

POLICE POWERS AND RESPONSIBILITIES AND OTHER LEGISLATION AMENDMENT BILL 2003

EXPLANATORY NOTES

GENERAL OUTLINE

Objective of the Legislation

The objectives of the legislation are to –

- amend the *Police Powers and Responsibilities Act 2000* to clearly specify when a vehicle may be impounded or forfeited for a ‘road hoon’ related offence; to allow for the seizing of potentially harmful things; and to allow for a person affected by a potentially harmful thing to be taken to a place of safety;
- amend the *Bail Act 1980* and the *Juvenile Justice Act 1992* to allow police officers other than officers-in-charge of police stations and police establishments and watch-house managers to grant bail;
- amend the *Corrective Services Act 2000* to provide a more efficient method of arranging for prisoners to appear before a court;
- amend the *Police Service Administration Act 1990* to provide for criminal history and antecedent checks to be undertaken on persons applying for employment, or directly or indirectly employed by the Queensland Police Service;
- amend the *Prostitution Act 1999* to abolish the Prostitution Advisory Council and increase the membership of the Prostitution Licensing Authority, and to address a health related matter;
- amend the *Vagrants Gaming and Other Offences Act 1931* to provide a new part dealing with the quality of community use of public places; to provide for the unlawful sale of potentially harmful things; and to prevent unlawful tattooing and body piercing of minors;

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- amend the *Liquor Act 1992* to complement amendments to the *Vagrants Gaming and Other Offences Act 1931* by increasing the penalty for the sale of alcohol to certain persons;
- amend the *Weapons Act 1990*, the *Weapons Regulation 1996*, and the *Weapons (Categories) Regulation 1997* to require the licensing of cross bows; to regulate the use of shanghais and swords; and to clarify licensing conditions on weapons; and
- correct technical defects in some Acts.

Means of Achieving Policy Objectives

The Bill achieves its objectives by amending the relevant legislation.

Alternative Means of Achieving Policy Objectives

There are no alternative means of achieving the policy objectives.

Estimated Cost for Government Implementation

Costs involved in abolishing the Prostitution Advisory Council and increasing the size of the Prostitution Licensing Authority will be cost neutral. The existing and future budgets of the Prostitution Advisory Council will, where appropriate, be transferred to the Prostitution Licensing Authority.

Consistency with Fundamental Legislative Principles

While this Bill recognises the importance of protection of law-abiding citizens, by ensuring a balance between the rights and liberties of individuals and the institution of Parliament, three proposals have been identified as having possible fundamental legislative principles issues under the *Legislative Standards Act 1992*.

Part 2, clause 8, amends section 59H of the *Police Powers and Responsibilities Act 2000* to allow for an application for a 3 month impoundment of a vehicle, or a forfeiture of a vehicle to be made prior to a driver being found guilty of a prescribed offence. The amendment overcomes a current defect in the Act that allows a person to continue to commit prescribed offences without the risk of a 3 month impoundment or

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forfeiture of a vehicle until findings of guilt are recorded for previous offences.

However, to provide a balance for this necessary amendment, clause 9 amends section 59I of the *Police Powers and Responsibilities Act 2000*. Subsection (2) requires a court to which an application for impoundment or forfeiture is made to adjourn the hearing of the application until all prescribed offences to which the application relates are heard and determined by the court. Additionally, subsection (3) requires that the court order the return of the vehicle to its owner during the period of the adjournment mentioned in subsection (2). Consequently, although an application can be lodged before a finding of guilt, the application cannot be acted on until relevant charges are heard and determined by a court.

Part 3, clause 18 inserts a new section 40 into the *Bail Act 1980*. The section declares that any bail granted by a police officer, other than an officer-in-charge of a police station or police establishment, or a watch-house manager, in the period since the commencement of the *Police Powers and Responsibilities Act 2000*, is not invalid. The section is necessary to ensure that bail granted remains valid for the person to whom it was granted, and that any offence committed which may relate to a bail offence or a bail hearing can be heard and determined by a court.

Part 13, clause 63 inserts section 183 to declare that an authorised officer has, and always has had, power to impose a condition on a licence issued under this Act that restricts, or has the effect of restricting, the possession or use of a weapon to a registered weapon of a particular category

As a result of a District Court appeal in the matter of *Hildebrand v Coyne* (DCA 14 May 2003) it is necessary to amend the *Weapons Act* to ensure that certain conditions may be legally placed on weapons licences by an Authorised Officer. The decision resulted from an appeal by the Queensland Police Service against the dismissal of a charge under section 34(1) of the *Weapons Act* by the magistrate at Mackay. The charge alleged that the respondent contravened a condition of his weapons licence in that he possessed a firearm that was not 'registered' to his licence.

Section 15 of the *Weapons Act* permits an Authorised Officer to impose conditions on a licence that may limit the use or possession of a weapon. In this case the Authorised Officer decided that the respondent's use and possession of category A and B weapons be limited to 'registered weapons' mentioned in the licence and be for a particular purpose. The respondent successfully argued that the conditions imposed on the respondent's licence were invalid as being contrary to section 17 of the Act and to section 18 of the Regulations. The Judge found that any condition imposed on a licence

must be subject to the clear intent of section 17. In dismissing the appeal, he held that the conditions attached to the respondent's licence purportedly limiting his possession to 'registered category A and B weapons' were contrary to the express terms of section 18 of the Regulations.

As a result of the appeal decision it is necessary to amend the Weapons Act to ensure that the original intent of Parliament in registering weapons to licences is recognised and confirmed. In making this amendment, there is a need to validate previously issued licences and conditions placed on them. Therefore, a declaratory amendment is made to the *Weapons Act* to validate conditions that may be imposed by the Authorised Officer to limit use or possession of a weapon.

Consultation conducted in Development of the Bill

With respect to the contents of the Bill, the following departments and agencies were consulted with—

- Department of the Premier and Cabinet;
- Queensland Treasury;
- Department of Industrial Relations;
- Department of Justice and Attorney-General;
- Department of Emergency Services;
- Department of Health;
- Department of Tourism, Racing and Fair Trading;
- Department of Employment and Training, Office of Youth Affairs;
- Department of Housing;
- Department of Public Works;
- Department of Aboriginal and Torres Strait Islander Policy;
- Department of Families;
- Department of Corrective Services;
- Corptech; and
- Partnerone.

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With respect to those issues addressed in parts 8 and 12 of the Bill, consultation was also undertaken at a ministerial level in the form of a Joint Ministerial Summit and involved –

- Minister for Police and Corrective Services, and the Minister Assisting the Premier on the Carpentaria Minerals Province;
- Minister for Justice and Attorney-General;
- Minister for Families, Minister for Aboriginal and Torres Strait Islander Policy, Minister for Disability Service and Minister for Seniors;
- Minister for Public Works and Minister for Housing;
- Minister for Health and Minister Assisting the Premier on Women's Policy;
- Minister for Emergency Services and Minister Assisting the Premier in North Queensland;
- Cr Mooney, Mayor of Townsville;
- Cr Bunnell, Deputy Mayor of Townsville;
- Cr Wilson, Chair, City Safe Standing Committee, Townsville;
- Mr Guthrie, CEO, Townsville City Council;
- Mr Hornby, Director, Community and Cultural Services, Townsville City Council;
- Mr Bligh, Legal Officer, Townsville City Council;
- Mr Lees, Consultant, Townsville City Council;
- Mr Steen, Manager, Health Services, Townsville City Council;
- Mr King, Corporate Projects Officer, Townsville City Council;
- Mr Cardiff, Director, Planning and Development, Townsville City Council;
- Mr Hoolihan, Chair, Townsville Thuringowa Action Group;
- Mr Smallwood, Chair, ATSIC Regional Council;
- Mr Illen, Chair, Aboriginal and Islander Health Service;
- Mr McIntyre, CEO, Keriba Mina Torres Strait Islander Corporation;
- Mr Appo, Deputy Chair, ATSIC Regional Council; and

- Ms Walters, Anti Discrimination Commission.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Short title

Clause 1 provides the short title of the Bill.

Commencement

Clause 2 provides that parts 4 and 12 commence on 1 April 2004. The clause provides that section 14 commences on proclamation and section 13; part 13, division 3; section 80; and part 15 commence on a day to be fixed by proclamation or 1 November 2004, whichever happens first. The remaining provisions commence on assent.

PART 2—AMENDMENT OF POLICE POWERS AND RESPONSIBILITIES ACT 2000

Act amended in pt 2 and sch

Clause 3 is a machinery clause allowing for the amendments.

Amendment of s 44A (Prevention of particular offences relating to liquor)

Clause 4 amends section 44A to permit a police officer to seize and dispose of opened and unopened containers of liquor which involve or are likely to involve an offence mentioned in subsection (1). For the purposes of the section, liquor is to include methylated spirits.

Insertion of new s 59AA

Clause 5 inserts a new section 59AA and declares when a person is taken to have been charged for the purpose of the division in terms of the impoundment of, or applications for impoundment of, vehicles.

Amendment of s 59C (Powers for prescribed offence)

Clause 6 amends section numbers and makes reference to the driver of a vehicle.

Amendment of s 59G (Content of notice for second or subsequent offence)

Clause 7 provides for the content of a notice to be served on a person who has previously been found guilty of a prescribed offence or has previously been charged with a prescribed offence which has not yet been determined by a court.

Replacement of s 59H (Application for impounding)

Clause 8 corrects an unintended limitation in the Act that allows a person to continue to commit prescribed offences without the risk of a 3 month impoundment or forfeiture of a vehicle when previous prescribed offences have not yet been heard and determined by a court. The amendment allows for an application for a 3 month impoundment or forfeiture of a vehicle to be made to a court where a person has either been previously found guilty of a prescribed offence or offences or has been previously charged with a prescribed offence or offences which have not yet been heard and determined. The section also allows for a combination of prescribed offences for which a person has been found guilty or has been charged but which have not yet been heard and determined. The clause also inserts section 59HA accordingly.

Replacement of s 59I (Orders on application for impounding order if relevant offence not decided)

Clause 8 also replaces the current section 59I with a new section that complements amendments to the division. The new section requires a court to adjourn the hearing of an application where a charge has not yet been heard and determined until the driver has been found guilty of the

relevant number of offences. The court is also required to order the return of the vehicle to its owner unless a person has previously been found guilty of a prescribed offence in which case a discretion rests with the court. The section also requires that a person not sell or dispose of a vehicle subject to an impoundment order which has not been heard and determined.

59IA Orders on application for forfeiture order if relevant offence not decided

This section, which is part of clause 8, relates to applications for forfeiture orders. It follows the same procedures as contained in section 59I, with necessary adaptations.

Amendment of s 59J (Where application to be decided)

Clause 9 makes necessary amendments to section 59J to complement the amendments to the division.

Amendment of s 59L (Consideration of application)

Clause 10 amends section 59L to clarify that the determination of applications for impoundment or forfeiture relate to the driver of the vehicle and not the owner or person in control. Therefore, it is the driver's history of previous prescribed offences that is relevant to the application. Additionally, new subsection (3) allows a court to order the impoundment of a vehicle for 3 months where a forfeiture application is made but cannot continue due to the driver being found not guilty of a second or subsequent prescribed offence.

Insertion of new s59LA (Counting the occasions)

Clause 11 inserts a new section that provides a court with a determined method for calculation of the order of offences.

Amendment of s 59O (Powers for enforcing court order)

Clause 12 amends references to sections as a result of the amendments.

Replacement of s 371A (Power to seize potentially harmful things)

Clause 13 omits the current section 371A and replaces it with a new section 371A. The new section allows a police officer to seize and dispose of potentially harmful things where a person is found in circumstances that lead to a reasonable suspicion that the person has ingested or inhaled, is ingesting or inhaling or is about to ingest or inhale a potentially harmful thing. Additionally, the section applies where a person is found in possession of a potentially harmful thing in circumstances that lead to a reasonable suspicion that the person has ingested or inhaled, is ingesting or inhaling or is about to ingest or inhale a potentially harmful thing.

The section provides a search power to ensure that all potentially harmful things in a person's possession may be seized in order to reduce danger to that person. However, prior to seizure of a potentially harmful thing, a police officer must ask the person why the person is in possession of the thing. Seizure of the thing is not permitted where the person gives a reasonable explanation as to its possession. It is to be noted that the section is not associated with the commission of an offence. Therefore, other than for this section, possession of the thing is lawful. Consequently, subsection (5) provides that what may otherwise be lawful possession of a thing is not a reasonable explanation for its possession if the person has it for the purposes of inhalation or ingestion.

Clause 13 also inserts new sections 371B, 371C, 371D, 371E and 371F.

371B Dealing with persons affected by potentially harmful things

Section 371B applies where a police officer is satisfied that a person is affected by the ingestion or inhalation of a potentially harmful thing and it is appropriate for the person to be taken to a place of safety in the interests of their welfare. The section will only apply to areas declared by regulation as the concept of taking a person to a place of safety is to be trialed in limited areas.

371C Duties in relation to person detained under s 371B

Section 371C imposes duties on a police officer who takes detains a person to take the person to a place of safety. Principally, a police officer must take the person to the place of safety at the earliest reasonable opportunity and release the person. A person in charge of a place of safety must agree to accept the person and give a signed undertaking to that effect to the police officer. The person may provide care to the affected person.

371D No compulsion to stay at place of safety

The section makes a clear statement that a person cannot be compelled to stay at a place of safety unless compelled to do so under another Act.

371E Review of operation of ss 371B – 371D

The effectiveness of the operation of sections 371B to 371D are to be reviewed by the Crime and Misconduct Commissioner for the 9 month period of the trial.

371F Expiry of ss 371B – 371E

Sections 371B to 371E expire 1 year after they commence unless extended by regulation for periods of up to 1 year.

Amendment of sch 4 (Dictionary)

Clause 14 amends the Dictionary in terms of new definitions provided by the Bill.

PART 3—AMENDMENT OF BAIL ACT 1980

Act amended in pt 3

Clause 15 indicates that the part amends the *Bail Act 1980*.

Amendment of s 7 (Power of police officer to grant bail)

Clause 16 amends section 7 of the *Bail Act 1980* to allow a police officer, other than an officer-in-charge of a police station or police establishment, or a watch-house manager, to grant bail to a person in custody. The amendment is necessary so that an officer-in-charge does not have to be recalled to duty to grant bail and so that a watch-house manager may attend to managerial functions associated with operating a watch-house without the need to personally grant bail on every occasion.

Amendment of s 28A (Other warrants for apprehension of defendant)

Clause 17 makes an associated amendment to section 28A relevant to this part.

Insertion of new s 40

Clause 18 inserts a new section 40 which declares that any bail granted by a police officer, other than an officer-in-charge of a police station or police establishment, or a watch-house manager, in the period since the commencement of the *Police Powers and Responsibilities Act 2000*, is not invalid. The section is necessary to ensure that bail granted remains valid and that any offence committed which may relate to a bail offence or a bail hearing can be heard and determined by a court.

PART 4—AMENDMENT OF CHILD PROTECTION ACT 1999

Act amended in pt 4

Clause 19 indicated that the part amends the *Child Protection Act 1999*.

Omission of s 248 (Tattooing of children prohibited)

Clause 20 omits section 248 from the *Child Protection Act 1999*. The offence is to be transferred to the *Vagrants Gaming and Other Offences Act 1931*.

PART 5—AMENDMENT OF CORRECTIVE SERVICES ACT 2000

Act amended in pt 5

Clause 21 indicates that the part amends the *Corrective Services Act 2000*.

Amendment of s 54 (Transfer to court)

Clause 22 amends section 54 of the *Corrective Services Act 2000* to allow alternative means of transferring a prisoner to court. Currently, a prisoner who is charged with an offence while serving a term of imprisonment can only be brought before a court by order of a court. This is a cumbersome and unnecessary process requiring that the prisoner be charged with an offence by a police officer and the police officer then appearing before a court to obtain an order for the prisoner to be brought before the court to answer the charge. The amendment allows for a prisoner to be brought before a court, without further authority, in situations where a notice to appear or a complaint and summons is served on a prisoner.

PART 6—AMENDMENT OF CRIMINAL LAW (REHABILITATION OF OFFENDERS) ACT 1986

Act amended in pt 6

Clause 23 indicates that the part amends the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

Amendment of s 9A (Disclosure of particulars in special cases)

Clause 24 amends section 9A, table, of the Act for the purposes of Part 9 of this Bill.

PART 7—AMENDMENT OF JUVENILE JUSTICE ACT 1992

Act amended in pt 7

Clause 25 indicates that the part amends the *Juvenile Justice Act 1992*.

Amendment of s 50 (Dealing with a child if court can not be promptly constituted)

Clause 26 makes amendments to the *Juvenile Justice Act 1992* for the purposes similar to those outlined in part 3 of this Bill – Amendment of *Bail Act 1980*.

PART 8—AMENDMENT OF LIQUOR ACT 1992

Act amended in pt 8

Clause 27 indicates that the part amends the *Liquor Act 1992*.

Amendment of s 156 (Liquor prohibited to certain persons)

Clause 28 doubles the penalties for licensees or employees selling or supplying liquor to persons who are intoxicated.

**PART 9—AMENDMENT OF POLICE SERVICE
ADMINISTRATION ACT 1990**

Act amended in pt 9

Clause 29 indicates that the part amends the *Police Service Administration Act 1990*.

Amendment of s 1.4 (Definitions)

Clause 30 amends section 1.4 of the *Police Service Administration Act 1990* to insert definitions for the purposes of the part 5AA only.

Insertion of new s 1.6

Clause 31 declares that a note in the text is part of the Act.

Insertion of new pt 5AA

Clause 32 inserts a new part 5AA dealing with criminal history checks on persons engaged by the Police Service.

PART 5AA – ASSESSMENT OF SUITABILITY OF PERSONS SEEKING TO BE ENGAGED, OR ENGAGED, BY THE SERVICE

Division 1 - Preliminary

Section 5AA.1 – Purpose of pt 5AA

The purpose of the part is to ensure the commissioner is able to gather and use all the relevant information the commissioner needs to assess a person's suitability to be, or continue to be, engaged by the police service.

Section 5AA.2 – Parliament's intention

The section states that it is Parliament's intention that relevant information about a person only be used for the purpose of this part unless the information disclosed the commission of an offence that requires investigation.

Section 5AA.3 - Meaning of 'engaged by the service'

The section lists those persons who are 'engaged by the police service'. The section includes each person who is employed by the police service or performs a function for the police service. For example, an employee of PartnerOne or TechCorp who may have access to Police Service human resource or payroll information whether on a full time basis or on a temporary basis falls within the ambit of the part. For reasons of security and safety of police officers, access to this information must be restricted to those persons identified as having a high level of integrity.

Section 5AA.4 – This part applies despite the Criminal Law (Rehabilitation of Offenders) Act 1986

The part applies despite the provisions of the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

Section 5AA.5 – Person to be advised of duties of disclosure etc

The section requires the Commissioner to inform a person prior to employment of the fact that a person has a duty to disclose relevant information under division 2 and that relevant information regarding the prospective employee may be obtained and the use to which the

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information may be put. Also, the Commissioner is required to provide guidelines outlining what the person must disclose to the Commissioner.

Subsection (2) requires a Chief Executive Officer to advise a person that the person is an external service provider, of the person's duty to disclose and the fact that the commissioner may obtain and consider relevant information as soon as the Chief Executive Officer becomes aware of the person's status. The person is also to be given a copy of the guidelines issued by the commissioner.

Division 2 – Disclosure of relevant information

Section 5AA.6 – Persons engaged or seeking to be engaged by the service must disclose relevant information

A person seeking to be 'engaged by the police service' or 'engaged' by the police service must, if required, by the Commissioner disclose relevant information known to the person to the Commissioner.

Section 5AA.7 – Persons engaged by the service must disclose changes in relevant information

A person 'engaged by the police service' is required to disclose to the Commissioner any change in the person's relevant information where a person is aware of that change.

Section 5AA.8 – Requirements for disclosure

The section requires a person to make a disclosure in the approved form and outlines the nature of the disclosure.

Division 3 – Commissioner may obtain relevant information from other entities

Section 5AA.9 – Commissioner may request information from other authorities

The section allows the Commissioner to access relevant information in the possession of another law enforcement agency within or without Australia in order to ensure that an appropriate security check can be made on a person engaged by the police service or seeking to be engaged by the police service.

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Section 5AA.10 - Prosecuting authority to notify commissioner about committal, conviction etc.

The section imposes an obligation on the Director of Public Prosecutions to give written notice to the Commissioner should a person 'engaged by the police service' be charged with an indictable offence which is subsequently dealt with by the Director. The section outlines the information that must be provided to the Commissioner within 7 days. The section applies only where the Director of Public Prosecutions is aware that a person is engaged by the service.

Division 4 – Controls on use of relevant information and information about particular investigations

Section 5AA.11 – Assessment of suitability

The Commissioner may make an assessment of suitability of a person engaged by the service or seeking to be engaged by the service by considering relevant information about the person.

Section 5AA.12 – Particular persons to be advised if person unsuitable

The section requires the Commissioner to disclose to the person adverse information relating to the person's suitability to be 'engaged by the police service' and provide a show cause time to allow the person to make representations to the Commissioner and give reasons why the Commissioner considers the person is unsuitable. However, the information need only be disclosed if it is used as a basis for excluding a person from being engaged by the police service or whose engagement is terminated. Additionally, the section also provides exemptions to disclosure. If after considering any representations the Commissioner decides a person is not suitable the Commissioner must give the person written notice of the decision. Information relied on to make a decision cannot be used for any other purpose unless its disclosure is authorised under section 5AA.14(3).

Section 5AA.13 – External service provider to be advised if person unsuitable

The Commissioner is required to notify the CEO of an external service provider, in writing, if a person employed by the external service provider is not suitable to be, or continue to be, engaged by the service as a result of an assessment. The Commissioner to disclose to the person and the CEO adverse information relating to the person's suitability to be 'engaged by

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the police service' and provide a show cause time to allow the person and the CEO to make representations to the Commissioner. An exemption to providing reasons in a written notice is provided in subsection (2). If a person is already engaged by an external service provider, the CEO is required to consider steps that may be taken to reduce any risk to the integrity of the police service. Should the CEO decline to take steps to move the person, the Commissioner may appeal the CEO's decision to the Chair, CMC.

Section 5AA.14 – Secrecy

The section creates an offence for the unlawful disclosure of information obtained under this part. Exemptions which allow disclosure are provided in subsection (3).

Section 5AA.15 – Guidelines for dealing with relevant information

The section requires that the Commissioner must make guidelines for the use of information obtained under this part. The guidelines are to afford natural justice, use only relevant information, and ensure decisions are made in a consistent way. A copy of the guidelines are to be provided to a person on request.

Insertion of new pt 11, div 1, hdg

Clause 33 inserts a new division heading.

Insertion of new pt 11, div 2, hdg

Clause 34 inserts a new division.

Division 2 – Transitional provision to assist in interpretation

Section 11.3 - Relevant information

The section declares that the Commissioner has always had power to inquire into a person's criminal history and to take into account relevant information for deciding whether the person is suitable to be engaged, or to continue to be engaged, by the service.

Section 11.4 – Amendment of regulation by Police Powers and Responsibilities and Other Acts Amendment Act 2003 does not affect powers of Governor in Council

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The section declares that the amendment to the regulation by Parliament does not affect the power of the Governor in Council to further amend or to repeal it.

Insertion of new sch

Clause 35 inserts a new schedule after part 11. The Schedule defines what relevant information is for the purpose of the part.

**PART 10—AMENDMENT OF POLICE SERVICE
ADMINISTRATION REGULATION 1990**

Regulation amended in pt 10B

Clause 36 provides that this part amends the *Police Service Administration Regulation 1990*.

Insertion of new s 10.2

Clause 37 inserts a new section 10.2 into the regulation to define “external service provider” as CorpTech and PartnerOne. For the purposes of the Act there are no other external service providers at the time of passage of the Bill.

PART 11—AMENDMENT OF PROSTITUTION ACT 1999

Act amended in pt 11

Clause 38 indicates that the part amends the *Prostitution Act 1999*.

Amendment of s 91 (Prostitute providing sexual intercourse or oral sex without a prophylactic)

Clause 39 amends the *Prostitution Act 1999* to ensure that all prostitutes, including prostitutes working in contravention of the Act, must not engage

in sexual intercourse or oral sex without using a prophylactic. The provision also applies to clients of those prostitutes.

Amendment of s 101 (Functions of Authority)

Clause 40 amends the functions of the Prostitution Licensing Authority. The clause includes some functions previously undertaken by the Prostitution Advisory Council but restricts the Authority to providing advice to the Minister rather than acting alone.

Amendment of s 102 (Membership)

Clause 41 amends the Act to increase the membership of the Authority from 6 members to 8 members. The additional members must be, in the Minister's opinion, qualified to represent community interests and not have, or had, a business interest in a brothel or in the provision of prostitution services.

Clauses 42 to 47

The clauses make necessary machinery amendments to the Act.

PART 12—AMENDMENT OF VAGRANTS GAMING AND OTHER OFFENCES ACT 1931

Act amended in pt 12

Clause 48 indicates that the part amends the *Vagrants Gaming and Other Offences Act 1931*.

Amendment of pt 2, hdg

Clause 49 makes machinery amendments to the Act.

Replacement of s 7

Clause 50 repeals section of the Act and replaces it with Part 2A – Quality of Community Use of Public Places.

Section 7 – Object of pt 2A

The section outlines the objectives of the part and ensures that members of the public may lawfully use and pass through public places without interference from unlawful acts of nuisance committed by others.

Section 7AA – Public nuisance

The section creates an offence of ‘public nuisance’ and defines what constitutes the offence. In determining what is a ‘public nuisance’ offence in terms of the section, a court, is not limited by, but should take into account the following examples –

offensive language;

- (1) A person calling another person a slut in a shopping centre or a park may constitute offensive language.
- (2) A person calling another person a slut in the public bar of a hotel may not constitute offensive language.
- (3) A person using obscene language in a mall or a street may constitute offensive language.
- (4) A person using obscene language in the public bar of a hotel in the course of a conversation with another person may not constitute offensive language.
- (5) A person disrupts a church service by using language offensive to persons at that service or to persons who are gathering for the service or to persons who are outside a place of worship after a service may constitute an offence. However, the section does not prevent a person from lawfully protesting and expressing an opinion about adverse decisions or actions of a church or its members.

offensive manner;

- (1) A person encourages another to participate in a fight.
- (2) A person running over the roofs of parked cars.
- (3) A person engaging in an act of sexual intercourse in view of others in a public place.
- (4) A person urinating in view of another in a public place.

- (5) A person walking past persons dining and interfering with that person's food.
- (6) A person seeking money or property from another in a manner that causes a person to be intimidated, have concern about their safety, or such as to cause a person to leave a public place.
- (7) Behaving in a manner that might cause another person to leave a public place.

Clause 51 inserts Part 2C heading

Insertion of new pt 3A

Clause 52 inserts Part 3A – body piercing and tattooing.

PART 3A—BODY PIERCING AND TATTOOING

Section 23 – Particular body piercing of minor prohibited

The section prohibits, as part of a business transaction, the body piercing of the sexual organs or nipples of a minor.

Section 24 – Tattooing minor prohibited

The section prohibits the tattooing of a minor.

Insertion of new s 37D

Clause 53 inserts a new section 37D into the Act. The section prohibits the sale or supply of a potentially harmful thing to another person if the seller knows or believes, on reasonable grounds that the other person intends to ingest or inhale the thing or intends to sell or supply the thing to another person for inhalation or ingestion.

For the purposes of interpreting this section, a shopkeeper whom, for instance, keeps containers of methylated spirits in refrigerated machinery without a legitimate need to do so, may be taken as knowing that the methylated spirits is intended for ingestion by a person. Therefore, to sell that methylated spirits to a person may constitute an offence under this provision.

The section does not apply to things that are intended by the manufacturer to be ingested or inhaled, e.g., medications or tobacco products.

The *Anti-Discrimination Act 1991*, section 46, does not apply to this provision.

PART 13—AMENDMENT OF WEAPONS ACT 1990

Act amended in pt 13

Clause 54 provides that part 13 amends the *Weapons Act 1990*.

Division 2—Amendments commencing on assent

Amendment of s 15 (Authorised officer decides application)

The Authorised Officer, Weapons Licensing Branch, has made a practice of placing a standard condition on a licence that requires the licensee only to possess weapons registered to the licence. This condition was subject to appeal to the District Court (*Hildebrand v Coyne*). Judge Shanahan found that there was no offence at law for a breach of the conditions as the conditions imposed were in conflict with the ‘expressed intent’ of the *Weapons Act* and *Weapons Regulation* in that there is no reference in the *Weapons Act* or *Weapons Regulation* to registered weapons.

The effect of the decision is that all weapons licences issued in Queensland have been issued contrary to the *Weapons Act* in that all current licences are conditional on possession of ‘registered’ weapons. The implications could be significant in that persons convicted of an offence of breach of licence conditions as the result of possession of unregistered weapon since 1996 could apply for the matter to be re-opened on the basis of this decision

Clause 55 amends section 15 by clearing providing that the authorised officer may condition the use of possession of weapon to conditions limiting the use or possession of a weapon, conditions prescribed under a regulation and applying to the weapon or any other conditions the authorised officer considers appropriate in the particular circumstances.

Amendment of s 35 (Acquisition of weapons)

Clause 56 amends the penalty for an offence against section 35(1) by including category M or B weapons.

Amendment of s 49A(Authority given by licence)

Clause 57 amends the section to clearly provide that the authority given by a licence issued by an authorised officer is subject to conditions whether imposed by or an authorised officer or prescribed under a regulation. Further, the clause provides that if a condition is prescribed under a Regulation for a category of weapon whether licensed before or after the day the condition has effect, the licence is taken to have been amended to include the condition.

Amendment of s 57 (Particular conduct involving a weapon in a public place prohibited)

Clause 58 amends the section 57 of the *Weapons Act* by inserting 'sword' in subsection 57(1) and inserting a slingshot or shanghai. Further, the clause inserts subsections (5), (6) and (7) which provide what is a reasonable excuse to carry a sword or a weapon defined in subsection 57(1) of the Act.

Amendment of s 58 (Dangerous conduct with weapon prohibited generally)

Clause 59 amends the section 58 of the *Weapons Act* by inserting a sword and a shanghai in subsection 58(1) of the Act.

Amendment of s 59 (Possession or use of weapon under the influence of liquor or a drug prohibited)

Clause 60 amends the section 59 of the *Weapons Act* by inserting a sword and a shanghai in subsection 59(1) of the Act. Further, the clause includes a replica of those things mentioned in s. 59(1) of the Act.

Amendment of s 73 (Dealer etc. to require information)

Clause 61 corrects a drafting error created during the development of the *Weapons (Handguns and Trafficking) Amendment Act 2003*. The error

incorrectly substituted the mandatory requirement for a dealer or armourer to obtain and record information prescribed in both subsections 73(a) and (b) of the *Weapons Act*. The amendment corrects that error.

Amendment of s 132 (Conditions for concealable firearms licence)

The *Weapons (Handguns and Trafficking) Amendment Act 2003* inserted section 132 (Conditions for concealable firearms licence) in the *Weapons Act*. The Amendment Act commenced on 1 July 2003. The purpose of section 132 was to restrict the category H weapons that could be lawfully possessed and used by sports or target shooters. The provisions of section 132(1)(d) and (e) and subsection (2) of the *Weapons Act* were included as a consequence of a policy decision taken during the development of the Amendment Act. The decision prohibited, without the authorisation of the Authorised Officer, the possession of weapons with a magazine with a maximum capacity of more than 10 rounds. Since the commencement of the Amendment Act the Commonwealth has provided advice that the Authorised officer should not be entitled to authorise a licensee, by condition endorsed on the licence, to possess a category H weapon that the licensee is not authorised to possess under subsection 132(1)(d) and (e) of the Act. To clearly reflect this advice, clause 62 omits subsection 132(1)(d) and (e) and subsection 132(2)(d) and (e) of the Act.

Insertion of new pt 8, division 3

Clause 63 inserts Division 3 (Transitional provisions for *Police Powers and Responsibilities and Other Legislation Amendment Act 2003*) and sections 183 and 184. Sections 183 provide an essential transitional provision about authorised officers powers. This clause supports the amendments to section 15 of the *Weapons Act* by providing a declaratory statement that an authorised officer has and always has had the power to impose a condition on a licence issued under the *Weapons Act* that restricts or has the effect of restricting the possession or use of a weapon to a registered weapon of a particular category.

The clause also inserts section 184 (Amendment of regulation by *Police Powers and Responsibilities and Other Acts Amendment Act 2003* does not affect powers of Governor in Council). Section 184 provides that the amendment of the *Weapons Regulation 1996* and the *Weapons (Categories) Regulation 1997* by the *Police Powers and Responsibilities and Other Legislation Amendment Act 2003* does not affect the power of the Governor in Council to further amend the regulations or to repeal them.

Amendment of schedule 1 (Subject matter for regulations)

Clause 64 amends Item 2A of Schedule 1 of the *Weapons Act* by identifying category M weapons. The clause also amends Item 4 and Item 15 of Schedule 1 of the Act to clearly reflect the advice received from the Commonwealth concerning conditions for a concealable firearms' licence.

Amendment of schedule 2 (Dictionary)

Clause 65 amends Schedule 2 of the *Weapons Act* by inserting definitions for shanghai , sword and unlawful . The clause also amends the existing definitions of firearm and shooting club .

Division 3—Amendments commencing after assent

Amendment of s 15 (Authorised officer decides application)

Clause 66 inserts a new condition, relating to a category M crossbow, that requires the licensee within 7 days to permanently mark on the crossbow an identifying number fixed by the authorised officer for the crossbow.

Amendment of s 33 (Interstate residents moving to Queensland)

Clause 67 inserts the term 'category M crossbow' in subsection 33(3)(a) of the *Weapons Act*.

Amendment of s 36 (Sale or disposal of weapons)

Clause 68 amends the penalty for an offence against section 36 of the *Weapons Act* by including a category M crossbow.

Amendment of s 49 (Commissioner to maintain firearms register)

Clause 69 enables the commissioner to record in the firearms register a crossbow that has been lawfully obtained under the *Weapons Act*.

Amendment of s 56 (Discharge of weapon on private land without owner's consent prohibited)

Clause 70 makes necessary amendment to section 56 of the *Weapons Act* as a result of categorising a crossbow as a weapon in section 7A of the *Weapons Categories Regulation*.

Amendment of s 57 (Particular conduct involving a weapon in a public place prohibited)

Clause 71 omits crossbow from section 57(1) of the *Weapons Act*.

Amendment of s 58 (Dangerous conduct with weapon prohibited generally)

Clause 72 omits crossbow from section 58(1) of the *Weapons Act*.

Amendment of s 59 (Possession or use of weapon under the influence of liquor or a drug prohibited)

Clause 73 omits crossbow from section 59(1) of the *Weapons Act*.

Amendment of s 65 (Unlawful trafficking in weapons)

Clause 74 amends the penalty for an offence against section 65 of the *Weapons Act* by including a category M crossbow.

Amendment of s 68 (Dealers to be licensed)

Clause 75 amends the penalty for an offence against section 68(1) of the *Weapons Act* by including a category M crossbow.

Amendment of s 69 (Armourers to be licensed)

Clause 76 amends the penalty for an offence against section 69(1) of the *Weapons Act* by including a category M crossbow.

Insertion of new s 185

Clause 77 inserts a transitional provision that declares a person who applies for a licence for a category M crossbow and is in lawful possession of a crossbow immediately before the crossbow commencement day is taken to have adequate knowledge of safety practices for the use, storage and maintenance of the weapon.

Amendment of schedule 2 (Dictionary)

Clause 78 amends Schedule 2 of the *Weapons Act* by inserting definitions for category M crossbow .

PART 14—AMENDMENT OF WEAPONS REGULATION 1996

Regulation amended in pt 14

Clause 79 provides that this part amends the *Weapons Regulation 1996*.

Amendment of s 25A (Miscellaneous weapons licence)

Clause 80 amends section 25A of the *Weapons Regulation* to enable the issue of a miscellaneous licence for a crossbow as defined in section 7A(g) of the *Weapons (Categories) Regulation 1997*.

Amendment of schedule 1 (Fees)

Clause 81 amends Schedule 1 of the *Weapons Regulation* by inserting under Item 2 the fee for a miscellaneous weapons licence.

PART 15—AMENDMENT OF WEAPONS (CATEGORIES) REGULATION 1997

Regulation amended in pt 15

Clause 82 provides that this part amends the *Weapons (Categories) Regulation 1997*.

Amendment of s 7A (Category M weapons)

Clause 83 amends section 7A by inserting a new definition of a crossbow. Further, the clause amends the existing section 7A(f) to clearly provide that s. 7(f) applies to a pistol crossbow.

SCHEDULE

MINOR AMENDMENTS OF POLICE POWERS AND RESPONSIBILITIES ACT 2000

The schedule makes minor amendments to the *Police Powers and Responsibilities Act 2000*.