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

Statement of Compatibility

FOR

Amendments to be moved during consideration in detail by the Honourable Mark Ryan MP, Minister for Police and Corrective Services and Minister for Fire and Emergency Services

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, Mark Ryan MP, Minister for Police and Corrective Services and Minister for Fire and Emergency Services make this statement of compatibility with respect to amendments to be moved during consideration in detail (ACiDs) of the Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill 2022 (the Bill).

In my opinion, amendments 19 and 29 (clauses 70 and 72) to be moved during in consideration in detail are not compatible with the human rights protected by the HR Act. The nature and the extent of the incompatibility is outlined in this statement. In my further opinion, the remainder of the amendments to the Bill to be moved during consideration in detail are compatible with the human rights protected by the HR Act for the reasons outlined in this statement.

Overview of the amendments

The Bill was introduced on 26 October 2022 and contained a variety of legislative measures relevant to the operation of the child protection registry scheme underpinned by the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* (the CPOROPO Act).

The ACiD will amend the Bill, the CPOROPO Act, the *Mental Health 2016*, *Mineral Resources Act 1989*, the *Police Powers and Responsibilities Act 2000* (PPRA), the *Police Powers and Responsibilities Regulation 2012, Police Service Administration Act 1990*, *Summary Offences Act 2005* (SOA), *Supreme Court of Queensland Act 1991* (SCQ) and the *Youth Justice Act 1992* (YJA) to implement a diverse range of policy objectives.

<u>*Omitting the requirement for reportable offenders to report MAC addresses*</u>

Amendments to the Bill will remove the proposed requirements for reportable offenders to provide media access control (MAC) addresses of digital devices they possess or use and in motor vehicles they use or own.

The Bill had proposed to extend the parameters of schedule 2 of the CPOROPO Act to require reportable offenders to provide police with MAC addresses of all digital devices they possess or use and in motor vehicles they use or own. The objective was to provide police with greater visibility of the digital devices in each reportable offender's possession and to allow police to monitor the whereabouts of at risk offenders who reside in the community.

Technology evolutions and advances commonly referred to as MAC randomisation and motor vehicle passive modes have effectively disguised the unique MAC address(es) of any digital device or motor vehicle. These advances will now impede the intention and the operational capability of the proposed legislation and result in the inability of reportable offenders to comply with the proposed changes.

The Statement of Compatibility prepared in relation to the Bill identified the requirements for reportable offenders to provide MAC addresses of digital devices and motor vehicles did limit human rights under the HR Act, however, these limitations were considered reasonable and demonstrably justifiable (section 13 of the HR Act). The amendments will remove these requirements and therefore will no longer limit these human rights.

Clarifying the term 'sexual offence against any person' under the PPRA

Amendments to the Bill will also provide clarification of the term 'sexual offence against any person' which appears in section 244(1)(g)(iii) of the PPRA. Section 244 'Matters to be taken into account' of the PPRA outlines factors the chief executive officer must be satisfied on reasonable grounds about before granting an authority to conduct a controlled operation. Subsection (1)(g) is directed to preventing harm or deleterious impacts to any person caused by the conduct involved in the controlled operation.

This amendment is a clarifying provision for the term 'sexual offence against any person' which appears in subsection (1)(g)(iii). The objective is to make clear that controlled operations may be authorised which involve the possession, distribution or editing of material that depicts a sexual offence or producing material that appears to depict a sexual offence provided the material does not depict a real person. The provision also provides that communicating with a person suspected of committing or attempting to commit offences does not constitute a 'sexual offence against any person' for the purposes of section 244 of the PPRA.

This amendment is a clarifying provision providing guidance to approving officers and participants involved in controlled operations. This amendment does not change any of the other requirements or procedures involved in the authorisation, conduct or monitoring of controlled operations and does not limit a human right listed under the HR Act.

Decriminalising the offence of begging in a public place under the SOA

Section 8 'Begging in a public place' of the SOA provides that a person must not beg for money or goods in a public place; or cause, procure or encourage a child to beg for money or goods in a public place; or solicit donations of money or goods in a public place. It is a simple offence punishable by a maximum penalty of 10 penalty units or 6 months imprisonment.

On 31 October 2022, the Community Support and Services Committee (CSSC) tabled Report No. 23, *Towards a healthier, safer, more just and compassionate Queensland: decriminalising the offences affecting those most vulnerable* (Report No.23) making 16 recommendations, including recommending the offence of begging be decriminalised, subject to appropriate community-based diversion services being in place.

The recommendation was reflective of mounting public opinion that these behaviours require a health-based response, and their continued criminalisation entrenches vulnerable people in the criminal justice system. Report No. 23 also notes that these offences have a disproportionate impact on Aboriginal people and Torres Strait Islander people and those suffering from chronic ill health, poverty and/or homelessness.

Decriminalising the offence of begging in a public place will ensure that vulnerable persons do not unnecessarily enter the criminal justice system.

Amending the offence of public urination under the SOA

The ACiD will also amend section 7 'Urinating in a public place' of the SOA by requiring police, before they commence a proceeding or issue a penalty infringement for the offence, to consider in all the circumstances, if it would be more appropriate to take no action.

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

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

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

Clarifying that the inspector of detention services is not required to obtain chief executive approval for entry as a visitor to a detention centre

The ACiD will make a minor and technical amendment to the Youth Justice Act 1992 (YJ Act) to implement the original policy intent of section 105 of the *Inspector of Detention Services Act 2023* as passed (the IDS Act). The amendment will provide that section 272 of the YJ Act (which requires ordinary visitors to seek chief executive approval for entry as a visitor to a detention centre) does not apply to the inspector of detention services.

Clarifying the options for the service of police banning notices

Section 602G 'How police banning notice may be given' of the PPRA provides for the service of a police banning notice on a person who has been banned by a police officer for unacceptable behaviour in a licensed premises, safe night precinct or a public place at which an event is being held and alcohol is sold for consumption.

The ACiD will amend section 602G to clarify that the service of an extended police banning notice will include service by post. Postal service is sometimes required in instances where an initial police banning notice is extended from 1 month to up to 3 months and an extended banning notice is then served on the person via post.

Removing sex work offences as part of police controlled operations and controlled activities

Police at times conduct authorised controlled operations and controlled activities to investigate prescribed offences. Once authorised, appropriately trained persons act as participants in the operations and activities and may, at times, engage in otherwise unlawful behaviour.

In March 2021, the QLRC released Report No.80 'A decriminalized sex-work industry for Queensland' (the QLRC Report) which recommended the decriminalisation of sex-work in Queensland.

Recommendation 5 of the QLRC Report was as follows:

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

Schedule 2 of the PPRA provides the list of relevant offences to which police can apply for a controlled operation and a surveillance device warrant. Schedule 5 of the PPRA provides a list of controlled activity offences to which police can undertake a controlled activity.

The ACiD implements the QLRC recommendation by removing the nominated offences from Schedules 2 and 5 of the PPRA.

Repeal of sex work specific move-on power

Recommendation 2 of the QLRC Report was as follows:

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

The ACiD partially implements Recommendation 2 of the QLRC Report by repealing section 46(5) (When power applies to behaviour) from the PPRA to remove a police officer's power to issue a move-on direction on the basis the officer suspects that the person is soliciting for prostitution.

Decriminalising the offence of public intoxication

Amendments to the Bill will decriminalise the offence of public intoxication through amendments to the PPRA, the *Police Powers and Responsibilities Regulation 2012* and the SOA.

Currently, section 10 'Being intoxicated in a public place' of the SOA provides that a person must not be intoxicated in a public place. It is a simple offence punishable by a maximum of 2

penalty units. For the purposes of the offence, *intoxicated* means drunk or otherwise adversely affected by drugs or another intoxicating substance.

Decriminalising the offences of public drunkenness will ensure that those persons do not unnecessarily enter the criminal justice system.

Amendments to the Bill will allow a police officer to detain an intoxicated person in a public place if the officer is satisfied detaining the person is necessary as they are behaving in a disorderly, offensive, threatening or violent way; or to preserve the safety or welfare of the person.

Police may then transport the intoxicated person to a place of safety and release them so they may receive the care necessary to enable the person to recover from the effects of being intoxicated. A place of safety means:

- a hospital for a person who requires medical attention; or
- if the person does not require medical attention – a place, other than a police station or watch-house, at which the person can recover safely from the effects of being intoxicated, for example:
    - a place, other than a hospital, that provides care for persons who are intoxicated or who have ingested or inhaled the potentially harmful thing;
    - a place where the person is living; and
    - a place where a relative or friend of the person is living.

Where police are unable to find a place of safety that is located within a reasonable distance from the place where the person is detained, police may transport the person to a police station or watchhouse and detain them for a maximum period of 8 hours until the person is no longer intoxicated or release them if it is appropriate to do so. The person will not face a criminal charge of being intoxicated in a public place as the offence provision will be omitted by amendments to the Bill.

The approach is broadly consistent with section 378 'Additional case when arrest for being intoxicated in a public place may be discontinued' of the PPRA (omitted by the ACiD), which provided that, where appropriate, officers are to take the person arrested for public intoxication to a place of safety for treatment or care.

The amendments in the Bill will continue to place a duty on police to take an intoxicated person to a place of safety where appropriate. Amendments to the Bill in relation to public intoxication may limit human rights under the HR Act.

Validation of disciplinary referrals under Police Service Administration Act 1990

On 8 March 2023, the Queensland Court of Appeal held that the manner in which disciplinary matters had been referred and considered by the Queensland Police Service did not comply with the requirements of the PSA Act: *Carless v Johnson* [2023] QCA 29 (*Carless*). The Court held that section 7.10 and section 7.11 of the PSA Act required the Police Commissioner (the commissioner) to refer complaints against a subject officer to a specified 'prescribed officer'.

That prescribed officer was then vested with the statutory power to commence a disciplinary proceeding in respect of the subject officer. In the disciplinary proceedings challenged in *Carless,* this procedure had not been followed. As the referral process did not comply with the requirements of section 7.10(2) of the PSA Act*,* the Court of Appeal held the referral was invalid.

The Bill amends the PSA Act in response to the decision of the Court of Appeal in *Carless.* It operates to validate the following referrals made on or after 30 October 2019, but before 8 March 2023:

(a) the referral did not specify a particular prescribed officer as the entity to whom the referral was made; or

(b) the referral specified a prescribed officer as the entity to whom the referral was made but another officer purported to act as the prescribed officer; or

(c) the referral did not specify a particular prescribed officer by name and rank.

Granting mining lease for Byerwen Coal

Amendment to the *Mineral Resources Act 1989* provides a solution that will give certainty for Byerwen Coal Pty Ltd (Byerwen Coal) and Isaac Regional Council in relation to the operation of a workers' camp at the Byerwen Mine Project (Byerwen Mine) in central Queensland's Bowen Basin.

Isaac Regional Council originally granted a temporary development permit for the workers' camp in 2016. In September 2019, Byerwen Coal lodged a development application for a material change of use, which sought to make permanent and expand the camp. The application was refused on the grounds that the proposed development conflicted with the relevant assessment benchmarks in the local planning scheme and regional plan—a decision that was upheld in the Planning and Environment Court.

The workers' camp is currently operating without a development approval or other relevant authority. Byerwen Coal has sought to secure the workers' camp for a 25-year term under the authority of Mining Lease (ML) 700066.

The establishment of a permanent workers' camp on the mine site is inconsistent with the Government's position, established in the *Strong and Sustainable Resource Communities Act 2017*, that residents of communities in the vicinity of large resource projects should benefit from the construction and operation of the projects. The Byerwen Mine predates the *Strong and Sustainable Resource Communities Act 2017* and is not subject to it outside of the ban on having a 100 percent fly in, fly out workforce. While that Act is not applicable, establishing a permanent workers' camp on the mine site is inconsistent with representations made in Byerwen Mine's Environmental Impact Statement and Workforce Accommodation Strategy for the project. Those representations, which included maximising residency in the nearby township of Glenden for approximately 30 percent of the workforce, informed the Government's decision to approve Byerwen Mine.

However, the grant under the *Mineral Resources Act 1989* of a mining lease subject to conditions enforcing Byerwen Coal's representations may result in further litigation. In the

interim, the workers' camp would continue to operate without authorisation and at risk of being closed, which would affect the mining operations. A legislative solution is therefore necessary.

The Bill will achieve this by:

- granting ML 700066, with the lease expiring on 31 March 2030
- providing that ML 700066 will not be renewed and cannot be consolidated with another mining lease
- imposing conditions requiring Byerwen to progressively transition its entire workforce from the workers' camp on ML 700066 to Glenden, with 30 percent of the workforce to be accommodated in residential dwellings in Glenden
- prohibiting Byerwen from relocating the workers' camp to another mining lease associated with the project.

Amendments to the Mental Health Act

The objective of the ACiDs to the Mental Health Act, which are unrelated to the Bill, is to retrospectively validate the appointment of, and any relevant exercise of jurisdiction by, a person who during the period 14 February 2023 to 29 June 2023 (inclusive), acted as a member and president of the Mental Health Court, but did not have a valid commission (the unappointed person).

Amendments to the SCQ Act

The objective of the ACiDs to the SCQ Act, which are unrelated to the Bill, is to: retrospectively provide for the continuation of the expired *Supreme Court of Queensland Regulation 2012* (SCQ Regulation) and for anything done in relation to a Supreme Court district under the Regulation to be valid in the period between expiry and the commencement of this amendment; and to extend the expiry of the SCQ Regulation to 1 September 2024.

Administrative custody arrangements for children remanded in or sentenced to custody

Section 56(1) of the YJ Act provides that, except where a child remains the prisoner of the courts, a court that remands a child in custody must remand the child into the custody of the chief executive. Section 56(4) provides that a court that remands a child into custody of the chief executive must order the commissioner of the police service to deliver the child as soon as practicable into the custody of the chief executive at a Youth Detention Centre (YDC).

It has emerged that courts may have not always made orders under section 56(4) of the YJ Act and, therefore some children, while lawfully in custody, may have been held unlawfully in police custody.

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

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

The amendments set out a framework for decision-making about the timing of the transfer to the custody of the chief executive which ensure any relevant factor can be taken into account, with the objective being an appropriate balancing of the interests of children in watchhouses, children held in youth detention centres and staff employed at youth detention centres.

The chief executive will be required to consider the child's individual needs; the needs of other children in police custody awaiting transfer; the chief executive's and commissioner of the police service's statutory obligations to operate safe and secure YDCs and police watchhouses; and the chief executive's obligations as an employer. Consideration of the child's individual needs will involve reference to age, self-harm and suicide risk, medical conditions, date and location of next court appearance, and any other issue that may impact the child's health or wellbeing during transport.

Transport of Children between watchhouses and to other police holding cells

Section 640 of the Police Powers and Responsibilities Act 2000 (PPRA) provides that a watchhouse manager may transfer a person in custody in a watchhouse from the watchhouse (a) to another watchhouse; or (b) to a holding cell at a police station, among other sections. This includes the transfer of children who are held in a watchhouse.

The purpose of Amendment 19 is to continue the ability of the QPS to properly manage its watchhouses by transferring children in its custody between watchhouses and to holding cells.

For example, where a child is expected to be held on a remand order or a detention order for a lengthy period of time in a watchhouse that frequently experiences high demand, it may be preferable to transport that child to a different watchhouse until such time as the chief executive (youth justice) notifies the commissioner of the police service of a date for the child to be delivered to a youth detention centre.

The Government acknowledges that, as the amendments to section 56 and 210 of the YJ Act outlined above are incompatible with human rights, the transfer of children between watchhouses or watchhouses and holding cells is also incompatible with the same human rights in the same way.

Accordingly, amendment 19 includes a declaration which provides that sections 640(a) and (b) of the PPRA, in so much as they relate to a child, is to have effect despite being incompatible with human rights, and despite anything else in the HR Act.

Validation of past police custody

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

This, in turn, may create a potential liability for police officers who have acted in good faith when detaining children and transporting them to YDCs.

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

Establishment of detention centres and other places

Section 262 of the YJ Act provides that the Governor in Council may, by regulation, establish YDCs and other places for the purposes of the YJ Act. This includes places for potentially holding children in custody.

The amendments include a human rights override to clarify that a regulation may be made to declare a police watchhouse or part of a corrective services facility as a YDC or place for holding children in custody. This provision will enable the chief executive to address immediate capacity issues in YDCs, all of which are currently operating at, or above, operational capacity.

The provision is subject to a 'sunset' clause, expiring on 31 August 2027, with the ability to extend the provision for a maximum of 12 months. Despite the override, the Minister will still be required to consider human rights when requesting that the Governor in Council make a regulation. Remedies under the *Human Rights Act 2019* will not be available, but judicial review will be available.

Transfer of detainees aged 18 or over to adult custody

The amendments also correct drafting errors in the YJ Act in relation to the transfer of persons over 18 years of age in YDCs to adult corrective services facilities.

• Human Rights Issues

Human rights relevant to the amendments (Part 2, Division 2 and 3 of the *Human Rights Act 2019*)

Validation of disciplinary referrals under Police Service Administration Act 1990

The AciDs insert a new Division 16 into Part 11 of the PSA Act. New section 11.46 operates to validate the affected referrals and subsequent action taken in relation to the referrals. It also clarifies that no compensation is payable because of the operation of the provision (s 11.46(4)). Where the consequence of validating an affected referral will be the suspension or demotion of a subject officer, section 11.47 clarifies that all duties performed by the subject officers during the period of demotion or suspension are taken to always have been valid.

These amendments may have the effect of removing certain employment entitlements from affected subject officers which arose because of the invalidity of a referral, including rights to backpay and to repayment of a fine. In this sense, the validation of the affected referrals may deprive subject officers of their 'property'. This may engage the right to property in section 24(2) of the *Human Rights Act 2019* (the HR Act). However, the right to property will only be limited if the interference is arbitrary. An interference will be arbitrary where it is capricious, unpredictable, unjust or unreasonable in the sense of not being proportionate to the legitimate aim sought. Non-arbitrariness and proportionality are different standards, but if the interference is proportionate under section13 of the HR Act, it will not be arbitrary (and there will be no limit on the right to property).

Where the consequences of validating an affected referral will be the suspension or demotion of a subject officer, this may engage the right to privacy in section 25(a) of the HR Act to the extent the scope of that right may be interpreted as encompassing a right to work. That is because the validating law will have the effect of removing an entitlement a subject officer would otherwise have had to reinstatement to their previous office. However, the right to privacy will only be limited where the interference is unlawful or arbitrary. The internal limitations of 'lawfulness' and 'arbitrariness' will be considered when applying the proportionality analysis, below. If an interference is lawful and proportionate, there will be no limit on the right to privacy.

The amendments may also engage the rights of eligible persons to have the opportunity, without discrimination, to access, on terms of equality, the public service and public office under section 23(2)(b) of the HR Act. This is because the validation of certain affected referrals may result in the suspension or demotion of subject officers in circumstances where they would otherwise have been entitled to reinstatement. It has been accepted in international human rights case law that an arbitrary refusal to reinstate a public service employee may limit this right.[1]

Section 11.48 operates to remove the time limit that would otherwise apply under section 7.12 of the PSA Act for starting a new disciplinary proceeding in relation to an affected referral, and provides that interrupted disciplinary proceedings may be continued by a prescribed officer under new section 11.49. The rights of affected subject officers to seek review of a disciplinary decision before the Queensland Civil and Administrative Tribunal (QCAT) are re-enlivened by new section 11.50. Hence, while these provisions may engage the right of access to the courts which may be implied as part of the right to a fair hearing in section 31(1) of the HR Act,[2] I am of the view that this right is not limited by the amendments.

Remedial action

Where the consequence of validating an affected referral is to restore a disciplinary sanction or professional development strategy, new section 11.51 requires the commissioner to take all action necessary to impose a disciplinary sanction or professional development strategy from the day the validation has effect, including by recovering an amount paid to a subject officer, or by recovering a fine. However, the commissioner has a discretion under section 11.51(7) not to take remedial action if they are satisfied this would cause excessive hardship to the subject officer and would be contrary to the public interest. New section 11.52 imposes obligations on the commissioner to notify a subject officer of a proposed remedial action and to consider a written submission provided by a subject officer, before taking the remedial action.

These amendments may also limit property rights (section 24(2) of the HR Act), the right to privacy (section 25(a) of the HR Act) and the right to access the public service without discrimination (section 23(2)(b) of the HR Act), as the restoration of disciplinary sanctions

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1 Human Rights Committee, *Communication No 203/1986,* 34th sess, UN Doc Supp No 40 (A/44/40) Appendix II (4 November 1988) [4] ('*Hermoza v Peru*').

2 This human right is recognised as an implied aspect of art 14 of the International Covenant on Civil and Political Rights ('ICCPR'): Human Rights Committee, *General Comment No 32 – Article 14: Right to equality before courts and tribunals and to a fair trial*, 90th sess, UN Doc CCPR/C/GC/32 (23 August 2007) 2-3 [9], 5 [17]. In Victoria, the right to a fair hearing (which section 31 closely resembles) has been held to include a right of access to the courts: *Slaveski v Smith* (2012) 34 VR 206, 220 [50]-[52] (Warren CJ, Nettle and Redlich JJA).

may deprive subject officers of property, including their salary, or may result in their demotion or suspension.

Judicial review

Section 11.54 will provide that a decision made under the new division is final and conclusive, and cannot be challenged, appealed against or reviewed, unless the Supreme Court decides that the decision is affected by jurisdictional error. That is, review of a decision under new division 16 of part 11 is limited to review for jurisdictional error only.

The limits on the availability of review may engage an implied right of access to the courts in the right to a fair hearing in section 31 of the HR Act. However, the right of access to the courts does not require that a person have available to them a full spectrum of review rights. Rather, what is required is that there be a sufficient review of the legality of the decisions and procedures followed.[3] As judicial review of a decision made under the division is available in cases of jurisdictional error, the right is not limited.

Decriminalising the offence of public intoxication

As the framework in the Bill includes a limited power to detain an intoxicated individual, they will engage the rights to liberty and security of person and freedom of movement under section 29 and 19 of the HR Act, respectively. The right to liberty may be limited in relation to the proposal to decriminalise the offence of being intoxicated in a public place as police will still maintain their ability to take an intoxicated person into protective police custody and take them to a place of safety should one be available. If a place of safety is not available, or it is not appropriate, then police will continue to have the power to detain the person at a police station, police watchhouse as a last resort. In such instances the person will remain in protective police custody until they are no longer intoxicated or for a maximum period of 8 hours, whichever is sooner.

The principle that underlies the right is that detained persons should 'not be subjected to hardship or constraint other than the hardship or constraint that results from the deprivation of liberty'.[4] As the proposed amendments allow for the detention of intoxicated persons in certain circumstances, the amendments will potentially engage s 30 of the HR Act, the right to humane treatment when deprived of liberty.

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

The right to privacy and reputation may also be limited by the requirement that police enter the details of the detention such as their name (if known) and where the person was detained, into

[3] *R (Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions* [2001] UKHL 23; [2003] 2 AC 295, 320 [49]-[50] (Lord Slynn). See also at 323 [61]-[62] (Lord Nolan), 330 [87], 339 [122] (Lord Hoffmann), 350 [154] (Lord Clyde), 362 [189], 364-5 [196] (Lord Hutton).

a register as an *enforcement act* as required in sections 678 'Register of enforcement acts' of the PPRA.

Granting mining lease for Byerwen Coal

In considering the effect of the amendments on human rights, it is necessary to understand how ML 700066 relates to the Byerwen Mine as a whole.

The Byerwen Mine involves the extraction of coal, some of which is thermal coal that will probably be used in electricity production, resulting in carbon emissions. However, ML 700066 will not authorise the extraction of coal or other minerals. Those activities are authorised under other mining leases forming part of the Byerwen Mine and ML700066 will merely permit Byerwen Coal to accommodate its workers.

Accordingly, the grant of ML700066 itself does not have climate change implications and I am satisfied that the amendments do not engage human rights to the extent human rights may be limited by climate change.

Further, the amendments directly affect only Byerwen Coal. Section 11(2) of the HRA provides that only individuals have human rights. As Byerwen Coal is a corporation and does not have human rights, it is arguable that it has no effect on human rights.

However, because the amendments affect the accommodation that will be available to Byerwen Mine workers, I have proceeded on the basis that it engages the following human rights of individuals:

- freedom of movement (section 19, HRA); and
- privacy and reputation (section 25, HRA).

Section 25(a) of the HRA states that a person has the right not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with. To the extent the amendments interferes with these rights of individual workers, the interference will be lawful. In this context, therefore, whether the right stated in section 25(a) is limited depends on whether any interference caused by the amendments would be 'arbitrary'. In a human rights context, 'arbitrary' refers to conduct that is capricious, unpredictable or unjust, and also refers to interferences which are unreasonable in the sense of not being proportionate to a legitimate aim sought. If an interference is proportionate under section 13 of the HRA, it will not be arbitrary. Accordingly, whether the interference with privacy is arbitrary will be addressed below when considering the factors in section 13.

Amendments to the Mental Health Act and SCQ Act

In my opinion, the human rights relevant to the amendments to the Mental Health Act and SCQ Act are:

- right to a fair hearing (section 31 of the HR Act); and
- rights in criminal proceedings (section 32 of the HR Act).

Administrative custody arrangements for children remanded in or sentenced to custody

Sections 56 and 210 of the YJ Act ensure the safe custody and wellbeing of children in custody, placing them under the care and control of the chief executive.

Amendment 29 amends section 56(1) and (4) of the YJ Act to provide that where a court remands a child into the custody of the chief executive, the commissioner of the police service is automatically required to deliver the child, as soon as reasonably practicable (with reference to specified criteria – see below), into the custody of the chief executive.

Amendment 29 makes similar amendments to section 210(2) in relation to a child subject to a detention order made by a court.

The amendments establish a new decision-making framework, which requires the chief executive to consider relevant factors in deciding the timing of the transfer from police custody to youth justice custody. Specifically, the amendments provide that the chief executive must have regard to the following factors:

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

The Government acknowledges that these proposed amendments are incompatible with a number of human rights protected by the HR Act, as they will mean that children will continue to be held in police watchhouses until a bed becomes available at a YDC.

The human rights engaged include the right of children to protection in their best interests under (HR Act, section 26(2)); the right not to be treated or punished in a cruel, inhuman or degrading way (HR Act, section 17(b)); right to privacy and non-interference with family (HR Act, section 25(a)); right of Aboriginal and Torres Strait Islander peoples to maintain kinship ties (HR Act, section 28(2)(c))); right to humane treatment when deprived of liberty (HR Act, section 30); right of child detainees who have not been convicted to be segregated from adult detainees (HR Act, section 33(1)); right to education (HR Act, section 36(1)) and right to health services (HR Act, section 37).

The amendments are also inconsistent with international standards about the best interests of the child, including the United Nations Convention on the Rights of the Child (CROC)[4] and United Nations Standard Minimum Rules for the Administration of Juvenile Justice ('the Beijing Rules').[5]

The CROC recognises "that children are especially vulnerable to physical and emotional harm" in custodial environments. It requires state parties to ensure:

- separate facilities for children deprived of their liberty, with distinct child-centred staff, personnel, policies and practices;
- the child's right to maintain contact with family;
- a physical environment and accommodation in keeping with the rehabilitative aim of residential placement, with due regard to children's needs for privacy, stimuli, opportunities to associate with peers, and participate in sports, physical exercise, arts and leisure activities;
- the child's right to education;
- access to adequate medical care; and
- facilitation of contact with the child's wider community.

The Beijing Rules further provide the framework under which legislation like the YJ Act should operate, reflecting the focus, for child defendants, on rehabilitation, protection, and diversion from the criminal justice system.

The Beijing Rules reflect that treatment of children must be proportionate and cognisant of their best interests:

- Rule 13.1 provides that detention should only be used as a measure of last resort and for the shortest possible period of time

4 *Convention on the Rights of the Child*, https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child

5 *Standard Minimum Rules for the Administration of Juvenile Justice* (the Beijing Rules), https://www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf

- Rule 13.2 provides that whenever possible detention pending trial shall be replaced by alternative measures such as close supervision, intensive care or placement with a family or educational setting or home

- Rule 13.3 requires, relevantly, that children in detention pending trial are entitled to all rights and guarantees of other prisoners.

- Rule 13.4 provides that children in detention pending trial shall be kept separate from adults.

- Rule 13.5 provides that whilst in custody, children shall receive care, protection and all necessary individual assistance (social, educational, vocational, psychological, medical and physical) that they may require in view of their age, sex and personality

The purpose of the amendment is to enable the chief executive to appropriately balance the interests and rights of children in watchhouses, children currently in YDCs, and staff when reaching decisions about the timing of the transfer of children from police custody to youth justice custody.

The amendment recognises that whilst not ideal, a police watchhouse may be the most appropriate, available place to hold a child in custody when YDCs are full, based on their individual needs and the needs of other children in youth detention and staff, until a space is available in a YDC. This is because overcrowding a YDC, so that it is over capacity, impacts the human rights of all children detained in the centre. This includes detainees' rights to privacy, access to education and other programs, and to be held in a safe and secure environment.

Holding a child in a watchhouse for a limited period allows the child to be securely detained, with appropriate surveillance and monitoring to avoid self-harm and suicide risks. This is not available in all rooms in YDCs. In addition, operating YDCs above capacity can lead to prolonged periods of separation.

There is also a higher risk of assault in YDCs operating above capacity, due to the nature of the operating environment, with groups of detainees mixing together when engaging in programs and other activities. There were 238 assaults on staff in YDCs in 2022. Operating YDCs at above capacity is also a known riot risk, as demonstrated in Victoria at the Parkville Youth Justice Precinct.

The Government is taking action to meet the current high demand on YDC capacity, including the building of two new YDCs by 2026. This should ensure that children are only held in watchhouses for the shortest time necessary.

In the meantime, DYJESBT will continue to work closely with the Queensland Police Service (QPS) and other agencies, including Queensland Health and the Department of Education, to support the safety and wellbeing of young people in watchhouses.

A range of supports are available to young people in watchhouses as part of usual operations. This includes support from regional Youth Justice staff and funded support including legal advocacy, bail support and cultural services.

Funding is provided to support Aboriginal and Torres Strait Islander young people and their families through wellbeing assessments, cultural support, facilitating contact with families, and providing cultural support and advice to police.

All young people are supported to have contact with their care providers, families and other people of significance. Care providers are also provided regular updates about court outcomes, the young person's wellbeing while in a watchhouse and information about YDC admission.

Youth Justice staff and funded non-government organisations also work with the QPS to provide a range of practical and therapeutic supports to young people, including books and other activities, programs, snacks and hygiene items.

The Department of Education has developed a collection of resources to provide young people access to education while in watchhouses. Youth Justice and funded non-government organisation staff assist young people to complete these resources.

Where longer stays occur, DYJESBT works to initiate local arrangements for additional safety and wellbeing assessments and other supports, which are available on weekdays, weekends and after-hours as required. Support is also available from Queensland Health, and referrals are urgently actioned in the event that mental health supports are required.

The Office of the Public Guardian also monitors the wellbeing of young people in watchhouses via its Community Visitor program.

It is considered that the current, significant demand on youth detention capacity, and lack of alternative accommodation in the short term, is an 'exceptional circumstance' which justifies the override declaration. The provisions will help the chief executive:

- meet their workplace health and safety obligations as an employer, and fire obligations as the occupier of YDC sites;
- prevent overcrowding, which has been shown to increase the risk of rioting and unrest in YDCs, lead to assaults and injury to young people and staff, and increase offending while in detention;
- minimise separations, enabling young people to have access to rehabilitation and programs to the greatest extent possible; and
- balance the safety and care of young people, YDC staff and the community.

Accordingly, the amendment includes a declaration which provides that it is to have effect despite being incompatible with human rights, and despite anything else in the HR Act.

Establishment of detention centres at watchhouses or corrective services facilities

Section 262 of the YJ Act provides that the Governor in Council may, by regulation, establish detention centres and other places for the purposes of the YJ Act; determine the purpose for which a place, other than a detention centre, may be used; and name a detention centre or other place.

The amendments will enable the Minister to recommend to the Governor in Council that a regulation be made to establish a YDC in what is currently a police watchhouse or corrective services facility.

It is acknowledged that this proposed amendment is incompatible with human rights under the HR Act. The human rights engaged are similar to those discussed above.

The preference is not to hold children in police watchhouses for extended periods of time. It is acknowledged that watchhouses are designed to hold adults for relatively short periods of time. They are not designed for holding children for longer periods during which they may be held together with other children, may not have access to appropriate fresh air or direct sunlight, may face issues receiving visits from family members and may see or hear adult detainees in the watchhouse.

However, as outlined above, holding children in police watchhouses is preferrable to transferring them to overcrowded YDCs. Operating YDCs at above built capacity-levels, particularly for extended periods of time, creates significant and serious risks.

DYJESBT is committed to minimising watchhouse stays where possible and expediting the admission of young people to a YDC. DYJESBT is also committed to working together with the QPS to:

- provide services and supports to promote the safety and wellbeing of children in watchhouses
- facilitate contact with family and other people of significance, and
- provide services and supports to expedite legal assistance and bail merit applications.

The proposed amendments are an interim measure and time limited to 31 August 2027, with the option of an extension up to a maximum of 12 months.

These measures are necessary to address the immediate capacity issues experienced at YDCs, prior to the two new YDCs becoming operational by 2026.

For this reason, the Government considers that it is necessary, in this exceptional case, to override the HR Act. Accordingly, section 262 will be amended to include a declaration that provides that a regulation made under that provision establishing a YDC in a watchhouse or part of a corrective services facility is to have effect despite being incompatible with human rights.

The override will extend to subsequent decisions and acts made or done in relation to the new YDC, such as a decision to transfer a child to that YDC.

Validation of past police custody

The amendments limit a young person's right to seek legal redress for acts or omissions arising from being in police custody as opposed to the chief executive's custody, in the absence of an order or warrant issued by the court under sections 56(4) or 210 of the YJ Act.

Accordingly, the amendment may be considered to limit section 15(3) of the HR Act – every person is equal before the law and is entitled to the equal protection of the law without discrimination. It may also be considered to limit the best interests of the child (HR Act, section 26(2)).

The following amendments will not limit a human right outlined in the *Human Rights Act 2019* (HR Act):

- Omitting the requirement for reportable offenders to report MAC addresses;
- Clarifying the term 'sexual offence against any person' under the PPRA;
- Decriminalising the offence of begging in a public place under the SOA;
- Amending the offence of public urination under the SOA;
- Clarifying that the inspector of detention services is not required to obtain chief executive approval for entry as a visitor to a detention centre;
- Clarifying the options for the service of police banning notices;
- Removing sex work offences as part of police-controlled operations and controlled activities; and
- Repeal of sex-work specific move-on power

Transfer of detainees aged 18 or over to adult custody

This amendment is minor in nature and seeks to implement the original policy intent of section 36 of the *Strengthening Community Safety Act 2023* in relation to the application of new sections 276G to 276K of the YJ Act – transfer of persons remanded in detention. The amendment clarifies that the transfer provisions apply to a young person on remand in a YDC who is at least 17 years and 10 months, regardless of when they had entered detention, and who at the time of being given a prison transfer notice has either no future court date or no court date within the next two months.

Sections 276DB and 276J of the YJ Act give the person a right to apply to the Childrens Court for review of decisions of the chief executive in relation to transfers to adult custody.

The provision provides that when considering an application under section s.276DB or 276J, the Court must be constituted by a judge. This amendment recognises the significance of these decisions.

The amendments do not impact on the original human rights assessment of section 36 of the *Strengthening Community Safety Act 2023*.

As outlined to the Economics and Governance Committee during its consideration of the Strengthening Community Safety Bill:

Clause 36 has the consequence that the Youth Justice Act aligns more closely with, and therefore promotes, the right in section 33(1) of the HR Act of children held on remand to

be segregated from detained adults. The amendments still allow for some flexibility in appropriate cases, which is consistent with article 37(c) of the Convention on the Rights of the Child, which recognises an exception to the requirement of segregation where 'it is considered in the child's best interest not to do so'. Accordingly, clause 36 does not limit, but rather promotes, the right in section 33(1).[6]

If human rights may be subject to limitations if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 of the HR Act)

(a) the nature of the right

Validation of disciplinary referrals under Police Service Administration Act 1990

Property rights - Section 24(2) of the HR Act provides that all persons have the right not to be arbitrarily deprived of their property. This right underpins many of the structures essential to maintaining a free and democratic society based on human dignity, equality and freedom. The meaning of 'property' is to be construed liberally and encompasses economic interests.[7]

The right to privacy - Section 25(a) of the HR Act provides that all persons have the right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with. Because the right to privacy protects an individual's right to establish and develop meaningful social relations, the scope of this right may also extend to encompassing a right to work.[8] This right is subject to the internal limitation of lawfulness – only unlawful (or arbitrary) interferences with privacy will limit the right. The Bill does not unlawfully interfere with the right to work as the amendments operate to ensure the validity of the limitation.

The right to access the public service without discrimination - The right to have access, on general terms of equality to the public service and to public office in section 23(2)(b) of the HR Act is modelled on article 25(c) of the ICCPR and is intended to ensure equality of opportunity for citizens to access public service positions. Under article 25(c) of the ICCPR, this right requires that the criteria and processes for appointment, promotion, suspension and dismissal of public service officers are to be reasonable and objective.[9]

Decriminalising the offence of public intoxication

Freedom of movement - The right to freedom of movement protects a person's right to move freely within Queensland, enter and leave it, and choose where to live if they are lawfully within Queensland.

Privacy and reputation – The right to privacy and reputation protects a person's right not to have their privacy and reputation unlawfully or arbitrarily interfered with. The nature of the right to privacy and reputation is very broad. Protection against a person's privacy is limited to

6 Legislative Assembly of Queensland, Economics and Governance Committee, Briefing Paper – Departmental Brief, Strengthening Community Safety Bill 2023, 24 February 2023, pp. 7-8.

7 *Austin BMI Pty Ltd v Deputy Premier* [2023] QSC 95, [327] (Freeburn J).

8 *ZZ v Secretary, Department of Justice* [2013] VSC 267, [72]-[95] (Bell J).

9 Human Rights Committee, *General Comment No 25,* 57th sess, UN DOC CCPR/C/21/Rev.1/Add.7 (27 August 1996) 6-7 [20].

unlawful or arbitrary interference. The notion of arbitrary interference extends to lawful interferences, which are also unreasonable, unnecessary, or disproportionate.

Right to liberty and security of person – The right to liberty and security of a person provides that a person must not arbitrarily be arrested or detained. A person must not be deprived of the person's liberty except on grounds, and in accordance with procedures, established by law.

Right to humane treatment when deprived of liberty – The right to humane treatment when deprived of liberty provides that all detained persons must be treated with humanity and respect for the inherent dignity of the human person.

The right to liberty and security of a person and the right to humane treatment when deprived of liberty may be limited in relation to the proposal to decriminalise the offence of being intoxicated in a public place as police will still maintain their ability to take an intoxicated person into police custody and take them to a place of safety should one be available. If a place of safety is not available, or it is not appropriate, then police will continue to have the power to detain the person at a police watchhouse. In such instances the person will remain in police custody until they are no longer intoxicated or for a maximum period of 8 hours, whichever is sooner. At the conclusion of this period, the person will be released without facing any criminal charge.

Granting mining lease for Byerwen Coal

The protection of *freedom of movement* (section 19, HRA) provides that every person lawfully within Queensland has the right to move freely within Queensland, enter or leave Queensland, and choose where they live. The right protects a person against being forced to remain in, or move to or from, a particular place. The right also includes the freedom to choose where to live.

The *right to privacy* (section 25(a), HRA) protects a person from having their privacy, family, home and correspondence unlawfully or arbitrarily interfered with. The purpose of this is 'to protect and enhance the liberty of the person – the existence, autonomy, security and well-being or every individual in their own private sphere'.

The amendments give effect to conditions on ML 700066 which require the progressive increase, over time, of the number of workers that must be accommodated in Glenden, with all workers to be accommodated in Glenden one year before the end of the mining lease term. This means that individual workers who would prefer to live at the workers' camp while rostered to work on site may not be able to.

Amendments to the Mental Health Act and SCQ Act

Right to a fair hearing – (section 31 of the HRA)- Section 31(1) of the HRA provides for all individuals to have criminal charges or civil proceedings decided by a competent, independent and impartial court or tribunal following a fair, public hearing. This right affirms the right of all individuals to procedural fairness when coming before a court.

Rights in criminal proceedings – (section 32 of the HRA) - Section 32(4) of the HRA provides that a person convicted of a criminal offence has the right to have the conviction and any sentence imposed in relation to it reviewed by a higher court in accordance with law.

Validation of past police custody

Equality before the law (section 15(3)) – the right to equality ensures that all laws and policies are applied equally, and do not have a discriminatory effect. Public entities, as well as courts and tribunals, are required to treat all people equally when applying the law. It also requires that the laws themselves provide equal protection for everyone. Sometimes it will be necessary for certain groups to be treated differently in order to have equal protection of the law.

The best interests of the child (section 26(2)) – The concept of the child's best interests is aimed at ensuring both the full and effective enjoyment of all the [child's human rights] and the holistic development of the child.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Validation of disciplinary referrals under Police Service Administration Act 1990

The purpose of any limitations to be imposed by the Bill is to promote and uphold the ethical standards of, and public confidence in, the Queensland Police Service (QPS). This is a legitimate purpose that is consistent with a free and democratic society as it promotes the public interest in upholding the integrity of the QPS.

Decriminalising the offence of public intoxication

The purpose of decriminalising public intoxication will ensure that those persons do not unnecessarily enter the criminal justice system but are instead afforded the appropriate health and community-based response relevant to their needs. In doing this, it will align Queensland with other jurisdictions and give effect to recommendations contained in the 1991 final report of the Royal Commission into Aboriginal Deaths in Custody, which recommended the offence of public drunkenness be decriminalised accompanied by the establishment of non-custodial facilities for the care and treatment of intoxicated persons.

The decriminalisation of public intoxication may assist in reducing the over representation of First Nations peoples in the criminal justice system and support the Queensland Government in achieving Target 10 of the National Agreement on Closing the Gap, which seeks to reduce the rate of Aboriginal peoples and Torres Strait Islander adults held in incarceration by at least 15% by 2031.

Additionally, the amendments to the Bill supports recommendation 101 of the Women's Safety and Justice Taskforce (the Taskforce) in *Hear her voice – Report Two – Women and girls' experiences across the criminal justice system* (Report Two), that recommended the offences of begging and public intoxication be repealed as soon as possible.

Granting mining lease for Byerwen Coal

The purpose of the amendments are to drive sustainable economic prosperity in Queensland's regions through ensuring that communities near large resource projects benefit from the construction and operation of those projects.

Amendments to the Mental Health Act

The amendments to the Mental Health Act limit the right to a fair hearing by retrospectively validating the appointment of, and any relevant exercise of jurisdiction by, the unappointed person.

The amendments to the Mental Health Act also narrowly limit rights in criminal proceedings by removing the ability of a person to challenge a decision of the Mental Health Court on the grounds that the unappointed person who made the decision was not validly appointed.

While the unappointed person did not have a valid commission at the relevant time, they were otherwise eligible for appointment, and had previously been appointed as a member and president.

The purpose of these limitations is to provide certainty to individuals and the justice system as a whole by ensuring the validity of any decisions of the Mental Health Court made by the unappointed person. The amendments do not limit a person's right to challenge the unappointed person's exercise of jurisdiction on any other grounds.

Amendments to the SCQ Act

The amendments to the SCQ Act limit the right to a fair hearing by retrospectively validating any exercise of power, performance of function, decision or document produced, or other thing done in relation to proceedings (as it relates to a Supreme Court district under the SCQ Regulation) that occurred after the expiry of the regulation up until its revival.

The amendments also narrowly limit rights in criminal proceedings by removing the ability of a person to challenge a decision on a ground relating to the absence of a prescribed Supreme Court district.

Similarly, the purpose of these limitations is to provide certainty to individuals and the justice system as a whole by ensuring the continued validity of Supreme Court districts.

Validation of past police custody

The purpose of the amendment is to provide appropriate protections to police officers by validating any action taken in good faith on the assumption that orders or warrants had been made or issued by the courts under sections 56(4) or section 210(2) of the YJ Act.

This is considered consistent with a free and democratic society based on human dignity, equality and freedom. Parliament intended that courts act under section 56(4) or 210(2), and stakeholders have operated under the assumption that this has been happening since the YJ Act first commenced.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

Validation of disciplinary referrals under Police Service Administration Act 1990

Validating referral processes which did not comply with the requirements of section 7.10 and section 7.11 of the PSA Act, and requiring the commissioner to take all necessary action to impose a disciplinary sanction or professional development strategy on a subject officer from the date the validation has effect, will achieve this purpose by ensuring subject officers who

have been subject to fair disciplinary processes are not able to avoid the imposition of an appropriate disciplinary sanction due to the identified procedural defects in the referral process.

Decriminalising the offence of public intoxication

The proposed amendments are designed to meet the policy objective of ensuring that persons who are intoxicated in a public place do not unnecessarily enter the criminal justice system but are instead afforded the appropriate health and community-based response relevant to their needs.

In relation to intoxicated persons, the limitation helps to achieve this purpose by removing the option that the person would also have to face the criminal charge of being intoxicated in a public place. Instead, the person may be taken to a place of safety to allow the person to sober up. If a place of safety is not available or it is not appropriate, then police will continue to have the power to detain the person at a police watchhouse until they are no longer intoxicated or a maximum period of 8 hours whichever is sooner.

In terms of recording details of the intoxicated person's detention in the police service's enforcement acts register, the register provides a central information point in order to capture the basic details of the detention. As such, it allows police and the detained person to access the information after the event in an open and transparent manner.

Granting mining lease for Byerwen Coal

There is a rational connection between the limitation on freedom of movement and the right to privacy and the purpose of the amendments. Requiring the Byerwen Mine workforce to be accommodated in Glenden while rostered to work on site will incentivise individual workers to participate in, and contribute to, the local economy and social opportunities, which is more likely to lead to enhanced services and infrastructure and diversified local economies.

Amendments to the Mental Health Act and SCQ Act

The limitations achieve the purpose by retrospectively:

- validating the appointment of, and any relevant exercise of jurisdiction by, the unappointed person; and
- providing for the continuation of the expired SCQ Regulation; and for anything done or purported to be done in relation to a Supreme Court district under the Regulation to be valid in the period between expiry and the commencement of this amendment.

Validation of past police custody

Validating any actions taken in good faith by a police officer on the assumption that the court had issued the required orders or warrants to lawfully take a child into police custody will achieve the purpose.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose

Validation of disciplinary referrals under Police Service Administration Act 1990

The Bill only operates to validate specified procedural errors in the referral processes, set out in section 11.45. In addition, the amendments are appropriately tailored by providing safeguards to ensure the validation and the taking of remedial action impose the least restrictive burden on the human rights of affected subject officers. These safeguards include:

- re-enlivening the entitlement for subject officers to apply for review of a disciplinary decision arising from an affected referral (s 11.50);
- conferring a discretion on the commissioner to refrain from taking remedial action if the commissioner is satisfied taking the action would cause excessive hardship to the subject officer and it is in the public interest (s 11.51(7)); and
- requiring the commissioner to notify and consider any submission provided by a subject officer before taking a remedial action (s 11.52).

I consider the amendments to be the least restrictive way of achieving the purpose of the Bill.

Decriminalising the offence of public intoxication

No other less restrictive, reasonably available alternatives have been identified.

Granting mining lease for Byerwen Coal

Various alternatives to granting ML 700066 subject to conditions requiring Byerwen Coal to progressively increase the number of its workers accommodated in Glenden (as opposed to in the workers camp on ML700066) were considered.

Granting Byerwen Coal's application would be wholly ineffective to achieve the purpose and is therefore unsuitable.

Another option is to refuse Byerwen Coal's application entirely. This would have the practical effect of requiring mine workers to reside in Glenden (the nearest township to the mine site). This option would mean less freedom to choose where to live over the term of ML 700066. However, it would arguably impose a lesser limitation on the right to privacy than granting ML 700066 through the amendments, because workers would not have to settle in the camp first and relocate later.

However, this option is not reasonably available. There is presently insufficient suitable housing available in Glenden to accommodate the required workforce. Time is needed to put in place sustainable long-term accommodation arrangements for the Byerwen Mine workforce. Without the transition period, there is a risk to the ongoing operations of the Byerwen Mine, disrupting the employment of individual workers and limiting the social and economic benefits available to surrounding communities.

The need for a transition period also informed the content of the conditions on which ML 700066 is to be granted under the amendments. The milestones under the conditions were identified through consultation with Byerwen Coal, Isaac Regional Council and Glencore, which presently owns a significant proportion of the housing stock in Glenden, about accommodation requirements, available housing and timeframes for refurbishing existing housing to bring it to an appropriate standard.

I am therefore satisfied that the grant of ML 700066 on the conditions set out in the amendments is the least restrictive way reasonably available to achieve the purpose.

Amendments to the Mental Health Act and SCQ Act

No other less restrictive, reasonably available alternatives have been identified.

Validation of past police custody

There is no less restrictive alternative which would still achieve the purpose of the amendment. The amendment only applies to actions taken in good faith and that would have been lawful had courts complied with section 56(4) or 210(2).

(e) the balance between the importance of the purpose of the limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Validation of disciplinary referrals under Police Service Administration Act 1990

The validation of affected referrals and the consequential imposition of disciplinary sanctions may impose a burden on the human rights of subject officers by removing certain entitlements they would have otherwise held as part of their employment with the QPS. The right not to be arbitrarily deprived of property and the right to privacy are both intrinsic to the promotion of the autonomy and the inherent dignity of the person. Further, the right of equal access to the public service is directed to upholding the important democratic purpose of promoting an impartial and independent public service.

However, in my view, any burden imposed on these rights by the amendments is readily outweighed by the importance of the purpose of the limitation, which is to promote and to maintain the public confidence in the ethical standards of the QPS. The enhancement of the integrity of the QPS is in the public interest.

In addition, the extent of the burden on human rights imposed by the amendments is in my view largely mitigated by provisions in the Bill which are carefully targeted to ensuring the consequences of the validation of affected referrals do not impose a disproportionate burden on the rights of subject officers. For example, the commissioner will have a discretion not to take remedial action by imposing a disciplinary sanction on a subject officer where this would cause excessive hardship to the subject officer and where refraining from taking the action is in the public interest. Additionally, the amendments ensure only the procedural errors identified in section 11.45 are validated, that rights to seek review of disciplinary decisions which would otherwise be lost are preserved (s 11.50), and other potential grounds upon which a subject officer may review or appeal against decisions to impose a disciplinary sanction or professional development strategy have not been removed. Affected subject officers may also apply for review of a decision made under the new Division for jurisdictional error.

On balance, I consider the public interest promoted by the amendments outweigh any impact on the human rights of subject officers which have been identified.

As any limits on the right to property and to privacy are proportionate and they are not arbitrary. Hence, these rights are not limited by the amendment.

Decriminalising the offence of public intoxication

In terms of recording details of the intoxicated person's detention in the police service's enforcement acts register, this will allow for a central storage point to record the basic details of the intoxicated person's detention and if necessary, their transportation to a place of safety. Currently, police are required to use the enforcement acts register to store basic details of other enforcement acts such as searches of persons, vehicles and places. Importantly, section 681 'Persons to be given copy of information in register' of the PPRA provides that at any time within 3 years after the enforcement act is done, the person may ask any police officer who is entitled to inspect the register to give the person a copy or printout of the information recorded in the register about the enforcement act. This amendment will simply replace the use of the enforcement act register to record the enforcement of the previous criminal offence of public intoxication with the new power to detain and, where necessary, transport the intoxicated person to a place of safety.

The right to liberty provides that a person must not be arrested and detained, unless provided for by law. The detention of a person who is intoxicated is not arbitrary but only permissible if specific pre-requisites are met. A person must only be detained if the person falls within the following criteria:

- the person must be in a public place; and
- the person must be intoxicated; and
- it is necessary to detain the person because the person is
    - disorderly, offensive, threatening or violent; and
    - is likely to interfere with the peaceful passage or the enjoyment by another of a public place; or
    - is likely to risk the life, health or safety of any person; or
    - incapable or maintaining their own life, health or safety.

The detention powers under the amendments to the Bill do not have widespread application. They do not apply to all persons who may be intoxicated. This power is restricted to a specific cohort of persons who are not only in a public place but in addition to their intoxication are either behaving in a manner that would potentially adversely affect another person or indicate that the intoxicated person is incapable of preserving their own health.

Additionally, a police officer that exercises this power to detain an intoxicated person is obligated to take that person to a place of safety and must only detain the person at a watchhouse if there is no other reasonably alternative place of safety.

Finally, a person who is detained under amendments to the Bill may be released by a police officer who is satisfied it is appropriate to do so, such as to the care of another person at a place of safety. In any event, the person must be released, if a police officer is satisfied that the person is not longer intoxicated or the person has been detained for 8 hours.

Amendments in the Bill are balanced as they allow for the detention of an intoxicated person in circumstances where the person's behaviour is having either an adverse impact on another or where the person cannot care for themselves, and that period of detention is for the most minimum reasonable time possible. Consequently, the ACiD is considered to be consistent with a free and democratic society based on human dignity, equality and freedom.

Granting mining lease for Byerwen Coal

To the extent the amendments impact on freedom of movement and right to privacy, it is considered that the grant of ML 700066 subject to the conditions set out in the amendments are a proportionate measure to achieve the purpose and strike a fair balance between the importance of the purpose and the preservation of the human rights.

I am therefore also satisfied that the limitation on the right stated in section 25(a) of the HRA is not 'arbitrary' in the sense described above.

Importantly, the grant of the mining lease subject to conditions does not require individual workers to permanently reside in Glenden. Rather, it provides that the accommodation provided by Byerwen Coal for the workers rostered to work on site will be located in the township. This means individual workers will have the freedom to live in locations chosen to suit their recreational and family needs.

However, the amendments will consolidate urban growth and encourage the efficient ongoing use of significant social and administrative infrastructure located in Glenden, driving sustainable economic prosperity for the community. Supporting resource communities to attract and retain workers and their families and managing the social impacts of resource projects is increasingly important in the current period of transition, with regional communities that rely on traditional commodities needing to grow and diversify their economies as Queensland's economy decarbonises.

Amendments to the Mental Health Act and SCQ Act

The limitations achieve the purpose by retrospectively:

- validating the appointment of, and any relevant exercise of jurisdiction by, the unappointed person; and
- providing for the continuation of the expired SCQ Regulation; and for anything done or purported to be done in relation to a Supreme Court district under the Regulation to be valid in the period between expiry and the commencement of this amendment.

Validation of past police custody

It is acknowledged that the amendment will limit a child's right to seek legal redress for actions taken by the police, in circumstances where a court has failed to make an order or issue a warrant. However, it is considered that, on balance, these limitations are outweighed by the need to provide adequate protections for those police officers who have acted in good faith under the assumption that the court had issued the required orders and warrants to place the child into police custody.

(f) any other relevant factors

There are no other relevant factors.

Conclusion

In my opinion, 19 and 29 (clauses 70 and 72) are not compatible with the human rights protected by the HR Act for the above reasons. In my further opinion, the remainder of the amendments to the Bill which are to be moved during consideration in detail are compatible with human rights under the HR Act.

Mark Ryan MP
Minister for Police and Corrective Services and
Minister for Fire and Emergency Services

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

Statement about Exceptional Circumstances

FOR

Amendments to be moved during consideration in detail by the Honourable Mark Ryan MP, Minister for Police and Corrective Services and Minister for Fire and Emergency Services

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with s 44 *Human Rights Act 2019* (HR Act), I, Mark Ryan, Minister for Police and Corrective Services and Minister for Fire and Emergency Services, make this statement about exceptional circumstances with respect to the amendments to be moved during consideration in detail of the Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill 2022 (the Bill).

The Bill proposes various amendments to the *Youth Justice Act 1992* which provide that the HR Act does not apply. Amendments to sections 56 and 210 provide that the HR Act does not apply when children are remanded in or sentenced to custody, and must be held in a police watchhouse until space becomes available in a youth detention centre. Amendments to section 262 provide that the HR Act does not apply to the establishment of youth detention centres.

The proposed amendments to s 56 set out a framework for decision-making about the timing of the transfer that ensure any relevant factor can be taken into account, with the objective being an appropriate balancing of the interests of children in watchhouses, children in YDCs, and employees. Consistent with current practice, the proposed framework allows lawful detention of children in watchhouses while allowing the Chief Executive, Youth Justice to prioritise the transfer of children to youth detention based on their relative needs.

The proposed amendments to s 262 will allow the Governor-in-Council to approve the establishment of a place such as a watchhouse as a detention centre if there is a sudden surge in numbers of detainees who cannot be accommodated even in watchhouses.

There is also a proposed override of s 640(a) and (b) of the *Police Powers and Responsibility Act 2000* in so much as it at relates to children. This section provides for the transport of people in custody between watchhouses. Given the human rights override declaration for the decision to transfer a child from a watchhouse to a youth detention centre whilst under a remand or sentence order, it is considered necessary to provide a human rights override declaration that covers decisions made to transfer a child subject to one of those orders between watchhouses or holding cells.

These override declarations apply until 31 December 2026, with the possibility of extension by regulation for up to a year.

The Government accepts that these provisions are incompatible with human rights. Therefore in this exceptional case, the HR Act is being overridden and its application is entirely excluded from the operation of these new provisions to protect public and worker safety.

Demand for youth detention beds in Queensland has exceeded capacity for many months. To meet this unprecedented growth in children requiring detention, the Government has fast-tracked the construction of new youth detention centres in Cairns and Woodford, and has implemented a range of other strategies to meet the demand for youth detention beds, without success. To meet current demand, between 25-70 children are being held in police watchhouses at any one time, which is an undesirable but unavoidable limit on children's human rights.

To address the current crisis in youth detention capacity, the amendments are designed to temporarily override the application of the HR Act until the new centres are operational, which is expected in late 2026.

Mark Ryan MP

Minister for Police and Corrective Services and

Minister for Fire and Emergency Services

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