

# **POLICE POWERS AND RESPONSIBILITIES AND OTHER LEGISLATION AMENDMENT BILL 2003**

## **EXPLANATORY NOTES**

### **FOR**

### **AMENDMENTS TO BE MOVED IN COMMITTEE BY THE HONOURABLE MINISTER TONY MCGRADY MP, MINISTER FOR POLICE AND CORRECTIVE SERVICES AND MINISTER ASSISTING THE PREMIER ON THE CARPENTARIA MINERALS PROVINCE**

#### **Title of the Bill**

*Police Powers and Responsibilities and Other Legislation Amendment  
Bill 2003*

#### **Objectives of the Amendments**

The amendments correct technical defects with respect to numbering and commencement of provisions and to ensure consistency between Acts.

Additionally, with respect to the new provisions dealing with taking a person to a place of safety should the person be affected by a potentially harmful substance, the amendment clarifies that the CMC is to report to the Speaker of Parliament following its review.

Further, the recently proclaimed *Weapons (Handguns and Trafficking) Amendment Act 2003* placed a number of controls on the calibre of handguns that could be lawfully possessed by members of the community. On October 24 2002, the Prime Minister, together with State and Territory leaders, agreed to progress a number of new measures put forward by the Commonwealth to significantly tighten handgun controls. The agreement,

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signed at the Council of Australian Governments (COAG) meeting resolved that the APMC should develop detailed proposals for a national approach to handgun control. In order to facilitate APMC consideration, the Commonwealth provided a list of key measures to promote handgun law reform. The APMC then made specific recommendations that were referred back to COAG for final approval.

On 6 December 2002, the Premier, in conjunction with other COAG leaders, signed an agreement to give effect to the Prime Minister's proposals. Generally, COAG endorsed the 28 resolutions made by the APMC meeting and agreed that legislative and administrative measures be in place by 30 June 2003.

Since the proclamation of the Amendment Act advice has been received that necessitates amendment to the *Weapons Act* to address the altered policy position concerning the conditions for concealable firearm use by removing the reference to section 132(1)(d) and (e) in section 132(2) of the *Weapons Act*.

The amendments to section 132 and Item 4 of Schedule 1 of the *Weapons Act* in the *Police Powers and Responsibilities and Other Legislation Amendment Bill 2003* go beyond those required by the Commonwealth.

These amendments will reflect the amendment required by the Commonwealth.

Finally, the *Public Service Act 1996* is amended to ensure that there is a clear legislative authority for chief executives to request and take into account criminal history information when considering a person's suitability for engagement to perform relevant duties in the public service.

### **Achievement of the Objectives**

The proposed amendments will amend the *Police Powers and Responsibilities and Other Legislation Amendment Bill 2003* by correcting technical defects and removing section 62(1) and section 64(2) and (3) of the Amendment Bill.

Additionally, the amendments put beyond doubt a chief executive's authority to request and take into account criminal history information in accordance with the *Criminal Law (Rehabilitation of Offenders) Act 1986* where it is relevant to the duties of a job. Chief executives may only access criminal history information where the person consents. If the person does

not consent, the chief executive does not need to consider, or further consider the person for engagement in the public service.

The amendments also insert a requirement that the police commissioner provide a criminal history at a chief executive's request, and give an express power to the public service commissioner to issue a directive governing the undertaking of criminal history checks by chief executives.

### **Alternative Ways of Achieving Policy Objectives**

There is no alternative way to achieve the policy objectives.

### **Estimated Cost for Government Implementation**

The implementation of the amendments is not anticipated to generate additional costs.

### **Consistency with Fundamental Legislative Principles**

Generally, the proposed amendments are consistent with the application of fundamental legislative principles.

Specifically, the criteria for administrative decisions to be made under the new Part 9A and natural justice processes will be detailed in a directive issued by the public service commissioner. Section 34 of the *Public Service Act 1996* provides that the commissioner may issue directives and guidelines.

A new transitional regulation making power is inserted into the *Weapons Act 1990*. The provision will enable a regulation to be made of a transitional nature to allow individuals affected by proposed laws relating to crossbows time to become compliant with new requirements or prohibitions. The proposed regulation making power is limited in nature and expires after 1 year.

### **Consultation**

Consultation was undertaken with the Queensland Public Sector Union, the Office of Public Service Merit and Equity and within government.

## NOTES ON PROVISIONS

**Amendment 1** amends clause 2 of the *Police Powers and Responsibilities and Other Legislation Amendment Bill 2003* ('the Bill') to allow new Part 11A to commence by proclamation.

**Amendment 2** amends clause 13 of the Bill to provide that the CMC must provide its report on a review of potentially harmful substance abuse to the Speaker of Parliament after first consulting with the Minister for Police.

**Amendment 3** amends clause 13 of the Bill to allow for the expiry of section 371F along with sections 371B to 371E. Section 371F is no longer necessary after the expiration of the other sections.

**Amendment 4** amends clause 13 to allow for section 371F to be extended by regulation should it be desirable to extend the operation of sections 371B to 371E.

**Amendment 5** amends clause 22 to remove the words 'complaint and' before the word 'summons'. The amendment provides consistency with the Justices Act which refers to a summons and not the alternative wording of complaint and summons.

**Amendment 6** amends the Bill to insert a new part 5A.

Clause 22A amends part 5 of the Criminal Code.

Section 328A (Dangerous operation of a vehicle) provides a person who operates, or in any way interferes with the operation of a vehicle dangerously commits an offence. Subsection (4) provides a circumstance of aggravation where the offender is adversely affected by an intoxicating substance. Clause 22B amends subsection (4) in accordance with amendments to the National Standards Commission that facilitate drink driving enforcement.

Sub-section (5) is amended to insert the term 'high alcohol limit' which is defined under the *Transport Operations (Road Use Management) Act 1995*. In addition, the term 'breath' is inserted to the meaning of 'operates, or in any way interferes with the operation of, a vehicle dangerously'.

**Amendment 7** inserts a new part 8A to the Bill following clause 28. The new part corrects a numbering defect in section 318A of the *Police Powers and Responsibilities Act 2000*.

**Amendment 8** inserts a new part 11A to the Bill following clause 47.

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Clause 47A states that Part 11A of the Bill amends the *Public Service Act 1996*.

Clause 47B inserts a new Part 9A - Criminal History Reports If Engaged To Perform Relevant Duties.

The new part includes definitions of “criminal history”, “criminal history report”, “engage” and “relevant duties”.

“Criminal history” is defined in accordance with section 3 of the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

The new Part 9A ensures that there is a clear legislative authority for chief executives to request and take into account criminal history information when considering a person’s suitability for engagement to perform relevant duties. The effect of the new provisions is as follows:

- The new section 114B clarifies that Part 9A does not limit any other law under which the criminal history of a person may be obtained, including any other part of this Act and operates subject to the *Criminal Law (Rehabilitation of Offenders) Act 1986*;
- The new section 114C gives authority to a chief executive, under a directive for Part 9A, to ask a person for written consent for the chief executive to obtain the person’s criminal history if the chief executive decides, under a directive for Part 9A, that, because of the nature of particular duties to be performed in the department, it may be necessary to have regard to the criminal history of anyone engaged to perform those duties to ensure that the person engaged is suitable to perform the duties. This applies to a person even if the person is a public service employee at the time that the chief executive proposes to engage the person to perform the relevant duties.
- The new section 114D requires the commissioner of police to provide a criminal history to a chief executive at the chief executive’s request if a person has given the chief executive written consent, as long as the criminal history information is in the possession of, or can be accessed by, the commissioner of police;
- The new section 114E provides that in making an assessment about the person’s suitability for engagement to perform the relevant duties after obtaining the person’s criminal history, a chief executive must have regard to the person’s criminal history

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under a directive for Part 9A. If, after making the assessment, the criminal history is no longer required to be kept under a directive for Part 9A, the chief executive must destroy the criminal history and other documents in accordance with a directive for Part 9A;

- The new section 114F provides that if a person does not consent to a chief executive obtaining the person's criminal history, the chief executive is not required to consider, or further consider, the person for engagement to perform the relevant duties;
- The new section 114G makes it an offence punishable by a maximum penalty of 100 penalty units if a person who is or has been a public service employee in a department or a selection panel member and who, in that capacity, acquired information or gained access to a document under Part 9A about a person's criminal history, disclosed the information or gave access to the document to anyone else. The penalty does not apply if the information was disclosed or access was given to a document to a public service employee in the department or a selection panel member for the purpose of assessing the person's suitability to be engaged to perform the relevant duties in relation to which the criminal history was obtained. The penalty also does not apply if the information or document was released with the person's consent, or disclosure or giving of access is otherwise required under an Act; and
- The new section 114H gives the commissioner power to issue a directive or guideline for Part 9A. The directive must make provision for the circumstances in which a chief executive may decide that it is necessary to obtain the criminal history of a person under section 114D and must provide that a person must be given a reasonable opportunity to make written representations about the person's criminal history obtained under that section before an adverse decision about the person is made. For the purposes of this section "adverse decision" about a person means a decision about the person's suitability for engagement to perform the relevant duties in relation to which the person's criminal history was obtained, other than a decision that the person is suitable to perform the relevant duties.

Clause 47C inserts a transitional provision that provides that a chief executive may not request a person's consent under section 144C unless the chief executive proposes to engage the person in relevant duties after the commencement of this provision.

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Clause 47D amends schedule 3 to insert definitions of “criminal history”, “criminal history report”, “engage” and “relevant duties”.

**Amendment 9** amends clause 50 of the Bill to provide that the CMC must provide its report on a review of the public nuisance offence to the Speaker of Parliament after first consulting with the Minister for Police.

**Amendment 10** amends clause 62 of the Bill by removing the amendment to omit section 132(1)(d) & (e) from the *Weapons Act*.

**Amendment 11** amends clause 64 of the Bill by removing the amendment to omit references to magazines from schedule 1, item 4 of the *Weapons Act 1990*.

**Amendment 12** amends clause 64 of the Bill to correct the amendment instruction in the clause.

**Amendment 13** amends the Bill by inserting a new clause 69A to include a further amendment to the *Weapons Act* section 52. The amendment recognises that minors may participate in recreational and target shooting using crossbows and should receive safety training in the possession and use of a crossbow. As is the case with category A & B weapons, direct and immediate supervision is required at all times the minor has physical possession of the crossbow.

**Amendment 14** amends the heading to clause 77 of the Bill.

**Amendment 15** amends clause 63 of the Bill by inserting another transitional regulation making power into the *Weapons Act*. The new provision enables transitional regulations to be made to with respect to persons affected by the crossbow amendments to the *Weapons Act*, in particular current owners of crossbows. The regulation making power expires after 1 year.