 607 and that section expire 1 year after they commence unless a regulation extends the operation of the provisions and that section for periods of up to 1 year. The provisions have been extended to 31 December 2006. Sections 604 to 607 are included in Part 6 “Miscellaneous powers”, Division 1 “Potentially harmful things” of the PPRA. The omission of section 608 will provide for the ongoing operation of sections 604-607 in the declared localities prescribed in Part 2B of the *Police Powers and Responsibilities Regulation 2000*;
- amend section 697 “Cost recovery for animal held by commissioner under order under s 696” to remove any doubt that this section applies in relation to an animal seized by a police officer and held in the possession of the Police Service whether or not an order has been made under section 696 “Orders issuer may make in relation to seized thing” of the PPRA;
- amend section 705 “Destruction of drug matter soon after it is seized etc” and insert a new section 705A “Disposal of things used for administering etc. dangerous drugs” to authorise the Commissioner to destroy and dispose of drug matter, including pipes and utensils, at the end of a proceeding without having to first obtain an order for forfeiture and destruction of the seized things under section 701 “Disposal of seized things at end of proceeding” of the PPRA. This will reduce the number of court orders issued for minor purposes;
- amend sections 747, 755, 756, 758, 770 and 785 of Chapter 22 “Provisions about evading police officers” of the PPRA to correct drafting deficiencies. These provisions were included in the *Police Powers and Responsibilities and Other Acts Amendment Act (No. 26) 2006*;

- insert three new sections 859, 860 and 861 in Chapter 24 “Repeals, transitional provisions and amendments” in the PPRA;
- make minor drafting changes to a number of sections in the PPRA (Schedule 1 of the Bill);
- *Police Service Administration Act 1990* (Schedule 2 in the Bill) to address a number of minor drafting matters, including the omission of two redundant terms “assistant watch-house officer” and “assistant watch-house manager” from section 5A(3) “Persons to whom pt 5A applies” of that Act and inserting in their place, “watch-house officer” as a consequence of recent amendments relating to watch-house officers in the *Police Powers and Responsibilities and Other Acts Amendment Act (No. 26) 2006*;
- *Prostitution Act 1999* to clarify the scope of the Independent Assessor’s powers to hear appeals concerning decisions about development applications under Part 4 “Development approvals for brothels” of that Act; and
- *Weapons Act 1990* (Schedule 2 in the Bill) to correct minor drafting irregularities.

Reasons for the Legislation

Prohibition of the sale of spray paint to minors (*Summary Offences Act*)

State Government entities, local governments, private industry and the general public spend millions of dollars annually repairing graffiti damage in this State. Lord Mayor Campbell Newman recently estimated that graffiti vandalism costs the Brisbane community an estimated \$10 million every year and significantly reduces the amenity, perceived safety and livability of the City. It is estimated that Queensland Rail will spend about \$2 million this financial year removing graffiti from carriages and other railway property. The primary cause of such damage is the misuse of aerosol spray paint cans by offenders to produce ‘tags’ or more stylised signatures, names, multicoloured drawings, slogans and messages on public and private property. Queensland Police Service (the QPS) records show that graffiti offences in this State are committed predominantly by minors and young adults.

A number of retailers in the State currently have voluntary codes of practice restricting the sale of spray paint cans to minors. However, their staff may be reluctant, if challenged by a customer, to adhere to these voluntary codes of practice for fear of being accused of discrimination. To more effectively combat spray paint graffiti crime, the *Summary Offences Act* will be amended to prohibit the sale of spray paint cans to minors.

Section 27 “Forfeiture” of the *Summary Offences Act* will be widened to authorise courts that find persons guilty of the new offences under section 23B “Sale of spray paint (cans) to minors” and section 23C “When employee of seller liable” of that Act to order spray paint cans to which either offence relates to be forfeited to the State.

Unauthorised SMS messages and similar telecommunication alerts of police traffic enforcement sites (*Summary Offences Act*)

Early this year, a business named Road Spy commenced operations on the Gold Coast. Informants provide reports to Road Spy about the location of police mobile speed cameras and police radars, in addition to details about traffic hazards and obstructions in that area. This information is immediately disseminated via SMS text message alerts on a 24-hour basis to the mobile telephones of fee-paying subscribers. This business elected to stop providing alerts about police random breath testing (RBT) sites to new subscribers from 12 January 2006. However, RBT alerts would continue to be provided to existing subscribers for the duration of their current subscriptions. Road Spy’s Internet site (www.roadspy.com.au/) informs readers that it can help them to avoid traffic delays, costly speeding fines, accumulation of points on their licenses ‘or worse’. The subscription scheme includes 6 monthly and 12 monthly intervals.

Road Spy, and any similar businesses that may operate in Queensland in the future, pose a significant threat to road safety in their area of operations on the basis that ‘hoons’ and other law breakers will subscribe to their services primarily to avoid police traffic enforcement sites. Subscribers will also be motivated to read incoming SMS text messages on their mobile phones while driving vehicles. Neither Queensland legislation nor the Australian Road Rules currently prohibit commercial activities of this nature. Consequently, legislation is proposed to prohibit persons, in trade or commerce, from providing a service in Queensland or elsewhere of informing another person, by sending a message over the Internet, or by a SMS text message or by any other message that may be heard, read or

viewed by a person using on mobile phone, of the location of a police traffic enforcement site for the purpose of, or that has the effect of, enabling the other person to avoid, or be prepared for, a check made at the site.

The amendments will not prohibit commercial radio stations from broadcasting the location of police radar and speed camera sites to their listeners. This is because the alerts are limited in number, tend to occur on a random and delayed basis and are usually imprecise about the location of the police traffic enforcement sites. Consequently, such alerts are not considered to pose the same level of threat to road safety as that posed by the comprehensive, precise and almost instantaneous alerts provided to subscribers by Road Spy or by any similar businesses that may commence operations in the State in the future.

Amendment to the *Domestic and Family Violence Protection Act 1989*

The Police Powers and Responsibilities and Other Acts Amendment Bill 2006 amended section 70 “Duty of police officer who has taken a person into custody under s 69” of the *Domestic and Family Violence Protection Act* to allow a police officer who detains a person from a domestic violence incident to detain that person in a 'police holding cell' as well as in a watch-house. The officer-in-charge of a police station at which there is a holding cell must ensure the detained person’s particulars are entered in the register as required by a regulation. However, the responsibility placed on the officer-in-charge under this provision cannot be delegated to other police officers, including shift supervisors. The amendment to the Schedule “Dictionary” to include a definition of “officer-in-charge” will correct this matter. The definition of “holding cell” also requires amendment to correct a minor irregularity in the current wording.

Amendments to the PPRA

- **Stop, detain, search and seizure powers for police investigating unlawful spray paint can sales --**

The proposed new sections 23B “Sale of spray paint to minors” and 23C “When employee of seller liable” of the *Summary Offences Act* have necessitated amendments to section 30 “Prescribed circumstances of searching persons without warrant (under section 29)” and to section 32 “Prescribed circumstances for searching vehicle without warrant (under section 31)” of the PPRA to empower police officers to stop, detain and search persons and vehicles and

seize evidence of these new offences. These search powers will be identical to those currently provided to police under sections 29 and 31 for searches of suspected offenders (adults and minors) in possession of graffiti implements that may afford evidence of an offence under section 17 “Graffiti instrument” of the *Summary Offences Act*. The same safeguards that currently apply to police searches of adults and minors under the PPRA will apply to searches for evidence of offences under the proposed new sections 23B and 23C of the *Summary Offences Act*.

- Correction of drafting deficiency to section 43 “Unlawful supply of smoking products to children” --

This section empowers police officers to ask persons reasonably suspected to be a child who are observed to be supplied with a smoking product to provide proof of their age and to produce the item as evidence of an offence against the *Tobacco and Other Smoking Products Act 1998*. The Schedule of that Act defines ‘child’ to mean an individual who is under 18 years (a minor). In contrast, Schedule 6 “Dictionary” of the PPRA defines “child” to mean a child within the meaning of the *Juvenile Justice Act 1992*. Schedule 4 “Dictionary” of the *Juvenile Justice Act 1992* defines ‘child’ to mean (a) a person who has not turned 17 years; or (b) after a day fixed under section 6 (Child’s age regulation that has not commenced) – a person who has not turned 18 years. An amendment to section 43 of the PPRA is necessary to remove any doubt that for the purposes of section 43 of the PPRA, “child” means an individual who is under 18 years (a minor).

- Empowerment of police officers to ask suspected minors questions about possession of spray paint cans --

A new section 43A “Unlawful sale of spray paint to minors” will be inserted into the PPRA to empower police officers to ask suspected minors who are sold spray paint to show acceptable evidence of age and to produce the thing sold to them. Police officers may seize the spray paint if the suspected minor either refuses or is unable to comply with the request or shows acceptable evidence of age showing the person is a minor and the police officer reasonably suspects the spray paint is evidence of an offence against the *Summary Offences Act*. The police powers to question minors and to seize evidence of an offence relating to the suspected unlawful sale of spray paint will be

parallel to those currently operating in section 43 “Unlawful supply of smoking products to children” of the PPRA.

- Evade police --

The following amendments are to be made to the following sections of Chapter 22 “Provisions about evading police officers” of the PPRA to correct drafting deficiencies to allow the provisions to operate effectively:

- section 747 “Definitions for ch 22” - The definition “relevant period” is replaced a consequence of the amendment to section 758(1);
- section 755 “When evasion offence notice may be given to owner of motor vehicle involved in offence” –
 - sub-section 755(2) will require an owner of a motor vehicle involved in evasion offences to give a declaration to the police officer named in an evasion offence notice or to the officer in charge of a stated police station or police establishment. The inclusion of the word “declaration” will ensure section 755(2) is consistent with section 756(1) and (2) “Who may be prosecuted for evasion offence if no response to evasion offence notice” of the PPRA;
 - sub-section 755(4) - The omission of the words “owner the notice” and the insertion of the words, “notice to an owner who is an individual” will allow that subsection to be consistent with subsection 755(3) that provides that if the owner is an individual, the evasion offence notice must be given to the owner personally. Consequently, neither subsection will apply to owners that are corporations; and
 - sub-section 755(5) - The insertion of a new subsection (d) will provide that an evasion offence notice must identify the motor vehicle involved in the evasion offence and state the consequences if the owner does not comply with the requirement by giving the police officer named in the notice, or the officer in charge of the police station or police establishment where the officer is stationed, a declaration within the 4 business days. This will remove any doubt that while an owner may choose to comply with the mandatory requirement by giving a signed declaration within the 4 business days, not to do so will invoke subsection 756(2)

namely, *The person is taken to have been the driver of the motor vehicle involved in the evasion offence to which the evasion offence notice relates even though the actual offender may have been someone else;*

- section 756(1)(b) “Who may be prosecuted for evasion offence if no response to evasion offence notice” – The words “a police officer” are to be omitted to correct a drafting inconsistency;
- section 758(1) “Application for impounding order for evasion offence” - The amendment will make this subsection consistent with section 759 “Application for forfeiture order for evasion offence” that refers to evasion offences committed within the “relevant period” that is defined in section 747 “Definitions for ch 22” of the PPRA;
- section 770 “Motor vehicle not to be sold etc. before charge of offence is decided” – The omission of the words, “charge of offence” from the heading and their replacement the word, “application” is necessary for drafting consistency. Section 770 is further amended by omitting subsection (1) and replacing it with a new subsection (1) that provides that this section applies in relation to a motor vehicle that is the subject of an application for an impounding order or a forfeiture order. Also, section 770(2) is amended by inserting from “before” the words, “until the application for the impounding order or forfeiture order is decided or otherwise ends”. Under the current provisions, if a driver who is not the owner of a vehicle is charged with an evasion offence, the owner of the motor vehicle must not modify or sell or otherwise dispose of the motor vehicle before the proceeding is decided. If the driver (who was not the owner) fails to appear in court in relation to the evasion offence, the owner would not be able to sell or modify their car until the matter is finalised. This may take a considerable period of time to occur. To address this matter, section 770 is to be amended to relate to the period during which an application for an impounding order or forfeiture order is decided or otherwise ends; and
- section 785 “Disposal of forfeited motor vehicle” provides, *The commissioner may dispose of a motor vehicle forfeited to the State under this part in the way the commissioner considers appropriate, including by selling it.* The amendment will replace

the word “part” with the word “chapter”. Section 785 is included in Part 5 “Other provisions” of Chapter 22 of the PPRA. However, this section operates in conjunction with Part 4 “Deciding applications” of Chapter 22 of the PPRA. Part 4 includes section 766(1) “Consideration of application for forfeiture order” that states, *On the hearing of an application for a forfeiture order for an evasion offence, the relevant court may order that the motor vehicle be forfeited to the State or impounded for the period, of not more than 3 months, fixed by the court if the person to whom the application relates has been found guilty of 2 evasion offences committed within the prescribed period.* References to forfeiture orders also appear in Part 3 “Obtaining impounding and forfeiture orders” of Chapter 22 of the PPRA. Consequently, section 785 is amended to replace the word “part” with “chapter” to avoid any confusion about the scope of this section; and

- **Minor amendments as consequence of renumbering of act and drafting inconsistencies in previous amendment Acts --**

A new section 859 “Declaratory provision about renumbering” is to be inserted into the PPRA to remove any doubt that in any instrument, document or order made or issued during the transitional period between 20 July 2006 and the commencement of this section is lawful and sufficient despite the instrument, document or order showing an out-dated PPRA section number after that Act was renumbered.

The new sections 860 and 861 validate amendments to the PPRA arising from the *Police Powers and Responsibilities (Motorbike Noise) Amendment Act 2005* and the *Police Powers and Responsibilities and Other Acts Amendment Act 2006*, notwithstanding minor drafting inconsistencies in these amendment Acts.

Amendments to the *Prostitution Act 1999*

The *Prostitution Amendment Bill 2006* included an amendment to Part 4 “Development approvals for brothels” of the *Prostitution Act* to implement recommendation 13 of the Crime and Misconduct Commission report of the regulation of the prostitution industry in Queensland. During preparation of this Bill, advice from the Department of Local Government, Planning, Sport and Recreation necessitated a number of changes to the proposed amendments to correct minor drafting errors and to more clearly set out the scope of the Independent Assessor’s powers to hear appeals

under Part 4 of the *Prostitution Act*. These amendments were subsequently drafted by the Office of the Queensland Parliamentary Counsel to amend clauses 12 to 14 and 39 of the *Prostitution Amendment Bill*. However, the amendments in committee were not made to the Bill before it was assented to by Parliament and have been subsequently included in the *Summary Offences and Other Acts Amendment Bill*.

Other Acts Amended

The miscellaneous amendments in Schedule 1 “Minor amendments of Police Powers and Responsibilities Act 2000” and Schedule 2 “Other Acts amended” (*Police Service Administration Act 1990* and the *Weapons Act 1990*) are necessary to omit and replace redundant provisions or correct minor drafting inconsistencies.

All of the proposed amendments are essential to ensure that police officers may more effectively combat graffiti crime, that road safety is maintained in Queensland, that the evade police legislation operates effectively, that officers-in-charge may delegate their responsibilities under the *Domestic and Family Violence Protection Act 1989*, that the appeal provisions of the *Prostitution Act 1999* are widened and that outdated or inconsistent provisions of the PPRA, the *Police Service Administration Act 1990* and the *Weapons Act 1990* are addressed.

Means of Achieving Policy Objectives

The Bill achieves the objectives by amending the *Summary Offences Act 2005*, the *Domestic and Family Violence Protection Act 1989*, the *Police Powers and Responsibilities Act 2000*, the *Police Service Administration Act 1990*, the *Prostitution Act 1999* and the *Weapons Act 1990*.

Alternative means of achieving policy objectives

There are no alternatives that would achieve the policy objectives other than by the amendments in this Bill.

Costs for Government of implementation

Any additional costs to the Police Department arising from the banning of the sale of spray paint cans to minors will be met within existing budget provisions.

There may be some additional costs for the Department of Justice and Attorney-General in relation to the new offence of sale of spray cans to minors in terms of Magistrate's time and the processing of documents through the Registry. However, the Queensland Police Service is unable to estimate potential costs at this time. Accordingly, the Department will monitor any cost implications resulting from these amendments.

Any additional costs to the Police Department arising from the prohibition of unauthorised SMS messages and similar communications about police radar and similar traffic enforcement sites will be met within existing budget provisions.

Consistency with Fundamental Legislative Principles

The prohibition on the sale of spray paint cans to minors will be in the public interest because it should enhance the existing laws to prevent unlawful graffiti damage to public and private property in the State. The banning of SMS alerts and similar messages about police traffic enforcement sites in trade or commerce will also protect the public interest by ensuring road safety standards in Queensland are not compromised by the alert warnings. The banning of SMS alerts and similar messages about police traffic enforcement sites will be confined to persons engaged in trade or commerce and will not impede the general public's right to freedom of speech and communication.

Consultation conducted in Development of the Bill

The following departments were consulted during the preparation of the Bill:

- Department of Aboriginal and Torres Strait Islander Policy
- Department of Communities
- Department of the Premier and Cabinet
- Department of Justice and Attorney-General
- Department of Local Government, Planning, Sport and Recreation
- Disability Services Queensland
- Department of Transport – Queensland Transport
- Office of Fair Trading

Notes on Provisions

Summary Offences and Other Acts Amendment Bill 2006

Part 1 Preliminary

Clause 1 - Short title

Clause 1 specifies the short title of the Bill.

Clause 2 - Commencement

Clause 2 provides for:

- sections 4, 5, 7, 8, 12, 13, 15 and 16 commence on a day to be fixed by proclamation;
- Part 5 commences immediately after the commencement of the *Prostitution Amendment Act 2006*, part 2; and

Part 2 Amendment of *Summary Offences Act 2005*

Clause 3 - Act amended in pt 2

Clause 3 provides that Part 2 of the Bill amends the *Summary Offences Act 2005*.

Clause 4 - Amendment of s 23 (Sale of potentially harmful things)

Clause 4(1) amends section 23(1) of the Act by omitting the words ‘A person (the *seller*)’ and inserting the words ‘A seller’ for consistency with other provisions in the Act relating to ‘sellers’.

Clause 4(2) amends section 23(3) of the Act by omitting the definition “sell” because this term will be defined in Schedule 2 “Dictionary” of this Act.

Clause 5 - Insertion of new ss 23A-23E

Clause 5 inserts five new sections in the *Summary Offences Act 2005* relating to the prohibition of the sale of spray paint to minors.

Clause 5 inserts a new section after section 23, namely section 23A “Seller must take prevention measures in relation to spray paint” that requires in relation to a sale of spray paint, a seller who is an employer must take prevention measures in relation to each employee of the seller. A maximum penalty of 40 penalty units will apply to a contravention of this requirement. Section 23A(3) sets out the prevention measures that a seller must take in relation to an employee.

Clause 5 inserts a new section 23B “Sale of spray paint to minors” that provides in subsection (1) that a seller of spray paint must not sell spray paint to a minor. The maximum penalties are (a) for a first offence – 140 penalty units; (b) for a second offence – 280 penalty units and (c) for a third or later offence – 420 penalty units for a contravention of this prohibition.

Section 23B(2) that an employee of the seller who sells spray paint can not be prosecuted under this section.

Section 23B(3) provides defence grounds to a charge of an offence against subsection 23B(1) for a seller to prove—

- (a) that the seller, or an employee of the seller, required the minor to produce acceptable evidence of age; and
- (b) the person produced acceptable evidence of age; and
- (c) the seller or employee had no reason to believe that the evidence was false.

Section 23B(4) provides that for the purposes of the *Anti-Discrimination Act 1991*, section 46 “Discrimination in goods and services area”, a seller is not to be taken to discriminate against a person only because the seller refuses to sell spray paint to a minor because of subsection 23B(1).

Section 23B(5) in this section defines “acceptable evidence of age” of a person to mean a document that—

- (a) is a driver licence, proof of age card or an Australian or foreign passport; and

- (b) bears a photograph of the person; and
- (c) indicates by reference to the person's date of birth or otherwise that the person has attained a particular age.

Clause 5 inserts a new section 23C "When employee of seller liable" and provides in subsection (1) that this section applies if a seller has, in relation to an employee of the seller, taken the prevention measures mentioned in section 23A(3). Section 23C(2) provides that the employee of the seller must not, in the course of the employee's employment, sell spray paint to a minor. Maximum penalties apply to a contravention of this provision, namely:

- (a) for a first offence—20 penalty units; or
- (b) for a second or later offence—40 penalty units.

The new section 23C(3) provides that for deciding whether a person has committed a second or latter offence for subsection (2), it does not matter whether the prevention measures taken in relation to the employee were taken by the same or a different employer.

Clause 5 inserts a new section 23D "Seller of spray paint must display prohibition sign" that provides in subsection (1) that a seller of spray paint who is an employer must display, as prescribed under a regulation, a prohibition sign at each point of sale at the seller's retail outlet. A maximum penalty of 20 penalty units is provided for a contravention of this provision. Section 23D(2) provides that in this section:

- "point of sale" means a counter or similar fixture where spray paint may be sold.
- "prohibition sign" means a sign about the supply of spray paint to minors complying with the requirements prescribed under a regulation.
- "retail outlet" means premises where spray paint is available for sale to the public.

Clause 5 inserts a new section 23E "Provision about definition of *sell* for ss 23A-23D" in the *Summary Offences Act 2005*. Section 23E(1) provides that this section applies for the application of the definition "sell" in the dictionary to sections 23A to 23D. Section 23E(2) provides a seller does not keep or expose for sale or offer to sell spray paint to a minor only because the seller keeps or exposes for sale or offers to sell spray paint to the public generally.

Clause 6 - Insertion of new s 24A

Clause 6 inserts after section 24 a new section 24A “Unlawful SMS messages etc.” that provides in subsection (1) that a person must not, in trade or commerce, provide, in Queensland or elsewhere, a service of informing another person of the location of a traffic enforcement site for the purpose of, or that has the effect of, enabling the other person to avoid, or be prepared for, a check made at the site.

A maximum penalty of 100 penalty units is provided for a contravention of this provision.

Section 24A(2) provides that for subsection (1), a person provides a service of informing another person of the location of a traffic enforcement site if the person makes information about the location of a traffic enforcement site available to the other person by a relevant message service.

Section 24A(3) provides that subsection (1) does not apply to the provider of a telephone service or an internet service provider only because another person uses the provider’s telephone or internet service to make information about the location of a traffic enforcement site available to someone else.

Section 24A(4) provides that in this section—

internet message means a message that may be viewed by a person on a website.

message includes information in any form, whether or not for a particular person.

relevant message means any of the following that informs a person of the location of a traffic site-

- (a) an internet message;
- (b) an SMS message;
- (c) another type of message that may be heard, read or otherwise viewed by a person using a mobile phone

SMS message means a text message sent using the mobile phone service known as the short messaging service.

traffic enforcement site means a place being used by a police officer to perform random or systematic checks of compliance by drivers with the *Transport Operations (Road Use Management) Act 1995*.

Examples of traffic enforcement site—

- the site of a speed camera
- a random breath test site
- a vehicle safety check site

Clause 7 - Amendment of s 27 (Forfeiture)

Clause 7 amends section 27 of the *Summary Offences Act 2005* to insert a reference to the new section 23B “Sale of spray paint to minors” and the new section 23C “When employee of seller liable” to provide for a court that finds a person guilty of an offence under either section to order that the thing to which the offence relates be forfeited to the State.

Clause 8 - Amendment of sch 2 (Dictionary)

Clause 8 amends Schedule 2 of the *Summary Offences Act 2005* to insert the following definitions:

- “employee” of a seller, means a person who sells, or may sell, spray paint in the course of the person’s employment.
- “potentially harmful thing” see section 23.
- “sell” includes—
 - (a) sell by wholesale, retail or auction; and
 - (b) supply in trade or commerce or under an arrangement; and
 - (c) agree, attempt or offer to sell; and
 - (d) keep or expose for sale; and
 - (e) cause or permit to be sold.
- “seller”, of potentially harmful things or spray paint, means a person who, in trade or commerce, sells potentially harmful things or spray paint to the public, and includes an employee of a seller.
- “spray can” includes a thing that is made or adapted for use for emitting paint by the operation of air, gas or vapour pressure on the contents of the thing.
- “spray paint” includes—
 - (a) any liquid or other substance in a spray can that, if applied to a surface of a thing by using a spray can, is designed to colour, stain, mark or corrode the surface of the thing; and

- (a) a spray can.

Part 3 **Amendment of *Domestic and Family Violence Protection Act 1989***

Clause 9 - Act amended in pt 3

Clause 9 provides that Part 3 of the Bill amends the *Domestic and Family Violence Protection Act 1989*.

Clause 10 - Amendment of sch (Dictionary)

Clause 10(1) amends the Schedule by inserting the definition, “officer-in-charge” of a police station to include a police officer nominated by the officer-in-charge of the police station as the officer-in-charge of the police station during the officer-in-charge’s absence. The amendment will allow the officer-in-charge responsibilities under section 70 “Duty of police officer who has taken a person into custody under s 69” to be delegated to other police officers during the absence of the officer-in-charge.

Clause 10(2) amends the definition “holding cell” to remove a redundant reference to “police establishment”.

Part 4 **Amendment of *Police Powers and Responsibilities Act 2000***

Clause 11 - Act amended in pt 4 and sch 1

Clause 11 provides that Part 5 and Schedule 1 “Minor amendments of Police Powers and Responsibilities Act 2000” amend the *Police Powers and Responsibilities Act 2000* (PPRA). Schedule 1 corrects minor drafting irregularities in that Act.

Clause 12 - Amendment of s 30 (Prescribed circumstances for searching persons without warrant)

Clause 12 amends section 30(a)(viii) of the PPRA by omitting the words from “section 17” and inserting, “section 17 or 23B or 23C” to empower police officers to stop, detain and search persons without a warrant under section 29 “Searching persons without warrant” of the *Police Powers and Responsibilities Act 2000* and to seize property that may be evidence of the commission of the new graffiti offence in section 23B “Sale of spray paint cans to minors” and section 23C “When employee of seller liable” of the *Summary Offences Act 2005*. This will be in addition to the existing power for police officers to stop, detain and search persons without warrant and to seize property that may be evidence of the commission of a graffiti offence against section 17 “Graffiti instrument” of the *Summary Offences Act 2005*.

Clause 13 - Amendment of s 32 (Prescribed circumstances for searching vehicle without warrant)

Clause 13 amends section 32(1) of the PPRA by omitting from “section 17” and inserting, “section 17 or 23B or 23C; or” to empower police officers to stop a vehicle, detain the vehicle and its occupants and search the vehicle without a warrant under section 30 “Searching vehicles without warrant” of the *Police Powers and Responsibilities Act 2000* and to seize property that may be evidence of the commission of the new graffiti offence in section 23B “Sale of spray paint cans to minors” and section 23C “When employee of seller liable” of the *Summary Offences Act 2005*. This will be in addition to the existing power for police officers to stop vehicles, detain vehicles and their occupants and to search vehicles without warrant and to seize property that may be evidence of the commission of a graffiti offence against section 17 “Graffiti instrument” of the *Summary Offences Act 2005*.

Clause 14 - Amendment of s 43 (Unlawful supply of smoking products to children)

Clause 14(1) amends section 43 by omitting the word “children” from the heading and inserting the word “minors” of the PPRA. Section 36 “Meaning of commonly used words and expressions” of the *Acts Interpretation Act 1954* defines “minor” to mean an individual who is under 18. The term “child” is defined in Schedule 6 “Dictionary” of the *Police Powers and Responsibilities Act 2000* to mean “a child within the meaning of the *Juvenile Justice Act 1992*”. The *Juvenile Justice Act 1992* defines “child” to mean (a) a person who has not turned 17 years; or (b)

after a day fixed under section 6 (Child's age regulation)-a person who has not turned 18 years. No regulation has been made for subsection (b). However, section 43 of the *Police Powers and Responsibilities Act 2000* operates in conjunction with the *Tobacco and Other Smoking Products Act 1998*. The Schedule "Dictionary" of this latter Act defines "child" to mean an individual who is under 18 (i.e. a minor). Consequently, it is necessary to amend section 43 of the *Police Powers and Responsibilities Act 2000* to be consistent with the *Tobacco and Other Smoking Products Act 1998*.

Clause 14(2) amends section 43 by omitting the provisions "a child" where they appear and inserting in their place the provisions "under 18 years" to remove any doubt that the section is consistent with the *Tobacco and Other Smoking Products Act 1998*.

Clause 15 - Insertion of new s 43A

Clause 15 inserts a new section 43A "Unlawful sale of spray paint to minors" in the PPRA. The new section is parallel to section 43 "Unlawful supply of smoking products to children" of the *Police Powers and Responsibilities Act 2000*. Section 43A will apply if a police officer either observes a person being sold a thing the police officer reasonably suspects is spray paint; or reasonably suspects a person has just been sold spray paint; and reasonably suspects the person is under 18. A police officer may:

- ask the person to show acceptable evidence of age of the person; and
- require the person to produce the thing sold to the person.

The police officer may seize the spray paint if the person either refuses, or is unable, to comply with the request; or shows acceptable evidence of age of the person showing the person is under 18 and the police officer reasonably suspects the spray paint is evidence of an offence against the *Summary Offences Act 2005*. This section includes two definitions:

- "acceptable evidence of age" has the meaning given to it by the *Summary Offences Act 2005*, schedule 2.
- "spray paint" has the meaning given to it by the *Summary Offences Act 2005*, schedule 2.

Clause 16 - Omission of s 608 (Expiry of ss 604-607)

Clause 16 omits section 608 of the PPRA that provides that sections 604 to 607 and that section expire 1 year after they commence unless a regulation

extends the operation of the provisions and that section for periods of up to 1 year. The provisions have been extended to 31 December 2006. Sections 604 to 607 are included in Part 6 “Miscellaneous powers”, Division 1 “Potentially harmful things” of the *Police Powers and Responsibilities Act 2000*. These provisions relate to persons at a declared locality who are affected by the ingestion or inhalation of a potentially harmful thing. It is appropriate for a police officer to take the person to a place of safety at which the person can receive treatment of care necessary to enable the person to recover safely from the effects of the potentially harmful thing. It is lawful for the police officer to detain the person for the purpose of taking the person to the place of safety.

The omission of section 608 is necessary to enable the ongoing operation of the powers in sections 604-607 in the declared localities prescribed in Part 2B of the *Police Powers and Responsibilities Regulation 2000*.

Clause 17 - Amendment of s 697 (Cost recovery for animal held by commissioner under order under s 696)

Clause 17 amends section 697 of the PPRA, by omitting the heading from “held” and replacing it with the words “held in possession of police service”. The clause also replaces subsection 1 to remove any doubt that this section applies in relation to an animal seized by a police officer and held in the possession of the police service whether or not an order has been made under section 696 “Orders issuer may make in relation to seized thing” of the PPRA.

Clause 18 – Amendment of s 705 (Destruction of drug matter soon after it is seized etc.)

Clause 18(1) amends section 705 “Destruction of drug matter soon after it is seized etc” of the PPRA by omitting subsection (3) because it is to be transferred into a new section 705A of the PPRA. Clause 18(2) amends section 705(4) by renumbering it as section 705(3) as a consequence of clause 18(1).

Clause 19- Insertion of new s 705A

Clause 19 inserts a new section 705A “Disposal of things used for administering etc. dangerous drugs” in the PPRA to authorise the Commissioner to destroy drug matter for the use, of that has been used, in connection with the administration, consumption or smoking of a

dangerous drug and it is no longer required as evidence in a proceeding. This amendment will provide the Commissioner with authority to destroy and dispose of pipes and utensils without having to first obtain an order for forfeiture of the relevant things to the State under section 701 “Disposal of seized things at end of proceeding” of the PPRA.

Clause 20 - Amendment of s 747 (Definitions for ch 22)

This clause amends section 747 of the PPRA by omitting the definition “relevant period and inserting a new definition to clarify the meaning of this term.

Clause 21 - Amendment of s 755 (When evasion offence notice may be given to owner of motor vehicle involved in offence)

Clause 21(1) amends section 755(2) of the PPRA by omitting all words from “state” and inserting the words, ‘give a declaration to -

- (a) the police officer named in the notice, or
- (b) the officer in charge of a stated police station or police establishment.’

The amendment is necessary to ensure section 755(2) is consistent with subsections 756(1)(a) and (b) “Who may be prosecuted for evasion offence if no response to evasion offence notice” of the *Police Powers and Responsibilities Act 2000* that provide that this section applies only if a police officer gives an evasion offence notice to a person under section 755 and the person given the notice does not give a police officer a declaration as required under that section within the time required under that section.

Clause 21(2) amends section 755(4) of the PPRA by omitting the words “owner the notice” and inserting the words, “notice to an owner who is an individual” to be consistent with subsection 755(3) that provides that if the owner is an individual, the evasion offence notice must be given to the owner personally. Consequently, neither subsection will apply to owners that are corporations.

Clause 21(3) amends section 755(5) of the PPRA by inserting a new subsection (d) to provide that an evasion offence notice is to mention the consequences if an owner does not comply with the requirement within 4 business days to give a declaration.

Clause 22 - Amendment of s 756 (Who may be prosecuted for evasion offence if no response to evasion offence notice)

Clause 22 amends section 756(1)(b) of the PPRA by omitting the provisions, “a police officer” to correct a drafting inconsistency.

Clause 23 - Amendment of s 758 (Application for impounding order for evasion offence)

Clause 23 amends section 758(1) of the PPRA by inserting after the words “evasion offence” where first mentioned the words, “committed within the relevant period” to make this subsection consistent with section 759 “Application for forfeiture order for evasion offence” that refers to evasion offences committed within the “relevant period” that is defined in section 747 “Definitions for ch 22” of the *Police Powers and Responsibilities Act 2000*.

Clause 24 - Amendment of s 770 (Motor vehicle not to be sold etc. before charge of offence is decided)

Clause 24(1) amends the heading of section 770 of the PPRA by omitting the words, “charge of offence” and replacing them with the word, “application” for drafting consistency.

Clause 24(2) amends section 770 of the PPRA by omitting subsection (1) and replacing it with a new subsection (1) that provides that this section applies in relation to a motor vehicle that is the subject of an application for an impounding order or a forfeiture order.

Clause 24(3) amends section 770(2) by inserting from “before” the words, “until the application for the impounding order or forfeiture order is decided or otherwise ends”.

These amendments are necessary because under the current provisions, if a driver who is not the owner of a vehicle is charged with an evasion offence, the owner of the motor vehicle must not modify or sell or otherwise dispose of the motor vehicle before the proceeding is decided. If the driver (who was not the owner) fails to appear in court in relation to the evasion offence, the owner would not be able to sell or modify their car until the matter is finalised. The outstanding matter may take a substantial period of time to finalise. To address this matter, section 770 is to be amended to relate to the period during which an application for an impounding order or forfeiture order is decided or otherwise ends.

Clause 25 - Amendment of s 785 (Disposal of forfeited motor vehicle)

Clause 25 amends section 785 of the PPRA by replacing the word “part” with the word “chapter”. Section 785 is included in Part 5 “Other provisions” of Chapter 22 of the PPRA. However, this section operates in conjunction with Part 4 “Deciding applications” of Chapter 22. Part 4 includes section 766(1) “Consideration of application for forfeiture order” that states, *On the hearing of an application for a forfeiture order for an evasion offence, the relevant court may order that the motor vehicle be forfeited to the State or impounded for the period, of not more than 3 months, fixed by the court if the person to whom the application relates has been found guilty of 2 evasion offences committed within the prescribed period.* References to forfeiture orders also appear in Part 3 “Obtaining impounding and forfeiture orders” of Chapter 22. Consequently, section 785 is amended to replace the word “part” with “chapter” to remove any confusion.

Clause 26 - Insertion of new ss 859-861

The clause inserts a new section 859 “Declaratory provision about renumbering” that provides, (1) To remove any doubt, it is declared that in any instrument, document or order made or issued during the transitional period, it was always lawful and sufficient for all purposes to refer to a provision of this Act by a number it had immediately before the transitional period, or by any number it had during the transitional period, even though the provision had been renumbered, with or without amendment, before the issuing or making of the instrument, document or order. Section 859(2) provides, ‘In this section - *transitional period* means the period between 20 July 2006 and the commencement of this section’.

The clause also inserts Part 8 “Transitional provisions for Summary Offences and Other Acts Amendment Act 2009” in Chapter 24 “Repeals, transitional provisions and amendments” in the PPRA.

The clause inserts a new section 860 “References to provisions in s 861” in the PPRA provides that a reference in section 861 to a provision of the *Police Powers and Responsibilities Act 2000*, whether or not the provision had commenced, is a reference to the provision as numbered before the commencement of the *Police Powers and Responsibilities and Other Acts Amendment Act 2006*, section 84 “Insertion of new s 459A “Renumbering of Act”.

The clause also inserts a new section 861 “Effect of particular amendments” in the PPRA that declares that the amendment of the following provisions of the *Police Powers and Responsibilities Act 2000* had effect as if:

- for section 361(2)—the words ‘to ‘direction” had appeared after “relates” in the *Police Powers and Responsibilities (Motorbike Noise) Amendment Act 2005*, section 20(2); and
- for section 204—the word ‘After’ did not appear before the word ‘section’ in the *Police Powers and Responsibilities and Other Acts Amendment Act 2006*, section 39; and
- for section 371AB(4)—the word ‘omit,’ did not appear before the word ‘insert’ in the *Police Powers and Responsibilities and Other Acts Amendment Act 2006*, section 49(1).

Part 5 Amendment of *Prostitution Act 1999*

Clause 27 - Act amended in pt 5

Clause 27 provides that Part 6 amends the *Prostitution Act 1999*.

Clause 28 - Replacement of ss 62 and 63

Clause 28 omits sections 62 and 63 of the *Prostitution Act 1999* and inserts in their place a new section 62 “Definitions for pt 4” that provides that in this part (Part 4 Development approvals for brothels):

- “application land” means land the subject of a development application.
- “development application” means an application under the Integrated Planning Act for—
 - (a) a material change of use of premises for a brothel; or
 - (b) a minor change to a development approval for a brothel or a request to change or cancel conditions of a development approval.

Clause 29 - Amendment of s 64A (Object of appeal divisions)

Clause 29 amends section 64A(1) of the *Prostitution Act 1999* by omitting the words “code assessable development applications” and replacing them with, “particular development applications” to acknowledge that appeal provisions may apply to both code assessable development applications and impact assessable development applications.

Clause 30 - Amendment of s 64K (Appeals by applicants)

Clause 30(1) amends section 64K(1) of the *Prostitution Act 1999* by omitting the words “An applicant for a code assessable development application may, as permitted under the Integrated Planning Act, section 4.1.27 appeal to the independent assessor against” and inserting in their place the words, “An applicant for a development application that an assessment manager decides requires code assessment under the Integrated Planning Act may appeal to the independent assessor against”. Reference to “a development application” is necessary as a consequence of the appeal provisions applying to both code assessable development applications and impact assessable development applications.

Clause 30(2) amends section 64K of the *Prostitution Act 1999* by inserting subsection (1A) that provides that also, an applicant for a development application may appeal to the independent assessor against a statement in an acknowledgment notice under the Integrated Planning Act that an aspect of the development applied for requires impact assessment.

This amendment will allow an applicant for a development application that an assessment manager decides requires impact assessment under the *Integrated Planning Act 1997* to appeal to the Independent Assessor against a matter listed under section 64K(1) of the *Prostitution Act 1999*.

Clause 30(3) amends section 64K(2) by inserting after “after” the words, “either of the following happens under the Integrated Planning Act” to be consistent with other amendments to this Act.

Clause 30(4) amends section 64K(2)(a) of the *Prostitution Act 1999* by including after the words “decision notice” the words, “or acknowledgment notice is given to the applicant” as a consequence of the new subsection (1A).

Clause 30(5) amends section 64K(4) by omitting the provisions “and (3)” and replacing them with the provisions “, (2) and (4)” as renumbered in accordance with Clause 30(6).

Clause 30(6) amends section 64K(1A) to (4) by renumbering them as subsections 64K(2) to (5).

Clause 31 - Amendment of sch 4 (Definitions)—

Clause 31 amends Schedule 4 “Definitions” of the *Prostitution Act 1999* by omitting the definition “code assessable development application” because this term has been replaced by “particular development applications” (Clause 29).

Part 6 Other Acts amended

Clause 32 - Acts amended in sch 2

Clause 32 provides that Schedule 2 “Other Acts amended” amends the Acts it mentions, namely the *Police Service Administration Act 1990* and the *Weapons Act 1990*. The amendments remove redundant terms and correct punctuation and other minor drafting irregularities.

(Schedule 1 already mentioned contains minor amendments to the *Police Powers and Responsibilities Act 2000*).