

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

Amendments during consideration in detail to be moved by
The Honourable the Minister for Police and Corrective Services and
Minister for Fire and Emergency Services

1 After clause 1

Page 6, after line 6—

insert—

1A Commencement

- (1) Part 9, other than sections 70 to 72 and 75 to 82, is taken to have commenced on 23 August 2023.
- (2) The following provisions commence on a day to be fixed by proclamation—
 - (a) sections 50B, 50D to 50H, 50J to 50L, 50N, 55, 63 and 65;
 - (b) section 52, to the extent it inserts chapter 24, part 24, division 3;
 - (c) part 5.

2 Clause 40 (Amendment of sch 2 (Personal details for reportable offenders))

Page 34, lines 20 to 24—

omit, insert—

number of the following vehicles—

3 Clause 40 (Amendment of sch 2 (Personal details for reportable offenders))

Page 35, line 34 to page 36, line 29—

omit, insert—

offender has access to, including details of each software application stored on the device, or that can be accessed using the device, that is designed

or used to hide—

- (a) the identity or location of a person who administers, accesses or uses a network, computer, the device or another digital device; or
- (b) information stored on a network, computer, the device or another digital device, including, for example, photographs, username and password combinations, and other software applications; or
- (c) communication, including the exchange of information, between 2 or more persons using a network, computer, the device or another digital device; or
- (d) the location of a network, computer, the device or another digital device.

Examples of software applications—

a password manager, a hidden digital vault, a virtual environment, software that encrypts, or encrypts and hides, information

4 Clause 42 (Amendment of sch 5 (Dictionary))

Page 38, lines 13 to 25—

omit.

5 After clause 47

Page 43, after line 12—

insert—

**Part 3A Amendment of Mental
Health Act 2016**

47A Act amended

This part amends the *Mental Health Act 2016*.

47B Amendment of ch 21, hdg

Chapter 21, heading, after ‘transitional’—

insert—

and validation

47C Insertion of new ch 21, pt 3

Chapter 21—

insert—

Part 3 Appointments and validation

873 Appointments to Mental Health Court and validation

- (1) This section applies in relation to the appointments of a person, in effect on the commencement of this section, to be a member and the president of the Mental Health Court (the *current appointments*).
- (2) The period of each of the person’s current appointments is taken to include, and to have always included, the period from 14 February 2023 to 29 June 2023 (the *relevant period*).
- (3) Subsection (2) applies despite anything stated in an instrument under which a current appointment was made or under which the person was continued in office.
- (4) Anything done under this Act or another law during the relevant period has the same effect, and is taken to have always had the same effect, as it would have had if the person had been appointed to be a member and the president of the Mental Health Court, for the relevant period, before the start of the

relevant period.

- (5) Without limiting subsections (2) and (4), an exercise of jurisdiction by the person during the relevant period is as valid as it would be, and is taken to have always been as valid as it would have been, if the person had been appointed to be a member and the president of the Mental Health Court, for the relevant period, before the start of the relevant period.

- (6) In this section—

exercise of jurisdiction means an exercise of the jurisdiction conferred on the Mental Health Court, or of the powers and functions conferred on a member of the court or the president of the court, under this Act or another law.

6 After clause 47

Page 43, after line 12—

insert—

Part 3B Amendment of Mineral Resources Act 1989

47D Act amended

This part amends the *Mineral Resources Act 1989*.

47E Insertion of new ch 12, pt 4C

Chapter 12—

insert—

Part 4C Provisions about Byerwen mine

334ZJL Definitions for part

In this part—

accommodates, in relation to a worker, see section 334ZJM.

Byerwen mine means the mine that is the subject of the Byerwen mine project.

Byerwen mine project means each of the following mining leases—

- (a) ML700066;
- (b) the mining leases mentioned in section 334ZJO(1);
- (c) any mining lease granted for a mining lease application mentioned in section 334ZJP(1);
- (d) any other mining lease, if the authorised activities for the lease are or will be carried out as a single integrated operation with the authorised activities for the leases mentioned in paragraphs (a) to (c).

Glenden means the area within the following boundary—

- starting at 21.33975° south, 148.10430° east
- to 21.33583° south, 148.12047° east
- to 21.34802° south, 148.12885° east
- to 21.36431° south, 148.13596° east
- to 21.36439° south, 148.10035° east
- to the starting point.

Note—

The area includes the population centre of Glenden entered in the Gazetteer under the *Place Names Act 1994*.

ML700066 means the mining lease granted under section 334ZJN(2) while the lease is in effect.

rostered worker means a worker subject to a roster period within the meaning of section 334ZJM.

worker means a coal mine worker within the meaning of the *Coal Mining Safety and Health Act 1999* who carries out work at the Byerwen mine.

334ZJM Meaning of *accommodate*

- (1) The holder of a mining lease **accommodates** a worker at a place if the holder—
 - (a) provides a residential dwelling for the worker at the place; or
 - (b) provides a bed for the worker, in premises other than a residential dwelling, at the place during a roster period for the worker.
- (2) In this section—

roster period, in relation to a worker, means a period of consecutive days in a roster cycle during which the worker is scheduled to work shifts at the Byerwen mine.

Example—

for a week-on/week-off roster—each week the worker is scheduled to work shifts

334ZJN Grant of mining lease ML700066

- (1) This section applies to mining lease application 700066 for a mining lease for infrastructure associated with, arising from or promoting the activity of mining for the Byerwen mine.

- (2) On the commencement, the mining lease is, by operation of this section, granted.
- (3) The mining lease granted under subsection (2)—
 - (a) expires on 31 March 2030; and
 - (b) can not be renewed; and
 - (c) can not be consolidated with another mining lease.
- (4) The mining lease is subject to the following conditions—
 - (a) the holder must accommodate at least the following number of workers in Glenden—
 - (i) for the period starting on 31 March 2025 and ending on 30 March 2026—10% of the workers at any time;
 - (ii) for the period starting on 31 March 2026 and ending on 30 March 2027—25% of the workers at any time;
 - (iii) for the period starting on 31 March 2027 and ending on 30 March 2028—50% of the workers at any time;
 - (iv) for the period starting on 31 March 2028 and ending on 30 March 2029—75% of the workers at any time;
 - (b) for a period mentioned in paragraph (a), workers who are not accommodated in Glenden must be accommodated on the area of the mining lease;

- (c) from 31 March 2029, the holder must accommodate all workers in Glenden;
- (d) for each of the conditions mentioned in paragraphs (a) and (c)—
 - (i) at least 30% of the workers accommodated in Glenden must be accommodated in a residential dwelling; and
 - (ii) if subparagraph (i) is satisfied and the number of rostered workers is insufficient to enable the condition to be satisfied—the condition is taken to be satisfied if all rostered workers are accommodated in Glenden;
- (e) from 31 March 2029, the holder must not carry out an activity on the area of the lease other than an activity related to decommissioning of infrastructure, structures or equipment on the area;
- (f) the holder must give the Minister a report, by 1 July in each year from 2024 to 2029, that—
 - (i) is in the form approved by the Minister; and
 - (ii) includes the information prescribed by regulation about the holder's compliance with paragraphs (a) to (d).
- (5) Subsection (4) does not limit section 276.
- (6) This Act, other than sections 286 to 288, applies in relation to the mining lease as if, on the day of the commencement—
 - (a) the lease had been granted by the Minister under section 271A; and

- (b) the conditions mentioned in subsection (4) had been lawfully imposed by the Minister under section 276(1)(n).
- (7) However, a condition mentioned in subsection (4) may be varied under section 294 only—
 - (a) to change 1 or more of the dates mentioned in subsection (4)(a), other than the end date of the period mentioned in subsection (4)(a)(iv); and
 - (b) if the Minister has considered the advice of the Coordinator-General before making the variation.
- (8) To remove any doubt, it is declared that this section applies despite any noncompliance with a provision of this Act in relation to the application mentioned in subsection (1), including the mining lease notice issued for the application.
- (9) In this section—

Coordinator-General see the *State Development and Public Works Organisation Act 1971*, schedule 2.

334ZJO Variation of particular mining leases

- (1) This section applies to mining leases 70434, 70435, 70436 and 700058.
- (2) On the commencement, each mining lease is varied to include the following conditions—
 - (a) from the commencement, the holder must accommodate all workers either—
 - (i) in Glenden; or
 - (ii) on the area of ML700066 in compliance with the conditions

- mentioned in section 334ZJN(4)(a) to (c);
- (b) for the condition mentioned in paragraph (a)—
 - (i) at least 30% of the workers accommodated in Glenden must be accommodated in a residential dwelling; and
 - (ii) if subparagraph (i) is satisfied and the number of rostered workers is insufficient to enable the condition to be satisfied—the condition is taken to be satisfied if all rostered workers are accommodated in Glenden.
 - (3) The conditions under subsection (2) apply—
 - (a) despite section 234(1); and
 - (b) in addition to any existing conditions of each mining lease.
 - (4) This Act applies to the variation of each mining lease under subsection (2) as if the variation had been made by the Minister under section 294(1) on the day of the commencement.
 - (5) However, the conditions mentioned in subsection (2) can not be varied under section 294.

334ZJP Deciding particular applications

- (1) This section applies in relation to—
 - (a) mining lease applications 10355, 10356, 10357 and 10374; and
 - (b) any other application for the grant or renewal of a mining lease for the Byerwen mine project, including the

grant of a mining lease consolidating other mining leases, if—

- (i) the application was made, but not decided, before the commencement; or
 - (ii) the application is made after the commencement.
- (2) However, this section does not apply in relation to the application mentioned in section 334ZJN(1).
- (3) If the Minister decides to grant or renew the mining lease under section 271A, 286A or 299, the mining lease is granted or renewed subject to the following conditions—
- (a) the holder must accommodate all workers either—
 - (i) in Glenden; or
 - (ii) on the area of ML700066 in compliance with the conditions mentioned in section 334ZJN(4)(a) to (c);
 - (b) for the condition mentioned in paragraph (a)—
 - (i) at least 30% of the workers accommodated in Glenden must be accommodated in a residential dwelling; and
 - (ii) if subparagraph (i) is satisfied and the number of rostered workers is insufficient to enable the condition to be satisfied—the condition is taken to be satisfied if all rostered workers are accommodated in Glenden.
- (4) Subsection (3) does not limit section 276.

- (5) The conditions mentioned in subsection (3) can not be varied under section 294.

334ZJQ No compensation payable by the State

- (1) No compensation is payable by the State to any person in connection with the enactment or operation of this part, or anything done to give effect to this part, other than as required under sections 279 and 280.
- (2) This section applies despite any other Act or law.

47F Amendment of sch 2 (Dictionary)

Schedule 2—

insert—

accommodates, in relation to a worker, for chapter 12, part 4C, see section 334ZJM.

Byerwen mine, for chapter 12, part 4C, see section 334ZJL.

Byerwen mine project, for chapter 12, part 4C, see section 334ZJL.

Glenden, for chapter 12, part 4C, see section 334ZJL.

ML700066, for chapter 12, part 4C, see section 334ZJL.

rostered worker, for chapter 12, part 4C, see section 334ZJL.

worker, for chapter 12, part 4C, see section 334ZJL.

7 After clause 50

Page 48, after line 17—

insert—

50A Amendment of s 46 (When power applies to behaviour)

Section 46(5)—

omit.

8 After clause 50

Page 48, after line 17—

insert—

50B Insertion of new ch 2, pt 8

Chapter 2—

insert—

Part 8 Power to detain particular intoxicated persons

53BO Other police powers not affected

Nothing in this part affects the power of a police officer, under this Act or another Act, to take action in relation to a person who is intoxicated.

53BP Detaining intoxicated persons

- (1) A police officer may detain a person who is in a public place if the officer is satisfied—
 - (a) the person is intoxicated; and
 - (b) it is necessary to detain the person because the person is—
 - (i) behaving in a way that—
 - (A) is disorderly, offensive, threatening or violent; and

- (B) is likely to interfere with the peaceful passage through, or enjoyment of, the public place by a member of the public; or
 - (ii) behaving in a way that is likely to risk the life, health or safety of any person, including, for example, the person to be detained; or
 - (iii) incapable of preserving the person's own life, health or safety.
- (2) A police officer must release the person from detention under this part on the earlier of the following—
- (a) the officer being satisfied the person is no longer intoxicated;
 - (b) 8 hours elapsing after the person is first detained under this part.
- (3) Also, a police officer may release the person from detention under this part if the officer is satisfied it is appropriate to do so.

53BQ Transporting detained persons

- (1) This section applies if a person is detained under section 53BP.
- (2) A police officer may transport the person to, and release the person at, a place of safety if—
- (a) for a place of safety where there is a person apparently in charge of the place—the person apparently in charge of the place agrees, verbally or in writing, to provide care for the person at the place; and

- (b) the police officer is satisfied the person's behaviour or presence does not pose a risk of harm to any person at the place, including, for example, harm caused by domestic violence.
- (3) Subsection (4) applies if—
 - (a) after making reasonable enquiries, a police officer is unable to find a place of safety located within a reasonable distance from where the person is detained; or
 - (b) a police officer is unable to transport and release the person under subsection (2).
- (4) The police officer may—
 - (a) transport the person to a police station or watch-house; and
 - (b) continue to detain the person at the police station or watch-house, subject to section 53BP(2) and (3).
- (5) To remove any doubt, it is declared that nothing in this section requires a person who is released at a place of safety to remain at the place.

9 After clause 50

Page 48, after line 17—

insert—

50C Amendment of s 244 (Matters to be taken into account)

Section 244—

insert—

- (3) For subsection (1)(g)(iii), the following conduct does not involve the commission of

a sexual offence against a person—

- (a) possessing, distributing or editing material that depicts a sexual offence;

Example—

administering a website or chat group used by members to share materials that depict sexual offences

- (b) producing material that appears to depict a sexual offence provided the material does not depict a real person;

Examples—

- the use of artificial intelligence to fabricate material depicting a sexual offence
- altering material to change the appearance of a person or conduct depicted in the material

- (c) communicating with a person suspected of—

- (i) committing, or having committed, a sexual offence; or

- (ii) seeking to commit a sexual offence; or

- (iii) offering to engage in conduct that would constitute a sexual offence; or

- (iv) enabling another person to engage in conduct that would constitute a sexual offence.

- (4) In this section—

chat group means a group of persons using electronic communication to communicate within the group, regardless of whether the service used for the communication is intended to be primarily used for that purpose.

Examples of services used to host chat groups—

instant messaging services, email or computer games

distributing see the Criminal Code, section 207A, definition *distribute*.

material see the Criminal Code, section 207A.

10 After clause 50

Page 48, after line 17—

insert—

50D Omission of s 378 (Additional case when arrest for being intoxicated in a public place may be discontinued)

Section 378—

omit.

11 After clause 50

Page 48, after line 17—

insert—

50E Amendment of s 394 (Duty of police officer receiving custody of person arrested for offence)

(1) Section 394(2)(c)—

omit.

(2) Section 394(3), ‘section 378 or’—

omit.

12 After clause 50

Page 48, after line 17—

insert—

50F Amendment of s 442 (Application of ch 16)

(1) Section 442—

insert—

(ea) is detained under chapter 2, part 8; or

(2) Section 442(ea) and (f)—

renumber as section 442(f) and (g).

13 After clause 50

Page 48, after line 17—

insert—

**50G Amendment of s 444 (Powers relating to thing
taken from person taken to place of safety)**

(1) Section 444(1), ‘378’—

omit, insert—

53BQ(2)

(2) Section 444(2)(c), ‘in possession or’—

omit.

14 After clause 50

Page 48, after line 17—

insert—

**50H Amendment of s 602C (Police officer may give
initial police banning notice)**

Section 602C(3)(a), examples, sixth dot point—

omit, insert—

- urinating or wilfully exposing genitals in contravention of the *Summary Offences Act 2005*, section 7 or 9

15 After clause 50

Page 48, after line 17—

insert—

50I Amendment of s 602G (How police banning notices may be given)

Section 602G(1)(a)—

omit, insert—

(a) by—

- (i) for an initial police banning notice—personally serving the notice on the respondent; or
- (ii) for an extended police banning notice—serving the notice on the respondent; or

16 After clause 50

Page 48, after line 17—

insert—

50J Amendment of s 604 (Dealing with persons affected by potentially harmful things)

Section 604(2), from ‘place, other’—

omit, insert—

place of safety.

17 After clause 50

Page 48, after line 17—

insert—

50K Amendment of s 605 (Duties in relation to person detained under s 604)

(1) Section 605(1), example—

omit.

(2) Section 605(2) to (6)—

omit, insert—

(2) However, subsection (1) does not apply if—

- (a) after making reasonable enquiries, the police officer is unable to find a place of safety located within a reasonable distance from where the person is detained; or
- (b) there is a person apparently in charge of the place of safety and the person does not agree to provide care for the person; or
- (c) the police officer is satisfied the person's behaviour or presence poses a risk of harm to any person at the place of safety, including, for example, harm caused by domestic violence.

(3) If subsection (1) does not apply because of subsection (2), the person must be released.

(4) As soon as practicable after a person is released under subsection (1) or (3), the police officer must enter in a register kept for this section the particulars prescribed by regulation.

(5) To remove any doubt, it is declared that nothing in this section requires a person who is released at a place of safety to remain at the place.

18 After clause 50

Page 48, after line 17—

insert—

50L Omission of ss 606 and 607

Sections 606 and 607—

omit.

19 After clause 50

Page 48, after line 17—

insert—

50M Amendment of s 640 (Transfer of persons in watch-houses)

Section 640—

insert—

- (2) A failure of a watch-house manager to provide procedural fairness to a child transferred under subsection (1)(a) or (b) does not affect the validity of the decision to transfer the child.
- (3) For the purposes of the *Human Rights Act 2019*, section 43(1), it is declared that subsection (1)(a) and (b) has effect in relation the transfer of a child—
 - (a) despite being incompatible with human rights; and
 - (b) despite anything else in the *Human Rights Act 2019*.
- (4) This subsection and subsections (3) and (5) expire on 31 December 2026.
- (5) A regulation may postpone the expiry of this subsection and subsections (3) and (4) but can not postpone the expiry for more than 1 year after 31 December 2026.

20 After clause 50

Page 48, after line 17—

insert—

50N Insertion of new s 792B

After section 792A—

insert—

792B Meaning of *place of safety*

- (1) A *place of safety* for a person who is intoxicated or who has ingested or inhaled a potentially harmful thing is—
- (a) if the person requires medical attention only available at a hospital—a hospital; or
- (b) otherwise—a place, other than a police station or watch-house, at which the person can recover safely from the effects of being intoxicated or the potentially harmful thing.

Examples—

- 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, whether on a temporary or permanent basis
 - a place where a relative or friend of the person is living, whether on a temporary or permanent basis
- (2) Despite subsection (1)(b), a place mentioned in that paragraph is not a place of safety if there is a risk of an act of domestic violence being committed by, or against, the person while at the place.
- (3) A vehicle, other than a police vehicle, is a *place of safety* if the vehicle is used to safely transport the person to a place mentioned in subsection (1).

21 After clause 51

Page 48, after line 25—

insert—

52 Insertion of new ch 24, pt 24

Chapter 24—

insert—

**Part 24 Validation and
transitional
provisions for Child
Protection (Offender
Reporting and
Offender Prohibition
Order) and Other
Legislation
Amendment Act
2023**

Division 1 Preliminary

893 Definition for part

In this part—

former, for a provision of this Act, means the provision as in force immediately before the commencement.

Division 2 Validation provisions

894 Refined limitations on controlled operations does not affect past operations

(1) This section applies to a controlled operation

involving conduct mentioned in section 244(3) if authorised by the chief executive officer under section 243 before the commencement.

- (2) It is declared that nothing in section 244(1)(g)(iii) prevented the controlled operation being granted authority by the chief executive officer under section 243.
- (3) To remove any doubt, it is declared that the authority to conduct the controlled operation, and anything done in reliance on the authority, is, and is taken to have always been, as valid as if section 244(3) had been in force at the time of the authorisation or conduct.

895 Validation of giving of particular extended police banning notices

- (1) This section applies in relation to an extended police banning notice that was, before the commencement, given to a person by sending the notice to the person by post.
- (2) The giving of the extended police banning notice to the person is, and is taken to have always been, as valid as it would have been if, at the time the notice was given to the person, new section 602G was in force.
- (3) Anything done as a result of the giving of the extended police banning notice to the person is, and is taken to have always been, as valid as it would have been if, at the time the notice was given to the person, new section 602G was in force.
- (4) In this section—
given includes purported to be given.
new section 602G means section 602G as in

force from the commencement.

Division 3 Transitional provisions

896 Continued application of former ss 378 and 394

- (1) This section applies if, on the commencement, a person is under arrest for being intoxicated in a public place.
- (2) For the purpose of the arrest, former sections 378 and 394 continue to apply as if the *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023* had not commenced.

897 Continued application of former ss 604 and 605

- (1) This section applies if, on the commencement, a person is being detained under section 604(3).
- (2) For the purpose of the detention, former sections 604 and 605 continue to apply as if the *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023* had not commenced.

22 After clause 51

Page 48, after line 25—

insert—

53 Amendment of sch 2 (Relevant offences for controlled operations and surveillance device warrants)

(1) Schedule 2, section 4, seventh, eighth and ninth dot points—

omit.

(2) Schedule 2, section 5—

omit.

23 After clause 51

Page 48, after line 25—

insert—

54 Amendment of sch 5 (Additional controlled activity offences)

Schedule 5, section 9—

omit.

24 After clause 51

Page 48, after line 25—

insert—

55 Amendment of sch 6 (Dictionary)

(1) Schedule 6—

insert—

place of safety see section 792B.

(2) Schedule 6, definition *enforcement act*—

insert—

(y) the detention of a person under chapter 2, part 8.

25 After clause 51

Page 48, after line 25—

insert—

**Part 5 Amendment of Police
Powers and
Responsibilities
Regulation 2012**

56 Regulation amended

This part amends the *Police Powers and Responsibilities Regulation 2012*.

**57 Amendment of s 16 (Prescribed
particulars—Act, s 605(6))**

Section 16, ‘605(6)’—

omit, insert—

605(4)

58 Amendment of sch 9 (Responsibilities code)

Schedule 9, after section 53D—

insert—

**53E Detention of person under Act, ch 2, pt
8—Act, s 679(1)**

The following information about the detention of a person under chapter 2, part 8 of the Act must be included in the register of enforcement acts—

- (a) the name of the person, if known;
- (b) the time the person was detained;
- (c) where the person was detained;

- (d) if the person was transported to, and detained at, a police station or watch-house—the reason why the person was transported to, and detained at, the police station or watch-house;
- (e) any apparent injury the person received during the detention.

26 After clause 51

Page 48, after line 25—

insert—

**Part 6 Amendment of Police
Service Administration
Act 1990**

59 Act amended

This part amends the *Police Service Administration Act 1990*.

**60 Amendment of pt 11, hdg (Transitional and
declaratory provisions)**

Part 11, heading, ‘and declaratory’—

omit, insert—

, declaratory and validating

61 Insertion of new pt 11, div 16

Part 11—

insert—

**Division 16 Transitional and
validation provisions
inserted under Child**

Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023

11.44 Definitions for division

In this division—

affected referral means a referral to which this division applies under section 11.45.

disciplinary sanction see section 7.34.

professional development strategy see section 7.3.

subject officer see section 11.45(1)(a).

11.45 Application of division

- (1) This division applies if—
 - (a) the commissioner referred a complaint about a police officer (the *subject officer*) under section 7.10 on or after 30 October 2019 but before 8 March 2023; and
 - (b) the referral mentioned in paragraph (a) was not properly made.
- (2) For this division, a referral was not properly made if—
 - (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 particular 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.
- (3) A reference in subsection (1) to having referred a complaint about a police officer under section 7.10 includes a reference to purportedly having done so.

11.46 Validation of affected referrals and subsequent action

- (1) An affected referral, and anything else done under this Act or another law in relation to the referral (*subsequent action*), is, and is taken to have always been, as valid as it would be or would have been if the referral had been properly made.

Examples of subsequent action—

- starting a disciplinary proceeding
 - accepting a proposed disciplinary sanction under section 7.21
 - imposing a disciplinary sanction or professional development strategy
- (2) Subsection (1) applies for all purposes, including a legal proceeding started before the commencement.
- (3) To remove any doubt, it is declared that—
- (a) an affected referral and subsequent action is taken to have had effect from the day the referral or action would have had effect if the referral had been properly made; and
- (b) subject to this division, a disciplinary proceeding related to the affected

referral may be commenced, continued or concluded under part 7; and

- (c) a disciplinary sanction, or professional development strategy, imposed on the subject officer because of the affected referral is, and is taken to have always been, as valid as it would be or would have been if the referral had been properly made.
- (4) No compensation is payable to a person because of the operation of this section.

11.47 Demotions and suspensions affected by validation

- (1) This section applies if—
 - (a) the imposition of a disciplinary sanction on the subject officer is, as subsequent action, validated under section 11.46; and
 - (b) the disciplinary sanction is the demotion or suspension of the subject officer.
- (2) The performance of duties by the subject officer during the period of the demotion or suspension, and anything else done under this Act or another law in relation to the officer's performance of those duties has the same effect, and is taken to have always had the same effect, as it would have had if the officer had not been demoted or suspended at the relevant time.
- (3) Subsection (2) applies for all purposes, including a legal proceeding started before the commencement.
- (4) A reference in subsection (2) to the performance of duties includes a reference to

the purported performance of duties.

(5) In this section—

duties includes—

- (a) higher duties performed by an officer; and
- (b) the exercise of a power, or authorisation of an action, by an officer under the *Police Powers and Responsibilities Act 2000* or another law.

higher duties, performed by an officer, means the duties performed by the officer because of a rank held by the officer on a temporary basis.

11.48 New period for starting disciplinary proceedings

(1) This section applies if—

- (a) a disciplinary proceeding related to an affected referral had not been started under part 7 before the commencement; and
- (b) the disciplinary proceeding can not be started because of a time restriction under section 7.12.

(2) Despite section 7.12, the disciplinary proceeding may be started within 28 days after the commencement.

(3) Before starting the disciplinary proceeding, the commissioner may specify a new prescribed officer as the entity to whom the affected referral was made, regardless of whether a prescribed officer was properly specified for the referral when first made.

11.49 Continuation of interrupted disciplinary proceedings

- (1) This section applies if, before the commencement, a disciplinary proceeding related to an affected referral was started, but not finally dealt with, under part 7.
- (2) The disciplinary proceeding may be continued by the prescribed officer repeating the last action taken by the officer under part 7, division 3 or 4.

Example—

If the last action taken by the prescribed officer was to give the subject officer a proposed sanction notice under section 7.28(2), the disciplinary proceeding may be continued by the prescribed officer giving the subject officer a new proposed sanction notice under section 7.28(2).

- (3) For subsection (2), a reference to the last action taken by the prescribed officer includes a reference to the last action taken by the officer who purported to be the prescribed officer for the disciplinary proceeding.
- (4) Before continuing the disciplinary proceeding, the commissioner may specify a new officer as the prescribed officer to whom the affected referral was made, regardless of whether a prescribed officer was properly specified for the referral when first made.

11.50 Right to review by tribunal

- (1) This section applies if, on or after 15 June 2022, a subject officer was given a QCAT information notice for a disciplinary decision relating to an affected referral, unless—
 - (a) the officer applied to the tribunal for a review of the decision; and

- (b) the tribunal made a decision on the application concluding the review.
- (2) Within 14 days after the commencement, the commissioner must give the subject officer and the CCC a new QCAT information notice for the disciplinary decision.
- (3) Subsection (4) applies if, after receiving the new QCAT information notice, the subject officer applies to the tribunal for a review of the disciplinary decision.
- (4) For the purpose of the tribunal reviewing the disciplinary decision, the *Crime and Corruption Act 2001*, chapter 5, part 3 applies with the following changes—
 - (a) the subject officer is taken to be the aggrieved person;
 - (b) the disciplinary decision is taken to be the reviewable decision;
 - (c) the application for the review must be made within 28 days after the subject officer is given the QCAT information notice under subsection (2).
- (5) Also, the tribunal must have regard to the action, if any, taken by the commissioner under section 11.51(2) or (7) in relation to the disciplinary decision.
- (6) The giving of a QCAT information notice under subsection (2) does not affect the day the disciplinary decision has effect under section 11.46.
- (7) No application fee is payable by the subject officer if, before the commencement, the officer paid an application fee for a review by the tribunal of the same disciplinary decision.
- (8) In this section—

application fee means the fee payable under the QCAT Act, section 38 for an application for review by the tribunal of a disciplinary decision.

disciplinary decision means a decision made under section 7.27(2) or 7.30(2).

11.51 Remedial action by commissioner

- (1) This section applies if the imposition of a disciplinary sanction or professional development strategy on a subject officer is, as subsequent action, validated under section 11.46.
- (2) The commissioner must take all action (***remedial action***) necessary to impose the disciplinary sanction or professional development strategy from the day it has effect under section 11.46.
- (3) Without limiting subsection (2), the commissioner may take the following remedial action—
 - (a) recover an amount paid to the subject officer that would not have been paid had the disciplinary sanction had effect before the commencement;
 - (b) exercise the powers of a prescribed officer in imposing the disciplinary sanction under part 7, division 5, including, for example, imposing conditions on probation;
 - (c) if the disciplinary sanction imposed on the subject officer is a fine—recover the fine in accordance with section 7.40.
- (4) An amount may be recovered under subsection (3)(a) by—

- (a) deducting the amount from the subject officer's fortnightly salary; or
 - (b) recovering the amount from the subject officer as a debt payable to the State.
- (5) A deduction mentioned in subsection (4)(a) must not be made at a rate of more than 2 penalty units each fortnight without the written consent of the subject officer.
- (6) Subsection (3)(a) does not apply to amounts paid to the subject officer for duties actually performed by the officer.

Examples—

- amounts paid to the subject officer for performing the duties of a sergeant during a period after the officer is taken to have been demoted to a senior constable
 - amounts paid to the subject officer for working during the period for which the officer is taken to have been suspended
- (7) Despite subsection (2), the commissioner may refrain from taking any or all remedial action if the commissioner is satisfied—
- (a) taking the action would cause excessive hardship to the subject officer; and
 - (b) refraining from taking the action because of the excessive hardship is in the public interest.
- (8) The commissioner may only delegate the commissioner's power under subsection (7) to a police officer of the rank of deputy commissioner.
- (9) To remove any doubt, it is declared that the commissioner may act under subsection (7) even if that action would, in effect, negate the imposition of the disciplinary sanction.

11.52 Notice before taking remedial action

- (1) This section applies if the commissioner proposes to take remedial action in relation to the subject officer under section 11.51.
- (2) Before taking the remedial action, the commissioner must give the subject officer a written notice stating the following information—
 - (a) the remedial action proposed to be taken;
 - (b) the day the remedial action is proposed to begin;
 - (c) that, if the officer believes the remedial action would cause the officer excessive hardship, the officer may, within the response period, give the commissioner a written submission about the hardship.
- (3) If the subject officer makes a written submission mentioned in subsection (2)(c) within the response period, the commissioner must consider the submission before taking the remedial action.
- (4) In this section—

response period, for a written notice given to a subject officer under subsection (2), means the period of 21 days after the notice is given to the officer.

11.53 Division not affected by other action

- (1) This division applies regardless of—
 - (a) any direction given by the commissioner to the subject officer before the commencement because of

- the complaint for the affected referral;
or
 - (b) any action taken against the subject officer before the commencement, under this Act or another Act, because of the complaint for the affected referral.
- (2) Any of the following notices given to the subject officer by the commissioner or a superior officer before the commencement is of no effect—
- (a) a notice stating that the affected referral is invalid (however described);
 - (b) a notice stating that a disciplinary proceeding related to the affected referral is concluded (however described).

11.54 Judicial review

- (1) Unless the Supreme Court decides a decision made under this division is affected by jurisdictional error, the decision—
- (a) is final and conclusive; and
 - (b) can not be challenged, appealed against, reviewed, quashed, set aside or called in question in any other way under the *Judicial Review Act 1991* or otherwise (whether by the Supreme Court, another court, a tribunal or another entity); and
 - (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground.
- (2) The *Judicial Review Act 1991*, part 5 applies

to a decision made under this division to the extent it is affected by jurisdictional error.

27 After clause 51

Page 48, after line 25—

insert—

**Part 7 Amendment of
Summary Offences Act
2005**

62 Act amended

This part amends the *Summary Offences Act 2005*.

63 Amendment of s 7 (Urinating in a public place)

(1) Section 7(1), ‘place.’—

omit, insert—

place, other than by using a toilet.

(2) Section 7(3)—

omit, insert—

(3) Before a police officer takes enforcement action for an offence against subsection (1), the officer must consider whether, in all the circumstances, it is more appropriate to take no action.

(4) Without limiting subsection (3), the police officer must have regard to the following circumstances—

(a) whether any vulnerability, or special health needs, of the person contributed to the person committing the offence;

(b) whether the person, when committing the offence, took reasonable steps to avoid offending or embarrassing anyone.

(5) In this section—

enforcement action, in relation to an offence against subsection (1), means—

- (a) starting a proceeding for the offence; or
- (b) serving an infringement notice for the offence.

64 Omission of s 8 (Begging in a public place)

Section 8—

omit.

65 Omission of s 10 (Being intoxicated in a public place)

Section 10—

omit.

28 After clause 51

Page 48, after line 25—

insert—

Part 8 Amendment of Supreme Court of Queensland Act 1991

66 Act amended

This part amends the *Supreme Court of Queensland Act 1991*.

67 Amendment of pt 12, hdg

Part 12, heading, after ‘Transitional’—

insert—

and validation

68 Insertion of new s 95

After section 94—

insert—

95 Validation provision for Supreme Court of Queensland Regulation 2012

- (1) Despite the *Statutory Instruments Act 1992*, section 54, the *Supreme Court of Queensland Regulation 2012*—
 - (a) is taken not to have expired on 1 September 2022; and
 - (b) expires on 1 September 2024 unless—
 - (i) it is repealed before that day; or
 - (ii) a regulation mentioned in subsection (2) is made before that day exempting it from expiry.
- (2) A regulation under the *Statutory Instruments Act 1992*, section 56A may exempt the *Supreme Court of Queensland Regulation 2012* from expiry, and extend a period of exemption, as if expiry under subsection (1)(b) were expiry under section 54 of that Act.
- (3) Anything done under this Act or another law before the commencement of this section has the same effect, and is taken to have always had the same effect, as it would have had if the *Supreme Court of Queensland Regulation 2012* had not expired.
- (4) A reference in subsection (3) to anything

done includes a reference to—

- (a) an exercise of the court’s jurisdiction;
or
- (b) the commencement of a proceeding or
taking of a step in a proceeding; or
- (c) the performance of a function; or
- (d) the exercise of a power; or
- (e) the establishment of a district registry;
or
- (f) the taking of an action with a document
including, for example, executing,
filing, making an entry in, presenting,
issuing or serving a document; or
- (g) the making of a decision.

29 After clause 51

Page 48, after line 25—

insert—

**Part 9 Amendment of Youth
Justice Act 1992**

69 Act amended

This part amends the *Youth Justice Act 1992*.

**70 Replacement of s 56 (Custody of child if not
released by court)**

Section 56—

omit, insert—

56 Custody of child if not released by court

(1) This section applies if—

- (a) a court remands a child in custody; and

- (b) the child does not remain the prisoner of the court; and
 - (c) the child is not already in the custody of the chief executive.
- (2) The commissioner of the police service must—
 - (a) take immediate custody of the child; and
 - (b) deliver the child into the custody of the chief executive as soon as reasonably practicable after the date the chief executive notifies to the commissioner under subsection (3).
- (3) The chief executive must—
 - (a) notify the commissioner of the police service of the date from which delivery of the child into the chief executive’s custody will be accepted; and
 - (b) fulfil the duty under paragraph (a) as soon as reasonably practicable in all the circumstances, including, for example, the number of children held by the commissioner and the capacity of detention centres.
- (4) In deciding the date, the chief executive must have regard to the information available to the chief executive about the following matters—
 - (a) the child’s needs, having regard to—
 - (i) the child’s age and sex; and
 - (ii) the child’s cultural background; and
 - (iii) the child’s historic and current self-harm risk and suicide risk; and

- (iv) the child’s medical conditions, if any; and
 - (v) the child’s physical health and mental health issues, if any; and
 - (vi) the child’s substance misuse and withdrawal issues, if any; and
 - (vii) the child’s cognitive capacity; and
 - (viii) the location and date of the child’s next court appearance; and
 - (ix) any other issue the chief executive considers may affect the child’s health or wellbeing in a watch-house environment; and
 - (x) any other issue the chief executive considers may affect the child’s health or wellbeing while the child is being transported between a watch-house and a detention centre;
- (b) if 1 or more other children are being held by the commissioner of the police service—the relative needs of the child and the other children having regard to the matters mentioned in paragraph (a);
- (c) the effect the delivery of the child is likely to have on—
- (i) the chief executive’s ability to comply with section 263; and
 - (ii) the chief executive’s ability to fulfil the chief executive’s duties as an employer; and
 - (iii) the commissioner of the police service’s ability to fulfil the commissioner’s duties as an employer; and

- (iv) the commissioner of the police service's ability to fulfil the commissioner's responsibility for—
 - (A) the security and management of watch-houses; and
 - (B) the safety and wellbeing of people detained in watch-houses.
- (5) A failure of the chief executive to provide procedural fairness to the child in deciding the date under subsection (4) does not affect the validity of the decision.
- (6) Subsection (2) does not apply to a person who is an adult being dealt with for an offence committed by the person as a child if, under section 136, 137 or 138, the person must be held in a corrective services facility.
- (7) Subsection (8) applies to jurisdiction conferred by an Act on a court—
 - (a) to commit a person to a place of detention (other than a detention centre) pending appearance before a court; and
 - (b) to give directions to the person in charge of the place.
- (8) The jurisdiction is taken, if the person is a child and this section applies, instead to confer jurisdiction on the court to remand the child into the custody of the chief executive and to give directions to the chief executive.
- (9) If a court remands a child into the custody of the chief executive under subsection (8), subsection (2) applies to the child.
- (10) Subject to subsection (11), the chief executive may keep a child mentioned in

subsection (1) who is in the chief executive's custody in places that the chief executive determines from time to time.

- (11) The chief executive can not determine under subsection (10) that a child is to be kept in a prison.
- (12) For the purposes of the *Human Rights Act 2019*, section 43(1), it is declared that this section has effect—
 - (a) despite being incompatible with human rights; and
 - (b) despite anything else in the *Human Rights Act 2019*.
- (13) This subsection and subsections (12) and (14) expire on 31 December 2026.
- (14) A regulation may postpone the expiry of this subsection and subsections (12) and (13) but can not postpone the expiry for more than 1 year after 31 December 2026.

71 Amendment of s 135 (Where offender is detained for adult offence)

Section 135(2), 'the offender must be remanded into the custody of the chief executive and, for that purpose,'—

omit.

72 Amendment of s 210 (Detention to be served in detention centre)

- (1) Section 210(2)—

omit, insert—

- (2) If a court makes a detention order against a child and the child is not already in the custody of the chief executive, the

commissioner of the police service must—

- (a) take immediate custody of the child; and
- (b) deliver the child into the custody of the chief executive as soon as reasonably practicable after the date the chief executive notifies to the commissioner under subsection (3).

(2A) The chief executive must—

- (a) notify the commissioner of the police service of the date from which delivery of the child into the chief executive's custody will be accepted; and
- (b) fulfil the duty under paragraph (a) as soon as reasonably practicable in all the circumstances, including, for example, the number of children held by the commissioner and the capacity of detention centres.

(2B) In deciding the date, the chief executive must have regard to the information available to the chief executive about the following matters—

- (a) the child's needs, having regard to—
 - (i) the child's age and sex; and
 - (ii) the child's cultural background; and
 - (iii) the child's historic and current self-harm risk and suicide risk; and
 - (iv) the child's medical conditions, if any; and
 - (v) the child's physical health and mental health issues, if any; and

- (vi) the child's substance misuse and withdrawal issues, if any; and
 - (vii) the child's cognitive capacity; and
 - (viii) the location and date of the child's next court appearance; and
 - (ix) any other issue the chief executive considers may affect the child's health or wellbeing in a watch-house environment; and
 - (x) any other issue the chief executive considers may affect the child's health or wellbeing while the child is being transported between a watch-house and a detention centre;
- (b) if 1 or more other children are being held by the commissioner of the police service—the relative needs of the child and the other children having regard to the matters mentioned in paragraph (a);
- (c) the effect the delivery of the child is likely to have on—
- (i) the chief executive's ability to comply with section 263; and
 - (ii) the chief executive's ability to fulfil the chief executive's duties as an employer; and
 - (iii) the commissioner of the police service's ability to fulfil the commissioner's duties as an employer; and
 - (iv) the commissioner of the police service's ability to fulfil the commissioner's responsibility for—

- (A) the security and management of watch-houses; and
 - (B) the safety and wellbeing of people detained in watch-houses.
- (2C) A failure of the chief executive to provide procedural fairness to the child in deciding the date under subsection (4) does not affect the validity of the decision.
- (2) Section 210—
insert—
- (4) For the purposes of the *Human Rights Act 2019*, section 43(1), it is declared that this section has effect—
 - (a) despite being incompatible with human rights; and
 - (b) despite anything else in the *Human Rights Act 2019*.
 - (5) This subsection and subsections (7) and (9) expire on 31 December 2026.
 - (6) A regulation may postpone the expiry of this subsection and subsections (7) and (8) but can not postpone the expiry for more than 1 year after 31 December 2026.
- (3) Section 210(2A) to (6)—
renumber as section 210(3) to (9).

73 Amendment of s 262 (Establishment of detention centres and other places)

Section 262—

insert—

- (2) For the purposes of the *Human Rights Act 2019*, section 43(1), it is declared that subsection (1) has effect—

- (a) despite being incompatible with human rights; and
 - (b) despite anything else in the *Human Rights Act 2019*.
- (3) Despite the *Human Rights Act 2019*, section 43(3), subsection (2) does not apply to a regulation made under subsection (1)—
 - (a) before 23 August 2023; or
 - (b) that declares subsection (2) does not apply to the regulation.
- (4) Before recommending to the Governor in Council the making of a regulation under subsection (1) to which subsection (2) applies and that establishes a detention centre, the Minister must have regard to whether the establishment of the detention centre would be compatible with human rights.
- (5) To remove any doubt, it is declared that—
 - (a) subsection (4) does not require the Minister to comply with the *Human Rights Act 2019*, section 58; and
 - (b) a failure to comply with subsection (4) does not affect the validity of the regulation.
- (6) A regulation made under subsection (1) to which subsection (2) applies expires when subsection (2) expires.
- (7) This subsection and subsections (2) to (6) and (8) expire on 31 December 2026.
- (8) A regulation may postpone the expiry of this subsection and subsections (2) to (7) but can not postpone the expiry for more than 1 year after 31 December 2026.

74 Insertion of new s 262A

After section 262—

insert—

262A Human Rights Act 2019, s 58 does not apply to particular acts and decisions

- (1) It is declared that the *Human Rights Act 2019*, section 58 does not apply to acts and decisions that—
 - (a) are reasonably necessary for the administration of this Act; and
 - (b) relate to—
 - (i) a child in a relevant detention centre; or
 - (ii) the placing of a child in a relevant detention centre.

Examples of acts and decisions—

- a decision by the chief executive under section 56 or 265 to place a child in a relevant detention centre
 - the transportation of a child to a relevant detention centre
 - the chief executive's carrying out of their responsibility under section 263 for the wellbeing of a child detained in a relevant detention centre
 - the chief executive's carrying out of their responsibility under section 302 to establish programs and services for a child detained in a relevant detention centre
- (2) This section expires on 31 December 2026.
 - (3) A regulation may postpone the expiry of this section but can not postpone the expiry for more than 1 year after 31 December 2026.
 - (4) In this section—

relevant detention centre means a detention centre established by a regulation to which

section 262(2) applies.

75 Amendment of s 272 (Ordinary visitor)

Section 272(1)—

insert—

- (e) the inspector of detention services.

76 Amendment of s 276DB (Review by Childrens Court)

Section 276DB—

insert—

- (6) The proceeding must be heard by the Childrens Court constituted by a Childrens Court judge.

77 Omission of s 276G (Application of subdivision)

Section 276G—

omit.

78 Amendment of s 276H (Prison transfer notice)

- (1) Section 276H, before subsection (1)—

insert—

- (1A) This section applies in relation to a person—
 - (a) remanded in custody in detention in relation to a charge of an offence; and
 - (b) who is at least 17 years and 10 months; and
 - (c) for whom—
 - (i) there is no future court date in relation to the charge; or

- (ii) the future court date in relation to the charge is in at least 2 months time.
- (2) Section 276H(1)(d)(i), ‘subsection (6)’—
omit, insert—
subsection (7)
- (3) Section 276H(3), ‘Subsection (2)’—
omit, insert—
Subsection (3)
- (4) Section 276H(4), ‘subsection (3)’—
omit, insert—
subsection (4)
- (5) Section 276H(1A) to (6)—
renumber as section 276H(1) to (7).

79 Amendment of s 276I (Decision of chief executive)

- (1) Section 276I(1), ‘the person a prison transfer notice’—
omit, insert—
a person a prison transfer notice under section 276H
- (2) Section 276I(2)(a), ‘section 276H(1)(d)’—
omit, insert—
section 276H(2)(d)

80 Amendment of s 276J (Review by Childrens Court)

- (1) Section 276J(1), ‘transfer the person’—
omit, insert—

transfer a person

(2) Section 276J—

insert—

(5A) The proceeding must be heard by the
Childrens Court constituted by a Childrens
Court judge.

(3) Section 276J(5A) and (6)—

renumber as section 276J(6) and (7).

81 Amendment of part 11, hdg (Transitional provisions)

Part 11, heading, after ‘Transitional’—

insert—

and validation

82 Insertion of new pt 11, div 22

Part 11—

insert—

Division 22 Validation and transitional provisions for Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023

414 Definition for division

In this division—

former, for a provision of this Act, means the

provision as in force from time to time before the commencement.

415 Validation of holding of child remanded in custody before commencement

- (1) This section applies if, before the commencement—
 - (a) a child was remanded in custody by a court; and
 - (b) the child was subsequently held by the commissioner of the police service; and
 - (c) the court did not make an order under former section 56(4) in relation to the child.
- (2) The child is taken to have been in the lawful custody of the commissioner of the police service while the child was held by the commissioner.
- (3) Anything done in good faith in relation to the child while the child was held by the commissioner of the police service is as valid and lawful as it would have been if the court had made an order under former section 56(4) in relation to the child.
- (4) To remove any doubt, it is declared that, in a proceeding in which good faith under subsection (3) is relevant, the burden of proof is on the person who seeks to show a lack of good faith.

416 Validation of holding of child sentenced to detention before commencement

- (1) This section applies if, before the commencement—

- (a) a child was sentenced by a court to serve a period of detention; and
 - (b) the child was subsequently held by the commissioner of the police service; and
 - (c) the court did not issue a warrant under former section 210(2) in relation to the child.
- (2) The child is taken to have been in the lawful custody of the commissioner of the police service while the child was held by the commissioner.
- (3) Anything done in good faith in relation to the child while the child was held by the commissioner of the police service is as valid and lawful as it would have been if the court had issued a warrant under former section 210(2) in relation to the child.
- (4) To remove any doubt, it is declared that, in a proceeding in which good faith under subsection (3) is relevant, the burden of proof is on the person who seeks to show a lack of good faith.

417 Application of s 56 to child remanded in custody before commencement

Section 56 applies to a child who—

- (a) before the commencement was remanded in custody by a court; and
- (b) was subsequently held by the commissioner of the police service; and
- (c) on the commencement is still held by the commissioner of the police service.

418 Application of s 210 to child sentenced to detention before commencement

Section 210 applies to a child who—

- (a) before the commencement was sentenced by a court to serve a period of detention; and
- (b) was subsequently held by the commissioner of the police service; and
- (c) on the commencement is still held by the commissioner of the police service.

30 Long title

Long title, ‘and the *Police Powers and Responsibilities Act 2000*’—

omit, insert—

, the *Mental Health Act 2016*, the *Mineral Resources Act 1989*, the *Police Powers and Responsibilities Act 2000*, the *Police Powers and Responsibilities Regulation 2012*, the *Police Service Administration Act 1990*, the *Summary Offences Act 2005*, the *Supreme Court of Queensland Act 1991* and the *Youth Justice Act 1992*

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