

# **Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill 2022**

## **Explanatory Notes**

### **For**

## **Amendments To Be Moved During Consideration In Detail By The Honourable Mark Ryan MP, Minister for Police and Corrective Services and Minister for Fire and Emergency Services**

### **Short title**

Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill 2022.

### **Objectives of the Amendments**

The objective of the amendments to be moved during consideration in detail of the Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill 2022 (the Bill) is to clarify and modernise legislation supporting the effective operation of the powers and functions of the Queensland Police Service (QPS). The amendments to the Bill will achieve this by:

- removing a proposed offender reporting obligation currently contained within the Bill relating to ‘Media Access Control (MAC) addresses’ on digital devices and vehicles, noting technological advancements have negated the need for the amendment;
- confirm that authorisation may be granted for a controlled operation under section 244 of the *Police Powers and Responsibilities Act 2000* (PPRA) which involves the use of certain material that depicts a sexual offence;
- providing legal clarity regarding how extended police banning notices may be given; and

Child Protection (Offender Reporting and Offender Prohibition Order) and Other  
Legislation Amendment Bill 2022

---

- validating certain police discipline referrals made under section 7.10 of the *Police Service Administration Act 1990* (PSAA) that did not correctly state the name and rank of the prescribed officer to whom a complaint was being referred.

The objective of the amendments to the Bill is also to promote the wellbeing of vulnerable members within our community and ensure legislation reflects current community standards that support the fair and just treatment of all. The amendments to the Bill will accomplish this by:

- decriminalising the offences of public intoxication and begging, and introducing new police powers which will enable intoxicated persons to be detained and transported in certain circumstances;
- amending the offence of public urination; and
- repealing sex-work specific covert powers afforded to police and ‘move on’ powers targeted at sex workers.

The amendments to the Bill will also achieve other policy objectives, including amendments to:

- the *Youth Justice Act 1992* (YJ Act) and the PPRA to ensure the original policy intent of the *Inspector of Detention Services Act 2022* is achieved and to clarify the administrative arrangements for holding young people in police watchhouses until beds become available in Youth detention centres (YDCs);
- the *Mineral Resources Act 1989* to enact the granting of a mining lease for infrastructure relating to a workers’ camp;
- the *Mental Health Act 2016* (Mental Health Act) to validate the appointment of, and any exercise of jurisdiction by, a person who acted as a member and president of the Mental Health Court during the period 14 February 2023 to 29 June 2023 (inclusive) but who did not have a valid commission during that period.
- the *Supreme Court of Queensland Act 1991* to retrospectively provide for the continuation of the expired *Supreme Court of Queensland Regulation 2012* (SCQ Regulation); for anything done in relation to a Supreme Court district under the SCQ Regulation to be valid as if the regulation had not expired; and for the expiry of the SCQ Regulation to be extended to 1 September 2024.

Removing the proposed requirements for reportable offender to provide MAC addresses

The Bill had proposed to extend the parameters of schedule 2 of the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* (CPOROPO Act) to require reportable offenders to provide police with MAC addresses of all digital devices they possess or use and in motor vehicles they use or own. The intent of this proposal was to provide police with greater visibility of the digital devices in each reportable offender’s possession and to allow police to monitor the whereabouts of at-risk offenders who reside in the community.

Technological evolutions (commonly referred to as MAC randomisation) have occurred across software and operating systems which have increased the privacy provisions around MAC address identification. These improvements enable operating and software systems to automatically create temporary randomly generated MAC addresses when connecting to networks. A temporary randomly generated MAC address may be unknown or not accessible to the device user and will only be valid for the time it is connected to a network or for a maximum of 24 hours before it is overwritten with a new address.

This technology effectively disguises the unique MAC address(es) of any digital device or motor vehicle from being detected and has been implemented widely across operating systems, digital devices and internet capable hardware. Further, some motor vehicle manufacturers also install a safety and privacy function referred to as ‘passive mode’ which, if activated, will also prevent the unique MAC address being displayed to a network. ‘Passive mode’ is similar to MAC randomisation where the motor vehicle does not emit a signal at all once it is moving.

These advancements to MAC randomisation and the functionality of motor vehicle ‘passive mode’ effectively prevent the detection of MAC addresses and will impede the intention and the operational capability of the proposed legislation. This technology is continuing to evolve and is expected to expand in response to growing privacy and safety concerns worldwide.

The proposed amendments in the Bill would require a reportable offender to report each new temporary MAC address on their digital devices and motor vehicles. The randomisation of MAC addresses is likely to result in the inability of reportable offenders to comply with their reporting obligations because of the difficulty in locating potentially multiple MAC addresses associated with their digital devices or motor vehicles and also the potential confusion caused through the creation of temporary MAC addresses which may update daily.

The proposed amendment would also place significant impost on the QPS Child Protection Offender Registry in receiving and recording information that may be only accurate for a short period and may not achieve the original policy intent of the proposed amendment.

Removing the requirement to report details of MAC addresses will not adversely affect the QPS Child Protection Offender Registry’s capacity to monitor reportable offenders. Rather, the removal will ensure that offenders who are not technology savvy do not inadvertently fail to comply with their reporting obligations.

The Bill includes other amendments that will enhance reportable offender monitoring. For example, amendments to section 19B of the CPOROPO Act, which requires reportable offenders to report the details of any place they stay for three or more consecutive days where the Commissioner is satisfied that reporting this information is necessary to protect the lives or sexual safety of children, will allow the QPS Child Protection Offender Registry to invest more resources in monitoring offenders who pose the greatest risk to the lives or sexual safety of children. New reporting requirements for the possession or use of anonymising software and hidden applications will also provide greater visibility regarding the online activities of reportable offenders in the community.

Clarifying the term ‘sexual offence against any person’ in section 244(1)(g)(iii) of the PPRA

Controlled operations are an important investigatory strategy employed by the QPS and other law enforcement agencies to gather evidence about serious or organised crime. Controlled operations may authorise a law enforcement officer or a person authorised to participate in the operation to engage in conduct that, apart from section 258 or 265 of the PPRA, would be unlawful. For example, a controlled operation may involve a covert police officer communicating with a drug dealer to gather evidence about offences involving the trafficking or supply of dangerous drugs. Similarly, a controlled operation may assist police officers to infiltrate an organised child exploitation syndicate, gather evidence identifying high-harm offenders and lead to the rescue of vulnerable children in Queensland and elsewhere from significant harm.

Chapter 11 of the PPRA outlines the robust approval process law enforcement agencies employ to authorise a controlled operation. A law enforcement officer of a law enforcement agency may apply to the chief executive officer (CEO) of the agency for the authority to conduct a controlled operation. Before authorising a controlled operation, the CEO must, except in limited circumstances, refer the application to the controlled operations committee (the COC) for their consideration and recommendation. The COC includes an independent member (a retired Supreme or District Court Judge), the Crime and Corruption Commission chairperson or the chairperson’s nominee and the Commissioner of Police or the commissioner’s nominee.

Section 244 of the PPRA outlines that a controlled operation may not be authorised unless the CEO is reasonably satisfied about a range of matters. Subsection (1)(g)(iii) specifies that any conduct involved in the operation will not ‘involve the commission of a sexual offence against any person’. This requirement is not further defined within Queensland legislation. Similar controlled operations legislation in New South Wales and Western Australia have defined the term ‘sexual offence’ by referring to a range of specific offences.

This amendment to the Bill is a clarifying provision to make clear that controlled operations may be authorised which involve the possession, distribution or editing of material that depicts a sexual offence or producing material that appears to depict a sexual offence provided the material does not depict a real person. The provision also provides that communicating with a person suspected of committing or attempting to commit offences does not constitute a ‘sexual offence against any person’ for the purposes of section 244 of the PPRA.

This amendment to the Bill will not impact upon other matters that must be taken into account under section 244(1) ensuring that important safeguards in this section continue to operate. For example, a controlled operation may not be authorised unless the CEO is reasonably satisfied that any unlawful conduct involved in conducting the operation will be limited to the maximum extent consistent with conducting an effective controlled operation. Similarly, the important safeguard in section 244(2) that the CEO must not grant authority for a controlled operation without the recommendation of the COC remains unaffected.

Clarifying service of extended banning notices

Police Banning Notices (PBNs) are designed to improve public safety by excluding individuals from particular places or events who have demonstrated violent, disorderly, offensive or threatening behaviour and are considered to pose an unacceptable risk of causing violence at the places stated in a PBN or otherwise impacting the safety or peaceful passage or reasonable enjoyment of others at the relevant places.

The safety of others at the places from which a respondent is banned is reliant on the respondent having knowledge of the places they are banned from and the period for which they are banned.

Following a review of the Government's Tackling Alcohol Fuelled Violence policy, the *Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Act 2021* (the Criminal Code Amendment Act) further amended the PPRA which enhanced the operation of police banning notices.

The Criminal Code Amendment Act introduced a new section 602G 'How police banning notices may be given' into the PPRA which broadened the methods of service available to a police officer to serve a police banning notice on a person to include service by electronic communication to a unique electronic address, such as an email address or mobile phone number.

The amendment to section 602G in this Bill is a clarifying provision to make clear that initial police banning notices may be served personally or by electronic communication (subject to 602G(2)) and extended banning notices may be served in several ways, including personally, by post, and by electronic communication.

#### Validating QPS discipline decisions

The amendments in the Bill in relation to the PSAA seek to introduce a validating provision that ratifies certain disciplinary referrals erroneously made under Part 7 of the PSAA.

The PSAA provides the legislative framework for the police discipline system in Queensland. Section 7.10 'Referral of complaint to prescribed officer' of the PSAA requires the Commissioner, or their delegate, to consider certain matters before referring a complaint about a police officer to a 'prescribed officer' for determination.

A prescribed officer is defined in s 7.3 of the PSAA to mean a police officer who holds a rank above the rank of the subject officer. Once a complaint has been referred, the prescribed officer has the power to start a disciplinary proceeding in accordance with s 7.11 of the PSAA.

On 8 March 2023, the Court of Appeal in *Assistant Commissioner Maurice Carless & Anor v Johnson; State of Queensland (Queensland Police Service) v Cousins* [2023] QCA 29 ('*Cousins*'), confirmed that for a referral pursuant to s 7.10 of the PSAA to be valid, it must specify the name and rank of the prescribed officer.

The consequence of this Court of Appeal decision is that referrals made under section 7.10 of the PSAA that did not specify the name and rank of the prescribed officer were invalid, which subsequently invalidates any associated disciplinary proceeding or disciplinary decision made in relation to the subject officer.

The PSAA contains limitation periods for the commencement of disciplinary action. Where a referral was invalid and where the limitation period has expired, discipline action under the PSAA will not be available to address the conduct that was the subject of the original referral.

An estimated 418 discipline matters have been identified to have been affected by this technical error in the initial referral. But for the technical error in the initial referral, the disciplinary process managing the complaint was appropriate, with the complaint properly investigated and assessed resulting in a disciplinary decision or professional development strategy that reflects the seriousness of the conduct involved.

Due to the invalidation of affected referrals, an Independent Assessment Committee (IAC) was formed to review all discipline matters that may be impacted and take any action required by the QPS to give lawful effect to the Court of Appeal decision. This resulted in the reversal of a number of disciplinary decisions, including revoking the suspension or demotion of affected officers.

The proposed amendments retrospectively validate police referrals that have not correctly specified the name and rank of the prescribed officer to whom the complaint was being referred. This will ensure any associated disciplinary decision or professional development strategy is given legal effect and the policy intent of 7.10 of the PSAA is upheld. Additionally, it enables the Commissioner to take all action necessary to impose the original disciplinary sanction or professional development strategy, ensuring appropriate standards of behaviour are upheld to promote and maintain public confidence, and officer confidence, in the Service.

#### Decriminalising the offences of begging and public intoxication

On 24 June 2022, the Legislative Assembly referred an inquiry into decriminalising public intoxication, begging and public urination offences, and health and social welfare-based responses to the Community Support and Services Committee (the Committee).

On 31 October 2022, the Committee tabled Report No. 23 which made 16 recommendations. A key recommendation of Report No. 23 proposed that offences including sections 8 'Begging in a public place' and 10 'Being intoxicated in a public place' of the *Summary Offences Act 2005* (SO Act) be repealed.

Report No.23 identified that these offences have a disproportionate impact on First Nations peoples and those suffering from chronic ill health or disability, poverty and/or homelessness.

This recommendation was also mirrored in recommendation 101 of the Women's Safety and Justice Taskforce's (the Taskforce) *Hear her voice – Report two – Women and girls' experiences across the criminal justice system* (Report Two), which proposed repealing sections 8 and 10 of the SO Act as soon as possible due to the disproportionate impact on women and girls.

Decriminalising these offences by repealing section 8 'Begging in a public place' and section 10 'Being intoxicated in a public place' of the SO Act will give effect to these

recommendations and ensure Queensland legislation protects its most vulnerable members and appropriately reflects current community values.

The offence of begging in a public place carries a maximum penalty of 10 penalty units or 6 months imprisonment. Additionally, police officers may issue an infringement notice for offences committed against sections 8(a) and (c) which carries a fine of 1 penalty unit.

QPS records reveal a marked decrease of 68% over the last 5 years in the number of persons being charged with begging. In 2021-2022 only 36 persons were charged with begging, whilst over that same period, only 24 persons were issued with infringement notices. Alternate policing strategies, including referring persons to appropriate support services, can be employed to manage any problematic behaviours associated with begging.

In relation to decriminalising public intoxication, Queensland is the only Australian jurisdiction that has not made legislative amendment to remove a criminal sanction for public drunkenness. Currently section 10 of the SO Act imposes a maximum penalty of 2 penalty units for the offence of public intoxication.

On average, approximately 21 people are charged with this offence in Queensland per week, with a total of 1,087 people being charged between 2021-2022. The Gold Coast, as a popular tourist and holiday destination with a busy nightlife, has the highest number of persons charged with public intoxication.

Decriminalising public intoxication will make Queensland consistent with other jurisdictions and reflect the mounting public opinion that these behaviours require a health and social welfare-based response, rather than entrenching vulnerable people in the criminal justice system through preferring criminal charges.

Repealing section 10 of the SO Act will also give effect to recommendation 79 of the Royal Commission into Aboriginal Deaths in Custody 1991 final report, which recommended governments legislate to abolish the offence of public drunkenness.

QPS policy has been developed to require police officers to consider alternatives to detaining intoxicated people in police cells. These alternatives include taking no formal action, administering a caution, or taking a person to a place of safety. Amendments in the Bill will build on existing policy by establishing an alternative legislative framework that will allow for an intoxicated person to be detained under strict criteria.

The proposed amendments in the Bill will authorise the detention of a person by a police officer only if the officer is satisfied:

- the person is intoxicated; and
  - o the person is disorderly, offensive, threatening or violent in a way that is, or is likely to, interfere with the enjoyment of a public place; or
  - o the person is behaving in a way likely to cause injury to themselves or another person; or
  - o the person is incapable of protecting themselves from physical harm.

The purpose of this detention power is to allow, if necessary, a police officer to transport an intoxicated person to a place of safety, such as a hospital or the person's home, or hold the person in a police establishment as a last resort, so that the person can safely recover from the adverse effects of the intoxicating substance.

A person detained under this framework can only be held for a maximum of 8 hours or until they are no longer intoxicated, whichever is sooner. A person detained under this power may be released at any time if the police officer believes it is reasonable to do so.

A police officer may also search an intoxicated person detained under this power, to ensure the safety of the person and others. For example, a search may reveal that the person is carrying a concealed weapon or is possession of intoxicants that could cause harm if ingested.

#### Amending the offence of public urination

Currently, section 7 'Urinating in a public place' of the SO Act imposes a maximum penalty of 2 penalty units, unless the person urinates within or in the vicinity of licensed premises. In the latter circumstance, the maximum penalty increases to 4 penalty units. Both offences may be dealt with through the service of an infringement notice, which carries a fine of 1 penalty unit or 2 penalty units respectively.

During 2021-22, Queensland police charged 182 adults and 13 young people and issued 1,082 infringement notices for offences against section 7 of the SO Act. However, in considering the prevalence of this offence, it may be noted that over the last five years there has been a 32% decrease in the number of persons charged.

Although only a few jurisdictions in Australia have a specific offence for public urination, the behaviour is capable of being criminalised throughout Australia as it is generally considered offensive, indecent, or disorderly conduct for which an offender can be held accountable under various offence provisions.

Maintaining this offence is particularly important to areas such as central business districts and entertainment venues. These popular areas would be negatively impacted if this offence was repealed as police may be unable to adequately deter offending behaviour potentially resulting in an objectionable and unhygienic environment that would act as a detriment to the business, tourism, and general community enjoyment of public spaces.

The proposed amendments in the Bill strike an appropriate balance between recognising the community concern associated with this offence and acknowledging that the offence may disproportionately impact upon vulnerable persons, including homeless people and those that suffer from health conditions contributing to the commission of the offence.

This is achieved by requiring a police officer to consider, before commencing a proceeding or issuing an infringement notice, whether it would be more appropriate to take no action.

The circumstances to which a police officer must have regard prior to taking enforcement action include:



- whether the offender has any vulnerability or special health needs which has contributed to the commission of the offence; and/or
- whether the offender has made reasonable attempts to avoid causing offence or embarrassment to another person.

#### Repealing sex-worker specific police powers

In August 2021, the Attorney-General requested the Queensland Law Reform Commission (QLRC) conduct a review and recommend a framework for a decriminalised sex-work industry in Queensland.

In March 2021, the QLRC released Report No.80, '*A decriminalized sex-work industry for Queensland*' (the QLRC Report). The QLRC report makes 47 recommendations in relation to decriminalising sex-work in Queensland and provides a framework for implementation. Relevant to the exercise of police powers, recommendation 2 of the QPRC report provided:

The specific public soliciting offence for sex work should be removed and sections 73–75 of the Prostitution Act should be repealed, so that there are no sex-work-specific public soliciting laws. There should be no specific move-on power for police if they suspect a person is soliciting for sex work and section 46(5) of the Police Powers Act should be repealed.

Similarly, recommendation 5 of the QLRC report provided:

Sex-work-specific covert powers given to police should be removed. References in schedule 2 of the Police Powers Act to sections 229H, 229I and 229K of the Criminal Code and to sections 78(1), 79(1), 81(1) and 82 of the Prostitution Act should be removed. The reference in schedule 5 of the Police Powers Act to section 73 of the Prostitution Act should also be removed.

The QLRC Report identified that sex-work specific powers create a strong sense of fear and mistrust of police by sex workers. Sex workers may fear being 'entrapped' by undercover police who have exercised covert police powers and cause them to feel anxious, unsafe, or vulnerable in their work.

The QLRC proposed that by removing these powers, a more positive relationship may be established between sex-workers and police, as it would enable sex-workers to view police as protectors rather than prosecutors. This may in turn encourage sex-workers to report harmful and criminal behaviour to police, thus supporting the safety of sex-workers and providing necessary intelligence to police regarding potential criminal activity, such as harassment, assault, human trafficking, slavery, and child exploitation.

On 24 April 2023, the Queensland Government indicated its broad support for the recommendations and announced its commitment to decriminalising sex work in Queensland. Amendments in the Bill will meet these recommendations through omitting provisions in the PPRA that:

- authorise police to use controlled activities, controlled operations and surveillance device warrants as investigatory strategies for sex work related offences; and

- allow police officers to give a move-on direction to a person the officer reasonably suspects is soliciting for prostitution.

Amendments to the *Youth Justice Act 1992* and *PPRA*

An amendment to the *Youth Justice Act 1992* is necessary to ensure that the original policy intent of the *Inspector of Detention Services Act 2022* is achieved.

Additionally, amendment is required to clarify the administrative arrangements for holding young people in police watchhouses until beds become available in YDCs.

YDC capacity in Queensland does not currently meet demand. The Government is building new YDCs in Woodford and Cairns, and is developing interim options to manage demand in the short to medium term, until the two new YDCs become operational in 2026.

It is not intended to normalise the holding of children in watchhouses, but to provide clarity, transparency and accountability in decision-making, and to balance the right to safety of staff, visitors, responders, and the community.

The amendments will also facilitate short to medium term capacity options.

*Administrative custody arrangements for children remanded in or sentenced to custody*

Section 56(1) of the YJ Act provides that, except where a child remains the prisoner of the courts, a court that remands a child in custody must remand the child into the custody of the chief executive. Section 56(4) provides that a court that remands a child into custody of the chief executive must order the commissioner of the police service to deliver the child as soon as practicable into the custody of the chief executive at a youth detention centre. There is no discretion. The purpose of the provision is to facilitate the transport of the child by police to a YDC.

It has emerged that in a number of cases, as a result of human error, Childrens Court magistrates have not made an order under section 56(4). As a result, some children, while lawfully in custody, have been held unlawfully in *police* custody.

A similar issue arises from the drafting of section 210 of the YJ Act, which provides that a court, on making a detention order against a child, must issue a warrant directing the Commissioner of the police service to take the child into custody and deliver the child to a detention centre.

The amendments address these issues, and remove the risk of future human error, by making automatic the necessary arrangements for children who are remanded in custody or subject to a detention order.

In addition, the amendments replace the current requirement for police to be ordered to deliver the child to the chief executive ‘as soon as practicable’ with a framework for decision-making about the timing of the transfer to the custody of the chief executive

which ensures any relevant factor can be taken into account. The objective of the framework is to balance the interests of children in watchhouses, children in held in youth detention centres and staff employed at youth detention centres and watchhouses.

Holding a child in a watchhouse may be less incompatible with human rights and safer than holding the child in a youth detention centre which is above capacity. However, it is possible that a court may decide differently. The amendments therefore include an override declaration under s.43 of the *Human Rights Act 2019* for decisions about holding children in watchhouses when YDCs are at or over capacity.

This override is time-limited, as it should not be required once infrastructure at Woodford and Cairns becomes operational. It is to expire on 31 December 2026, with the ability to extend the provision for a maximum of 12 months by regulation.

It is important that the Queensland Police Service can continue to ensure the security and management of watchhouses and the safety and wellbeing of people detained in watchhouses. The amendments address this by including a human rights override declaration for decisions to transfer a child between watchhouses or to holding cells. Given the human rights override declaration for the decision to transfer a child from a watchhouse to a youth detention centre whilst under a remand or sentence order, it is considered necessary to provide a human rights override declaration that covers decisions made to transfer a child subject to one of those orders between watchhouses or holding cells.

#### *Validation of past police custody*

Whilst no children have been unlawfully detained, it may be that children have been unlawfully held in police custody where a remanding or sentencing court did not make an order under section 56(4) or 210(2) of the YJ Act.

This, in turn, may give rise to liability for police officers who have acted in good faith when purporting to exercise powers whilst believing that children were lawfully in their custody.

To address this risk, the amendments retrospectively validate any action taken in good faith by a police officer on the assumption that orders had been made the courts under sections 56(4) or section 210(2) of the YJ Act.

#### *Establishment of detention centres*

Section 262 of the YJ Act provides that the Governor in Council may, by regulation, establish detention centres and other places for the purposes of the YJ Act.

The amendments include a human rights override so that a regulation may be made to establish a place as a youth detention centre even if it would not be compatible with human rights. This could include a police watchhouse or corrective services facility. It

is not intended to make acceptable the long term use of watchhouse or corrective services facilities for young people, but to ensure immediate capacity issues can be addressed.

This override is time-limited, as it should not be required once infrastructure at Woodford and Cairns becomes operational. It is to expire on 31 December 2026, with the ability to extend the provision for a maximum of 12 months by regulation.

Despite the override, the Minister will still be required to consider human rights when requesting that the Governor in Council make a regulation. Remedies under the *Human Rights Act 2019* will not be available, but judicial review will be available.

The amendment does not alter any other aspects of the establishment of detention centres. For example, a detention centre could not be established at a place without the agreement of the owner or occupier.

The amendments also disapply section 58 of the *Human Rights Act 2019* (HR Act) from actions and decisions subsequent to the establishment of a detention centre under the override. This is to ensure that a decision to place a child in that detention centre, the transport of the child to the detention centre, and the provision of programs and services in the detention centre will be valid.

It is only intended that these provisions be used in extraordinary circumstances, such as where an order of a court results in a large number of children entering the chief executive's custody in the period between circulating the amendments and commencement, which would overcrowd existing youth detention centres to a critically dangerous extent; or where, before new YDCs in Woodford and Cairns become operational, an extraordinary spike in numbers overwhelms both youth detention centres and watchhouses.

#### *Transfer of detainees aged 18 or over to adult custody*

The amendments also correct drafting errors in the YJ Act in relation to the transfer of persons remanded in youth detention centres to an adult corrective services facility.

#### Amendments to the *Mineral Resources Act 1989*

The objective for moving amendments during consideration in detail for the Bill is to provide certainty to Byerwen Coal Pty Ltd (Byerwen Coal) and its workers, Isaac Regional Council and local residents in relation to the operation of a workers' camp at the Byerwen Mine in central Queensland's Bowen Basin.

This is through amending the *Mineral Resources Act 1989* to enact the granting of mining lease for infrastructure relating to a workers' camp, with conditions that will see the entire workforce of the mine transitioned to being accommodated in the township of Glenden. The amendments also seek to ensure that the residents of Glenden, located 45km east of the Byerwen Mine by road, benefit from the operation of a significant resource project in their region.

Amendments to the Mental Health Act

The Mental Health Court is established under the Mental Health Act. The Mental Health Court decides the state of mind of people charged with criminal offences, and whether an alleged offender was of unsound mind when they committed an offence, as well as their fitness for trial. The Mental Health Court is also the appeals body for decisions made by the Mental Health Review Tribunal. It is constituted by a Supreme Court Judge who is assisted by clinicians.

It has been identified that on 14 February 2023, the appointment of a member and president of the Mental Health Court lapsed; however, that person continued to act as a member and president of the Mental Health Court without a valid commission until 30 June 2023, when the person was then reappointed as a member and president.

Amendments to the Mental Health Act are required to validate the appointment of, and any exercise of jurisdiction by, the person who acted as a member and president of the Mental Health Court during the period 14 February 2023 to 29 June 2023 (inclusive), to provide certainty to the legal effect of decisions by the Mental Health Court during that period, and to provide protection to those who relied or acted on those decisions in good faith.

Amendments to the SCQ Act

Section 57 of the SCQ Act provides there are to be districts of the Supreme Court, with each district to consist of the Magistrates Court districts prescribed under a regulation. The districts have most recently been prescribed in the SCQ Regulation.

Various legislation, matters and court rules and processes are premised on the existence of the Supreme Court districts.

Under section 54 of the *Statutory Instruments Act 1992* (SIA), subordinate legislation expires on 1 September first occurring after the 10th anniversary of the day of its making, unless it is earlier repealed or exempted from expiry. As the SCQ Regulation was made on 30 August 2012, it expired on 1 September 2022, not 1 September 2023 as stated on the Queensland legislation website.

Amendments to the SCQ Act are required to retrospectively provide for the continuation of the SCQ Regulation; and for anything done in relation to a Supreme Court district under the SCQ Regulation to be valid as if the regulation had not expired. They also provide that the expiry of the SCQ Regulation is extended to 1 September 2024.

## **Achievement of policy objectives**

The proposed amendments to the Bill achieve its policy objectives by amending the following primary legislation:

- *Summary Offences Act 2005* (SO Act);
- *Police Powers and Responsibilities Act 2000* (PPRA);

- *Police Service Administration Act 1990 (PSAA);*
- *Police Powers and Responsibilities Regulation 2012 (PPRR);*
- *Youth Justice Act 1992 (YJ Act);*
- *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004;*
- *Mineral Resources Act 1989;*
- *Mental Health Act 2016;* and
- *Supreme Court of Queensland Act 1991.*

Additionally, the proposed amendments amend the Bill by removing references to MAC addresses which appear in Clauses 40 and 42.

*Removing the proposed requirements for reportable offender to provide MAC addresses*

The amendments to the Bill will achieve its objective by removing references to MAC addresses which appear in Clauses 40 and 42.

The effect of the changes to Clause 40 will mean that the proposed changes which would have added a requirement to provide the MAC address of a radio or other electronic communication device that is part of, or installed in a vehicle the reportable offender owns or has driven on at least 7 days within a 1 year period, whether or not the days are consecutive are no longer a part of the amended Schedule 2, item 9 of the Act. It will also mean that the proposed changes which would have added a requirement to provide the MAC address of each digital device in the reportable offender's possession, or that the offender has access to, are no longer a part of the amended Schedule 2, item 15A of the Act.

The effect of the changes to Clause 42 will mean that the definition of a MAC address is no longer a part of the amended schedule 5 (Dictionary) of the Act.

*Clarifying the term 'sexual offence against any person' in section 244(1)(g)(iii) of the PPRA*

The objective of clarifying the term 'sexual offence against any person' in section 244 of the PPRA will be met through amendments to the Bill that insert a new subsection 244(3) in the PPRA. These amendments outline when conduct involved in a controlled operation will not be considered to involve the commission of a sexual offence against any person. This will include the possession, distribution or editing of material that depicts a sexual offence and the production of material that appears to depict a sexual offence provided the material does not depict a real person.

Further conduct in a controlled operation that will not be considered to be a 'sexual offence against any person' under section 244 includes communicating with a person suspected of committing, or having committed a sexual offence; seeking to commit a

sexual offence; offering to engage in conduct that would constitute a sexual offence; or enabling a person to engage in conduct that would constitute a sexual offence.

A new subsection 244(4) provides further clarity by providing definitions for the terms ‘chat group’, ‘distributing’ and ‘material’ which are used in section 244.

A new validation provision is inserted as Part 24, section 893 ‘Refined limitation on controlled operation do not affect past operations’. This section applies to a controlled operation involving conduct mentioned in section 244(1)(g)(iii) which was authorised prior to the commencement of these amendments. It declares that nothing in section 244(1)(g)(iii) prevented the controlled operation from being authorised and further declares that the authority to conduct the controlled operation is, and is taken to have always been, valid.

*Clarifying service options for police banning notices*

The objective of clarifying the service options for police banning notices will be met by amending section 602G of the PPRA as proposed in the Bill. By introducing the new subsection (1)(a), the amendment makes clear that initial banning notices can only be served in person or by electronic communication, whilst an extended banning notice may be served in person, by post, by electronic communication or any other way authorised under section 39 of the *Acts Interpretation Act 1954*.

*Retrospective validation of QPS discipline decisions*

The amendments in the Bill in relation to the PSAA achieve its objective by validating disciplinary referrals which did not correctly specify the name and rank of the prescribed officer to whom the complaint was being referred, thereby upholding any associated disciplinary decision and sanction.

The disciplinary process for police officers under Part 7 of the PSAA ensures appropriate behaviour is maintained within the service to protect the public, uphold ethical standards within the service, and promote and maintain public confidence in the service.

Part 7 of the PSAA provides grounds for disciplinary action against an officer if, for example, the officer has:

- committed misconduct;
- been convicted of an indictable offence;
- performed their duties carelessly, incompetently or inefficiently;
- been absent from duty without leave and without reasonable excuse; or
- contravened, without reasonable excuse, a provision of the PSAA or the PPRA, a code of conduct that applies to the officer, or an authorised direction given to the officer by the commissioner or recognised senior officer.

If upon the conclusion of disciplinary proceedings resulting from a referred complaint, an officer is found to have acted in a manner that constitutes sufficient grounds for

disciplinary action to be taken, the officer may be subject to a disciplinary sanction or professional development strategy.

A disciplinary sanction may include dismissal, suspension from duty without pay, probation, demotion, comprehensive transfer, local transfer, a reprimand, fine, or requirement to perform community service.

The dismissal of an officer from the QPS is reserved for only the most serious misconduct matters and occurs when the subject officer is no longer fit to uphold and perform the functions and duties of an officer within the QPS.

The amendments in this Bill are reasonable and appropriate to ensure the QPS can effectively perform its legislative obligations under the PSAA, including:

- preserving peace and good order in all areas of Queensland;
- protecting and supporting the Queensland community;
- preventing and detecting crime;
- upholding the law;
- administering the law fairly and efficiently; and
- bringing offenders to justice.

To uphold these accountabilities, the amendments in this Bill are required to ensure the QPS can operate with the support and confidence of the community in relation to the competency and integrity of its police officers.

It is both reasonable and appropriate to retrospectively apply the amendments to validate erroneously referred complaints, noting the disciplinary process has finalised in respect of the affected officers and determined sufficient grounds exist to warrant the disciplinary sanction, and this decision should not be invalidated due to a technical error in the referral.

#### *Decriminalising the offences of public intoxication and begging*

The amendments to the Bill achieve its policy objective to minimise harm experienced by vulnerable members of our community and to make Queensland a more just and compassionate place by repealing the offences of begging and being intoxicated in a public place under the SO Act.

Additionally, to support the repeal of the public intoxication offence, the amendments will introduce a new legislative framework within the PPRA that authorises police officers to detain and transport intoxicated persons to places of safety, or, as a last resort, police facilities, to provide for the health and safety of that person without criminalising them.

This is achieved by making the following amendments to the PPRA:



- introducing a new Part 8 ‘Power to detain particular intoxicated persons’ in Chapter 2 ‘General enforcement powers’. This part notably consists of:
  - the new section 53BP ‘Detaining intoxicated persons’ that authorises police to detain persons who are intoxicated in a public place in circumstances in which it is necessary to detain the person because –
    - the person is behaving in a way that is disorderly, offensive, threatening, or violent and is likely to interfere with the enjoyment of a public place by another; or
    - the person is behaving in a way likely to cause injury to themselves or another person; or
    - the person is incapable of protecting themselves from physical harm;
  - a person detained under section 53BP must be released upon a police officer being satisfied the person is no longer intoxicated or after 8 hours after the person is first detained, whichever is earlier. Or alternatively, a person may be released at any time if the officer is satisfied it is appropriate to do so;
  - the new section 53BQ ‘Transporting detained persons’ which authorises a police officer to transport and release the detained person at a place of safety. This section also authorises a police officer to transport and detain an intoxicated person at a police station or watch-house if after making reasonable enquiries, the officer is unable to find a place of safety located within a reasonable distance from where the person is originally detained;
- authorising a police officer to search a person detained under the new section 53BP and seize certain things in Chapter 16 ‘Search powers for persons in custody’;
- introducing the new section 792B ‘Meaning of *place of safety*’ which identifies a place of safety for a person who is intoxicated or has ingested or inhaled a potentially harmful thing, may be:
  - a hospital, if the person requires medical attention;
  - if the person does not require medical attention, a place other than a police establishment, at which the person will be able to recover safely from the effects of the intoxicating substance, such as a diversion centre or, sobering up centre, or other appropriate support service facility;
  - a vehicle under the control of someone other than a police officer, used to safely transport the person to a place of safety; and
  - the person’s home, or the home of a relative or friend, if there is no risk of domestic violence involving the person, either as the perpetrator or aggrieved.

To support the introduction of the new intoxication detention framework, amendments are also made to the PPRR to require that certain information about a person detained under Chapter 2, Part 8 of the PPRA, must be recorded in the register of enforcement

acts. This includes the name of the person, if known, the time the person was detained, where the person was detained, the reason the person was detained at a police station or watch-house and any injury the person received during detention.

*Amending the offence of public urination*

The amendments to section 7 ‘Urinating in a public place’ of the SOA will require police, before they commence a proceeding or issue a penalty infringement for the offence, to consider in all the circumstances, if it would be more appropriate to take no action.

The circumstances to which the police officer must have regard to include:

- the person’s vulnerability, disability or special health needs; and
- in committing the offence, whether the person has made reasonable attempts to avoid causing the offence or embarrassing another person.

This will ensure that the practical investigative steps that police ordinarily take when responding to a public urination incident are legislated. For example, a person may have a medical need to immediately urinate should they be in a public place and unable to access public toilet facilities. In such instances, it may be more appropriate for police to take no action and, if appropriate, refer the person to a relevant health support service.

*Repealing sex-work specific police powers*

Acknowledging the Government’s commitment to decriminalising sex-work in Queensland, and recommendations 2 and 5 of the QLRC Report, the amendments in the Bill will achieve its policy objective by making the following amendments to the PPRA:

- repealing section 46(5) (When power applies to behaviour) to remove a police officer’s power to issue a move-on direction on the basis the officer suspects that the person is soliciting for prostitution;
- repealing references to sections 229H (Knowingly participating in provision of prostitution), 229I (Persons found in places reasonably suspected of being used for prostitution etc.) and 229K (Having an interest in premises used for prostitution etc.) of the Criminal Code from Schedule 2 of the PPRA to remove sex-work specific powers for controlled activities, controlled operations and the use of surveillance devices for these offences;
- repealing references to sections 78(1) (Brothel offences), 79(1) (Operating licensed brothel other than in a building), 81(1) (Licensee not to operate brothel in partnership or in association with unlicensed person) and 82 (Person not to have interest in more than 1 licensed brothel) of the *Prostitution Act 1999* (Prostitution Act) from Schedule 2 of the PPRA to remove sex-work specific powers for controlled activities, controlled operations and the use of surveillance devices for these offences; and

- repealing a reference to section 73 (Public soliciting for purposes of prostitution) of the Prostitution Act from Schedule 5 of the PPRA to remove sex-work specific powers for controlled activities for this offence.

Although in Recommendation 33, the QLRC Report proposed that any legislative reforms to decriminalise the sex-work industry should take effect at the same time, rather than taking a staged approach, the amendments in the Bill are considered appropriate and necessary to take immediate effect. The QLRC's intention behind Recommendation 33 was to avoid uncertainty that would result from a fragmented approach to legislative reform. However, in considering the QLRC Report, consultation has occurred with key stakeholders, which has identified the importance of implementing these amendments in a timely way. In particular, the amendments will support a more positive relationship between sex-workers and police, by removing any sense of fear and mistrust such powers might elicit amongst sex-workers.

#### Clarifying service options for police banning notices

The objective of clarifying the service options for police banning notices will be met by amending section 602G of the PPRA as proposed in the Bill. By introducing the new subsection (1)(a), the amendment makes clear that initial banning notices can only be served in person or by electronic communication, whilst an extended banning notice may be served in person, by post, by electronic communication or any other way authorised under section 39 of the *Acts Interpretation Act 1954*.

#### Amendments to the YJ Act and PPRA

A minor and technical amendment is proposed to implement the original policy intent of section 105 of the *Inspector of Detention Services Act 2022* as passed (the IDS Act), that YJ Act section 272 (which requires ordinary visitors to seek chief executive approval for entry as a visitor to a detention centre) does not apply to the Inspector of Detention Services. The IDS Act amendment did not take effect because of an intervening amendment made by the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2023*.

#### Custody arrangements for children in or sentenced to custody

In addition, the amendments in the Bill will achieve policy objectives to clarify the administrative arrangements for children in (or sentenced to) custody by:

- amending sections 56 and 210 of the YJ Act to remove the requirement for the court to make an order or issue a warrant, and instead provide that when a court remands or sentences a child to detention, the commissioner of the police service is to take immediate custody of the child and deliver the child into the custody of the chief executive, with timing to be decided under the new framework;
- inserting a new section 56 into the YJ Act to provide for a new framework for the timing of the transfer of a child into the custody of the chief executive, including the relevant factors that must be considered by the chief executive;
- providing a time-limited override declaration for the decision-making framework;

- inserting new sections 415 and 416 to validate retrospectively any action taken in good faith where a court had remanded or sentenced a child into custody;
- amending section 262 of the YJ Act to include a time-limited override declaration in accordance with section 43 of the HR Act. The override declaration provides that a regulation may be made to establish a place as a youth detention centre or other place, despite the regulation being incompatible with the HR Act. The override also applies to acts done and decisions taken after the establishment of a detention centre or other place. The override is subject to a sunset clause, expiring on 31 December 2026, with the option to extend by regulation for up to one year;
- inserting a new section 262A into the YJ Act to ensure acts and decisions following the establishing of a youth detention centre under the override declaration will be valid; and
- amending sections 276G, 276DB and 276J of the YJ Act to correct drafting errors in amendments relating to the transfer of remandees to adult corrective services facilities introduced in the *Strengthening Community Safety Act 2023*.

Lastly, section 640 of the PPRA is amended to declare that the HR Act does not apply to the transfer of children between watchhouses.

#### *Granting mining lease for Byerwen Coal*

The amendments in the Bill for the *Mineral Resources Act 1989* will achieve its objective by granting the mining lease for Byerwen Coal until 2030 and require the company to progressively transition its workforce from the workers' camp to the town of Glenden, to give effect to its earlier representations to the community under the Environmental Impact Statement (EIS).

Transitional arrangements have been put in place until 2029, to provide for the smooth transition of the workforce. The Bill allows the Minister, in consultation with the Coordinator-General, to vary the interim timeframes for transitioning the workers in Glenden, however, the final milestone of 31 March 2029 for 100 per cent of workers in Glenden cannot be varied.

Further, as the transition progresses, at least 30 percent of the workers accommodated in Glenden must be provided residential dwellings, such as houses, duplexes or units, for them to reside in on an ongoing basis.

The workforce for the Byerwen Mine is currently housed in a temporary workers' camp adjacent to the mine. The temporary camp was constructed under a temporary development approval issued by Isaac Regional Council.

In September 2019, Byerwen Coal lodged a development application to make permanent and expand the camp. The application was refused on the grounds that the proposed development conflicted with the local planning scheme and regional plan—a decision that was upheld in the Planning and Environment Court.

The expansion and permanent embedding of the workers' camp on the mine site is inconsistent with representations to the community made through the EIS and

Workforce Accommodation Strategy that supported the Government's approval of the Byerwen Mine project.

The workers' camp is currently operating without a development approval or other relevant authority, causing uncertainty about the continued operation of the mine, a significant resource project. Byerwen Coal has sought to secure the workers' camp under the authority of a mining lease. To provide certainty and assist in driving the Queensland Government's objective of promoting sustainable economic prosperity for Queensland's regions, amending the *Mineral Resources Act 1989* to grant with conditions the mining lease is considered the most appropriate approach to achieve this.

#### Amendments to the Mental Health Act

The ACiDs will achieve the objectives by amending the Mental Health Act to retrospectively validate the appointment of, and exercise of jurisdiction by, a person who acted as a member and president of the Mental Health Court during a period when they did not have a valid commission.

#### Amendments to the SCQ Act

The amendments will achieve the objectives by amending the SCQ Act to retrospectively provide for the continuation of the SCQ Regulation and for anything done or purported to be done in relation to a Supreme Court district under the SCQ Regulation to be valid as if the regulation had not expired.

## **Alternative ways of achieving the policy objectives**

There is no alternative way to achieve the policy objective for all amendments, although amendments proposed to the *Mineral Resources Act 1989* in some part could be achieved in other ways.

Broadly, under the *Mineral Resources Act 1989*, the Minister may grant a mining lease, grant the lease with conditions, or reject the lease.

Granting the mining lease and allowing the workers camp to become permanent would not achieve the desired objectives of ensuring that regional communities benefit from significant resource projects.

Alternatively, rejecting the mining lease would have a similar outcome as sufficient accommodation for the entire workforce is not immediately available, potentially risking the ongoing operation of the mine in the short to medium term.

Further, as Byerwen Coal and Isaac Regional Council have opposing views with respect to the grant of the mining lease, deciding the application administratively would almost certainly lead to litigation, causing further uncertainty and delay.

Consequently, a legislative approach has been prepared that seeks to balance the interests of Byerwen and the local community, while also promoting much-needed certainty.

## **Estimated cost for government implementation**

Any costs incurred through the implementation of amendments to the Bill will be met through existing budgets.

## **Consistency with fundamental legislative principles**

The proposed amendments to the Bill have been prepared with due regard to the fundamental legislative principles outlined in the *Legislative Standards Act 1992* (LSA). Potential breaches of fundamental legislative principles are addressed below.

### ***Amendments to the Police Powers and Responsibilities Act 2000***

*Whether a Bill has sufficient regard to the rights and liberties of individuals (Sections 4(2)(a) and 4(3) of the LSA)*

#### *Decriminalising public intoxication*

It may be argued that amendments to the Bill will impact upon a person's rights and liberties through establishing a legislative framework that authorises the detention and search of a person who is intoxicated in a public place in certain circumstances. These powers apply without a warrant and in the absence of any criminal conduct or suspected criminal activity.

However, concerns regarding the intrusiveness of these powers on an individual's rights and liberties are mitigated through the safeguards that are incorporated into this framework to ensure that police may appropriately deal with intoxicated persons in public spaces. Specific safeguards associated with the power to detain an intoxicated person include:

- the power only applies to an intoxicated person under specific circumstances. The person must be in a public place and be:
  - behaving in disorderly, offensive, threatening or violent manner and is likely to interfere with the peaceful passage through, or enjoyment of, a public place by another person; or
  - behaving in a way likely to cause risk the life, health or safety of any person; or
  - incapable of preserving the person's own life, health or safety.
- police officers must make reasonable attempts to identify and transport the person to a place of safety, and can only detain the person at a police establishment as a last resort; and
- a person detained must only be detained for a maximum of 8 hours or until they are no longer intoxicated whichever is the earlier, and a police officer may release the person at any time if appropriate to do so.

It should be also noted that the existing legislative safeguards under the PPRA that apply to person in the custody of police officers will be maintained and that the detention power authorised through amendments to the Bill will be considered to be an

enforcement act requiring a record of the detention to be entered into the enforcement register.

The detention of an intoxicated person through the exercise of the police powers outlined in the amendments in the Bill are justified on the basis that such powers are reasonably necessary to protect intoxicated persons from harm to themselves or others, and ensure that other users of public space are not adversely affected by disorderly behaviour or put at risk of harm because of the conduct of intoxicated persons. The proposed search powers are justified on the basis that they are necessary to ensure the safety of police officers, detained persons and the safety and security of places of safety, including police establishments.

*Clarifying the term 'sexual offence against any person'*

Section 4(3)(g) of the LSA provides that one of the factors in determining whether legislation has sufficient regard to the rights and liberties of individuals is whether it adversely affects rights and liberties or imposes obligations retrospectively.

This fundamental legislative principle reflects the common law presumption that Parliament intends legislation to operate prospectively rather than retrospectively. However, this presumption in no way limits the sovereignty of parliament to legislate retrospectively and the presumption can be displaced if the legislation expressly states an intention to apply retrospectively or if the intention is clearly implied in the words of the statute.

When considering the impact of retrospective legislation, Parliamentary committees generally consider the retrospective legislation undesirable if the legislation may affect:

- an individual's liability to be investigated for misconduct;
- an individual's liability to be prosecuted; or
- an individual's criminal or civil liability.

Although retrospective legislation may generally be undesirable, in certain circumstances it can be both necessary and justified.

Parliamentary Committees generally do not object to retrospective legislation that:

- is beneficial to persons other than Government;
- is curative or validating and is justified in order to correct an unintended legislative consequence or clarify a situation;
- removes uncertainty from the general law or legislation;
- validates past action in a manner that does not adversely affect a persons' accrued rights or interests;
- is necessary for the ongoing administration of amended legislation; and/or
- it is justifiable in the public interest.

The amendments in new section 244(3) of the PPRA are a clarifying provision that are not intended to change this section but to merely illustrate the types of conduct that if they do occur in a controlled operation will not be considered ‘the commission of a sexual offence against any person’. These amendments make it clearer to the CEO of a law enforcement agency and participants the circumstances in which controlled operations may be authorised.

New section 893 applies to a controlled operation involving conduct mentioned in section 244(1)(g)(iii) which was authorised prior to the commencement of these amendments. It declares that nothing in section 244(1)(g)(iii) prevented the controlled operation from being authorised and further declares that the authority to conduct the controlled operation is, and is taken to have always been, valid. This will provide certainty to persons involved in past controlled operations that the authority to conduct the controlled operation was lawful.

#### Service of police banning notices

The amendment to section 602G also seeks to clarify the operation of the provision. This amendment more clearly articulates the service options available for police banning notices and is in line with the original policy intention of the section.

#### ***Amendments to the Police Service Administration Act 1990***

##### Retrospective validation of QPS discipline decisions

The amendment to retrospectively validate certain disciplinary referrals impacts section 4(3)(g) of the LSA as it affects the rights and interests of affected subject officers.

Officers who have been subject to a disciplinary sanction following a complaint incorrectly referred under section 7.10 of the PSAA, may have an expectation that the resulting discipline decision will be annulled as a result of the *Cousins* decision. The amendment to retrospectively validate these erroneous referrals would therefore adversely impact the rights of the affected officers and interfere with their possible expectation that any disciplinary action taken is reversed, which may include their reinstatement to the QPS or the restoration of a previously held rank.

Whilst the amendments adversely and retrospectively affect the rights of the affected subject officers, due regard has been given to the impact the legislation has on these rights and the amendments are considered reasonably justified.

The retrospective amendments are curative in nature and do not remove a right or liberty that an officer was intended to possess, but instead validates the rights the parties would have possessed had the technical error not occurred.

The reversal of police disciplinary sanctions due to a technical error would unjustifiably erode public confidence in the QPS and interfere with the QPS’ ability to perform its statutory functions and obligations. Any interference or limitation with the fundamental legislative principles is therefore justified in a fair and democratic society based on the rule of law.

##### Amendments to the YJ Act



Section 4(3)(a) of the LSA provides that whether legislation has sufficient regard to the rights and liberties depends on whether the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

The proposed amendments establish a decision-making framework for the timing of the transfer of a young person into the custody of the chief executive (i.e. transferred to a Youth Detention Centre). Under the framework, the timing of when a young person is transferred to a Youth Detention Centre is an administrative decision made by the chief executive.

This new power potentially impacts upon fundamental legislative principles, as the decision about when a young person is transferred to the custody of the chief executive impacts their rights and liberties, and may result in children being held in police watchhouses for prolonged periods. However, the proposed amendments are considered sufficiently defined, and include a number of safeguards and protections, and are subject to judicial review.

The amendments clearly outline the relevant factors the chief executive must take into account including:

- the effect on the chief executive’s ability to comply with section 263 of the YJ Act (chief executive’s responsibility for the security and management of detention centres and the safe custody and wellbeing of children) and with the chief executive’s duties as an employer;
- the police commissioner’s responsibilities in relation to watchhouses;
- the individual child’s needs, including for example in relation to:
  - age and gender identification;
  - cultural background;
  - historic and current self-harm and suicide risk;
  - medical conditions;
  - primary health and mental health issues;
  - substance misuse and withdrawal issues;
  - cognitive capacity;
  - current presentation;
  - next court date and court location;
  - any other issue that may impact the child’s health or wellbeing in a watchhouse environment; and
  - any other issue that may impact the child’s health or wellbeing during transport.

If the chief executive is unable to accommodate all children currently remanded in or sentenced to custody in detention centres, then the chief executive is to prioritise children based on their relative needs.

Requiring the chief executive to consider the above factors will ensure an appropriate balancing of the rights and interests of children in watchhouses, children in youth detention centres, and staff.

*Legislation should not adversely affect rights and liberties, or impose obligations, retrospectively or confer immunity from proceeding or prosecution without adequate justification – Legislative Standards Act 1992, sections 4(3)(g) and 4(3)(h)*

Section 4(3)(g) of the LSA provides that whether legislation has sufficient regard to the rights and liberties of individuals may depend on whether the legislation adversely affects rights and liberties, or imposes obligations, retrospectively.

Proposed new sections 415 and 416 will have retrospective effect, therefore enlivens section 4(3)(g) of the LSA. However, these provisions promote the rights and liberties of individuals by ensuring that a person is not liable for any action taken in good faith where a court had made, or purported to make, an order or issued a warrant under section 56 or 210 of the YJ Act, remanding or sentencing a child into custody.

The protection from liability is limited to where a person has acted in good faith and is considered justified in the circumstances.

The new clauses 73 and 74 also apply retrospectively. This is necessary to ensure that children can be safely accommodated in the event that a court ruling prior to commencement results in a significant number of children needing to be accommodated at short notice in the chief executive's custody.

*Sufficient regard to the institution of Parliament – Sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly - Legislative Standards Act 1992, section 4(4)(b)*

Despite the override declaration, the amendments to section 262 of the YJ Act, do not alter the Parliament's power to scrutinise any regulation made under that section.

*Sufficient regard to the institution of Parliament - authorises the amendment of an Act only by another Act - Legislative Standards Act 1992, section 4(4)(c)*

Proposed new clauses 70 (new section 56(14)), 72 (new section 210(9), after renumbering), 73 (new section 262(8)) and 74 (new section 262A(3)), provide for the extension by regulation of expiry dates set by the Act. This amendment is not a substantive extension, is time-limited, and is only intended to allow for any unforeseen delay in the operationalisation of new detention centre infrastructure in Woodford and Cairns. Any regulation extending an expiry date will be subject to Parliamentary scrutiny.

#### *Amendments to the Mental Health Act*

Section 4(3)(g) of the LSA provides that legislation should not adversely affect rights and liberties, or impose obligations, retrospectively. The proposed amendments to the Mental Health Act will retrospectively validate the appointment of, and any relevant exercise of jurisdiction by, a person who acted as a member and president of the Mental Health Court without a valid commission.

These amendments may be considered a departure from the fundamental legislative principle under section 4(3)(g) of the LSA, as they retrospectively affect the rights of persons who appeared before the member and president to have their matters heard and decided. Further, the amendments retrospectively affect the rights of persons to challenge those decisions on the grounds that the decision was not made by a validly appointed member or president.

However, any departure from this fundamental legislative principle is justified as the amendments will provide certainty to individuals and the justice system as a whole by ensuring the validity of the appointment of, and any relevant exercise of jurisdiction by, the person who acted as a member and president.

### *Amendments to the SCQ Act*

The same fundamental principle issue arises in relation to the amendment to the SCQ Act - legislation should not adversely affect rights and liberties, or impose obligations, retrospectively (section 4(3)(g) of the LSA).

The proposed amendments to the SCQ Act will retrospectively provide for the continuation of the SCQ Regulation as if it did not expire on 1 September 2022; and for anything done in relation to a Supreme Court district under the SCQ Regulation to be valid between expiry and the commencement of this amendment.

These amendments may be considered a departure from the fundamental legislative principle under section 4(3)(g) of the LSA, as they retrospectively affect the rights of persons who may be impacted by any exercise of power, performance of function, decision or document produced, or other thing done in relation to proceedings (as it relates to a Supreme Court district) that occurred at any time after the expiry up to the revival of the expired regulation.

However, any departure from this fundamental legislative principle is justified as the amendments will provide certainty to individuals and the justice system as a whole by ensuring the continued validity of Supreme Court districts and any exercise of power, performance of function, decision or document produced, or other thing done in relation to proceedings (as it relates to a Supreme Court district) that occurred between expiry and the SCQ Regulation's revival.

## **Consultation**

In preparing the QLRC Report about the decriminalisation of sex work in Queensland, the QLRC released a public consultation paper and consulted widely in its review. Consequently, it was considered appropriate for consultation about amendments in the Bill that repeal sex-worker specific police powers to target the following stakeholders: the Queensland Police Union of Employees, the Queensland Council of Unions, Respect Inc, the Queensland Law Reform Commission, the Queensland Human Rights Commission, and the Queensland Law Society.

Similarly, when preparing Report No. 23, the Committee widely consulted with a diverse range of stakeholders to inform its consideration of decriminalising the offences of public intoxication, begging and public urination.

The independent member of the Controlled Operations Committee was consulted and supported the amendments to section 244 of the PPRA.

*Granting mining lease for Byerwen Coal*

As required under the *Mineral Resources Act 1989*, a public notice was issued in relation to the Byerwen Coal mining lease application, which provided an opportunity for all stakeholders to lodge an objection to the application.

Since that time, the Department of Resources has liaised with Byerwen Coal and Isaac Regional Council, particularly in relation to the proposed requirements for Byerwen Coal to transition its workforce from the camp into the town of Glenden. This feedback was used to develop the amendments.

The Chief Justice has been consulted on the amendments to the Mental Health Act and the SCQ Act.

## Notes on provisions

### Part 1 Preliminary

*Amendment 1* inserts clause 1A (Commencement) after clause 1 of the Bill. Clause 1A lists provisions to commence on a day to be fixed by proclamation.

In particular, it provides that part 9, other than sections 70 to 72 and 75 to 82, is taken to have commenced on 23 August 2023, which is the date these amendments were circulated in Parliament – the day it was announced that they would be moved during consideration in detail of the Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill 2022.

Clauses 73 and 74 are taken to have commenced on 23 August 2023 in case of the unlikely, but possible, event that an order of a court results in a large number of children entering the chief executive's custody in the period between circulating the amendments and commencement, which would overcrowd existing youth detention centres to a critically dangerous extent.

In those circumstances, it would be necessary to urgently establish additional detention centre capacity and it may not be possible, in the time available, to establish and operationalise that capacity in a way that is consistent with human rights.

### Part 2 Amendment of Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004

*Amendments 2 and 3* amend clause 40 (Amendment of sch 2 (Personal details for reportable offenders)) of the Bill.

*Amendment 2* omits reference to the MAC address of a radio or other electronic communication device that is part of, or installed in, the vehicle identified in clause 40, subsection 1. This means the proposed amendments in the Bill regarding schedule 2, item 9 of the CPOROPO Act will relate to the make, model, colour and registration number of the subsequently listed vehicles at subsections (a) and (b).

*Amendment 3* amends clause 40, subsection 3 of the Bill, which introduces a new item 15A in schedule 2 relating to details of each digital device in the reportable offender's possession, or that the offender has access to. This amendment omits reference to the MAC address of the device.

*Amendment 4* amends clause 42 (Amendment of sch 5 (Dictionary)), subsection 2, to omit the proposed definition of 'media access control (MAC) address' from the Bill, noting it is no longer required as it will no longer form part of the Act.

### Part 3A Amendment of Mental Health Act 2016

*Amendment 5* inserts a new part 3A (Amendment of Mental Health Act 2016) to the Bill. The part amends the *Mental Health Act 2016* by inserting a new chapter 21, part 3 to validate appointments to the Mental Health Court. The new part comprises new section 873 (Appointments to Mental Health Court and validation), which applies in



The lease is subject to conditions that will require the progressive transition of Byerwen's workforce from mining lease 700066 to being accommodated in Glenden. Several interim milestones are set out (e.g. 10 per cent of workers must be accommodated in Glenden between 31 March 2025 and ending on 30 March 2026). The final year of the lease (period 31 March 2029 to 31 March 2030) is provided to allow for decommissioning activities to occur.

From 31 March 2029, the holder must accommodate all workers in Glenden. However, the Minister may vary the interim milestones. It is intended that such variations would only be made in extenuating circumstances and in consultation with the Coordinator-General. Variations can be made to one or more of the dates in the interim milestones, but variation cannot be made to the final milestone, i.e., the requirement to have all workers accommodated in Glenden by 31 March 2029 cannot be changed.

The lease is subject to further conditions that at least 30% of the workforce accommodated in Glenden should be accommodated in residential dwellings. As of 31 March 2029, the holder must house 30% of the total workforce at the mine in residential dwellings.

For those workers accommodated in non-residential dwellings, the provision seeks to ensure that a bed need only be provided for those workers requiring accommodation at a given time. This provides flexibility to the holder regarding how they accommodate these workers, provided they are accommodated in Glenden.

Finally, the lease is subject to reporting requirements. By 1 July for each year of the lease to 1 July 2029, the holder must provide a report outlining their compliance with, for the relevant period, the progressive transition of workers from the mine site to accommodation in Glenden. The specific requirements of this report are to be prescribed by regulation.

New provision 334ZJO varies several existing leases over the Byerwen mine to impose additional conditions. The conditions seek to prevent the relocation of the current worker's camp to another mining lease by requiring Byerwen Coal to accommodate their workers either in Glenden or on ML700066 and not on the existing leases.

The leases are subject to further conditions that at least 30% of the workforce accommodated in Glenden should be accommodated in residential dwellings. As of 31 March 2029, the holder must house 30% of the total workforce for the mine in residential dwellings.

For those workers accommodated in non-residential dwellings, again the provision seeks to ensure that a bed need only be provided for those workers requiring accommodation at a given time. This provides flexibility to the holder regarding how they accommodate these workers, provided they are accommodated in Glenden.

New provision 334ZJP supplements new provision 334ZJO by providing that the same conditions imposed on existing leases that seek to prevent the relocation of the current worker's camp are also taken to apply to any future mining leases granted or renewed for the Byerwen mine project. This includes specific mining lease applications 10355, 10356, 10357 and 10374 which are under consideration at the time of commencement.

New provision 334ZJQ provides that no compensation is payable by the State to any person because of the operation of Part 4C. An exception is provided for compensation as required under sections 279 or 280 of the *Mineral Resources Act 1989*.

New provision 47F updates the dictionary of the *Mineral Resources Act 1989* to provide relevant definitions for the new part.

**Amendment 7** inserts clause 50A (Amendment of s 46 (When power applies to behaviour)) to the Bill. This clause will repeal section 46(5) of the PPRA, which stipulates a police officer may issue a direction to a person in a regulated place under section 48, if the police officer reasonably suspects the person is soliciting for prostitution.

**Amendment 8** inserts clause 50B (Insertion of new ch 2, pt 8) to the Bill. This clause introduces a new Part 8 (Power to detain particular intoxicated persons) to chapter 2 of the PPRA, which includes sections 53BO, 53BP and 53BQ.

Section 53BO (Other police powers not affected) clarifies that nothing in the new Part 8 affects the power of a police officer under the PPRA or any other Act, to take action in relation to a person who is intoxicated.

Section 53BP (Detaining intoxicated persons) introduces a police power to detain a person who is intoxicated in a public place. The new power is linked to an intoxicated person's behaviour, including the risk they pose to themselves or others in those public spaces. A police officer must be satisfied the circumstances detailed in subsection (1) are met, prior to detaining the intoxicated person.

Additionally, a person detained under this provision must be released if the police officer is satisfied the person is no longer intoxicated, or after 8 hours from the time the person was first detained, whichever is earlier.

A police officer may also release a person from detention at any time if the police officer considers it appropriate to do so.

For example, it may be appropriate to release the person from detention if:

- an appropriate friend or relative agrees to provide care for the intoxicated person and facilitate their transportation to a place of safety;
- a vehicle, other than a police vehicle, is available and can safely transport the intoxicated person to a place of safety, and it is more appropriate for the person to use this vehicle. Examples of appropriate alternative vehicles include an ambulance, or a vehicle operated by an appropriate support service.

New section 53BQ (Transporting detained persons) applies in relation to a person who is detained under section 53BP.

Under this section a police officer may transport an intoxicated person and release them at a place of safety if the police officer is satisfied that the person's behaviour or presence does not pose a risk of harm to any person at the place of safety, including, for example, harm caused by domestic violence.



Additionally, if a person is apparently in charge of the place of safety, the person in charge must agree to provide care for the intoxicated person.

In determining whether the person's behaviour or presence poses a risk of harm to any person at the place of safety, a police officer may consider a variety of factors, including whether the person is subject to a domestic violence order, a police protection notice or release conditions which would prevent the person from entering or remaining at the place.

Nothing in section 53BQ requires a person who is released at a place of safety to remain at the place.

Subsections (3) and (4) allow a police officer to transport an intoxicated person to a police station or watch-house if the police officer is unable to find a place of safety located within a reasonable distance from where the person is detained or the police officer is unable to transport and release the person at a place of safety. The detention of an intoxicated person at a police station or watch-house is subject to section 53BP (2) and (3) which outlines the circumstances for releasing an intoxicated person from police detention.

**Amendment 9** inserts clause 50C (Amendment of s 244 (Matters to be taken into account)) to the Bill.

This clause inserts a new subsection 244(3) to clarify that section 244(1)(g)(iii) will not apply in circumstances involving:

- the possession, distribution or editing of material that depicts a sexual offence;
- the production of material that appears to depict a sexual offence provided the material does not depict a real person; and
- the communication with a person suspected of committing or having committed a sexual offence; seeking to commit a sexual offence; offering to engage in conduct that would constitute a sexual offence; or enabling a person to engage in conduct that would constitute a sexual offence.

Examples are provided for subsection (3)(a) and (b) to assist with interpretation.

This clause also inserts a new subsection (4) which provides further clarity by providing definitions for the terms 'chat group', 'distributing' and 'material' which are used in section 244.

'Chat group' means a group of persons using electronic communication to communicate within the group, regardless of whether the service used for communication is intended to be primarily used for that purpose.

'Distributing' and 'material' are defined through reference to the terms 'distribute' and 'material' which are defined in section 207A of the Criminal Code.

**Amendment 10** inserts clause 50D (Omission of s 378 (Additional case when arrest for being intoxicated in a public place may be discontinued)) to the Bill.

This clause omits section 378 from the PPRA which relates to the transportation and release of a person arrested under section 10 (Being intoxicated in a public place) of the SO Act as it will become redundant as a consequence of repealing this section.

**Amendment 11** inserts clause 50E (Amendment of s 394 (Duty of police officer receiving custody of person arrested for offence)) to the Bill.

This clause amends section 394(2)(c) of the PPRA by omitting the requirement of a prescribed police officer at a police station, police establishment or watch-house to decide whether to discontinue an arrest under section 378 for a person arrested for being intoxicated in a public place. The decriminalisation of public intoxication and correlating repeal of section 378 of the PPRA mandates the amendment of section 394(2)(c) to remove reference to subsection (i).

This clause additionally amends section 394(3) to remove reference to section 378.

**Amendment 12** inserts clause 50F (Amendment of s 442 (Application of ch 16)) to the Bill.

This clause amends section 442 of the PPRA by providing that chapter 16 (Search powers for persons in custody) applies to a person who is detained under the new chapter 2, part 8 (Power to detain particular intoxicated persons). This amendment enables the application of sections 443 and 444, which authorise a police officer to search a detained person and seize certain things, for example anything that may endanger anyone's safety, and outlines police powers relating to a thing taken from the detained person.

**Amendment 13** inserts clause 50G (Amendment of s 444 (Powers relating to thing taken from person taken to place of safety)) to the Bill.

This clause amends section 444(1) by replacing reference to section 378 with reference to the new section 53BQ(2). Section 53BQ(2) relates to the power to transport an intoxicated person detained under section 53BP and release the person at a place of safety.

The amendment will allow a police officer, who has taken an item from an intoxicated person under section 443 to give that item to a person who is in charge of a place of safety or an adult friend or family member if the intoxicated person is taken to the home of a friend or family member.

The clause also amends section 444(2)(c) by omitting reference to 'in possession or' when referring to the person in charge of the place of safety.

**Amendment 14** inserts clause 50H (Amendment of s 602C (Police officer may give initial police banning notice)) to the Bill.

This clause amends section 602C(3)(a) of the PPRA by omitting a reference to 'being intoxicated in a public place in contravention of section 10 of the SO Act' in the sixth dot point of examples of disorderly, offensive, threatening or violent behaviour.

**Amendment 15** inserts clause 50I (Amendment of s 602G (How police banning notices may be given)) to the Bill.

This clause clarifies the operation of section 602G of the PPRA by removing any ambiguity regarding the service options for banning notices through providing that:

- Initial banning notices may be served personally, or by electronic communication to a unique address nominated by the respondent, unless prohibited by subsection (2); and
- Extended banning notices may be served personally, by post, or any other way permitted under section 39 of the *Acts Interpretation Act 1954* to which this subsection applies, in addition to service by electronic communication to a unique address nominated by the respondent as outlined in subsection (1)(b).

**Amendment 16** inserts clause 50J (Amendment of s 604 (Dealing with persons affected by potentially harmful things)) to the Bill.

This clause amends section 604(2) of the PPRA by omitting ‘place, other’ and inserting ‘place of safety’ and by omitting the examples listed in this subsection. This is a consequential amendment to reflect the definition of ‘place of safety’ introduced in the new section 792B and creates consistency within the PPRA.

**Amendment 17** inserts clause 50K (Amendment of s 605 (Duties in relation to person detained under s 604)) to the Bill.

This clause makes consequential amendments to section 605 of the PPRA to create consistency within the Act following the introduction of the definition of ‘place of safety’ at section 792B and the introduction of the power to detain particular intoxicated persons in chapter 2, part 8.

Subsection (1) is amended to omit the example of what may constitute a place of safety.

Subsection (2) to (6) are omitted and replaced with new subsections (2) to (5).

**Amendment 18** inserts clause 50L (Omission of ss 606 and 607) to the Bill.

This clause repeals sections 606 (No compulsion to stay at place of safety) and 607 (Review of operation of ss 604-606) of the PPRA as these sections are no longer necessary.

The clarifying provision in section 606 will now be contained within the new section 602(5) through amendments made by clause 50K.

The legislative review of the powers contained within sections 604-606 required by section 607 was completed by the Crime and Corruption Commission (CCC) (formerly the Crime and Misconduct Commission) in 2005 and the report, ‘Police powers and VSM: A Review’ was tabled in the Legislative Assembly.

**Amendment 19** inserts clause 50M (Amendment of s 640 (Transfer of persons in watchhouses) in the Bill.

This clause inserts an override declaration under section 43 of the HR Act in relation to the transfer of a child between watchhouses and police holding cells.

Procedural fairness is not required, due to the impracticality of obtaining and taking into account the child's views on each occasion.

A human rights override declaration applies until 31 December 2026, with the possibility of extension by regulation for up to one year. This is to enable management of the transfer of children between watchhouses during the same period of time as other relevant overrides outlined in these amendments.

**Amendment 20** inserts clause 50N (Insertion of new s 792B) in the Bill which introduces a new meaning of 'place of safety' in the PPRA.

The new section 792B (Meaning of *place of safety*) identifies a place of safety may be a hospital (if they require specialised medical attention), or a place other than a police station or watch-house, where the person can recover safely from the effects of being intoxicated or the potentially harmful thing.

Examples are provided for subsection (1)(b) to assist with interpretation.

However, subsection (2) makes clear that a place is not a place of safety if there is a risk of domestic violence.

This ensures that there is no likelihood of domestic violence or associated violence happening at the place because of the person's condition, or because of the person's history of perpetrating domestic violence, which may be evident if the person is subject to a domestic violence order, police protection notice or release conditions preventing the person from entering or remaining at the place.

This also ensures the person is not placed at risk of suffering domestic violence or associated violence as an aggrieved due to other persons being present at the place. Subsection (3) identifies that a vehicle, other than a police vehicle, may be a place of safety if the person can be safely transported to a place of safety mentioned in subsection (1).

**Amendment 21** inserts clause 52 (Insertion of new ch 24, pt 24) to the Bill.

This clause inserts a new Part 24 (Validation and transitional provisions for *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023*) to the PPRA.

Part 24 introduces a new Division 1 (Preliminary) containing a new section 893 which provides a definition for this part, so that 'former', in relation to a provision of this Act, means the provision as in force immediately before the commencement.

Part 24 also introduces a new Division 2 (Validation provisions) which includes sections 894 (Refined limitations on controlled operations does not affect past operations) and 895 (Validation of giving of particular extended police banning notices).

Section 894 applies to a controlled operation authorised by the chief executive officer prior to the commencement of the amendment which involved conduct mentioned in section 244(3). The amendment declares that nothing in section 244(1)(g)(iii) prevented the chief executive officer granting authority for the controlled operation under section

243. It also declares that the authority to conduct the controlled operation is, and is taken to have always been, valid.

Section 895 provides that an extended police banning notice that was, prior to commencement, given to a person by post is, and is taken to have always been, valid as if the new section 602G was in force.

Finally, Part 24 introduces a new Division 3 (Transitional provisions) which includes section 896 (Continued application of former ss 378 and 394) and section 897 (Continued application of former ss 604 and 605).

Section 896 applies if a person is under arrest for being intoxicated in a public place on the commencement of this Act. Section 897 applies if a person is being detained under section 604(3) of the PPRA on the commencement of this Act. In both situations police may still continue to deal with the person as if the new Act had not yet commenced.

**Amendment 22** inserts clause 53 which amends schedule 2 (Relevant offences for controlled operations and surveillance device warrants).

This clause amends section 4 of schedule 2 by omitting reference to sections 229H, 229I and 229K of the Criminal Code. Additionally, section 5 is omitted in its entirety, removing reference to sections 78(1), 79(1), 81(1) and 82 of the *Prostitution Act 1999*.

**Amendment 23** inserts clause 54 which omits references in section 9 of schedule 5 (Additional controlled activity offences) to an offence against section 73 (Public soliciting for purposes of prostitution) of the *Prostitution Act 1999*.

**Amendment 24** inserts clause 55 which amends schedule 6 (Dictionary) by:

- inserting reference to a ‘place of safety’ and referring to the meaning contained in new section 792B; and
- expanding the definition of ‘enforcement act’ by inserting a new subsection (y) to include the detention of a person under charter 2, part 8.

## **Part 5            Amendment of Police Powers and Responsibilities Regulation 2012**

**Amendment 25** inserts a new Part 5 (Amendment of Police Powers and Responsibilities Regulation 2012) to the Bill containing new clauses 56 to 58.

*Clause 56* states this part amends the *Police Powers and Responsibilities Regulation 2012*.

*Clause 57* makes a consequential amendment to section 16 (Prescribed particulars-Act, s 605(6)) to omit reference to section ‘605(6)’ and in its place insert ‘605(4)’.

*Clause 58* amends schedule 9 (Responsibilities Code) to insert a new section 53E (Detention of person under Act, ch 2, pt 8-Act, s 679(1)).

Section 53E states information in relation to a person detained under the new chapter 2, part 8 (Power to detain particular intoxicated persons) of the Act that must be included in the register of enforcement acts. This includes the person’s name, the time and

location the person was detained, if the person was transported and detained at a police station or watch-house – the reason why, and any apparent injury the person received during detention.

## **Part 6 Amendment of Police Service Administration Act 1990**

*Amendment 26* inserts a new part 6 (Amendment of Police Service Administration Act 1990) to the Bill containing new clauses 59 to 61.

Clause 59 identifies this part amends the *Police Service and Administration Act 1990*.

Clause 60 amends the heading of part 11 of the Act to reflect that this part also includes validating provisions.

Clause 61 inserts a new division 16 to part 11 of the Act.

Division 16 (Transitional and validation provisions inserted under Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023) contains new sections 11.44 to 11.54 of the Act.

Section 11.44 (Definitions for division) provides definitions for the division.

Section 11.45 (Application of division) identifies that the division applies to improperly made referrals under section 7.10 on or after 30 October 2019 but before 8 March 2023.

This section also identifies that a referral is improperly made if –

- it did not specify a particular prescribed officer;
- another officer purported to act as the prescribed officer but was not the officer specified in the referral; and
- it did not correctly specify a particular prescribed officer by name and rank.

Section 11.46 (Validation of affected referrals and subsequent action) validates affected referrals identified in section 11.45, along with any subsequent action.

In validating affected referrals and any subsequent action, all associated disciplinary proceedings, decisions or sanctions imposed are validated. Examples of subsequent action are provided within subsection (1) to include a decision to start a disciplinary proceeding and a subject officer's acceptance of a proposed disciplinary sanction or professional development strategy under section 7.21.

This section also contains clarifying and declaratory provisions in relation to the operation of this section and identifies that no compensation is payable to a person because of the operation of this section.

Section 11.47 (Demotions and suspensions affected by validation) applies in circumstances in which a disciplinary sanction, which has been validated under section 11.46, and the disciplinary decision is the demotion or suspension of the subject officer.

This section provides that in such circumstances, all duties performed by the subject officer during the period of the demotion or suspension, and anything else done under this Act or another law in relation to performing the duties, is valid as if the officer had not been demoted or suspended.

This ensures that if an officer's suspension or demotion was revoked due to actions taken by the IAC following the *Cousins* Court of Appeal decision (meaning the officer returned to their normal duties), any lawful action taken by the officer in performing their duties, is valid as if the officer had not been demoted or suspended at the time.

In this section 'duties' performed by an officer includes the performance of higher duties (meaning duties performed because of a rank held by the officer on a temporary basis) and the exercise of a power, or authorisation of an action, by the officer under the PPRA or another law.

Section 11.48 (New period for starting disciplinary proceedings) applies if a disciplinary proceeding related to an affected referral has not been started before commencement and the disciplinary proceedings cannot be started because of a time restriction under section 7.12.

In these circumstances, subsection (2) provides that despite the time limitations for commencing a disciplinary proceeding against an officer outlined in section 7.12, the disciplinary proceeding may be started within 28 days after commencement.

This ensures all referred complaints in which disciplinary proceedings were not commenced due to the invalidation of the referral, can proceed as if the referral was valid.

Section 11.49 (Continuation of interrupted disciplinary proceedings) applies if a disciplinary proceeding was commenced but was not concluded under section part 7.

In these circumstances, this section provides that the disciplinary proceeding may be continued by the prescribed officer repeating the last action taken by the officer under part 7, division 3 or 4.

A legislative example is provided to clarify the operation of this section. This example provides that if the last action taken by the prescribed officer was to give the subject officer a proposed sanction notice under section 7.28(2), the disciplinary proceeding may be continued by the prescribed officer giving the subject officer a new proposed sanction notice under section 7.28(2).

Section 11.50 (Right to review by tribunal) applies if, on or after 15 June 2022, a subject officer was given a QCAT information notice for a disciplinary decision relating to an affected referral, unless the officer applied to the tribunal and the tribunal made a decision on the application concluding the review.

If these circumstances apply, the commissioner must give the subject officer and the CCC a new QCAT information notice for the disciplinary decision within 14 days after the commencement. This re-enlivens the subject officer's ability to apply to the tribunal for review of the disciplinary decision.

The purpose of this section is to provide certain subject officers with the opportunity to seek review of the disciplinary decision, if their decision not to seek a review or to discontinue proceedings seeking a review, may have been influenced by the belief that the referral relating to their matter was invalid following the Supreme Court decision in *William Johnson v Assistant Commissioner Maurice Carless & Anor* [2022] QSC 146. The re-enlivened right to review by tribunal is thus applicable to subject officers who received a QCAT information notice up to 28 days prior to the Supreme Court decision, as their right to apply for review by tribunal had not expired.

If under this section, a subject officer has applied to the tribunal for a review of the discipline decision, the tribunal must have regard to the action, if any, taken by the commissioner under sections 11.51(2) or (7) in relation to the discipline decision. This ensures that the tribunal considers the disciplinary decision in context of any subsequent action taken by the QPS, to avoid any unintended outcomes arising from the tribunal's decision making.

This section also provides that no QCAT application fee is payable by the subject officer if, before the commencement, the officer paid an application fee for a review by the tribunal in relation to the same disciplinary decision.

Section 11.51 (Remedial action by commissioner) applies if a disciplinary sanction or professional development strategy imposed on a subject officer is validated under section 11.46.

If these circumstances apply, the commissioner must take all action (remedial action) necessary to impose the disciplinary sanction or professional development strategy from the day it has effect under section 11.46.

This may include:

- recovering an amount paid to the subject officer if that money would not have been paid had the disciplinary sanction had effect before commencement;
- exercising the powers of a prescribed officer in imposing the disciplinary sanction under part 7, division 5;
- recovering a fine imposed as a disciplinary sanction.

The commissioner may recover an amount paid to the subjective officer mentioned in subsection (3)(a), by deducting the amount from the officer's fortnightly salary, at a rate of no more than 2 penalty units unless the subject officer provides written consent for a higher amount to be deducted. This money can also be recovered from the officer as a debt payable to the State.

However, subsection (3)(a) does not apply to an amount paid to the subject officer for duties actually performed by the officer. Legislative examples are provided to give further clarity to the operation of this provision.

Despite the requirement for the commissioner to take remedial action following validation of affected referrals, the commissioner may refrain from taking any or all



remedial action if satisfied taking the action would cause excessive hardship to the subject officer and refraining from taking the action is in the public interest.

The commissioner may refrain from taking remedial action, even if this would, in effect, negate the disciplinary sanction.

In considering whether to refrain from taking any or all remedial action, the commissioner may only delegate this power to a police officer of the rank of deputy commissioner.

Section 11.52 (Notice before taking remedial action) applies if the commissioner proposes to take remedial action in relation to a subject officer under section 11.51.

This section requires the commissioner to give the subject officer written notice, prior to taking remedial action, stating –

- the remedial action proposed to be taken and the date it is proposed to begin; and
- that, the officer believes the remedial action would cause excessive hardship, the officer may, within the response period (21 days after the notice is given to the officer), give the commissioner a written submission about the hardship.

If the subject officer makes a written submission regarding hardship, the commissioner must consider the submission before taking the remedial action.

Section 11.53 (Division not affected by other action) identifies that the division applies regardless of any direction the commissioner has given or any action taken in relation to the subject officer, because of the complaint for the referral.

This section provides that notices given to the subject officer stating that the affected referral is invalid or that the disciplinary proceedings related to the affected referral are concluded, have no effect.

Section 11.54 (Judicial review) states that unless the Supreme Court decides a decision made under this division is affected by jurisdictional error, the decision is final and conclusive and cannot be legally challenged in any court or tribunal.

## **Part 7           Amendment of Summary Offences Act 2005**

*Amendment 27* inserts a new Part 7 (Amendment of Summary Offences Act 2005) to the Bill containing new clauses 62 to 65.

Clause 62 (Act amended) states this part amends the *Summary Offences Act 2005* (the SO Act).

Clause 63 (Amendment of s 7 (Urinating in a public place)) amends section 7 (Urinating in a public place) of the SO Act.

Subclause (1) amends section 7(1) by omitting ‘place’ and inserting ‘place, other than by using a toilet’, to clarify the circumstances in which it is an offence to urinate in a public place.

Subclause (2) amends section 7(3) by omitting the meaning of ‘public place’ for the purposes of the section and inserting new subsection (3) to (5), which states:

- before a police officer takes enforcement action for an offence against section 7(1), the officer must consider whether, in all the circumstances, it is more appropriate to take no action;
- in making this determination, the police officer must have regard to –
  - whether the person had any vulnerability or special health needs which contributed to the person committing the offence;
  - whether the person, when committing the offence, took reasonable steps to avoid offending or embarrassing anyone.
- enforcement action for the purpose of this section, means starting a proceeding or serving an infringement notice in relation to the offence.

Clause 64 repeals section 8 (Begging in a public place).

Clause 65 repeals section 10 (Being intoxicated in a public place).

#### **Part 8           Amendment of Supreme Court of Queensland Act 1991**

*Amendment 28* inserts a new part 8 (Amendment of Supreme Court of Queensland Act 1991) to the Bill. The new part amends the SCQ Act by amending the heading of part 12 and inserting a new section 95 (Validation provision for Supreme Court of Queensland Regulation 2012) to provide that:

- the SCQ Regulation is taken not to have expired on 1 September 2022 and expires on 1 September 2024, unless repealed or exempted from expiry before that day; and
- anything done under the SCQ Act or another law before commencement of the section will have the same effect as it would have if the SCQ Regulation had not expired.

#### **Part 9           Amendment of Youth Justice Act 1992**

*Amendment 29* inserts a new Part 9 (Amendment of Youth Justice Act 1992) to the Bill.

Clause 69 states that this part amends the YJ Act.

Clause 70 inserts a new section 56 (Custody of child id not released by court) into the YJ Act. This section will make automatic arrangements for the custody and transport of children remanded in custody, to ensure clarity and certainty that police are to take the child and deliver them at an appropriate time to the chief executive. It also provides a framework for decisions about when the transfer to the chief executive’s custody will occur, taking into account a range of factors including the child’s needs, and the need to operate safe detention centres and watchhouses.

Procedural fairness is not required, due to the impracticality of obtaining and taking into account the child's views on each occasion.

A human rights override declaration applies to this decision-making process until 31 December 2026, with the possibility of extension by regulation for up to one year. This is to enable management of the current shortage in detention centre capacity with clarity and certainty.

Clause 71 omits words from section 135 that are no longer required due to the new section 56.

Clause 72 makes amendments to section 210 that mirror the above amendments to section 56. New section 56 establishes arrangements for children remanded in custody; amended section 210 makes arrangements for children sentenced to custody.

Clause 73 amends section 262 to allow the establishment of a youth detention centre that would not be compatible with human rights. This provision is intended to be used only in extraordinary circumstances, such as where an order of a court results in a large number of children entering the chief executive's custody in the period between circulating the amendments and commencement, which would overcrowd existing youth detention centres to a critically dangerous extent; or where, before new detention centres in Woodford and Cairns become operational, an extraordinary spike in numbers overwhelms both youth detention centres and watchhouses.

The human rights override expires at the end of 2026, by which time the new centres are expected to be operational. Those centres are expected to provide sufficient capacity to meet demand for some years, and any new detention centre then should be fully compatible with human rights.

New subsection 262(6) allows extension by regulation for up to one year, to allow for any unforeseen delay in the operationalisation of Woodford and Cairns.

New paragraph (3)(b) allows detention centres to be established outside the override. This will be how Woodford and Cairns will be established. Any detention centre established under the override will expire when the override expires (new subsection (6)).

Despite the override, new subsection (4) establishes a requirement that the Minister have regard to human rights when recommending the establishment of a detention centre. This is because although the override is considered necessary to ensure the safety of detainees and staff in the context of the current capacity shortage, it is not the case that human rights are not important or should be disregarded. New subsection (5) makes clear that the subsection (4) requirement is outside the HR Act. Due to the critical circumstances that would prevail before a regulation is made to which new subsection (2) applies, new subsection (5) also provides that failure to consider human rights does not invalidate the regulation.

Clause 74 inserts new section 262A which provides that HR Act section 58 does not apply to acts and decisions made in connection with a detention centre established under the section 262 override. This is to ensure that youth justice staff and police can do all

things reasonably necessary to operationalise the centre, including the examples set out under subsection (1).

This provision does not disapply section 58 from acts or decisions that do not relate to a child in a relevant detention centre, or to the placing of a child in a relevant detention centre. Nor does it disapply section 58 from acts or decisions that are not reasonably necessary for the administration of the YJ Act.

For example, transporting a child to the detention centre relates to the placing of the child in the detention centre, but the nature of the transport and the treatment of the child during transport do not, and are subject to section 58. The delivery of programs and services to the extent practicable given the built environment and other relevant conditions is reasonably necessary for the administration of the Act; but any mistreatment of a child is not, and would breach the child's human rights under the HR Act.

New section 262A is subject to the same expiry as the other overrides.

Clause 75 makes a minor and technical amendment to implement the original policy intent of section 105 of the *Inspector of Detention Services Act 2023* as passed (the IDS Act), that YJ Act section 272 (which requires ordinary visitors to seek chief executive approval for entry as a visitor to a detention centre) does not apply to the inspector of detention services. The IDS Act amendment did not take effect due to a drafting error and an intervening amendment made by the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2023*.

Clause 76 amends section 276DB to ensure the Childrens Court is constituted by a judge when hearing a review of a chief executive's decision. The effect of section 5 of the *Childrens Court Act 1992* is that otherwise, the court could be constituted by a magistrate or even two justices of the peace. It is considered appropriate that the court be constituted by a judge for a review of a chief executive decision.

New clauses 77-80 address drafting errors in the existing provisions for the transfer of remandees, which currently only apply to a person who was in custody on the day they reached the age of 17 and 10 months and has no court.

Clauses 77 and 78 combined have the effect that the provisions will apply to a remandee aged *at least* 17 and 10 months, and has no court date for at least two months at the time they are given a prison transfer notice.

Clause 79 and 80(1) contain consequential amendments.

Clause 80(2) provides the equivalent of clause 58, for the same reasons.

New clauses 81-82 insert transitional and validation provisions. Significantly, new sections 415 and 416 validate past actions taken in good faith where orders under current sections 56(4) or 210(2) were required to be made by courts remanding children in or sentencing children to custody, but the orders were not made. The provisions make valid and lawful any actions that would have been valid and lawful had the orders been made.

New sections 417 and 418 are transitional provisions applying the new framework for transfers from police to chief executive custody to children who were in police custody at commencement.

**Long title**

*Amendment 30* makes a consequential amendment to the long title of the Bill.