

Summary Offences (Prevention of Knife Crime) and Other Legislation Amendment Bill 2023

Explanatory Notes

Short title

The short title of the Bill is the Summary Offences (Prevention of Knife Crime) and Other Legislation Amendment Bill 2023.

Policy objectives and the reasons for them

Knife related crime poses a serious risk to community safety. Since 2019, reported offences where a knife was identified as the most serious weapon has increased by 18% to 12,865 (2022-23 financial year). Furthermore, the number of reported offences committed by a person under the age of 18, where a knife was identified as the most serious weapon, has risen by 22% since 2018-19 to 2,177 (2022-23 financial year).

The Queensland Police Service (QPS) has introduced a number of strategies to combat knife related crime, including introducing the *Police Powers and Responsibilities (Jack's Law) Amendment Act 2023* (Jack's Law), which expanded police powers allowing officers to use hand-held metal detectors to detect knives in safe knife precincts, on public transport and at public transport hubs throughout Queensland. The QPS has also implemented successful educational campaigns, such as *I live my life...without a knife*. While there are some indicators of success surrounding these strategies, a stronger response is considered necessary to significantly reduce the risks knife crime poses to the community.

In addition to the use of knives in violent crime, Gel Blasters that are replica firearms are also contributing to public safety concerns. Gel Blasters are considered a replica firearm under section 9(f) of the *Weapons Categories Regulation 1997* and regulated under section 67 of the *Weapons Act 1990*. In this regard, a person must not possess or acquire the item without a reasonable excuse, such as membership to an association that provides recreational activities involving the replica firearm or because the person holds a collector's licence and the replica firearm is to form part of a collection. Despite current legislative provisions restricting possession of replica firearms, young people are using these items to commit serious offences.

The objective of the Bill is to advance essential reforms designed to promote community safety, reduce youth offending and minimise the risks associated with knives and other dangerous items, by:

- prohibiting the sale of knives and other weapons (known as *controlled items*) to minors;
- making it an offence for a person to falsely represent themselves as being over the age of 18 years for the purpose of being sold a controlled item;
- requiring retailers to display signage advertising the legal prohibition against the sale of controlled items to minors;

- prohibiting controlled items from being sold or advertised in a way that suggests the item is suitable for combat, intended to be used for violence, or likely to stimulate or encourage violent or criminal behaviour involving the item;
- imposing obligations upon suppliers of particular controlled items to safely secure the items at retail locations; and
- making consequential amendments to support these reforms, such as allowing a police officer to request to see proof of age if they see or reasonably suspect a person under the age of 18 has been sold a controlled item and authorising the police officer to seize the item under certain circumstances.

The Bill aims to reduce the accessibility of these dangerous items to young people, disrupt and deter violent offences, and curb the notoriety of weapon possession.

Achievement of policy objectives

The Bill will achieve its objectives by amending the following legislation:

- *Summary Offences Act 2005*; and
- *Police Powers and Responsibilities Act 2000*.

Amendments to the *Summary Offences Act 2005*

Prohibiting the sale of controlled items to minors

The Bill is designed to reduce knife crime and associated youth offending and enhance community safety by strengthening the legislative framework regarding the sale, possession and storage of knives and other dangerous items.

This is achieved by amending the *Summary Offences Act 2005* (SOA) to introduce a new division prohibiting the sale of controlled items to persons under the age of 18.

A ‘controlled item’ for the purpose of the new division will include knives (other than exempted knives), swords, machetes, axes (including a tomahawk), sickles or scythes, spear-guns, spears, and replica firearms that are considered a restricted item under section 9 of the *Weapons Category Regulation 1997* for the purposes of section 67 of the *Weapons Act 1990* (Weapons Act).

A replica firearm that is a restricted item encapsulates life-like toy guns known as Gel Blasters (also known as a gel gun, hydro blaster, or gel ball blaster) that shoot gel pellets, if the design of the item replicates a firearm to the extent that it may be mistaken for a genuine firearm.

Under section 67 of the Weapons Act, a person must not, without reasonable excuse, possess or acquire a restricted item. Despite the restrictions in section 67 of the Weapons Act, Gel Blasters have been used in the commission of serious offences, including several armed robberies in recent months perpetrated by young offenders, highlighting the need to place greater restrictions on their purchase. These items have the potential to cause serious psychological harm to victims, bystanders and police officers, and may result in the serious physical harm or death of the offender if responding police officers believe the item to be a genuine firearm and utilise proportionate force to mitigate the perceived threat.

Therefore, the Bill will provide additional safeguards regarding the acquisition of Gel Blasters that are replica firearms and limit the ability of young offenders to utilise these items to commit criminal offences.

What constitutes a *knife* under this new division has not been defined, allowing the ordinary meaning to apply. Therefore, it will include items such as kitchen knives and utility knives. However, certain knives are excluded from this definition, including:

- a plastic or wooden knife designed to be used for eating; or
- a knife with a rounded or dull edge (such as a butter knife); or
- a knife designed for use as a cheese knife.

This strikes the appropriate balance by continuing to allow young people to purchase inoffensive everyday items, whilst restricting the accessibility of more dangerous knives and other items.

The new offences that will be inserted under the new division 4B of part 2 of the SOA will also:

- prohibit a person from falsely representing themselves as 18 years or older to purchase a controlled item under section 19N of the SOA;
- introduce clear responsibilities upon commercial sellers and their employees by making each liable for an offence if they sell a controlled item to a minor, under sections 19G of the SOA. A defence will be available for the offences under sections 19G(1) and 19(1) of the SOA, where the person can prove that they sighted acceptable evidence of age and had no reason to believe the evidence produced was false;
- ensure that commercial sellers comply with their obligations to:
 - display clearly visible signs advising the sale of controlled items to a person under 18 years is prohibited (section 19K);
 - secure particular controlled items under section 19L;
 - refrain from selling a controlled item that indicates or suggests the item is suitable for combat or intended to be used for violence or is likely to stimulate or encourage violent behaviour (section 19M).

Commercial sellers will also be responsible for ensuring they instruct their employees about the prohibition on the sale of controlled items to minors and the requirement that they sight acceptable evidence of age before selling a controlled item, unless satisfied that the person is an adult under section 19H of the SOA. Commercial sellers must also warn employees of the legal consequences of disregarding these instructions and that the employee may commit an offence against 19I of the SOA. A commercial seller must obtain the written acknowledgement by the employee that confirms the employee has received these instructions and warning. Failing to fulfil these obligations may result in the commercial seller committing an offence against this section and be liable to a maximum penalty of 40 penalty units.

To promote awareness of the new offences, reflect the seriousness of selling controlled items to minors and to reinforce compliance, sellers will be required to display signage publicising the prohibition in all retail outlets. Prohibition signs must be displayed either, at every point of sale register at the outlet, or, at each place where a controlled item is displayed at the outlet (unless there is no display – then at every point of sale).

Secure storage requirements of particular controlled items

The Bill introduces new provisions that impose secure storage requirements for sellers of particular controlled items.

This new storage requirement will only relate to particular controlled items, including a dagger that is a double-edged blade, knives with a blade at each end, a sword, machete, axe (including a tomahawk), sickle or scythe, spear, spear-gun, and a bladed item prescribed by regulation.

To securely store the item, sellers will have the ability to either ensure the item is stored in a locked room, cage, cabinet or container, or is securely tethered, so that it can be held and inspected but not removed from the display without the assistance of a sales attendant.

Given the danger these items can present, this amendment is both necessary and appropriate, and access to these controlled items should be limited to minimise the associated risks. These measures will additionally help prevent accidental injury due to inappropriate handling of the item. For example, a child may access a dagger or sword that is displayed for sale and cause accidental harm to themselves or others. Such items may be particularly appealing to a minor as it may resemble or remind the child of a toy. Secure storage will also reduce the likelihood the item will be misappropriated or stolen. Given these items can be deadly weapons if used inappropriately, precautions should be taken to prevent unauthorised access. The risk of theft may also be increased given the concurrently proposed amendment which seeks to prohibit controlled items from being sold to minors.

Prohibiting the sale or marketing of controlled items which may suggest or encourage violent or criminal behaviour

The Bill introduces a new offence at section 19M of the SOA which prohibits the sale of controlled items that possess certain features that contravene this section and prohibits controlled items from being sold in a particular manner that contravenes this section.

This offence is designed to combat the notoriety associated with knife possession and prevent the glamourisation of these items as deadly weapons.

This is achieved by stipulating the features of a controlled weapon, or the way in which it is sold, must not –

- Indicate or suggest the item is suitable for combat or intended to be used for violence, whether actual or threatened, against a person or fictional creature (for example a zombie); or
- Be likely to stimulate or encourage violent or criminal behaviour that involves using the item.

Prohibited features of a controlled item, or the way in which the item is sold, includes images, words or markings on the item, or images or words in an advertisement for the item.

For example, a knife which possesses an image of blood on the blade or contains words such as ‘killer’ or ‘slayer’ anywhere on the knife, packaging or associated items (such as a sheath), would be prohibited.

This offence targets items such as ‘zombie knives’ (knives or other bladed weapons often inspired by horror films and designed or marketed in a manner which suggests they are suitable

for violence, including to ‘exterminate the undead’) which have grown in popularity internationally, particularly in the United Kingdom which is experiencing a rise in youth offenders using these items in violent and deadly attacks.

Alternative ways of achieving policy objectives

There are no alternative ways to achieve the policy objectives.

Estimated cost for government implementation

Any costs incurred through the implementation of amendments to the Bill will be met through existing budgets.

Consistency with fundamental legislative principles

The Bill has been prepared with due regard to the fundamental legislative principles outlined in the *Legislative Standards Act 1992* (LSA) and is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

Amendments to the *Summary Offences Act 2005*

Section 4(2)(a) of the LSA – ‘New offences to prevent the sale of particular knives and other weapons (controlled items) to minors & imposing other legislative safeguards relating to the sale, display and storage of controlled items’

The Bill will introduce new offence provisions by inserting a new division 4B of part 2 of the SOA. These new offences may impact upon the rights and liberties of individuals by making the subject person liable to criminal sanctions for non-compliance. In determining whether these proposed amendments are consistent with fundamental legislative principles, particularly that legislation have regard to the rights and liberties of individuals per section 4(2)(a) of the LSA, consideration has been given to whether the consequences imposed by the amendments are proportionate and reasonable.

It is noted the new offences contained within the Bill may impact upon the rights and liberties of individuals by establishing new criminal liabilities and sanctions.

In developing this Bill, it was noted that penalties should be proportionate to the offence and legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Additionally, penalties within legislation should be consistent with each other.

The new offences in the SOA which potentially impact upon the rights and liberties of individuals by making the subject person liable to criminal sanctions include:

- section 19G(1) - a person may be liable to criminal sanctions for selling a controlled item to a minor. The maximum penalty for this offence is 140 penalty units for the first occasion, 280 penalty units for a second offence, and 420 penalty units for a third or subsequent offence;

- sections 19H and 19K - commercial sellers of controlled items may be liable to criminal sanctions if they fail to implement certain measures to prevent the sale of controlled items to minors. The maximum penalty for section 19H is 40 penalty units and the maximum penalty for section 19K is 20 penalty units;
- section 19I - an employee may be liable to criminal sanctions for selling a controlled item to a minor in the course of their employment. This offence has a maximum penalty of 20 penalty units for a first offence, and 40 penalty units for a second or subsequent offence;
- section 19L - imposes a maximum penalty of 50 penalty units upon commercial sellers of controlled items if they do not securely store particular controlled items specified in subsection (1) at all times except when a person is in physical possession of the item, either by securely tethering the item or storing it in a locked room, cage, cabinet or container;
- section 19M – imposes a maximum penalty of 25 penalty units if a person sells a controlled item that possesses features that contravene this section or sells a controlled item in a way that contravenes this section. This includes, selling an item that has any of the below features in its design, or selling/marketing an item in a way that –
 - indicates or suggests the item is suitable for combat, or intended to be used for violence, whether actual or threatened, or
 - is likely to stimulate or encourage violent or criminal behaviour that involves using the item; and
- Section 19N - a person may be liable to a criminal sanction if the person falsely represents themselves as being over the age of 18 to purchase a controlled item. The maximum penalty for this offence is 25 penalty units.

The proposed penalties are appropriate and proportionate and reflect the seriousness of the offence, and provide a necessary deterrent to meet the policy objectives of the Bill. Legislative safeguards have also been included in the Bill to ensure penalties and offences are applied fairly. For example, although employees may be personally liable if they sell a controlled item to a minor, employers have a responsibility to instruct their employees not to sell controlled items to minors, sight acceptable evidence of age unless satisfied the person is an adult and warn the employee of the legal consequences of failing to comply with these instructions. It is also a defence to this offence if acceptable evidence of age has been sighted and there is no reason to believe the evidence was false.

It may also be suggested that the new offences impact upon fundamental legislative principles by limiting ordinary commercial activities. The [then] Scrutiny of Legislation Committee has indicated that legislation should not, without sufficient justification, unduly restrict ordinary activities. This committee considered that the regulation of business, although prolific, is an intervention in a right to conduct business in the way in which the persons involved considers appropriate. In particular, the amendments will regulate how controlled items may be sold and advertised and restricts the sale of certain controlled items if the design of the item may suggest the item is suitable for combat or encourage criminal or violent behaviour. Additionally, retailers will be impacted by the secure storage requirements for particular controlled items, which may impact the way in which the business operates and impose implementation costs to ensure the retail outlet is compliant.

The obligations and restrictions placed upon sellers of controlled items is justified as they represent sensible preventative measures designed to restrict young offenders gaining access to these dangerous items. These measures will enhance community safety by encouraging the responsible sale of these items.

Furthermore, it may be proposed that the new sections 19G and 19I impact upon the fundamental legislative principle outlined in section 4(3)(d) of the LSA, which relates to reversing the onus of proof in criminal proceedings without adequate justification. Under the new offence provisions at sections 19G and 19I, which prohibit the sale of controlled items to minors, it is a defence to these charges if the person can prove that the minor was required to produce acceptable evidence of age, which was sighted, and there was no reason to believe the purported evidence of age was false. In applying this defence, the onus is reversed as the accused is required to prove the requisite elements exist.

These offence provisions also emulate an analogous offence within the SOA at section 23B which prohibits the sale of spray paint to minors. Under this section, a seller of spray paint must also prove the requisite elements of the defence under subsection (3).

Whilst the prosecution must still prove all elements of these offences, the reversed onus of proof in relation to the prescribed defences may be seen to impact upon the presumption of innocence, which is a fundamental principle in criminal proceedings. However, this right is not absolute, and Parliament retains the power to legislate and reverse the onus of proof. In *Kuczborski v Queensland* [2014] HCA 46 [240] the High Court noted, '[i]t has long been established that it is within the competence of the legislature to regulate the incidence of the burden of proof.'

Placing the onus on the accused to prove elements of the defence is reasonably justified when balanced against the serious risk knife crime represents to the community and the need to institute strong measures to ensure compliance and create a strong deterrent. Knives and other controlled items continue to be used to commit violent offences within the community which has resulted in serious injury and death. The need to institute these reforms to curb the propensity of these offences justifies any potential impact on the identified legislative fundamental principles.

Additionally, unlike more serious criminal offences that may result in a term of imprisonment, the maximum penalty in relation to either section 19G or section 19I is confined to a financial penalty which is proportionate to the offence.

For an offence against section 19G, the maximum penalty is 140 penalty units (\$21,672) for a first offence, 280 penalty units (\$43,344) for a second offence, or 420 penalty units (\$65,016) for a third or later offence.

For an offence against section 19I, the maximum penalty is 20 penalty units (\$3,096) for a first offence, or 40 penalty units (\$6,192) for a second or later offence.

Additionally, it is appropriate in the circumstances for the onus to be placed upon the accused as the issue to be determined is particularly within the knowledge of the accused.

Any potential impact on the fundamental legislative principles is considered reasonable and justified as these reforms are necessary to address the prevalence of knife crime and youth offending and enhance community safety. These amendments will strengthen Queensland's response capabilities to address knife crime and youth offending and better align Queensland with other Australian jurisdictions, noting all jurisdictions (except for Queensland and Tasmania) have legislated restrictions regarding the sale of knives to children.

Any interference or limitation with the fundamental legislative principles contained within the Bill is justified in a fair and democratic society based on the rule of law.

Consultation

A consultation paper detailing the proposed amendments was provided to key stakeholders who were invited to provide feedback. All feedback received has been considered in the development of the Bill.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland. Whilst uniformity with other jurisdictions is not required, consideration has been given to the policy and legislative approaches adopted in other Australian jurisdictions in the development of the Bill.

Notes on provisions

Part 1 Preliminary

1. Short title

Clause 1 provides that the Act may be cited as the *Summary Offences (Prevention of Knife Crime) and Other Acts Amendment Bill 2023*.

2. Commencement

Clause 2 states that this Act will commence on a day to be fixed by proclamation.

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

3. Act amended

Clause 3 provides that part 2 amends the *Police Powers and Responsibilities Act 2000*.

4. Replacement of s 43A (Unlawful sale of spray paint to minors)

Clause 4 replaces section 43A ‘Unlawful sale of spray paint to minors’ with a new section 43A ‘Unlawful sale of controlled items or spray paint to minors’. This is a consequential amendment to reflect the new offences provided in clause 6 and will enable police officers to request a person produce acceptable evidence of age and require the person to produce an item sold (or suspected of being sold) to them, if the police officer reasonably suspects the person was sold a controlled item, or spray paint. Under the new section 43A, a police officer will also be authorised to seize the item if the officer reasonably suspects the item is evidence of an offence under the new sections 19G, 19I, in addition to sections 23B or 23C of the SOA.

Part 3 Amendment of *Summary Offences Act 2005*

5. Act amended

Clause 5 provides that part 3 amends the *Summary Offences Act 2005*.

6. Insertion of new pt 2, div 4B (Offences about selling knives and other controlled items)

Clause 6 inserts a new part 2, division 4B which includes sections 19E, 19F, 19G, 19H, 19I, 19J, 19K, 19L, 19M, and 19N.

19E Definitions for division

Section 19E inserts several definitions for the purpose of the new division 4B, including, ‘commercial seller’, ‘controlled item’, ‘employee’, ‘exempt knife’, ‘spear’, and ‘sword’.

Notably, a controlled item means -

- i. a knife other than an exempt knife;
- ii. a sword, machete or axe (which includes a tomahawk);
- iii. a sickle or scythe;
- iv. a spear gun;
- v. a spear;

- vi. a restricted item under the *Weapons Act 1990*, section 67 that is a replica of a firearm under that Act (which includes Gel Blasters that are replica firearms under section 9(f) of the *Weapons Category Regulation 1997*); and
- vii. Includes or excludes a thing as prescribed by regulation.

19F Meaning of *sell* for this division

The new section 19F identifies that for the purpose of this division, when applying the definition of *sell* in the dictionary, a person does not keep or expose for sale or offer to sell a controlled item to a minor, only because the person keeps or exposes for sale or offers to sell controlled items to the public generally.

19G Sale of controlled items to minors

The new section 19G creates a new offence prohibiting a person from selling a controlled item to a minor and establishes a penalty structure which includes increased maximum penalties for a second, third or subsequent offence.

This section does not apply to an employee who sells a controlled item during the course of their employment.

It is a defence to a charge for this offence if the person can prove that they, or their employee, required the minor to produce acceptable evidence of age, and the minor produced acceptable evidence (or purported acceptable evidence) of age, and the person or employee had no reason to believe the evidence was false.

19H Commercial seller must instruct employees about sale of controlled items

The new section 19H introduces obligations upon commercial sellers in relation to each employee. This provision ensures commercial sellers provide adequate instructions to their employees regarding their obligations and potential liability under this new division.

In order to fulfil this responsibility, a commercial seller must:

- instruct the employee not to sell a controlled item to a minor and sight acceptable evidence of age prior to selling a controlled item, unless satisfied the person is an adult; and
- warn the employee that if they disregard these instructions and sell a controlled item to a minor, they will commit an offence against section 19I.

A commercial seller must also obtain written acknowledgement from the employee which evidences that the employee received the instructions and the above-mentioned warning.

19I Sale of controlled items to minors

The new section 19I introduces a new offence which applies to employees of commercial sellers, if the commercial seller has complied with section 19H.

Under this section, an employee must not, in the course of their employment, sell a controlled item to a minor.

It is a defence to a charge for this offence if the employee can prove that they, their employee, or another employee, required the minor to produce acceptable evidence of age, and the minor produce acceptable evidence (or purported acceptable evidence) and there was no reason to believe the evidence was false.

19J Application of Anti-Discrimination Act 1991, s 46

The new section 19J provides that for the purposes of *the Anti-Discrimination Act 1991*, section 46 ‘Discrimination in goods and services area’, a person (the seller) is not taken to discriminate against another person merely because the seller refused to sell a controlled item because of their obligations under section 19G(1) or 19I(2), which prohibits the sale of controlled items to minors.

19K Commercial seller must display prohibition signs

The new section 19K provides in subsection (1) that a commercial seller must display prohibition signs which communicate the prohibition on the sale of controlled items to minors, at the commercial seller’s retail outlet.

The purpose of this amendment is to promote awareness of the new offences, reflect the seriousness of selling controlled items to minors and reinforce compliance.

Subsections (2) to (4) outline requirements that must be implemented by the seller to avoid committing an offence under section 19K(1), which include displaying a sign:

- at each place where a controlled item displayed; or
- at each point of sale at the outlet.

The signs must be displayed so that they are clearly visible to a person purchasing the controlled item, either at the counter or at the display. If the retail outlet does not contain a display (for example if there are no controlled items available on the shop floor which the buyer can see and collect for purchase as the item is instead stored / displayed elsewhere), display signs must be located at each point of sale at the outlet.

Prohibition signs must comply with the requirements prescribed by regulation.

19L Commercial seller must secure particular controlled items

The new section 19L imposes an obligation upon commercial sellers to securely store particular controlled items at all times except when a person is in physical possession of the item. In order to comply with this secure storage requirement, the commercial seller must either store the item in a locked room, cage, cabinet or container, or, securely tether the item.

However, this secure storage requirement only applies to specified controlled items, including:

- (a) a dagger that is a double-edged blade;
- (b) a knife with a blade at each end;
- (c) a sword, machete or axe;
- (d) a sickle or scythe;
- (e) a spear-gun;
- (f) a spear;
- (g) a bladed item prescribed by regulation.

19M Prohibited sales of controlled items

The new section 19M introduces a new offence which prohibits the sale of controlled items that possess certain features and prohibits a person from selling a controlled item in a way that contravenes this section.

Section 19M(2) provides the features of a controlled item, or the way it is sold, must not—

- (a) indicate or suggest the item is—
 - (i) suitable for combat; or
 - (ii) intended to be used for violence, whether actual or threatened, against a person or fictional creature (for example, a zombie); or
- (b) be likely to stimulate or encourage violent or criminal behaviour that involves using the item.

This provision is designed to prevent knives and other dangerous items from being marketed in a way that may stimulate or encourage knife crime and the use of these dangerous items to commit violent or criminal acts. The offence is also designed to prevent the sale of any items that possess these features, including in their design or packaging.

Section 19M(3) further clarifies the operation of this offence by identifying that a reference to the features of a controlled item, or the way it is sold, includes:

- (a) images, words or markings on the item, its packaging or an associated item; or
- (b) images or words in an advertisement for the item.

Several legislative examples are included to further guide the application of this provision. In particular, a depiction of blood or a skull may be an example of images, words or markings on a controlled item that may contravene this section. For example, a knife that possesses imagery of blood dripping from the edges of the blade would be considered a controlled item that may indicate or suggest the item is suitable for combat, intended to be used for violence, or likely to stimulate or encourage violent or criminal behaviour that involves using the item.

Although section 19M(4) clarifies that a controlled item would not contravene this section only because of a depiction or description of the item being used in a lawful way. For example, a depiction of a replica firearm which is a Gel Blaster being utilised for the purposes of engaging in a lawful recreational activity for which the item was intended does not contravene this section, despite the recreational activity simulating elements of combat.

Section 19M(5) also provides this offence does not apply to an employee who sells a controlled item to a minor in the course of their employment.

19N False representation of age

The new section 19N establishes that it is an offence for a person to falsely represent themselves as having attained the age of 18 for the purpose of being sold a controlled item.

6. Amendment of s 23 (Sale of potentially harmful things)

Clause 7 provides a consequential amendment to section 23 in relation to the sale of potentially harmful things, by inserting into subsection (3) that a ‘*seller* means a person who, in trade or commerce, sells potentially harmful things to the public’.

8. Amendment of s 23A (Seller must take prevention measures in relation to spray paint)

Clause 8 amends section 23A ‘Seller must take prevention measures in relation to spray paint’ by omitting subsection (4) ‘acceptable evidence of age’. This omission is necessary as the definition is relocated to schedule 2 by clause 9, subclause (3).

9. Amendment of s 23B (Sale of spray paint to minors)

Clause 9 introduces several consequential amendments section 23B ‘Sale of spray paint to minors’. Section 23B contains the offence provision that a seller must not sell spray paint to a minor and includes a defence provision which considers whether the seller required the person to produce acceptable evidence of age.

Subclause (1) amends section 23B(3)(b) to clarify that it is a defence to this charge if the person produced acceptable evidence, or ‘purported evidence of age’ showing the person was not a minor. This amendment provides clearer guidance regarding the application of this provision and this drafting is replicated in the new section 19G(3)(b). The drafting aligns with modern drafting practices and ensures parallel offences are consistent.

Subclause (2) omits ‘*acceptable evidence of age*’ as this definition is amended by subclause (3) and relocated to schedule 2.

Subclause (3) relocates the definition of ‘*acceptable evidence of age*’ to Schedule 2.

10. Amendment of s 47 (Forfeiture of thing to which offence relates)

Clause 10 amends section 47 ‘Forfeiture of thing to which offence relates’ to insert references to the new sections 19G, 19I and 19M to enable a court to order that a thing to which the offence relates be forfeited to the State. This will allow a court to order a controlled item be forfeited to the State under these new sections, as is similarly allowed in relation to an offence for the sale of spray paint to minors.

11. Amendment of s 49 (Regulation-making power)

Clause 11 amends section 49 ‘Regulation-making power’ to clarify that a regulation under section 19E, definition of *controlled item*, paragraph (b) may prescribe a thing to be a controlled item, even if the thing is an exempt knife. For example, certain cheese knives may be prescribed by regulation to be controlled items, even though under the definition of *exempt knife* paragraph (c) includes ‘a knife designed for use as a cheese knife’.

12. Amendment of sch 2 (Dictionary)

Clause 12 makes consequential amendments to Schedule 2 of the *Summary Offences Act 2005* to insert new definitions and update existing definitions to give effect to the new part 2, division 4B.

This is achieved by omitting the existing definitions for *employee*, *potentially harmful thing* and *seller* at subclause (1).

Subclause (2) proceeds to insert new definitions arising from the amendments under clause 6 and consolidates other definitions under Schedule 2. This amendment aligns with modern drafting practices to consolidate definitions of terms found within an Act.

Subclause (3) amends Schedule 2 to clarify the definition of *sell* to confirm it includes sales made online or at any place, and sales outside of Queensland to a person in Queensland. In relation to sales online or any place, subclause (3) also provides an example of places where a sale may happen, which includes retail premises, a flea market, a temporary retail stall, a private residence.

Subclause (4) amends Schedule 2 by renumbering the paragraphs contained in the definition of *sell*, as a consequential amendment arising by subclause (3) of clause 12.

Subclause (5) amends Schedule 2 by inserting a note into the definition of *sell* to ensure the operation of this definition is appropriately applied to the relevant sections within the Act.