

# Police Legislation Amendment Bill 2010

## Explanatory Notes

### General Outline

#### Objectives of the Bill

The objectives of the Bill are to:

1. amend the *Police Powers and Responsibilities Act 2000* (PPRA) to support the state-wide roll out of ticketing for public nuisance, public urination and associated offences;
2. amend the *Police Service Administration Act 1990* (PSAA) to enable the Queensland Police Service (QPS) to use the full criminal information provided to CrimTrac under the National Police Reference System (NPRS) for the assessment of suitability of records, including the revival of spent convictions, for employment screening purposes;
3. amend the *Prostitution Act 1999* (PA) and *Prostitution Regulation 2000* (PR) to:
  - allow for the automatic suspension and cancellation of a brothel licence or an approved manager's certificate for non payment of annual fees;
  - provide the Prostitution Licensing Authority (PLA) with a prescribed scheme for undertaking disciplinary inquiries; and
  - provide for probity checking of persons seeking to be or who are appointed as a member or executive director of the PLA, or employment as a staff member of the PLA.

#### Reasons for the Bill

##### Ticketing for public nuisance offences

Currently section 394 of the PPRA restricts the issue of a ticket and subsequent release of a person by a police officer receiving custody of a

person arrested for a public nuisance, public urination or associated offence to the prescribed areas of Townsville and South Brisbane Police Districts. In support of the statewide roll-out of ticketing for public nuisance offences, the Bill amends section 394 of the PPRA to remove provisions which limit the issuing of tickets for public nuisance or associated offences, in relation to persons arrested and in custody at a police station, police establishment or watch-house, to the prescribed areas.

#### CrimTrac – National Police Checking Service Support System

Section 10.2A of the PSAA authorises the Commissioner to disclose criminal history records, with the consent of the person, to third parties for employment screening purposes via CrimTrac or another police service. The disclosure of the criminal history records is subject to the non-disclosure provisions of other Acts, including the *Criminal Law (Rehabilitation of Offenders) Act 1986* (CLROA). Currently the assessment of the suitability and vetting of criminal history records for disclosure, including the revival of spent convictions pursuant to section 11 CLROA, is a manual process requiring the faxing or couriering of criminal history information to CrimTrac and other police services.

The Bill enhances efficiency by removing legislative impediments in the PSAA to enable the QPS to use the full criminal history information of a person, which is currently electronically provided to CrimTrac under NPRS, to assess the suitability of records for release, including the revival of spent convictions, for criminal history employment screening purposes under CrimTrac's National Police Checking Service Support System (NSS). However, these amendments do not extend the nature of the criminal history information which is subsequently released to third parties for employment screening purposes, which is limited to current adult convictions. Nor do the amendments change the requirement that the release of criminal history information to a third party can only be undertaken with the written consent of the person.

#### Prostitution - non-payment of annual fees

The PA requires licensees and approved managers to pay annual fees, namely, annual licence return fee and an annual licence fee or annual return fee and an annual certificate fee respectively. If a licensee or approved manager does not pay their annual fees, in the absence of disciplinary action by the PLA to suspend the licence or certificate, a person may hold a valid licence or certificate even without payment of the relevant annual

fees. The taking of disciplinary action by the PLA is ill suited to the non-payment of annual fees.

The Bill amends the PA and PR to provide for the automatic suspension and cancellation of a licensee's licence or approved manager's certificate following the non-payment of annual fees. Where the annual fees are not paid by the due date and the licensee or approved manager has not entered into a payment plan with the PLA, the amendments enable the:

- automatic 28 day suspension of the licensee's licence or the approved manager's certificate;
- lifting of a suspension on the payment of all outstanding annual fees during the suspension period;
- lifting of a suspension where, in exceptional circumstances, a licensee or approved manager enters into a payment plan with the PLA for the payment of the outstanding annual fees; and
- automatic cancellation of the licence or approved manager's certificate if the annual fees are not paid during the suspensions period or in accordance with any payment plan.

The Bill in providing the PLA with a discretionary power to enter into a payment plan with a licensee or approved manager in exceptional circumstances, provides the PLA with sufficient flexibility to address situations where it could be considered unjust to suspend them in the circumstances.

#### Prostitution – disciplinary inquiries

The PA provides the PLA with some disciplinary powers, however, provides little direction in respect of the way to which the PLA must conduct a disciplinary inquiry. Furthermore, the PA does not empower the PLA to require the attendance of persons before a disciplinary inquiry or for the production of documents or other things relevant to the disciplinary inquiry.

The Bill amends the PA to provide that the PLA may conduct a disciplinary inquiry by hearing or on correspondence and enables the PLA to continue with a disciplinary inquiry and make a determination as about whether a ground for disciplinary action is established, despite a licensee or approved manager failing to attend a hearing or providing a submission where the inquiry is conducted by correspondence.

Furthermore, the PLA is provided a power to compel the attendance of witnesses, and require a witness or the licensee or the approved manager to answer questions, produce documents or give information the PLA considers relevant. A witness who fails to attend a disciplinary hearing and a licensee, approved manager or witness who fails to answer questions, produce documents or provide information, without a reasonable excuse, commits an offence with a maximum penalty of 60 Penalty units. However, a person does not commit an offence in not answering questions, producing documents or providing information which may tend to incriminate the person.

#### Prostitution – probity checking for PLA appointments and employment

Section 105(b) of the PA currently restricts persons from becoming or continuing to be a member of the PLA if they are convicted of an indictable offence or an offence against the PA or a corresponding law. The convictions for the above offences are limited to current recorded adult convictions due to the operation of the CLROA and other relevant Acts that restrict the disclosure of particular criminal history records.

The Executive Director of the PLA is appointed under section 110B the PA, however, the PA does not set out any probity checking requirements for the appointment of the Executive Director. Staff members of the PLA are appointed under the *Public Service Act 2008* (PSA). Probity checking of persons seeking employment as staff members of the PLA is governed by the PSA and Directives about recruitment and/or recruitment history and, similar to the appointment of PLA members, only the current adult convictions of persons being considered for employment as staff members can be obtained and used for consideration of suitability for employment.

The current situation with respect to permissible criminal history disclosures does not reflect the integrity benchmarks required for a person seeking appointment as a member of the PLA or to undertake the duties of the Executive Director or staff member of the PLA.

The Bill amends the PA to allow the Minister to request the extended criminal history of an applicant for appointment as a member of the PLA or executive director from the Commissioner of Police. Additionally, the Bill also enables the Executive Director of the PLA to request the extended criminal history of a person seeking employment with the PLA as a staff member from the Commissioner of Police. The extended criminal history includes every conviction or charge of an offence, in Queensland or elsewhere and is despite CLROA (spent conviction, non-conviction

charges, including acquittals and withdrawn charges and the Youth Justice Act 1992 (YJA) (juvenile cautions and conferences). The Commissioner of Police in complying with a request to prepare an extended criminal history report, only has to include information to which the Commission has possession of or has access to.

However, the obtaining of the extended criminal history of a prospective member, executive director or staff member is subject to the person's written consent. All extended criminal history reports are subject to confidentiality and destruction requirements. Furthermore, natural justice is provided to the person by ensuring that if an adverse decision is to be made about the person's appointment or employment, the extended criminal history is to be disclosed to the person and they will be provided an opportunity to respond to the information prior to the decision being made.

These amendments will support the safety and security of clients and sex workers, ensure confidentiality of sensitive information and maintain public and client confidence in the integrity of the PLA.

### **Alternative Means of Achieving Policy Objectives**

There are no alternative means of achieving the policy objectives other than by legislative reform.

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

The financial impact on agencies from the implementation of the Bill will be minimal and will be met from existing agencies' budget allocations.

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

#### CrimTrac – National Police Checking Service Support System

The proposed amendments to the PSAA do not conflict with fundamental legislative principles. NSS will change the current process for the vetting and transfer of criminal history information between police services from a process of faxing and couriering of hard copy documents, to an electronic process. The new process will also enhance accountability through a data trail auditing functionality. Furthermore, the disclosure of the person's criminal history to an employer or third party remains unchanged and is only undertaken in accordance with relevant legislation limiting the disclosure to current adult convictions and with the written consent of the relevant person.

### Prostitution - non-payment of annual fees

The provisions for the automatic suspension and/or cancellation of a licence or certificate for unpaid annual fees remains consistent with other current decisions made under the PLA and is considered effective, appropriate and the most efficient way to have the matters dealt with. This model is similar to that found in section 36L of the *Liquor Regulation 2002* in relation to the automatic suspension and cancellation of a licence for the non-payment of fees

Additionally, the Bill, by allowing the licensee or manager to enter into a payment plan with the PLA in exceptional circumstances, provides sufficient flexibility to ensure that licences or certificates are not suspended or cancelled in circumstances that could be considered unjust.

### Prostitution - disciplinary inquiries

The PLA currently provides power for the PLA to undertake a disciplinary inquiry and action against a licensee or an approved manager, however, provides little direction on how the PLA is to conduct the disciplinary inquiry. The Bill inserts a clear framework for the PLA to undertake a disciplinary inquiry, promoting consistency in undertaking disciplinary inquiries. The disciplinary framework is similar to that provided for disciplinary proceedings of a teacher by the PP&C committee under Chapter 6, Part 1, Division 2 of the *Education (Queensland College of Teachers) Act 2005*.

Additionally, whilst the Bill enables the PLA to compel a relevant witness to attend a disciplinary inquiry, and compel a licensee, approved manager or a relevant witness to answer questions and provide information including documents, a person does not commit an offence for failing to answer questions or provide information, if they have a reasonable excuse, including not doing so, when compliance might tend to incriminate the person. The Bill also limits who may be compelled to attend or produce documents or other relevant things at a disciplinary inquiry to a relevant person.

The ability for the PLA to continue with a disciplinary inquiry and make a determination where the licensee or approved manager fails to attend a disciplinary hearing or provide a submission is considered essential. Without such power, there would be no consequence for a licensee or approved manager who fails to attend the hearing or make a submission. The ability for the PLA to continue with the inquiry is discretionary on the determination of the PLA and non-compliance by a person should not

automatically prevent a decision from being made. This is of particular relevance where the grounds for the disciplinary action may affect the health, safety or wellbeing of any person.

#### Prostitution - probity checking for PLA appointments and employment

The disclosure of a person's criminal history, including spent convictions and charges, potentially breaches the fundamental legislative principle that legislation should have sufficient regard to rights and liberties of individuals, with respect to individuals' rights to rehabilitation, privacy and paid employment. This is particularly relevant to untested criminal history information in the form of pending charges, acquittals and withdrawn charges.

However, the potential breach is justified on the basis that the proposed amendments will support the safety and security of clients and sex workers, ensure confidentiality of sensitive information and maintain public and client confidence in the integrity of the PLA. Furthermore, the amendments reflect the principles of natural justice by requiring that prior to using an extended criminal history report, the information must be disclosed to the person and the person is allowed a reasonable opportunity to make representations about the information. Additionally, the amendments only permit the criminal history checking of a prospective PLA members, executive director or staff members with their written consent. With regard to a public service officer seeking employment with the PLA, the appeal processes under Chapter 7, Part 1, Division 1 of the PSA will apply in relation to any adverse decision. The amendments also provide for confidentiality and destruction of criminal history reports.

The extended criminal history checking and disclosure requirements in relation to persons appointed as members of the PLA or as an executive director or prospective appointees are modelled on provisions relating to senior and ordinary tribunal members in Chapter 4, Part 3, Division 3 of the *Queensland Civil and Administrative Tribunals Act 2009*. The provisions relating to staff members is reflective of probity provisions contained in the *Public Service Act 2008*.

#### **Consultation conducted in Development of the Bill**

The following Government departments were consulted during the preparation of the Bill:

- Department of the Premier and Cabinet;
- Department of Justice and Attorney-General;

- Prostitution Licensing Authority;
- Department of Communities;
- Department of Employment, Economic Development and Innovation;
- Queensland Health;
- Public Service Commission;
- Queensland Treasury; and
- Department of Community Safety.

## Notes on Provisions

### Part 1 Preliminary

Clause 1 Short title: This clause stipulates that the Act's short title is the *Police Legislation Amendment Act 2010*.

### Part 2 Amendment of Police Powers and Responsibilities Act 2000

Clause 2 Act amended: This clause provides that this part amends the *Police Powers and Responsibilities Act 2000*.

Clause 3 Amendment of s 394 (Duty of police officer receiving custody of person arrested for offence): This clause amends section 394 to remove provisions which limit the issuing of tickets, in relation to persons arrested and in custody at a police station, police establishment or watch-house, for public nuisance, public urination and associated offences to a *prescribed area*.

Subclause (1) amends subsection 394(2)(ca) to remove the references to the commission of the offence in the *prescribed area* to enable the section to apply state-wide.

Subclause (2) omits subsection 394(5) as the power for a police officer receiving custody of a person arrested for a public nuisance or associated offence to issue infringement notices is to apply state-wide and therefore there is no longer a need for a power to add other police districts as a *prescribed area*.

Subclause (3) amends subsection 394(6) by removing from the definition of *associated offence*, limitations to the *prescribed area*.

Subclause (4) amends subsection 394(6) by removing the definition *prescribed area*.

Subclause (5) amends subsection 294(6) by renumbering the subsection as subsection (5).

### **Part 3                      Amendment of Police Service Administration Act 1990**

Clause 4 Act amended: This clause provides that this part amends the *Police Service Administration Act 1990*.

Clause 5 Amendment of s 10.2AA (Definition for sdiv 2): Subclause (1) amends the heading for section 10.2AA to reflect that the section contains more than one definition for subdivision 2.

Subclause 5(2) inserts the definition of *relevant agency* from section 10.2A, which is necessary due to amendments to sections 10.2A and 10.2E and new section 10.2BA.

Clause 6 Amendment of s 10.2A (Disclosure of criminal history for employment screening under commercial or other arrangement): Subclause 6(1) replaces subsection 10.2A(1)(a) due to the definition of *relevant agency* having been inserted in section 10.2AA.

Subclause 6(2) amends section 10.2A(1)(b) to clarify that the section only applies to the disclosure of a criminal history made to CrimTrac or another police force or service and that the disclosure is made to release the criminal history to a third party.

Subclause 6(3) amends section 10.2A(3) to clarify that the requirements of the subsection only apply to a disclosure of the criminal history to CrimTrac or the police force or service of another jurisdiction, which is made for the purpose of the disclosure of the criminal history to a third party for employment screening under this section.

Clause 7 Insertion of new s 10.2BA: This clause inserts new section 10.2BA (Disclosure of criminal history to assess suitability of records for s 10.2A purposes) to enable the Commissioner to utilise the full criminal history information of a person electronically provided to CrimTrac under section 10.2I, and authorise the disclosure of the full criminal history information of a person to CrimTrac and another police force or service of another jurisdiction, for the purposes of assessing the suitability of records for release under section 10.2A, including the revival of spent convictions pursuant to section 11 of the CLROA.

New subsection 10.2BA(2) clarifies that the Commissioner does not have to comply with the requirements of subsection 10.2A(3) before the Commissioner can disclose the full criminal history of a person to CrimTrac and another police force or service of another jurisdiction for the purposes of assessing the suitability of records.

New subsection 10.2BA(3) clarifies that for the purposes of the section, criminal history has the same expanded meaning as the meaning given by section 10.2G.

Clause 8 Amendment of s 10.2C (Misuse of information obtained under ss 10.2A-10.2B): This clause amends section 10.2C to insert a new offence provision, with a maximum penalty of 100 penalty units in circumstances where a person uses information provided under new section 10.2BA for a purpose other than that for which it was provided.

Clause 9 Amendment of s 10.2E (Relationship to other laws): This clause amends section 10.2E by inserting new subsection (2) to provide that the disclosure of a person's full criminal history to CrimTrac and a police force or service of another jurisdiction under 10.2BA for the purposes of assessing the suitability of records is not subject to any other Act which prevents or restricts the Commissioner from disclosing a person's full criminal history including the CLROA and the YJA.

Clause 10 Amendment of s 10.2I (Giving information to an IPSP to enable use of approved information by police services and law enforcement agencies for particular purposes): This clause amends section 10.2I by inserting 2 new subsections. New subsection 10.2I(1A) makes it lawful for

the Commissioner to use any information which has been disclosed to an IPSP under this section for any purpose that the Commissioner can use the information under any Act. The subsection further clarifies that it lawful for the Commissioner to use the information for another authorised purpose, despite this not being the particular purpose that the information was originally provided to the IPSP.

New subsection 10.2I(1B) enables the head of an IPSP to transfer information, which has been provided to it under this section, into another database administered by the IPSP for any purpose permitted under any Act. This subsection makes it lawful for the IPSP to transfer the information despite the transferring of information being a technical disclosure which would otherwise be an unlawful disclosure.

## **Part 4                      Amendment of Prostitution Act 1999**

Clause 11 Act amended: This clause provides that this part amends the *Prostitution Act 1999*.

Clause 12 Amendment of s 19 (The licence): This clause amends section 19(4) to clarify that a licence is issued for a term of three years. The term commences once the licensee is given the licensee under section 18.

Clause 13 Insertion of new ss 24A and 24B: This clause inserts new sections 24A and 24B to provide for the automatic suspension of licensee's licence for 28 days as a result of the non-payment of annual fees unless the licensee has entered into a payment plan with the PLA for the unpaid annual fees or for the lifting of the suspension where the licensee pays the annual fees or enters into a payment plan with the PLA for the payment of the annual fees.

New section 24A (Payment of fees by payment plan) provides the PLA with a discretionary power to permit a licensee, suffering financial hardship caused by exceptional circumstances, to enter into a payment plan with the PLA to pay the annual fees, under a payment plan, determined appropriate by the PLA. A licensee may apply to the PLA to pay the annual fees by payment plan before or after the prescribed day for the payment of the annual fees. Subsection 24A(4) restricts the discretionary ability of the PLA to enter into a payment plan with a licensee to situations where the

PLA is satisfied that the prescribed criteria are met. Subsection 24A(6) defines the term *exceptional circumstances*.

New section 24B (Automatic suspension of licence) provides for the automatic suspension of a licensee's licence for 28 days in circumstances where the licensee fails to pay the annual licence fee and/or the annual licence return fee for the licence by the prescribed day and the licensee has not entered into a payment plan with the PLA pursuant to section 24A for the payment of the fees. Subsection 24B(3) sets out the circumstances for the lifting of the 28 day suspension.

Clause 14 Amendment of s 25 (Automatic cancellation of licence): This clause amends section 25 to provide two additional circumstances for the automatic cancellation of a licensee's licence being the non-payment of the annual fees during the suspension period or where the licensee has entered in a payment plan for the payment of the annual fees under section 24A and the licensee fails to pay the annual fees in accordance with the payment plan.

Clause 15 Insertion of new ss 27A and 27B: This clause inserts new sections 27A and 27B which sets out how the PLA may conduct a disciplinary inquiry and the requirement for the PLA to issue a disciplinary inquiry notice prior to the disciplinary inquiry being conducted.

New section 27A (Authority may conduct disciplinary inquiry by hearing or on correspondence) provides that the PLA may conduct a disciplinary inquiry by way of a hearing or by correspondence. The determination as to whether a disciplinary inquiry is to be conducted by hearing or by correspondence is solely at the determination of the PLA.

New section 27B (Disciplinary inquiry notice) requires the PLA to give notice of the PLA's intention to conduct a disciplinary inquiry to the licensee and in specified circumstances, the Commissioner of Police or an authorised officer of a local government. Subsection 27B(2) requires the disciplinary inquiry notice to be in the approved form and sets out the information required to be contained in such notice. Subsection 27B(3) sets out the stated period for making a submission. Generally the required timeframe is at least 30 days. However, in urgent circumstances, or upon the request of the applicant under section 26(2), the relevant timeframes can be reduced to a period less than 30 days, as determined reasonable in the circumstances by the PLA.

Clause 16 Replacement of s 28 (Starting disciplinary action): This clause replaces section 28 and inserts new sections 28A to 28F which sets out the procedures and powers for the PLA to undertake disciplinary inquiries.

New section 28 (Starting disciplinary inquiry) sets out the timeframes for the commencement of a disciplinary hearing. Generally, the date for the commencement of the disciplinary hearing is required to be at least 30 days from the day the disciplinary inquiry notice is served on the licensee. However, in urgent circumstances, or upon the request of the applicant under section 26(2), or upon application of the licensee, the date for commencing an inquiry can be reduced to a period less than 30 days, as determined reasonable in the circumstances by the PLA.

New section 28A (Procedure for disciplinary inquiry by hearing) sets out the procedures for how the PLA is to conduct a disciplinary hearing.

New section 28B (Power of Authority to continue disciplinary inquiry in particular circumstances) sets out the conditional circumstances when the PLA may continue with a disciplinary inquiry and make a determination as to whether the ground for disciplinary action is established, despite a licensee not attending a hearing, providing a written submission, or giving information. The determination to continue with the disciplinary inquiry and make a determination is at the sole discretion of the PLA.

New section 28C (Failure to take oath or answer question) sets out the circumstances when a licensee commits an offence by failing to take an oath or affirmation or failing to answer questions. Subsection 28C(3) clarifies that it is a reasonable excuse for a licensee to fail to answer a question which might tend to incriminate the licensee.

New section 28D (Authority may require information relevant to disciplinary inquiry) provides the PLA with a power to require any person, including a licensee, by notice, to provide information, including documents, to the PLA for the purposes of a disciplinary inquiry and creates an offence for the person, without a reasonable excuse, to fail to provide such information. The PLA may require the provision of the required information prior to the disciplinary inquiry being undertaken. The section clarifies that it is a reasonable excuse for a person to fail to give the information, if doing so, would incriminate the person. Subsection 28D(2) provides a power to the PLA to make a copy of, or take an extract from, any document given to the PLA under a notice issued under subsection 28D(1).

New section 28E (Attendance notice) provides the PLA in specified circumstances with a power to require any person, who the PLA considers has information relevant to the inquiry, to attend a disciplinary hearing and give evidence or produce stated documents or other things and creates an offence if the person, who without a reasonable excuse, fails to attend, give evidence on oath or by affirmation, answer questions or produce documents or other things as required. The section clarifies that it is a reasonable excuse for a person to fail to give the information if doing so would incriminate the person. Subsection 28E(3) provides a power for the PLA to make a copy of, or take an extract from, any document given to the PLA under a notice issued under subsection 28E(1). Subsection 28E(7) defines the meaning of *relevant person*.

New section 28F (Substituted service on licensee or relevant person) enables the PLA to serve a notice upon a licensee pursuant to section 27B or a relevant person pursuant to section 28E, by substituted means, including by facsimile or telephone, in circumstances where the PLA is satisfied that the service of the relevant notice cannot be effected.

Clause 17 Insertion of new ss 50A and 50B: This clause inserts new sections 50A and 50B to provide for the automatic suspension of an approved manager's certificate for 28 days as a result of non-payment of annual fees, unless the approved manager has entered into a payment plan with the PLA for the unpaid annual fees, or for the lifting of the suspension where the approved manager pays the annual fees or enters into a payment plan with the PLA for the payment of the annual fees.

New section 50A (Payment of fee by payment plan) provides the PLA with a discretionary power to permit an approved manager, suffering financial hardship caused by exceptional circumstances, to enter into a payment plan with the PLA to pay the annual fees under a payment plan determined appropriate by the PLA. An approved manager may apply to the PLA to pay the annual fees by a payment plan before or after the prescribed day for the payment of the annual fees. Subsection 50A(4) restricts the discretionary ability of the PLA to enter into a payment plan with an approved manager to situations where the PLA is satisfied that the prescribed criteria are met. Subsection 50A(6) defines the term *exceptional circumstances*.

New section 50B (Automatic suspension of certificate) provides for the automatic suspension of an approved manager's certificate for 28 days in circumstances where the approved manager fails to pay, the annual certificate fee and/or the annual return fee for the certificate by the

prescribed day and the approved manager has not entered into a payment plan with the PLA under section 50A for the payment of the fees. Subsection 50B(2) sets out the circumstance for the lifting of the 28 day suspension.

Clause 18 Amendment of s 51 (Automatic cancellation of certificate): This clause amends section 51 to provide two additional circumstances for the automatic cancellation of an approved manager's certificate, being, the non-payment of the annual fees during the suspension period, or where the approved manager has entered into a payment plan for the payment of the annual fees under section 50A and the approved manager fails to pay the annual fees in accordance with the payment plan.

Clause 19 Insertion of new ss 53A and 53B: This clause inserts new sections 53A and 53B which sets out how the PLA may conduct a disciplinary inquiry into an approved manager and the requirement for the PLA to issue a disciplinary inquiry notice prior to the disciplinary inquiry being conducted.

New section 53A (Authority may conduct disciplinary inquiry by hearing or on correspondence) provides that the PLA may conduct a disciplinary inquiry in relation to an approved manager by way of a hearing or by correspondence. The determination as to whether a disciplinary inquiry is to be conducted by hearing or by correspondence is solely at the determination of the PLA.

New section 53B (Disciplinary inquiry notice) requires the PLA to give notice of the PLA's intention to conduct a disciplinary inquiry to the approved manager and in specified circumstances, the Commissioner of Police or an authorised officer of a local government. Subsection 53B(2) requires the disciplinary inquiry notice to be in the approved form and sets out the information required to be contained in the notice. Subsection 53B(3) sets out the stated period for making a submission. Generally the required timeframe is at least 30 days. However, in urgent circumstances, or upon the request of the applicant under section 52(2), the relevant timeframes can be reduced to a period less than 30 days as determined reasonable in the circumstances by the PLA.

Clause 20 Replacement of s 54 (Starting disciplinary action): This clause replaces section 54 and inserts new sections 54A to 54F which sets out the procedures and powers for the PLA to undertake disciplinary inquiries into approved managers.

New section 54 (Starting disciplinary inquiry) sets out the timeframes for the commencement of a disciplinary hearing. Generally, the date for the commencement of the disciplinary hearing is required to be at least 30 days from the day the disciplinary inquiry notice is served on the approved manager. However, in urgent circumstances, or upon the request of the applicant under section 52(2), or upon application of the approved manager, the date for commencing an inquiry can be reduced to a period less than 30 days as determined reasonable in the circumstances by the PLA.

New section 54A (Procedure for disciplinary inquiry by hearing) sets out the procedures for how the PLA is to conduct a disciplinary hearing.

New section 54B (Power of Authority to continue disciplinary inquiry in particular circumstances) sets out the conditional circumstances when the PLA may continue with a disciplinary inquiry and make a determination, as to whether the ground for disciplinary action is established, despite an approved manager not attending a hearing, providing a written submission, or giving information. The determination to continue with the disciplinary inquiry and make a determination is at the sole discretion of the PLA.

New section 54C (Failure to take oath or answer question) sets out the circumstances when an approved manager commits an offence by failing to take an oath or affirmation or failing to answer questions. Subsection 54C(3) clarifies that it is a reasonable excuse for the approved manager to fail to answer a question which might tend to incriminate the approved manager.

New section 54D (Authority may require information relevant to disciplinary inquiry) provides the PLA with a power to require any person, including an approved manager, by notice, to provide information, including documents, to the PLA for the purposes of a disciplinary inquiry and creates an offence for the person, without a reasonable excuse, to fail to provide such information. The PLA may require the provision of the required information prior to the disciplinary inquiry being undertaken. The section clarifies that it is a reasonable excuse for a person to fail to give the information, if doing so would incriminate the person. Subsection 54D(2) provides a power to the PLA to make a copy of, or take an extract from, any document given to the PLA under a notice issued under subsection 54D(1).

New section 54E (Attendance notice) provides the PLA, in specified circumstances, a power to require any person, who the PLA considers has

information relevant to the inquiry, to attend a disciplinary hearing and give evidence or produce stated documents or other things. The new section creates an offence if the person, who without a reasonable excuse, fails to attend, give evidence on oath or by affirmation, answer questions or produce documents or other things as required. The section clarifies that it is a reasonable excuse for a person to fail to give the information if doing so would incriminate the person. Subsection 54E(3) provides a power for the PLA to make a copy of, or take an extract from, any document given to the PLA under a notice issued under subsection 54E(1). Subsection 54E(7) defines the meaning of *relevant person*.

New section 54F (Substituted service on approved manager or relevant person) enables the PLA to serve a notice upon an approved manager pursuant to section 53B or a relevant person pursuant to section 54E, by substituted means, including by facsimile or telephone, in circumstances where the PLA is satisfied that the service of the relevant notice cannot be effected.

Clause 21 Insertion of new pt 7, div 1 hdg: This clause inserts new Division 1 (Establishment) heading in Part 7, prior to section 100.

Clause 22 Insertion of new pt 7, div 2 and sdiv 1 hdgs: This clause inserts new Division 2 (Membership) and Subdivision 1 (Appointment) headings in Part 7, after section 101.

Clause 23 Amendment of s 102 (Membership): This clause amends subsection 102(2) to clarify that Governor in Council appoints members of the PLA on the recommendation of the Minister.

Clause 24 Replacement of s 105 (Disqualifications for appointment): This clause omits the existing section 105 and inserts a new section 105 (Disqualifications for appointment) which sets out the circumstances when a person is not qualified to be recommended by the Minister for appointment as a member of the PLA or to continue as a member of the PLA. Subsection 105(a) replicates the existing circumstances for disqualification for appointment and subsection 105(b) extends the criteria to include circumstances where the Minister, as a result of considering the extended criminal history of the person, the Minister obtained under new subdivision 2, considers that the person is unsuitable to be recommended for appointment or continue as a member of the PLA.

Clause 25 Insertion of new pt 7, div 2, sdiv2, and div 3: This clause inserts after section 108 new subdivision 2 (Assessing suitability for appointment), including new sections 108AA to 108AE, which provide for probity

checking of members of the PLA or persons seeking appointment as a member of the PLA and new Division 3 heading (Status).

New section 108AA (Subdivision does not apply to exempt member) [renumbered 108A] excludes the requirements of the subdivision from applying to an exempt member. The exempt members of the PLA are the Commissioner of Police, or a police officer of at least the rank of Superintendent nominated by the Commissioner and the Chairperson or Assistant Commissioner, Crime, of the Crime and Misconduct Commission. These members are exempted as their membership of the PLA is mandatory and are subjected to higher levels of probity in their substantive positions.

New section 108AB (Extended criminal history checks) [renumbered 108B] enables the Minister to obtain an extended criminal history report from the Commissioner of Police on a member of the PLA, or on a person who is being considered for appoint as a member of the PLA. However, the Minister is restricted from making a request for a extended criminal history report on a person who is being considered for recommendation for appointment as a member of the PLA unless the person consents in writing to the request. The extended criminal history is not subject to CLROA or part 9 of the YJA which limit the disclosure of certain criminal history information. Furthermore, extended criminal history is defined in Schedule 4 (Dictionary) and includes every conviction or charge of an offence in Queensland or elsewhere. If the Minister requests the Commissioner for a report on a person's extended criminal history, the Commissioner is required to comply with the request but only has to provide information which is in the Commissioner's possession or to which the Commissioner has access. Subsection 108AB(6) requires that the Minister, before using the extended criminal history in determining the person's suitability to be recommended for appointment or continuing as a member, must disclose the information to the person and allow the person a reasonable opportunity to make representations to the Minister about the history. Subsection 108AB(7) places an obligation on the Minister to ensure that the extended criminal history report is destroyed as soon as practicable after it is no longer needed.

New section 108AC (Disclosure of changes in extended criminal history) [renumbered 108C] places an obligation on a member of the PLA, other than an exempted member, to immediately disclose to the Minister any change in the member's extended criminal history unless the member has a reasonable excuse. CLROA does not apply to the disclosure of the details

of the change in the extended criminal history. A maximum penalty of 100 penalty units or 2 years imprisonment applies where the member fails to make the disclosure. Subsection 108AC(3) sets out the information that is required to be included in such disclosure.

New section 108AD (Disclosure must not be false, misleading or incomplete) [renumbered 108D] requires the disclosure to be in the approved form and creates an offence for a member of the PLA to disclose false, misleading or incomplete information to the Minister with a maximum penalty of 100 penalty units or 2 years imprisonment. However, subsection 108AD(3) sets out the circumstances where a member, who is unable to provide particular information, is excluded from the offence provision under subsection 108AD(2).

New section 108AE (Use of information obtained under this subdivision) [renumbered 108E] limits the use of information obtained under subdivision 2, including an extended criminal history report, for the purpose of making a decision about a person's continued membership or recommendation of a person for appointment as a member of the PLA. Subsection 108AE(2) sets out the matters the Minister must have regard to in making a decision about a person's continued appointment as a member of the PLA or recommendation of a person for appointment as a member of the PLA.

Clause 26 (Renumbering of ss 108AA to 108D) renumbers the following sections:

New section 108AA – renumbered as section 108A;

new section 108AB – renumbered as section 108B;

new section 108AC – renumbered as section 108C;

new section 108AD – renumbered as section 108D;

new section 108AE – renumbered as section 108E;

existing section 108A – renumbered as section 108F

existing section 108B – renumbered as section 108G;

existing section 108C – renumbered as section 108H; and

existing section 108D – renumbered as section 108I.

Clause 27 Insertion of new pt 7A, div 2, sdiv1 hdg: This clause inserts new Subdivision 1 (Appointment) heading in Part 7A, division 2, before section 110B.

Clause 28 Amendment of s 110B (Appointment of executive director): This clause amends subsection 110B(2) to clarify that Governor in Council appoints the executive director of the PLA on the recommendation of the Minister.

Clause 29 Insertion of new pt 7A, div 2, sdiv2: This clause inserts after section 110K new Subdivision 2 (Assessing suitability for appointment), including new sections 110KA to 110KD, which provides for extended criminal history checking of the executive director of the PLA or persons seeking appointment as the executive director of the PLA.

New section 110KA (Extended criminal history checks) enables the Minister to obtain a criminal history report from the Commissioner of Police in relation to the executive director of the PLA or on a person who is being considered for appointment as the executive director of the PLA. However, the Minister is restricted from making a request for a criminal history report on a person who is being considered for recommendation for appointment as the executive director of the PLA, unless the person consents in writing to the request. The extended criminal history report is not subject to CLROA or part 9 of the YJA which limit the disclosure of certain criminal history information. Furthermore, extended criminal history is defined in Schedule 4 (Dictionary) and includes every conviction or charge of an offence in Queensland or elsewhere. If the Minister requests the Commissioner for a report on a person's extended criminal history, the Commissioner is required to comply with the request but only has to provide information which is in the Commissioner's possession or to which the Commissioner has access. Subsection 110KA(6) requires that the Minister, before using the extended criminal history report in determining the person's suitability to be recommended for appointment as the executive director of the PLA, or continuing as the executive director, must disclose the information to the person and allow the person a reasonable opportunity to make representations to the Minister about the information. Subsection 110KA(7) places an obligation on the Minister to ensure that the criminal history report is destroyed as soon as practicable after it is no longer needed.

New section 110KB (Disclosure of changes in extended criminal history) places an obligation on the executive director of the PLA to immediately disclose to the Minister any change in the executive director's extended criminal history unless the executive director has a reasonable excuse. CLROA does not apply to the disclosure of the details of the change in the extended criminal history. A maximum penalty of 100 penalty units or 2

years imprisonment applies where the executive director fails to make the disclosure. Subsection 110KB(3) sets out the information that is required to be included in such disclosure.

New section 110KC (Disclosure must not be false, misleading or incomplete) requires the disclosure to be in the approved form and creates an offence for the executive director of the PLA to disclose false, misleading or incomplete information to the Minister with a maximum penalty of 100 penalty units or 2 years imprisonment. However, subsection 110KC(3) sets out the circumstances where the executive director is unable to provide particular information, is excluded from the offence provision under subsection 110KC(2).

New section 110KD (Use of information obtained under this subdivision) limits the use of information obtained under subdivision 2, including an extended criminal history report, for the purpose of making a decision about a person's continued appointment as executive director of the PLA or recommendation of a person for appointment as the executive director. Subsection 110KD(2) sets out the matters the Minister must have regard to in making a decision about a person's continued appointment as the executive director or recommendation of a person for appointment as the executive director.

Clause 30 Insertion of new pt 7A, div 3, sdiv1 hdg: This clause inserts new Subdivision 1 (Employment) heading after Part 7A, Division 3.

Clause 31 Insertion of new pt 7A, div 3, sdiv2: This clause inserts after section 110L new Subdivision 2 (Assessing suitability to be engaged as staff member), including new sections 110M to 110V, which provides for extended criminal history checking of a person engaged as a staff member of the PLA or a person seeking to be engaged as a staff member.

New section 110M (Application of sdiv 2) clarifies when subdivision 2 applies to persons engaged by the PLA as staff members. Subsection 110M(2) clarifies that Chapter 5, Part 6 of the PSA only applies to the extent that the executive director of the PLA may make a directive for the consideration of a person's extended criminal history. The section further clarifies that a public service employee may appeal an adverse decision made about the person because of their extended criminal history to the chief executive of the Public Service Commission.

New section 110N (Executive director may obtain extended criminal history) enables the executive director to request a person, including a public service employee who the executive director is considering

engaging as a staff member, to provide a written consent for the executive director to obtain the person's extended criminal history.

New section 110O (Failure to consent to obtaining extended criminal history ) sets out the circumstances where the executive director does not have to consider a person for engagement with the PLA as a staff member.

New section 110P (Obtaining extended criminal history with consent) enables the executive director of the PLA to obtain an extended criminal history from the Commissioner of Police in relation to a person seeking to be engaged by the PLA as a staff member and sets out the information which may be included in the request to the Commissioner for the extended criminal history. The Commissioner of Police is required to comply with a request for a report on a person's extended criminal history, but only has to provide information which is in the Commissioner's possession or to which the Commissioner has access. The extended criminal history report is not subject to CLROA or part 9 of the YJA which limit the disclosure of certain criminal history information. Furthermore, extended criminal history is defined in Schedule 4 (Dictionary) and includes every conviction or charge of an offence in Queensland or elsewhere. Subsection 110P(5) places an obligation on the executive director to ensure that the criminal history report is destroyed as soon as practicable after it is no longer needed.

New section 110Q (Assessment of suitability using extended criminal history) places a requirement on the executive director to consider the extended criminal history report of a prospective staff member in making a determination about the person's suitability to be engaged as a staff member of the PLA.

New section 110R (Staff member to disclose change in extended criminal history) places an obligation on a person engaged as a staff member of the PLA to disclose to the executive director, in the approved form, any change in the person's extended criminal history and sets out the information that is required to be included in such disclosure. CLROA does not apply to the disclosure of the change in the extended criminal history.

New section 110S (Failing to make disclosure or making false, misleading or incomplete disclosure) creates an offence, with a maximum penalty of 100 penalty units or 2 years imprisonment, for a person engaged as a staff member of the PLA to fail to disclose a change in their criminal history to the executive director as required pursuant to section 110R or where the disclosure is false, misleading or incomplete. However, subsection 110S(2) sets out the circumstances where the staff member, who is unable

to provide particular information, is excluded from the offence provision under subsection 110S(1).

New section 110T (Executive director may obtain report from police commissioner) enables the executive director of the PLA to obtain a report on the extended criminal history from the police Commissioner of Police for persons who are engaged as staff members of the PLA. Subsection 110T(3) places an obligation for the police commissioner to comply with a request from the PLA executive director for a report on the extended criminal history of the person, but only has to provide information in the Commissioner's possession or to which the Commissioner has access. The extended criminal history report is not subject to CLROA or Part 9 of the YJA which limit the disclosure of certain criminal history information. Subsection 110T(5) places an obligation on the executive director to ensure that the extended criminal history report is destroyed as soon as practicable after it is no longer needed.

New section 110U (Use of information obtained under this subdivision) limits the use of information provided to the PLA executive director under this subdivision to assessing the suitability of a person to be engaged as a staff member of the PLA or to continue to be so engaged. Subsection 110U(3) sets out the matters the executive director must have regard to in making the assessment.

New section 110V (Person to be advised of information obtained from commissioner) places an obligation upon the executive director of the PLA to disclose the extended criminal history report to the person and allow the person to make a representation about the information, where, after considering the matters set out in section 110U(3), makes an adverse decision about the persons suitability to be engaged or continued engagement, as a staff member of the PLA.

Clause 32 Amendment of s 111 (Licence and certificate register): This clause amends section 111(1)(b) to require the executive director of the PLA to record the full particulars of the giving of a licence. Subsection 111(1)(d) requires the executive director of the PLA to record the full particulars of the giving of a approved manager's certificate in the register.

Clause 33 Amendment of s 131 (Offences about false or misleading information or documents): This clause amends section 131 to extend the application of the section to provide that for offences against sections 108D(2), 110KC(2) or 110S, it is enough to show that the information or document was 'false or misleading' without specifying which.

Clause 34 Amendment of s 132 (Evidentiary provision): This clause amends section 132(5) (Evidentiary provision) by inserting two additional matters that a certificate purporting to be signed by the executive director is evidence that an annual licence fee, annual licence return fee, annual certificate fee or an annual return fee was not paid by the prescribed day.

Clause 35 Insertion of new s 133A: This clause inserts new section 133A (Confidentiality) which imposes an obligation of confidentiality on relevant persons in relation to extended criminal history reports about other persons that they have obtained for the purposes of assessing the other person's suitability for appointment as a member of the PLA, appointment as an executive director or engagement as a staff member of the PLA. New subsection 133A(2) creates an offence for the unlawful disclosure of the acquired information with a maximum penalty of 100 penalty units. Subsection 133A(3) sets out the circumstances when the offence provision is exempted from applying to the disclosure of the acquired information or document. Subsection 133A(4) provides the meaning for the terms *relevant person* and *selection panel member*.

Clause 36 Insertion of new pt 9, div 7: This clause inserts new Division 7 (Provisions for Police Legislation Amendment Act 2010) into Part 9 to provide for the transitional provisions for the Police Legislation Amendment Act 2010.

New section 156 (Definition for pt 9, div 7) provides the meaning for the term *commencement* for Division 7.

New section 157 (Conduct of disciplinary inquiry started but not dealt with as at commencement) sets out how the disciplinary inquiry is to be conducted where a disciplinary inquiry was started but not completed as at the commencement of this section.

New section 158 (Disciplinary inquiry notice not given to licensee as at commencement) sets out how a disciplinary inquiry is to be conducted where the PLA has decided to conduct a disciplinary inquiry in relation to a licensee before the commencement of this section, but has not started the inquiry as at the commencement of this section.

New section 159 (Disciplinary inquiry notice not given to approved manager as at commencement) sets out how a disciplinary inquiry is to be conducted where the PLA has decided to conduct a disciplinary inquiry in relation to an approved manager before the commencement of this section, but has not started the inquiry as at the commencement of this section.

New section 160 (Disqualifications for appointment-particular members of Authority) clarifies that, as at the commencement of this section, section 105(b) applies to a member of the PLA with the exception of an exempted member.

New section 161 (Extended criminal history checks-particular members of Authority) sets out the application of sections 108B, 108C, 108D and 108E in relation members of the PLA, other than exempted members, at the commencement of this section.

New section 162 (Extended criminal history checks-executive director) sets out the application of sections 110KA, 110KB, 110KC and 110KD in relation to the executive director of the PLA as at the commencement of this section.

New section 163 (Executive director may obtain extended criminal history) sets out the application of sections 110R, 110S, 110T, 110U and 110V in relation to a staff member of the PLA as at the commencement of this section.

New section 164 (Transitional provision for Police Legislation Amendment Act 2010) clarifies that the Governor in Council can further amend or repeal amendments made to the PR by this Act.

Clause 37 Amendment of sch 4 (Dictionary): This clause amends schedule 4 (Dictionary) to provide definitions for the terms *commencement*, *extended criminal history*, *engage*, *exempted member*, *part 6 directive*, *prescribed day*, *prospective staff member*, *relevant duties*, *staff member* and *suspension period*.

## **Part 5**                      **Amendment of Prostitution Regulation 2000**

Clause 38 Regulation amended: This clause provides that this part amends the *Prostitution Regulation 2000*.

Clause 39 Amendment of s 3 (Definitions): This clause amends the definitions of *certificate anniversary day* and *licence anniversary day*. Subclause 39(1) amends the definition *certificate anniversary day* to provide that the certificate anniversary day is the date each year that is the

anniversary day for the giving of the approved manager's certificate under section 43 of the PA.

Subclause 39(2) amends the definition *licence anniversary day* to provide that the licence anniversary day is the date each year that is the anniversary day for the giving of the licensee's licence under section 18 of the PA.

Clause 40 Amendment of s 5A (Conditions of licence-annual licence fee and annual licence return fee-Act, s 19(5)(d)(i)): This clause amends section 5A to require that a licensee must pay the annual licence fee and the annual licence return fee on or before the licence anniversary day.

Clause 41 Amendment of s 5B (Conditions of licence-annual return-Act, s 19(5)(d)(ii)): This clause amends section 5B to require that a licensee must give the annual return to the PLA on or before the licence anniversary day.

Clause 42 Amendment of s 6A (Conditions of certificate-approved manager's annual certificate fee and annual return fee-Act, s 44(4)(d)(i)): This clause amends section 6A to require that an approved manager must pay the annual certificate fee and the annual return fee on or before the licence anniversary day.

Clause 43 Amendment of s 6B (Conditions of certificate-annual return-Act, s 44(4)(d)(ii)): This clause amends section 6B to require that an approved manager must give the annual return to the PLA on or before the certificate anniversary day.