

# **Police and Other Legislation Amendment Bill 2007**

## **Explanatory Notes**

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

Police and Other Legislation Amendment Bill 2007

### **Objectives of the Bill**

The objectives of the legislation are to remove redundant provisions, correct deficiencies or omissions and implement agreed policy changes. The *Police and Other Legislation Amendment Bill 2007* (the Bill) makes amendments to the *Police Powers and Responsibilities Act 2000* (PPRA), the *Police Service Administration Act 1990* (PSAA), the *Child Protection (Offender Reporting) Act 2004* (CPORA) and the *Transport Operations (Road Use Management) Act 1995* (TORUM).

### **Reasons for Bill**

The Minister for Police and Corrective Service is responsible for the administration of legislation under the police portfolio. Each year these statutes are examined to identify minor amendments which will remove redundant provisions, correct deficiencies or omissions and implement agreed policy changes. In addition, the Bill will amend the TORUM, which the Minister for Transport and Main Roads is responsible, to facilitate the enforcement of the proposed peer passenger restriction reforms to improve young driver safety in Queensland. Regulatory amendments will be required to fully implement this proposal and will progress following passage of the Bill.

### **Achievement of Objectives**

The Bill achieves the objectives by amending the PPRA, PSAA, CPORA and TORUM.

## **Fundamental legislative principles**

### *Requiring peer passengers to state their name and address*

Clause 9 of the Bill amends section 42 (Power for age-related offences and for particular motor vehicle related purposes) of the PPRA by extending the power to require a person's age if it is relevant to deciding whether a person is driving a motor vehicle in contravention of a provision of a regulation made under the TORUM that restricts the number of passengers below a stated age who may be in a motor vehicle while the person is driving it.

Because a police officer is trying to decide whether the driver of the vehicle is contravening an age-related restriction (peer passenger restriction), requiring a passenger of the vehicle to state their correct date of birth and to provide evidence of the correctness thereof may expose the passenger of that vehicle to arrest and prosecution for an offence against section 791 (Offence to contravene direction or requirement of police officer) of the PPRA. The provision is likely to be considered a breach of fundamental legislative principals in that it does not have sufficient regard to the rights and liberties of individuals under section 4 (2)(a) of the *Legislative Standards Act 1992*. The QPS is of the view that an appropriate balance has been achieved through the insertion of a new subsection (5) to the provision. This subsection effectively prevents a passenger being found guilty of the offence if the driver is not found guilty of the contravention of the age-related restriction.

### *Reversal of Onus – peer passenger restrictions*

The proposal to place an onus on the driver to establish the relationship of an immediate family member in relation to peer passenger restrictions for young drivers is likely to be considered a breach of fundamental legislative principles in that it reverses the onus of proof (see s.4(3)(d) of the *Legislative Standards Act 1992*). However, justification for the reversal is found in situations where the matter that is the subject of proof by the defendant is particularly within the defendant's knowledge and would be extremely difficult, or very expensive, for the State to prove. Proving the relationship of a passenger to a driver will be extremely difficult for police officers to establish. It is therefore considered that reversing the onus is essential to the enforcement and effectiveness of this reform and the potential road safety benefits to the community outweigh this potential breach.

**Estimated Cost for Government Implementation**

The Bill will not involve any additional financial costs.

**Consultation**

The following agencies were consulted during the development of the Bill:

- Department of the Premier and Cabinet;
- Department of Justice and Attorney-General;
- Department of Disability Services Queensland;
- Department of Child Safety;
- Department of Communities; and
- Anti-Discrimination Commission of Queensland.

**Notes On Provisions****Part 1                      Preliminary****Short Title**

Clause 1 specifies the short title of the Bill.

**Commencement**

Clause 2 provides for the commencement of the Act.

**Part 2                      Amendment of Child Protection  
(Offender Reporting) Act 2004****Act amended in Part 2**

Clause 3 specifies that Part 2 amends the *Child Protection (Offender Reporting) Act 2004*.

**Amendment of s 14 (When initial report must be made)**

Clause 4 amends section 14 to clarify that a reportable offender must report their personal details to the Commissioner within the latter of either the specified period detailed in the table of the provision or 28 days after the Commissioner gives the offender notice under section 59.

**Amendment of s 54 (Notice to be given to reportable offender)**

Clause 5 inserts a new subsection (4) into the provision that clarifies that an entity is not required to give a notice to a reportable offender under this provision if a notice has already been given under section 59 (Notice may be given by police commissioner).

**Amendment of s 70 (Confidentiality)**

Clause 6 amends section 70 to clarify the relationship between section 10.2 (Authorisation of disclosure) of the PSAA and the provision.

**Amendment of s 74 (Review of decision to place person on register)**

Clause 7 (1) amends the heading of section 74.

Clause 7 (2), (3), (4) and (5) amends section 74 to allow the current application of the provision to review a decision to place the person on the register to include a review of the length of the persons reporting period entered in the register. A new subsection (7) is inserted to the provision to provide that the commissioner must ensure the reporting period on the register is corrected.

**Part 3                      Amendment of Police Powers  
and Responsibilities Act 2000****Act amended in Part 3**

Clause 8 specifies that Part 3 amends the *Police Powers and Responsibilities Act 2000*.

**Amendment of s 42 (Power for age-related offences and for particular motor vehicle related purposes)**

Clause 9 amends section 42 (1) by extending the power to require a person's age if it is relevant to deciding whether a person is driving a motor vehicle in contravention of a provision of a regulation made under the Road Use Management Act that restricts the number of passengers below a stated age who may be in a motor vehicle while the person is driving it.

Subclause (2) provides that a passenger does not commit an offence of contravening a requirement to state their date of birth if the driver of the motor vehicle is not proved to have contravened a regulation that restricts the number of passengers below a stated age who may be in a motor vehicle while the person is driving it.

**Amendment of s 382 (Notice to appear may be issued for offence)**

Clause 10 amends section 382 (2) to allow a police officer to ask another police officer to issue and serve a notice to appear.

**Amendment to s 384 (Notice to appear form)**

Clause 11 (1) amends section 384 and renumbers subsection (1)(e) as subsection (1)(f).

Clause 11 (2) amends section 384 to require that a notice to appear issued by a police officer at the request of another police officer must state the particulars of officer requesting the issue and service of the notice to appear.

**Amendment of s 388 (Notice to appear equivalent of complaint and summons)**

Clause 12 (1) renumbers subsection 388 (4) and (5) to 388 (5) and (6).

Clause 12 (2) amends section 388 and inserts a new subsection (4) to clarify that if a police officer issues and serves a notice to appear at the request of another police officer, the police officer who made the request is taken to have started the proceeding against the person on whom the notice to appear is served.

**Amendment of s 724 (Evidentiary provision about particular things in the possession of the police service)**

Clause 13 provides a minor technical amendment to section 724 (7) definition of ‘running statement’.

**Replacement of schedule 3 (Relevant offences for chapter 13 disclosure of information provisions)**

Clause 14 amends schedule 3 of the PPRA to insert relevant offences that are currently prescribed in the *Police Powers and Responsibilities Regulation 2000*. The amendment results from the *Cross-Border Law Enforcement Legislation Amendment Act 2005* that introduced national model laws to allow seamless cross-border investigations of serious offences by law enforcement agencies

**Part 4                      Amendment of Police Service  
Administration Act 1990****Act amended in Part 4**

Clause 15 specifies that Part 4 amends the *Police Service Administration Act 1990*..

**Amendment of s 1.4 (Definitions)**

Clause 16 amends section 1.4 definition of ‘QPS database’ to reflect the Queensland Police Record & Information Management Exchange (QPRIME) implementation.

**Amendment of s schedule (Relevant information)**

Clause 17 amends the schedule (Relevant information) - schedule, entry for information about staff members, applicants to become staff members, volunteers and students. The amendment will reflect the Queensland Police Record & Information Management Exchange (QPRIME) implementation.

## **Part 5                      Amendment of Transport Operations (Road Use Management) Act 1995**

### **Act amended in Part 5**

Clause 18 specifies that Part 5 amends the *Transport Operations (Road Use Management) Act 1995*.

Clause 19 (1) clarifies the introductory words to section 150AA (Regulating young drivers) of the TORUM to reflect that regulations for young drivers may be made under sections of the TORUM other than section 150. This is achieved by replacing specific reference to section 150 in section 150AA with a general reference to the part of the Act in which the relevant sections are contained. Clauses 19 (2), (3) and (4) make minor drafting amendments to section 150AA.

Clause 20 inserts new section 150B to allow for the provision of a regulation concerning the proof of the contravention of a requirement limiting passengers by reference to their relationship to the driver in a proceeding for the offence. A regulation may prescribe –

- (a) that a belief of a police officer, on reasonable grounds, that the relationship did not exist is sufficient evidence of that fact; and
- (b) that the driver has the onus of proving the relationship did exist.

Subsection 150B (3) allows, for the purpose subsection (2)(a), the regulation may provide the belief may be formed by the police officer after reasonable enquiries are made with the driver and passengers of the vehicle driven by the driver.