

# Police Powers and Responsibilities and Other Legislation Amendment Bill 2023

## Explanatory Notes

### Short title

The short title of the Bill is the Police Powers and Responsibilities and Other Legislation Amendment Bill 2023.

### Policy objectives and the reasons for them

The objective of the Bill is to promote the efficiency of the Queensland Police Service (QPS) and the Queensland Fire and Emergency Services (QFES) through a range of amendments that will deliver operational or administrative improvements. In relation to the QPS, amendments in the Bill will:

- enhance the Police Drug Diversion Program through introducing drug diversion warnings, allowing an eligible person an opportunity to participate in a subsequent drug diversion assessment program and the expansion of minor drug offences to include the possession of prescribed quantities of any type of dangerous drug and certain pharmaceuticals;
- allow for the appointment of a person as an executive officer rather than to an executive officer position which will allow executive officers (i.e. Assistant and Deputy Commissioners) to be appointed generically to their respective rank or to the particular position that they will fill; and
- introduce a circumstance of aggravation for the offence of evading police under section 754 of the *Police Powers and Responsibilities Act 2000* (PPRA).

The Bill will make minor amendments to legislation administered by QFES by:

- confirming any request or application made under sections 64 ‘Prohibition by commissioner against lighting of fires’ and 65 ‘Granting of permits’ of the *Fire and Emergency Services Act 1990* (FES Act) must contain the information prescribed by regulation and, in the case of a request under section 64, be made in the way prescribed by regulation; and
- introducing the new section 150BA ‘Assault of persons performing functions or exercising powers’ of the FES Act and making consequential amendments to the offence outlined in section 150C ‘Obstruction of persons performing functions’ of the FES Act.

The Bill will also amend the maximum penalty of section 5 ‘Trafficking in dangerous drugs’ of the *Drugs Misuse Act 1986* from 25 years imprisonment to life imprisonment to reflect the serious nature of this offence.

#### Expansion of police drug diversion program

The Police Drug Diversion Program (PDDP) involves the re-direction of offenders away from conventional criminal justice processes, with the aim of addressing the personal use of illicit

drugs through a health-based approach that better addresses the underlying causes of drug offending.

Currently, police can only offer an eligible person the opportunity to participate in and complete a drug diversion assessment program if the person possesses less than 50 grams of cannabis and/or things used in connection with smoking cannabis. For minor drug possession offences involving any other type of dangerous drug or the unlawful possession of pharmaceuticals that are S4 or S8 medicines under the *Medicines and Poisons Act 2019*, the only option available to police to enforce the law is the commencement of formal proceedings against the person in court.

The Bill amends the PPRA and makes minor supporting amendments to other Acts to improve the law enforcement response to drug offences that involve small quantities of drugs that are for personal use by providing police with access to an alternative other than bringing a person before the court. Police will maintain a zero-tolerance approach to the suppliers and producers of illicit drugs.

The Bill increases Queensland's contribution to the harm minimisation commitment in the *National Drug Strategy 2017-2026*. The National Drug Strategy outlines harm minimisation as being achievable through the balanced adoption of effective demand, supply and harm reduction measures. Demand reduction includes strategies that reduce the misuse of drugs in the community and supports people to recover from dependence through evidence-based treatment. Harm reduction activities seek to reduce the adverse health, social and economic consequences of the use of drugs, for the user, their families and the wider community.

These amendments accord with recommendation 13 of the Mental Health Select Committee's *Inquiry into the opportunities to improve mental health outcomes for Queenslanders*, the objectives of *Achieving Balance, the Queensland Alcohol and Other Drugs Plan 2022-2027* and *Better Care Together – a plan for Queensland's state funded mental health, alcohol and other drugs services to 2027*. Further, the amendments give effect, in part, to recommendation 4 from the *Queensland Drug and Specialist Courts Review (QDSC Review): Final Report* which encouraged the adoption of expanded pre-arrest and post-arrest options for minor drug offences.

To facilitate this harm minimisation approach, the Bill broadens the scope of a 'minor drugs offence' in Schedule 6 of the PPRA from the possession of a small quantity of cannabis and a thing used for smoking cannabis to encompass all dangerous drugs as defined by section 4 of the *Drugs Misuse Act 1986* (DMA). The unlawful possession of S4 or S8 medicines under the *Medicines and Poisons Act 2019* will also be included in the definition of a minor drugs offence.

Under the Bill, a person will be eligible for diversionary action under the PDDP if the person is arrested for, or questioned by, a police officer for a minor drugs offence and the police officer reasonably believes the drug matter is for personal use. The quantity of illicit drugs to be considered a 'minor drugs offence' and therefore eligible for diversionary action by police will be prescribed under the *Police Powers and Responsibilities Regulation 2012*. Finally, the person must agree to participate in the diversionary action

A person will be ineligible for diversionary action under the PDDP if the person has previously been sentenced to a term of imprisonment for an offence against sections 5, 6, 8 or 9D of the

DMA or the person has committed another indictable offence in circumstances that are related to the minor drugs offence (for example, burglary of a home to obtain money to buy drugs).

Amendment in the Bill will improve the PDDP through:

- the introduction of a requirement that a police officer must offer an eligible person, who is an adult, a ‘drug diversion warning’ for a first minor drugs offence; and
- a requirement that a police officer offer an eligible person, who is an adult, the opportunity to complete a subsequent drug diversion assessment program if the person has previously been offered the opportunity to participate in a drug diversion assessment program.

Any drugs or drug utensils involved in the minor drugs offence will be forfeited to the State and can be immediately scheduled for destruction.

Repeat offenders will typically be brought before the court on a relevant charge, noting the court may also refer eligible offenders to the Illicit Drug Court Diversion Program to try and address underlying issues relating to the person’s drug use.

The Bill amends the *Youth Justice Act 1992* (YJA) to clarify that the alternatives to prosecution available to a police officer to consider in response to a minor drugs offence committed by a child are to, take no action, caution the child under the YJA, refer the child to a restorative justice process, offer the child a drug diversion warning or the opportunity to participate in a drug diversion assessment program. As there are a number of diversionary options available, the Bill makes the use of drug diversion warnings and drug diversion assessment programs, in relation to children, discretionary. The amendments also address a legislative gap where drug matter was not able to be automatically forfeited to the State if a child was cautioned for a minor drugs offence.

It is important to note the expansion of the proposed drug diversion scheme does not equate to the legalisation of dangerous drugs. The unlawful possession of dangerous drugs remains an offence. The PDDP is a legislative mechanism that is only available to eligible persons who fit strict criteria. For example, a person in unlawful possession of two dangerous drugs, one of which is a minor drug offence while the other exceeds the prescribed quantity of dangerous drugs would be ineligible for the PDDP as the person would have committed an indictable offence in circumstances related to the minor drug offence. In contrast, a person may remain eligible for the PDDP in circumstances where the person possesses multiple dangerous drugs under the prescribed quantities provided that police reasonably believed that those drugs were for the person’s personal use.

The Bill’s focus on a health-based response for a minor drugs offence involving a small quantity of any type of dangerous drug and the non-medical use of certain pharmaceuticals better addresses the underlying causes of drug-related offending and brings Queensland into line with other jurisdictions such as Victoria, Tasmania, the Australian Capital Territory and South Australia. This will lead to improved outcomes for both minor drug offenders and the community, better address the underlying causes of drug offending, reduce recidivism and significantly reduce the demand on the criminal justice system and allow court time to be reserved for more serious matters.

### Appointment of Executive Officers to a position or rank

Similar to other government departments, the QPS recruits and selects its personnel in accordance with the 'merit principle' through applying section 5.2 of the *Police Service Administration Act 1990*. Section 5.2 provides that a decision to appoint a person as a police recruit or to 'a police officer position' must be made by fair and equitable procedures including inviting applications and a selection on the basis of the merit of applicants.

The decision of *Lewis v Commissioner of the Queensland Police Service* [2021] QSC 169 has highlighted a technical issue with the appointment process outlined in section 5.2. This case found a distinction between the rank of a police officer and a 'police officer position'. While rank determines seniority, the police officer position refers to the specific role the officer will undertake. This case determined that appointments for a police officer may only be made to a police officer position and not to a generic rank.

Executive officers are a small cohort of police officers currently comprising 4 Deputy Commissioners and 17 Assistant Commissioners. Executive officers lead and manage significant components of the QPS. The nature of their role requires a degree of flexibility and responsiveness to the strategic needs of the QPS.

There are frequently multiple executive officer vacancies within the QPS. Historically, the QPS has invited applications and appointments have been made on the merits of applicants to the generic rank and not to a particular position. The proposed amendment will allow a person to be appointed as an executive officer either through the person's rank or position while maintaining the Government's commitment to the merit principle in the appointment of its employees.

### Introduction of a circumstance of aggravation for the offence of evading police under section 754 of the *Police Powers and Responsibilities Act 2000*

Evade police offences are an issue of significant community concern. These offences are generally committed in concert with a range of other traffic offences such as speeding, driving dangerously or driving without due care to other road users. The consequences of committing these offences can be dire, as evident from recent cases which resulted in fatalities. Although evade police offences already carry a significant penalty and policing strategies including the impoundment or forfeiture of motor vehicles used to commit this offence apply, these offences continue to occur warranting a stricter policing response. Of particular concern are recidivist offenders who through their actions demonstrate a repeated failure to comply with traffic laws, a continued disregard for authority and an intention to persistently engage in offending behaviour.

Amendments in the Bill will reflect youth crime initiatives designed to target violent juvenile car thieves, while also targeting recidivist offenders and dangerous drivers. The maximum penalty under section 754 of the PPRA will be increased to 5 years imprisonment and 300 penalty units if this offence is committed in the following circumstances:

- the offence is committed at night;
- the driver of the motor vehicle uses or threatens violence;
- the driver of the motor vehicle is armed or pretends to be armed;
- the driver of the motor vehicle is in company;
- the driver of the motor vehicle damages or threatens to damage any property; or

- the driver of the motor vehicle has previously been convicted of an offence under:
  - section 754 of the PPRA;
  - section 408A of the Criminal Code;
  - section 427 of the Criminal Code; or
  - Section 328A of the Criminal Code.

#### Sections 64 and 65 of the FES Act – requirements about making request or application

Chapter 3, part 7 of the FES Act provides a framework for the control and prevention of fires. Under section 62 ‘Offence to light unauthorised fire’ of the FES Act, it is an offence to light an unauthorised fire and under section 67 ‘Occupier to extinguish fire’ of the Act the occupier of land must take all reasonable steps to extinguish or control an unauthorised fire and must report the fire to specified officers.

Section 63 ‘Authorisation of fires by commissioner’ of the FES Act provides that the Queensland Fire and Emergency Services commissioner (QFES commissioner) may, by gazette notice, authorise the lighting of fires for purposes and in the circumstances specified. Despite any authorisation under section 63, section 64 of the FES Act provides that the QFES commissioner may prohibit the lighting of all or particular fires on land by giving a notice (prohibition notice) to the occupier of the land. Section 64(2) provides that the QFES commissioner must consider any request made by an occupier of land that a prohibition notice be given to the occupier of adjoining land, unless the commissioner believes the request is frivolous or vexatious.

Section 4(1) of the *Fire and Emergency Services Regulation 2011* (FES Regulation) provides that a request under section 64(2) must be made to the QFES commissioner in writing and include specified information. Section 4(2) of the FES Regulation provides that a copy of the request must be given to the occupier of the adjoining land.

Section 65 of the FES Act provides that a person may apply to the QFES commissioner for a permit to light a fire on any land. The application may be oral or in writing. The QFES commissioner may grant or refuse to grant an application but must refuse unless reasonable steps have been taken to notify every occupier of adjoining land of the application and provide them with an opportunity to object to the granting of the permit.

Section 5 ‘Requirements for an application for a permit to light a fire-Act, s 65(1)’ of the FES Regulation provides that an application for a permit to light a fire must include specified information.

Although section 4 ‘Requirements for a request for issue of a prohibition notice-Act, s 64(2)’ of the FES Regulation provides that a request that a prohibition notice be given must be in writing and a copy given to the occupier of adjoining land, section 64 of the FES Act does not provide for a regulation to prescribe requirements about how a request must be made. Further, neither section 64 or section 65 expressly provides that a regulation may prescribe information required for a request that a prohibition notice be given or an application for a permit to light a fire.

#### Assaulting a person performing functions or exercising powers under the FES Act

Section 150C of the FES Act provides that it is an offence to obstruct another person (an authorised person) in the performance of a function under the Act unless the person has a

reasonable excuse. Subsection 150C(2) includes a requirement that if a person has obstructed an authorised person and the authorised person decides to proceed with the performance of the function, the authorised person must warn the person that it is an offence to obstruct the authorised person (without reasonable excuse) and the authorised person considers the person's conduct to be an obstruction. For the purposes of the provision, obstruct includes abuse, assault, hinder, resist, threaten and attempt or threaten to obstruct.

It is not considered necessary that a person performing a function under the FES Act should be required to give a warning to another person that an assault would be considered an obstruction and would constitute an offence.

#### Increasing the maximum penalty of section 5 of the *Drugs Misuse Act 1986*

The Bill will increase the maximum penalty for section 5 of the *Drugs Misuse Act 1986* from 25 years imprisonment to life imprisonment to reflect the significant risks and harm that unlawful trafficking in dangerous drugs has on the community. The distribution and subsequent use of dangerous drugs is a major contributing factor in anti-social behaviour, family and domestic violence, property crime and violence related offences and causes significant risk to road safety. Increases in the maximum penalty for this offence by amendments in the Bill target offenders who seek to profit from the illicit drug market and provides a strong deterrence to this activity.

## **Achievement of policy objectives**

The Bill achieves its objectives by amending the following legislation:

- *Drugs Misuse Act 1986* (DMA);
- *Fire and Emergency Services Act 1990* (FES Act);
- *Penalties and Sentences Act 1992* (PSA);
- *Police Powers and Responsibilities Act 2000* (PPRA);
- *Police Service Administration Act 1990* (PSAA); and
- *Youth Justice Act 1992* (YJA).

#### Expansion of police drug diversion program

The Bill will achieve its objective of enhancing the efficiency of the QPS through amendments to:

- the PPRA that:
  - expand the range of alternative options available to police to divert minor drug offenders from the criminal justice system and into appropriate health interventions by expanding the police drug diversion program through:
    - introducing drug diversion warning for a minor drug offences;
    - allowing an eligible person the opportunity to participate in a subsequent drug diversion assessment program; and
    - expanding the eligibility for a drug diversion assessment program to apply to a minor drugs offence involving prescribed quantities of any type of dangerous drug and certain pharmaceuticals;
  - provide for the automatic forfeiture of relevant drug matter to the State as a condition of a diversionary police action for a minor drugs offence.

To further support the drug diversion objectives of the Bill minor amendments are made to the YJA that clarify that the offer of a drug diversion warning or an opportunity to participate in a

drug diversion assessment program may be considered by a police officer when determining if this alternative is more appropriate than commencing a proceeding against a child.

The Bill will consolidate provisions outlining the legislative framework for PDDP in the new division 5 (Additional case–minor drugs offence) under part 4 of Chapter 14 of the PPRA.

The Bill further enhances the operation of the PDDP by:

- removing the exclusion criteria preventing a person previously convicted of an offence involving violence against another from accessing the drug diversion assessment program as more flexible modes of delivery for drug diversion assessment programs mean that any risk to program providers presented by persons previously convicted of violent offences can be mitigated through telephone appointments instead of face-to-face appointments;
- clarifying that a drug diversion assessment program is now an escalated health intervention available after an initial drug diversion warning for minor drugs offences;
- broadening the types of things or utensils used for consuming drugs that can be forfeited to the State for destruction as a condition of a drug diversion agreement to cover a wider range of paraphernalia used to consume various types of drugs.

### Definitions

The Bill expands the definition of minor drugs offence in section 378B ‘Meaning of *minor drugs offence*’ of the PPRA by broadening the application of the PDDP to small quantities of any type of dangerous drugs and S4 or S8 medicines under the *Medicines and Poisons Act 2019* and things/utensils used in association with these drugs.

Eligibility for PDDP will be determined by the following criteria:

- the person is arrested for, or is being questioned by a police officer about, a minor drugs offence; and
- the person has not committed another indictable offence in circumstances that are related to the minor drugs offence; and
- the person has not previously been sentenced to serve a term of imprisonment for an offence against the DMA, section 5, 6, 8 or 9D; and
- the police officer reasonably believes each minor drugs matter was for the person’s personal use.

### Introduction of drug diversion warnings

The Bill will insert new section 378C ‘Drug diversion warning’ into the PPRA which requires an eligible adult person arrested for, or questioned by police about, a minor drugs offence, to be offered a drug diversion warning in relation to the offence. However, a person will not be eligible for a drug diversion warning if the person has previously been offered either a drug diversion warning or the opportunity to participate in a drug diversion assessment program.

The person must agree to be given a drug diversion warning for the minor drug offence. Police must release the person at the earliest reasonable opportunity after the person has been given the drug diversion warning.

### Forfeiture of drugs

Currently, the police drug diversion provisions under section 379 of the PPRA require that a person who is offered and agrees to a drug diversion assessment program for a minor drugs

offence must, on signing the agreement, forfeit the drug and anything used for smoking the drug, to the State.

The Bill replicates this power of forfeiture to drug diversion warnings and cautions to a child to ensure drug matter, including dangerous drugs and controlled or restricted drugs possessed unlawfully, as well as things used for ingesting drugs, can be immediately scheduled for disposal by police.

This approach streamlines processes and reduces a significant number of risks to the QPS and resource implications for retaining drug matter for extended periods without a clear and immediate power of forfeiture once a matter is finalised by a drug diversion alternative to court proceedings. It also relieves the need for forensic analysis by Queensland Health Forensic and Scientific Services and any associated costs to the State.

#### Appointment of Executive Officers to a position or rank

The Bill will amend section 5.2 ‘Appointment to be on merit on impartial procedures’ of the PSAA. This section provides that a decision to appoint a person as a police recruit or an executive officer or to a police officer position must be made by fair and equitable procedures that include:

- inviting applications and selection on the basis of the merits of applicants; and
- prevents unjust discrimination.

The Bill will amend section 5.2 to allow a person to be appointed to the rank of executive officers or to an executive officer position.

#### Introduction of a circumstance of aggravation for the offence of evading police under section 754 of the *Police Powers and Responsibilities Act 2000*

Presently, the minimum penalty for evading police is 50 penalty units or 50 days imprisonment with a maximum penalty of 300 penalty units or 3 years imprisonment.

Queensland has the third highest recidivism rates in the country at 69 per cent, with the national average at 59 per cent,<sup>1</sup> highlighting the need to create a greater deterrent.

The aggravated offence will target recidivist offenders and perpetrators that place the community at significant risk of harm and will have a maximum penalty of 5 years imprisonment or 300 penalty units.

#### Section 64 and 65 of the FES Act – requirements about making request or application

To clarify the process for making a request that the commissioner give a notice to an adjoining occupier prohibiting the lighting of all, or particular fires, the Bill will amend section 64 of the FES Act to expressly provide that a request must be made in the way and including the information prescribed by regulation.

The Bill will also amend section 65 of the FES Act to clarify the process for making an application for a permit to light a fire to expressly provide that an application must include the information prescribed by regulation.

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<sup>1</sup> Australian Government Productivity Commission, ‘Australia’s prison dilemma Research Paper’ (October 2021), 42.

The Bill will also make minor drafting amendments to section 64 and section 65 to reflect current drafting practice.

#### Assaulting a person performing functions or exercising powers under the FES Act

The Bill will introduce the new offence in section 150BA ‘Assault of persons performing functions or exercising powers’ to ensure that the warning requirement, which currently applies to the obstruction offence in section 150C, is not required in the circumstances of an assault. The Bill will also provide that an assault for the purposes of section 150BA has the meaning given by the Criminal Code section 245.

The Bill will make consequential amendments to the definition of ‘obstruct’ in section 150C to provide that it includes ‘abuse, hinder, resist, threaten and attempt to threaten to obstruct’ but no longer include ‘assault’.

#### Increasing the maximum penalty of section 5 of the *Drugs Misuse Act 1986*

The Bill will achieve the objective of providing a greater deterrence for the offence under section 5 ‘Trafficking in dangerous drugs’ of the *Drugs Misuse Act 1986* by increasing the maximum penalty from 25 years imprisonment to life imprisonment

## **Alternative ways of achieving policy objectives**

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

## **Estimated cost for government implementation**

Any costs incurred through the implementation of the amendments in the Bill will be met through the existing budgets of the QPS and QFES.

## **Consistency with fundamental legislative principles**

The amendments in the Bill have been drafted with due regard to the fundamental legislative principles in section 4 of the *Legislative Standards Act 1992* (LSA). Potential breaches of fundamental legislative principles are addressed below.

### ***Amendments to the Drugs Misuse Act 1986 (DMA)***

#### *Section 4(2)(a) of the LSA – Increasing the maximum penalty for trafficking in dangerous drugs*

It is proposed to amend section 5 ‘Trafficking in dangerous drugs’ of the DMA to increase the maximum penalty of 25 years imprisonment to life imprisonment. This may be perceived as a breach of a fundamental legislative principle that legislation have regard to the rights and liberties of individuals under section 4(2)(a) of the LSA.

Trafficking in dangerous drugs is among the most serious form of drug offending in the DMA and is considered a serious violent offence. The increased penalty will reflect the significant risks and harm carrying on a business of unlawfully trafficking in dangerous drugs has on the community. The use and distribution of dangerous drugs is a major contributing factor in anti-social behaviour, family and domestic violence, property crime and violence related offences

and causes significant risk to road safety. The use of dangerous drugs such as methylamphetamine can also cause a vast range of serious and life-threatening medical conditions for the user, in addition to placing a significant strain Queensland's health system. This offence targets offenders who seek to profit from and contribute to the trade of illicit drugs and requires a strong deterrence.

Increasing the maximum penalty for trafficking in dangerous drugs to life imprisonment enables Queensland to more closely align with current penalties in other Australian jurisdictions for serious drug offences. Although increasing the maximum penalty to life imprisonment may impact the sentence a drug trafficker receives, any breach of fundamental legislative principle is justified when considering the seriousness of the offence coupled with the negative social, health and economic cost to the community.

### ***Amendments to the Police Powers and Responsibilities Act 2000 (PPRA)***

#### *Section 4(2)(a) of the LSA – Amending the 'Evasion offence' by the addition of a circumstance of aggravation*

The proposed amendment to establish a circumstance of aggravation to the evasion offence at section 754 of the PPRA with a higher maximum penalty of 5 years imprisonment and 300 penalty units may be held as a breach of the fundamental legislative principle that legislation have regard to the rights and liberties of the individuals under section 4(2)(a) of the LSA.

Despite current legislative provisions intended to prevent and deter hooning activity and type 1 vehicle offences, dangerous driving and police evasion incidents continue to occur, exposing the community to harm through the potential risk of serious injury and fatalities.

The proposed circumstance of aggravation to the evasion offence targets recidivist offenders and provides greater penalties when the offence is committed in connection with anti-social and high-risk behaviours. Although the increased maximum penalty available under the aggravated offence may impact the period of imprisonment an offender is liable to receive, any potential breach of this fundamental legislative principle is justified to provide greater deterrence for the offence given the serious risk of harm associated with the offence.

### ***Amendments to the Fire and Emergency Services Act 1990 (FES Act).***

#### *Section 4(4)(a) of the LSA – Requirements for making requests or applications*

The amendments to sections 64 and 65 of the FES Act are potentially inconsistent with the fundamental legislative principle that legislation should have sufficient regard to the institution of Parliament (*Legislative Standards Act 1992* section 4(2)(b)). Whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill allows the delegation of legislative power only in appropriate cases and to appropriate persons (LSA section 4(4)(a)); and sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly (LSA section 4(4)(b)).

The amendments will provide for a regulation to prescribe details about making applications and requests to the commissioner. It is appropriate to provide that these matters may be delegated to subordinate legislation to provide for flexibility if there are changes to the processes or information required. Further, a regulation when made, will sufficiently subject the exercise of the delegated legislative power to Parliamentary scrutiny.

*Section 4(2)(a) of the LSA – Assault on a person performing a function or exercising a power*

The amendments to provide for an offence of assaulting a person performing a function or exercising a power under the FES Act (separate to an obstruction) is potentially inconsistent with the fundamental legislative principle that legislation should have sufficient regard to the rights and liberties of individuals (LSA section 4(2)(a)). In considering whether legislation has sufficient regard to the rights and liberties of individuals, it is necessary to consider whether the penalties imposed for offences are proportionate and relevant to the act or omission constituting the offence. The amendment does not alter the penalty applying currently under the FES Act for obstructing (including assaulting) an authorised person. The penalty (100 penalty units or 6 months imprisonments) is considered consistent with similar penalties applying across Queensland legislation. It is also considered appropriate given the importance of ensuring that persons performing functions or exercising powers under the Act, including those relating to safeguarding persons, property and the environment can do so without fear of obstruction or assault.

A person charged with an offence under new section 150BA will not be able to argue that they have a reasonable excuse for the assault, as would have been available to them when assault was captured by section 150C. It is considered that importing the Criminal Code definition of assault provides sufficient, and appropriate, defences or excuses for assaults (including elements relating to consent or the lack thereof).

New section 150BA will provide for an assault offence (separate from an obstruction) that will capture the same conduct as could be caught by the Criminal Code assault offence (section 335). It is noted that the 2020 Report of the Sentencing Advisory Council ‘Penalties for assaults on public officers’ considered this issue. The Council commented favourably on submissions made to it that:

‘it is important to retain separate levels of offences — even if these offences ostensibly capture the same forms of criminal behaviour. This ensures that people who commit these offences are not exposed to the possibility of a more severe penalty being imposed for actions that are relatively minor — for example, in the case of an assault, a light push where no injury has been caused.’

The Council noted that, in addition to meaning that a different penalty framework can be applied to different levels of behaviour, it also ensures that criminal histories more accurately reflect the seriousness of the charges for which an offender has been convicted and sentenced.

## **Consultation**

No external consultation was undertaken during the development of the Bill.

## **Consistency with legislation of other jurisdictions**

The amendments in the Bill are specific to the State of Queensland and is not uniform with, or complementary to legislation of the Commonwealth or another State.

## Notes on provisions

### Part 1 Preliminary

#### 1. Short title

Clause 1 provides that the Act may be cited as the *Police Powers and Responsibilities and Other Legislation Amendment Act 2023*.

#### 2. Commencement

Clause 2 provides that the following provisions commence on a day to be fixed by proclamation—

- sections 5 and 6;
- part 4;
- part 5, division 3;
- part 7; and
- schedule 1, part 2.

### Part 2 Amendment of Drugs Misuse Act 1986

#### 3. Act amended

Clause 3 provides that part 2 amends the *Drugs Misuse Act 1986*.

#### 4. Amendment of s 5 (Trafficking in dangerous drugs)

Clause 4 increases the maximum penalty for the offence of trafficking in a dangerous drug from 25 years imprisonment to life imprisonment.

#### 5. Amendment of s122A (Particular proceedings for minor drugs offences)

Section 122A ‘Particular proceedings for minor drugs offences’ of the *Drugs Misuse Act 1986* allows a court to offer a person who has pled guilty to minor drugs offence an opportunity to attend a drug diversion assessment program if the person is eligible under the *Police Powers and Responsibilities Act 2000*.

Clause 5 makes a technical amendment to renumber the relevant provision that provides for the drug diversion assessment program under the *Police Powers and Responsibilities Act 2000* from ‘section 379’ to ‘chapter 14, part 4, division 5’. The clause also makes minor amendments to ensure consistency between the *Drugs Misuse Act 1986* and the *Police Powers and Responsibilities Act 2000* by replacing references to ‘attend’ and ‘attendance’ with ‘participate’ and ‘participation’.

#### 6. Amendment of s122B (Provision of information to court)

Clause 6 makes minor amendments to section 122B to clarify that a reference to a ‘program’ is taken to be a ‘program as mentioned in the order’ and a reference to a ‘drug diversion program’ is amended to a ‘drug diversion assessment program’. The clause also makes minor amendments to ensure consistency between the *Drugs Misuse Act 1986* and the *Police Powers*

*and Responsibilities Act 2000* by replacing references to ‘attend’ and ‘attendance’ with ‘participate’ and ‘participation’.

## **Part 3 Amendment of Fire and Emergency Services Act 1990**

### **7. Act amended**

Clause 7 provides that part 3 amends the *Fire and Emergency Services Act 1990*.

### **8. Amendment of s 64 (Prohibition by commissioner against lighting of fires)**

Clause 8 amends section 64 ‘Prohibition by commissioner against lighting of fires’ to expressly provide that if an occupier of land asks the commissioner of the QFES commissioner to give a notice prohibiting an occupier of adjoining land from lighting all or particular fires, the request must be made in the way, and include the information, prescribed by regulation. The clause also makes a number of minor amendments to align with current drafting practice.

### **9. Amendment of s 65 (Granting of permits)**

Clause 9 amends section 65 ‘Granting of permits’ to provide that an application to the QFES commissioner for a permit to light a fire on any land must include the information prescribed by regulation. The clause also makes a number of minor amendments to align with current drafting practice.

### **10. Insertion of new s 150BA**

Clause 10 inserts a new section 150BA ‘Assault of persons performing functions or exercising powers’ to provide that a person must not assault another person performing a function or exercising a power under the FES Act. The offence carries a maximum penalty of 100 penalty units or 6 months imprisonment. The section defines assault as having the meaning given by the Criminal Code, section 245.

Assaults are currently dealt with as a type of obstruction under section 150C. Section 150C provides that a person must not obstruct another person (an authorised person) in the performance of a function under the Act without a reasonable excuse. Section 150C(2) provides that if a person has obstructed an authorised person and the authorised person decides to proceed with the performance of the function, the authorised person must warn the person that it is an offence to obstruct the authorised person unless the person has a reasonable excuse and the authorised person considers the person’s conduct to be an obstruction.

The new offence in section 150BA does not include the requirement that a warning be provided to a person before the offence of assault can arise. A person charged with an offence under new section 150BA will not be able to argue that they have a reasonable excuse for the assault, as would have been available to them when assault was captured by section 150C. It is considered that importing the Criminal Code definition of assault provides sufficient, and appropriate, defences or excuses for assaults (including elements relating to consent or the lack thereof). New section 150BA applies to assaults on persons performing functions or exercising powers under the FES Act. Therefore, should a person assault someone who is exercising, for example, powers under section 83 ‘Powers of first officer’ or section 53 ‘Powers of authorised officer in dangerous situations’ they will be committing an offence.

#### **11. Amendment of s 150C (Obstruction of persons performing functions)**

Clause 11 makes amendments consequential on the insertion of section 150BA by amending the definition of ‘obstruct’ to no longer include assault. The clause also amends the heading to section 150C and also section 150C(1) and (2) to clarify that the provision applies to persons performing a function or exercising powers.

Therefore, should a person obstruct someone who is exercising, for example, powers under section 83 ‘Powers of first officer’ or section 53 ‘Powers of authorised officer in dangerous situations’ they will be committing an offence if they have also complied with the warning requirements of the provision.

### **Part 4 Amendment of Penalties and Sentences Act 1992**

#### **12. Act amended**

Clause 12 provides that part 4 amends the *Penalties and Sentences Act 1992*.

#### **13. Amendment of s 15C (Meaning of eligible drug offender)**

Section 15C ‘Meaning of eligible drug offender’ of the *Penalties and Sentences Act 1992* outlines the circumstances where a person will not be an eligible drug offender including if the person has previously been given 2 diversion alternatives. This section provides that a diversion alternative includes the person agreeing to participate in a drug diversion assessment program under section 379 of the PPRA.

Clause 13 amends the diversion alternatives that may be counted for assessing whether a person is an eligible drug offender to include if the person has, at any time, agreed to an offer to participate in a subsequent drug diversion assessment program under section 379AA of the PPRA.

### **Part 5 Amendment of Police Powers and Responsibilities Act 2000**

#### **Division 1 Preliminary**

#### **14. Act amended**

Clause 14 provides that part 5 amends the *Police Powers and Responsibilities Act 2000*.

#### **Division 2 Amendments commencing on assent**

#### **15. Amendment of s 754 (Evasion offence)**

Clause 15 introduces a circumstance of aggravation for the evasion offence outlined in section 754 of the PPRA. An offender will face a maximum penalty of 300 penalty units or 5 years imprisonment if this offence occurs and:

- the offence takes place at night;

- the offender:
  - uses or threatens violence;
  - is or pretends to be armed with an offensive or dangerous weapon, instrument or noxious substance;
  - is in company with another;
  - attempt to damage or damages property; or
  - has been previously convicted of an offence under this section or sections 328a, 408A or 427 of the Criminal Code.

#### **16. Insertion of new s 754A**

Clause 16 inserts the new section 754A ‘Proceedings for particular offences against s 754’ which provides that an evasion offence with a circumstance of aggravation may be heard and decided summarily on the election of the prosecution. However, the maximum penalty that may be imposed on a summary conviction is 3 years imprisonment.

This section also provides that the Magistrates Court must abstain from dealing with an evasion offence with a circumstance of aggravation where the Court is satisfied that it may not adequately punish the offenders if convicted due to the seriousness or nature of the offence. In such an instance, the Court must conduct the proceedings for the charge as a committal proceeding under the *Justices Act 1886*.

#### **17. Amendment of s 756 (Who may be prosecuted for type 1 vehicle related offence if no response to type 1 vehicle related offence notice)**

Section 756 ‘Who may be prosecuted for type 1 vehicle related offence if no response to type 1 vehicle related offence notice’ of the PPRA provides that if a person is given a type 1 vehicle related offence notice and the person does not give a statutory declaration as required, the person is taken to have been the driver of the motor vehicle involved in the relevant type 1 vehicle related offence even though the actual offender may have been someone else.

This section also provides that in a proceeding for the relevant type 1 related offence, it is a defence for the person to prove on the balance of probabilities that the person was not the driver of the motor vehicle involved in the offence when the offence happened.

However, the person may not rely on evidence in the defence that is information the person was required to include in the statutory declaration unless the person gives the prosecuting authority a notice of the person’s intention to seek leave to rely on the evidence at least 21 business days before the hearing of the proceeding starts.

An exception is found to this rule for a type 1 vehicle related offence that is an offence against section 328A of the Criminal Code. Section 756(9) provides that the court may grant leave to the person to rely on evidence in the defence that is information the person was required to include in a statutory declaration even if the person has not complied with the prescribed timeframe, if the interests of justice require that the person should be able to rely on the evidence.

Clause 17 expands this exception to include all circumstances of aggravation for sections 754 introduced by the Bill.

## **Division 3 Amendments commencing by proclamation**

### **18. Insertion of new ch 14, pt 4, div 1, hdg**

Clause 18 inserts a new division heading to part 4 of chapter 14 for drafting purposes.

### **19. Insertion of new ch 14, pt 4, div 2, hdg**

Clause 19 inserts a new division heading to reflect that the general rule about when an arrest may be discontinued is outlined in section 376 ‘When arrest may be discontinued-general rule’.

### **20. Insertion of new ch 14, pt 4, div 3, hdg**

Clause 20 inserts a new division heading before section 377 ‘Additional case when arrest of adult may be discontinued’ to reflect that this section provides for the release of a person issued with an infringement notice, notice to appear or summons.

### **21. Insertion of new ch 14, pt 4, div 4 hdg**

Clause 21 inserts a new division heading before section 378 ‘Additional case when arrest for being intoxicated in a public place may be discontinued’ to reflect that this section provides for the release of an intoxicated person.

### **22. Replacement of s 379 (Additional case when arrest for minor drugs offence may be discontinued)**

Clause 22 replaces section 379 with the new division 5 ‘Additional case-minor drugs offence’. Division 5 consists of section 378A ‘Application of division’, 378B ‘Meaning of *minor drugs offence*’, 378C ‘Drug diversion warning’, 379 ‘Initial drug diversion assessment program’, 379AA ‘Subsequent drug diversion assessment program’ and 379AB ‘Drug diversion agreement’ which are explained below.

## **Division 5 Additional case-minor drugs offence**

### **378A Application of division**

The new section 378A outlines the circumstances where a person will be eligible for the police drug diversion program. This division applies to a person (the relevant person) who:

- is arrested for, or questioned by a police officer about a minor drugs offence;
- has not committed another indictable offence related to the minor drugs offence;
- has not been sentenced to imprisonment for offences under sections 5, 6, 8 or 9D of the *Drugs Misuse Act 1986*; and;
- a police officer reasonably believes each minor drugs matter which is the subject of the minor drugs offence was for the relevant person’s personal use.

### **378B Meaning of *minor drugs offence***

The new section 378B defines a *minor drug offence* to be:

- an offence against section 9 of the *Drugs Misuse Act 1986* involving possessing not more than the prescribed amount of a dangerous drug;

- an offence against sections 10(1), (2), (4) or (4A) or 10A(1)(a), (b) or (c) of the *Drugs Misuse Act 1986* involving possessing a thing for use, or had been used for the administration, consumption or smoking of a dangerous drug; or
- an offence against section 34(1) of the *Medicines and Poisons Act 2019* involving possessing not more than the prescribed amount of a S4 or S8 medicine.

The new section 378B provides that a *minor drugs offence* is not an offence under the *Drugs Misuse Act 1986* that involves the production, supply or trafficking of a dangerous drug. Similarly, a *minor drugs offence* is not an offence under the *Medicines and Poisons Act 2019* involving the dealing with, manufacture or supply of a S4 or S8 medicine.

This section also allows a regulation defining the prescribed quantity of a dangerous drug or S4 or S8 medicine to refer to an amount a police officer reasonably believes is for the personal use of the person in possession of the drug or medicine.

### **378C Drug Diversion warning**

The new section 378C provides that a relevant person who:

- has not previously accepted an offer to participate in a drug diversion assessment program; and
  - has not accepted an offer to be given a drug diversion warning,
- and is:
- a child, may be offered the opportunity of a drug diversion warning by a police officer; or
  - an adult, must be offered the opportunity of a drug diversion warning by a police officer.

The police officer must explain the nature and effect of the drug diversion warning to the relevant person or to a support person that is present. The officer must also give a written notice to the person who agrees to being given a drug diversion warning. This notice must contain relevant information including that a drug diversion was given to the person, the time the warning was given, the particulars of the minor drugs offence and the nature and effect of the warning.

The new section 378C automatically forfeits minor drugs matter to the State upon the giving of the drug diversion warning and outlines it is the duty of a police officer to release an arrested person at the earliest reasonable opportunity after the drug diversion warning has been given.

### **379 Initial drug diversion assessment program**

The new section 379 provides that a relevant person who:

- has previously been given a drug diversion warning; and
  - has not previously accepted an offer to participate in a drug diversion assessment program,
- and is:
- a child, may be offered the opportunity to participate in a drug diversion assessment program by a police officer; or
  - an adult, must be offered the opportunity to participate in a drug diversion assessment program by a police officer.

The police officer must explain the nature and effect of the drug diversion assessment program to the relevant person or to a support person that is present.

### **379AA Subsequent drug diversion assessment program**

The new section 379AA provides that a relevant person who:

- has previously accepted an offer to participate in a drug diversion assessment program; and
- has not previously accepted an offer to participate in a subsequent drug diversion assessment program,

and is:

- a child, may be offered the opportunity to participate in a subsequent drug diversion assessment program by a police officer; or
- an adult, must be offered the opportunity to participate in a subsequent drug diversion assessment program by a police officer.

The police officer must explain the nature and effect of the subsequent drug diversion assessment program to the relevant person or to a support person that is present.

### **379AB Drug diversion agreement**

The new section 379AB outlines that a relevant person who agrees to an offer to participate in an initial drug diversion assessment program or a subsequent drug diversion assessment program must sign an agreement (a drug diversion agreement) undertaking to participate in and complete a drug diversion assessment program. This agreement indicates that the drug diversion assessment program provider is authorised to tell the police Commissioner whether the person participated and completed the program or if the person failed to participate or complete the program.

The section also provides that the police officer must give the relevant person a written requirement to participate in and complete a drug diversion assessment program in accordance with the drug diversion agreement and inform the person that failure to comply with the requirement is an offence. The police officer must give the chief executive (health), or a person nominated by the chief executive, a copy of the drug diversion agreement.

The new section 379AB automatically forfeits minor drugs matter to the state upon the signing of the drug diversion agreement and outlines it is the duty of a police officer to release an arrested person at the earliest reasonable opportunity after the drug diversion agreement has been signed by the relevant person and the relevant person has received the written requirement.

Finally, clause 22 inserts a new division heading before section 379A ‘Additional case when arrest for graffiti offence may be discontinued’ to reflect that this section provides for the release of a child who has agreed to attend a graffiti removal program.

### **23. Insertion of new ch 14, pt 4, div 7, hdg**

Clause 23 inserts a new division heading before section 380 ‘Additional case when arrest of child may be discontinued’ to reflect that this section provides a further general rule for the release of a child.

**24. Amendment of s 380 (Additional case when arrest of child may be discontinued)**

Clause 24 provides that where a police officer has decided that it is more appropriate to take no action or to administer a caution to an arrested child, if the relevant offence is a minor drugs offence, the associate minor drugs matter is forfeited to the State.

**25. Insertion of new ch 14, pt 4, div 8, hdg**

Clause 25 inserts a new division heading to reflect the contents of section 381 'Limit on rearrest'.

**26. Amendment of s 394 (Duty of police officer receiving custody of person arrested for offence)**

Clause 26 makes a technical amendment to replace references to sections 379 with the new part 4, division 5.

**27. Amendment of s 490 (When DNA sample taken from suspected person and results must be destroyed)**

Clause 27 makes a technical amendment to replace references to sections 379 with the new part 4, division 5.

**28. Amendment of sch 6 (Dictionary)**

Clause 28 inserts new definitions into schedule 6 'Dictionary'.

*minor drugs matter* is defined to mean a dangerous drug, an S4 or S8 medicine and a thing for use or had been used for the administration, consumption or smoking of a dangerous drug. **S4 medicine** and **S8 medicine** are defined in sections 11(1)(c) and 11(1)(d) of the *Medicines and Poisons Act 2019* respectively.

Further, the discontinuing of an arrest for a minor drugs offence under chapter 14, part 4 division 5 is considered to be an enforcement act.

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

**29. Act amended**

Clause 29 provides that part 6 amends the *Police Service Administration Act 1990*.

**30. Amendment of s 5.2 (Appointment to be on merit on impartial procedures)**

Clause 30 authorises an executive officer to be appointed on merit to a police officer position or rank.

## Part 7 Amendment of Youth Justice Act 1992

### 31. Act amended

Clause 31 provides that part 7 amends the *Youth Justice Act 1992*.

### 32. Amendment of s 11 (Police officer to consider alternatives to proceeding against child)

Clause 32 amends section 11 to add the offering of a drug warning or an offer to participate in a drug diversion assessment program, under chapter 14, part 4, division 5 of the *Police Powers and Responsibilities Act 2000* to the existing diversionary options a police officer must consider before starting a proceeding against a child for a minor drugs offence. Existing diversionary options include taking no action, cautioning, or referral for a restorative justice process.

This clause also provides that if a police officer decides to take no action or to administer a caution to a child for a minor drugs offence, the related minor drugs matter is forfeited to the State.

### 33. Amendment of s 168 (Meaning of *eligible child*)

Section 168 defines an *eligible child* as a child charged with an eligible drug offence who has pleaded guilty to the offence. This section provides that a child is not an *eligible child* under certain circumstances including if 2 diversion alternatives have previously been given to the child.

Clause 33 provides that in calculating diversion alternatives, a child will have been considered to have been given a diversion alternative in circumstances that include the child having agreed to an offer to attend an initial or subsequent drug diversion assessment program.

## Part 8 Other amendments

### 34. Legislation amended

Clause 34 provides that Schedule 1 makes amendments to the legislation it mentions.