

# Police Service Administration and Other Legislation Amendment Regulation 2020

Explanatory notes for SL 2020 No. 211

made under the

*Police Service Administration Act 1990*

*Weapons Act 1990*

## General Outline

### Short title

*Police Service Administration and Other Legislation Amendment Regulation 2020*

### Authorising law

Section 10.28 of the *Police Service Administration Act 1990*

Section 172 of the *Weapons Act 1990*

### Policy objectives and the reasons for them

#### ***Police Service Administration Regulation 2016***

The first policy objective of the *Police Service Administration and Other Legislation Amendment Regulation 2020* (the amendment regulation) is to amend the *Police Service Administration Regulation 2016* (PSAR) to prescribe all Australian police agencies as approved agencies in section 67 'Approved agencies – Act, s. 10.2G' of the PSAR to facilitate efficient information sharing.

Under section 10.2L 'Giving information to approved agencies to enable use of information for particular purposes' of the *Police Service Administration Act 1990* (the PSAA), the Commissioner may give the head of an approved agency all or any information in a Queensland Police Service (QPS) database to enable the approved agency to use the information for a law enforcement purpose. Section 10.2L also authorises the Commissioner to give the information by allowing an authorised member of the approved agency to have direct access to a QPS database.

The QPS has streamlined information sharing with approved agencies through development of a web-based portal known as Self Service of Document Retrieval (SSoDR), which allows authorised agencies to securely search and retrieve certain documents from the Queensland Police Records and Information Management Exchange database (QPRIME).

Since 2008, Australian police agencies have been able to access and view national criminal history information through the National Police Reference System (NPRS), which is administered by the Australian Criminal Intelligence Commission.

Information sharing by the QPS to the NPRS is authorised under section 10.2J 'Giving approved information to police services and law enforcement agencies to enable use of approved information for particular purposes' of the PSAA. Section 10.2J authorises the transfer of the types of information listed under schedule 2 'Approved information' of the PSAR. The list of information that may be disclosed is broad.

However, the NPRS does not enable printing of criminal history information for court or other legal purposes and instead, a manual request for QPS criminal history information must be submitted to the QPS Police Information Centre (PIC). Manual requests must also be submitted for copies of court briefs. These requests are manually processed by PIC staff which is resource intensive and creates delays in the provision of the requested information.

The Australian Federal Police is currently the only police agency prescribed in section 67 of the PSAR as an approved agency. The proposed amendment in section 3 of the amendment regulation will prescribe police agencies in all other states and the Northern Territory as approved agencies. By agreement, authorised members from Australian police agencies will be able to use SSoDR to only obtain criminal histories and initial court brief documents. As SSoDR is a fully automated process, this amendment will improve the timeliness of document retrieval and reduce manual processing by the QPS. There is no change to the nature and extent of information accessed by the approved agencies, only to the process by which it is obtained. SSoDR has audit processes to ensure oversight of access and the information exchange process.

### ***Weapons Regulation 2016***

The second policy objective of the amendment regulation is to amend the *Weapons Regulation 2016* by inserting new section 143A 'Prohibition on possession of detachable magazines without licence'.

The *Weapons Regulation 2016* repealed and replaced the *Weapons Regulation 1996* but, due to an administrative error, the offence in repealed section 68E 'Prohibition on possession of certain magazines' was not replicated in the new regulation. The policy objective of the *Weapons Regulation 2016* was to replace the *Weapons Regulation 1996*, with no changes to the existing policy position and the omission of the section 68E offence was an oversight.

Other similar offences in repealed sections 68CA ‘Prohibition on possession of particular magazines – category B weapons’ and 68D ‘Prohibition on possession of particular magazines – category H weapons’ in the repealed *Weapons Regulation 1996* were included in the current regulation as sections 34 and 24 respectively. The omission of the section 68E offence has therefore created an anomaly where it is now an offence for the holder of a firearms licence to possess certain magazines, but it is not an offence for an unlicensed person to possess a magazine. The insertion of new section 143A will correct the anomaly.

## **Achievement of policy objectives**

### ***Police Service Administration Regulation 2016***

The amendment regulation achieves its first policy objective by amending section 67 of the PSAR to prescribe the following state and territory police agencies as approved agencies for the purposes of section 10.2G of the PSAA:

- New South Wales Police Force;
- Northern Territory Police Force;
- Western Australia Police Force;
- Tasmania Police Service;
- South Australia Police; and
- Victoria Police.

Authorised members within each police agency will be able to access and print copies of full criminal history information and court briefs from SSoDR, creating efficiencies for those jurisdictions and for the QPS. Access via SSoDR is auditable, enabling oversight and transparency of the information exchange process.

### ***Weapons Regulation 2016***

The amendment regulation achieves its second policy objective by inserting new section 143A into the *Weapons Regulation 2016*. New section 143A reinstates the offence contained in section 68E of the repealed *Weapons Regulation 1996*. The new section 143A(1) will prohibit the possession of a detachable magazine for a category A, B weapons without an appropriate weapons licence or without a reasonable excuse. Similarly, the new section 143A(2) will prohibit the possession of a detachable magazine for a category C, D, H or R weapon without an appropriate weapons licence or without other lawful authority, justification or excuse.

## **Consistency with policy objectives of authorising law**

The amendment regulation is consistent with the objectives of the authorising Acts.

## **Inconsistency with policy objectives of other legislation**

The amendment regulation is consistent with the policy objectives of other legislation.

## Benefits and costs of implementation

The amendment regulation will deliver efficiencies in the provision of criminal history information and court brief documents to other policing jurisdictions. Any costs incurred through the implementation of the amendment regulation are expected to be negligible and will be met through existing budgets.

## Consistency with fundamental legislative principles

Section 4(2)(a) of the *Legislative Standards Act 1992* requires legislation to have sufficient regard to the rights and liberties of individuals. This includes a right to privacy and confidentiality of personal information.

The effect of section 3 of the amendment regulation is to allow for the efficient sharing of information with police agencies of other states and the Northern Territory. This includes sharing of criminal history and court brief information and therefore, the amendment breaches the above fundamental legislative principle.

The breach is considered justified in the circumstances and in accordance with the purposes of the information sharing provisions in Part 10, Division 1A of the PSAA. The information can only be shared for a law enforcement purpose which is defined in section 10.2.G of the PSAA as 'a purpose for which the agency is authorised to use the information under a law of the Commonwealth or a State'. This is generally for investigative and prosecution purposes and supports national cooperative policing efforts.

The information is already being shared between police agencies via NPRS and manual requests in accordance with section 10.2J of the PSAA. Although the amendment to section 67 of the PSAR allows disclosure of any information in a QPS database, only criminal histories and initial court brief documents will be provided via the SSoDR portal. The SSoDR portal provides for a more automated method of sharing this information and is fully auditable to ensure information is only shared with authorised members and for relevant purposes.

Current legislative safeguards that ensure that information is disclosed appropriately, including section 10.2M 'Commissioner may impose conditions' and section 10.2P 'Misuse of information given under this division' of the *Police Service Administration Act 1990*, will continue to apply to information disclosed in accordance with the amendment regulation. This further mitigates any concerns that may be held about the amendment regulation's impact upon a person's right to privacy.

It may be further argued that the rights and liberties of an individual are impacted through the insertion of the new section 143A into the *Weapons Regulation 2016*, as a person found in possession of a detachable magazine in non-compliance with this section will commit an offence. However, this impact on the rights and liberties of an individual does not apply if the person is appropriately licenced or if a person has a reasonable excuse to possess a detachable magazine for a category A or B weapons, or a lawful authority, justification or excuse in the case of category C, D H and R weapons.

The purpose of this new section is to promote the freedom and security of the community generally as it ensures detachable magazines are only kept by appropriate persons. This new section is considered justified as it helps prevent the misuse of weapons in the community outweighing the impact this new section may have on an individual's rights and liberties.

## **Consultation**

The state and territory police forces and services in New South Wales, Victoria, Tasmania, South Australia, Western Australia and Northern Territory were consulted and support the PSAR Regulation amendment.

The Queensland Police Service has determined the amendment regulation is exempt from regulatory impact analysis as it falls within the following exclusion category as outlined in the Queensland Government Guide to Better Regulation:

- (j) relating to police powers and administration, general criminal laws, the administration of courts and tribunals and corrective services.

Consequently, the Office of Best Practice Regulation was not consulted in relation to the Regulation.