

I hereby certify that this PUBLIC BILL has finally passed the  
Legislative Assembly of Queensland.



Legislative Assembly Chamber,  
Brisbane,

The Clerk of the Parliament.

*13 August* 20 *13*

In the name and on behalf of the Queen, I assent to this Bill.

*Penelope Wainby*  
Government House,  
Brisbane, *13th August,*

20 *13*



Queensland

**No. 31 of 2013**

**A BILL for**

**An Act to amend the Bail Act 1980, the Corrective Services Act 2006, the Criminal Code, the Drugs Misuse Act 1986, the Industrial Relations Act 1999, the Penalties and Sentences Act 1992, the Police Powers and Responsibilities Act 2000, the Summary Offences Act 2005, the Victims of Crime Assistance Act 2009, the Workers' Compensation and Rehabilitation Act 2003 and the Youth Justice Act 1992 for particular purposes**





## Queensland

# Criminal Law and Other Legislation Amendment Bill 2013

## Contents

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		Page
<b>Part 1</b>	<b>Preliminary</b>	
1	Short title . . . . .	8
2	Commencement . . . . .	8
<b>Part 2</b>	<b>Amendment of Bail Act 1980</b>	
3	Act amended . . . . .	8
4	Amendment of s 11 (Conditions of release on bail) . . . . .	8
5	Amendment of s 29 (Offence to breach conditions of bail) . . . . .	9
<b>Part 3</b>	<b>Amendment of Corrective Services Act 2006</b>	
6	Act amended . . . . .	9
7	Insertion of new s 182A . . . . .	9
	182A Parole eligibility date for prisoner serving term of imprisonment for drug trafficking offence . . . . .	9
8	Amendment of s 185 (Parole eligibility date for prisoner serving terms of imprisonment in particular circumstances) . . . . .	10
9	Amendment of s 194 (Types of parole orders granted by parole board) 10	
11	Insertion of new ch 7A, pt 7 . . . . .	10
	Part 7 Transitional provision for Criminal Law and Other Legislation Amendment Act 2013	
	490C Application of amendment Act . . . . .	11
12	Amendment of sch 4 (Dictionary) . . . . .	11
<b>Part 4</b>	<b>Amendment of Criminal Code</b>	
13	Code amended . . . . .	11
15	Amendment of s 469 (Wilful damage) . . . . .	11
16	Insertion of new s 469AA . . . . .	12
	'469AA Forfeiture of thing used to record, store or transmit image of graffiti . . . . .	12

Contents

---

<b>Part 6</b>	<b>Amendment of Drugs Misuse Act 1986</b>	
37	Act amended . . . . .	13
38	Amendment of s 6 (Supplying dangerous drugs) . . . . .	13
<b>Part 6A</b>	<b>Amendment of Industrial Relations Act 1999</b>	
38A	Act amended . . . . .	14
38B	Insertion of new s 246BA . . . . .	15
	246BA Acting vice-president . . . . .	15
38C	Amendment of s 341 (Appeal from commission, magistrate or registrar) . . . . .	15
38D	Amendment of s 355 (Power to require documents to be produced)	15
38E	Amendment of s 372B (Employer's notice about place to inspect information) . . . . .	16
38F	Amendment of s 373 (Right to inspect and request information—authorised industrial officer) . . . . .	17
38G	Amendment of ch 12, hdg (Industrial organisations) . . . . .	17
38H	Amendment of s 530C (Definitions for div 5) . . . . .	17
38I	Insertion of new s 530G . . . . .	17
	530G Inspection of statement of interests . . . . .	17
38J	Insertion of new s 553DA . . . . .	18
	553DA When an entity is an associated entity of another entity	18
38K	Amendment of s 553F (Particular spending for political purposes must be authorised by ballot) . . . . .	18
38L	Insertion of new s 553FA . . . . .	18
	553FA Particular spending for political purposes by associated entity of organisation must be authorised by ballot . .	19
38M	Amendment of s 570 (Report and statement must be filed and published) . . . . .	20
38N	Amendment of sch 2 (Appointments) . . . . .	20
38O	Amendment of sch 5 (Dictionary) . . . . .	20
38P	Amendment of sch 5 (Dictionary) . . . . .	20
<b>Part 8</b>	<b>Amendment of Penalties and Sentences Act 1992</b>	
41	Act amended . . . . .	21
42	Amendment of s 4 (Definitions) . . . . .	21
43	Amendment of s 9 (Sentencing guidelines) . . . . .	23
44	Amendment of s 99 (Termination of probation order) . . . . .	23
45	Amendment of s 107 (Multiple offences) . . . . .	23
46	Amendment of s 108 (Termination of community service order) .	24
47	Insertion of new pt 5A. . . . .	24

	Part 5A	Graffiti removal orders	
	110A	Making of an order . . . . .	24
	110B	Effect of order . . . . .	25
	110C	General requirements of graffiti removal order . . . . .	25
	110D	Graffiti removal order to be explained . . . . .	26
	110E	Multiple orders for single graffiti offence . . . . .	27
	110F	Multiple orders for multiple offences . . . . .	27
	110G	Successive orders . . . . .	28
	110H	Unpaid service to be performed cumulatively . . . . .	30
	110I	Termination of graffiti removal order . . . . .	30
48		Amendment of s 119 (Termination of intensive correction order) .	30
49		Amendment of s 120 (Amendment and revocation of community based order) . . . . .	31
50		Insertion of new s 120A . . . . .	31
	120A	Amendment and revocation of graffiti removal order .	31
51		Amendment of s 121 (Offender may be re-sentenced on revocation of order) . . . . .	31
52		Amendment of s 125 (Powers of Magistrates Court that convicts offender of offence against s 123(1)) . . . . .	32
53		Amendment of s 126 (Powers of Supreme Court or District Court to deal with offender) . . . . .	32
54		Amendment of s 130 (Discharge of multiple community based orders where contravention taken into account) . . . . .	32
55		Amendment of s 134 (Requirements of order have effect despite appeal) . . . . .	33
56		Amendment of s 135 (Directions under community based order)	33
57		Amendment of s 160A (Application of ss 160B–160D) . . . . .	33
58		Amendment of s 160C (Sentence of more than 3 years and not a serious violent offence or sexual offence) . . . . .	33
59		Amendment of s 160D (Sentence for a serious violent offence or sexual offence) . . . . .	33
60		Amendment of s 160E (Automatic cancellation of parole release or eligibility dates) . . . . .	34
61		Amendment of s 172D (Court not to have regard to possible order under Dangerous Prisoners (Sexual Offenders) Act 2003) . . . . .	34
62		Amendment of s 189 (Outstanding offences may be taken into account in imposing sentence) . . . . .	34
63		Amendment of s 217 (Transitional provision for Dangerous Prisoners (Sexual Offenders) and Other Legislation Amendment Act 2010)	35
65		Amendment of sch 1 (Serious violent offences) . . . . .	35

Contents

---

<b>Part 9</b>	<b>Amendment of Police Powers and Responsibilities Act 2000</b>	
66	Act amended . . . . .	35
67	Insertion of new s 379A . . . . .	35
	379A Additional case when arrest for graffiti offence may be discontinued . . . . .	36
68	Amendment of s 381 (Limit on rearrest) . . . . .	37
69	Amendment of sch 6 (Dictionary) . . . . .	37
<b>Part 11</b>	<b>Amendment of Summary Offences Act 2005</b>	
72	Act amended . . . . .	38
73	Amendment of s 47 (Forfeiture) . . . . .	38
74	Insertion of new s 47A . . . . .	38
	47A Forfeiture of thing used to record, store or transmit image of graffiti . . . . .	38
<b>Part 12</b>	<b>Amendment of Victims of Crime Assistance Act 2009</b>	
75	Act amended . . . . .	39
76	Amendment of s 15 (Giving details of impact of crime on victim during sentencing) . . . . .	39
77	Insertion of new ss 15A and 15B . . . . .	40
	15A Reading aloud of victim impact statement during sentencing . . . . .	40
	15B Special arrangements for reading aloud of victim impact statement during sentencing . . . . .	41
78	Amendment of sch 3 (Dictionary) . . . . .	42
<b>Part 12A</b>	<b>Amendment of Workers' Compensation and Rehabilitation Act 2003</b>	
78A	Act amended . . . . .	42
78B	Amendment of s 71 (Issue or renewal of licence to a single employer) . . . . .	42
78C	Amendment of s 72 (Issue or renewal of licence to a group employer) . . . . .	44
78D	Amendment of s 570 (Powers of court on appeal) . . . . .	45
78E	Insertion of new ch 30 . . . . .	45
	Chapter 30 Transitional provisions for Criminal Law and Other Legislation Amendment Act 2013	
	675 Definition for ch 30 . . . . .	45
	676 Application of s 71 to current applications by single employers . . . . .	46
	677 Application of s 72 to current applications by group employers . . . . .	47

<b>Part 13</b>	<b>Amendment of Youth Justice Act 1992</b>	
79	Act amended . . . . .	48
80	Amendment of s 11 (Police officer to consider alternatives to proceeding against child) . . . . .	48
81	Amendment of s 37 (Form and content of conference agreement)	48
82	Amendment of s 41 (If chief executive signs agreement for program)	49
83	Insertion of new s 176A . . . . .	50
	176A Sentence orders—graffiti offences . . . . .	50
84	Amendment of s 177 (More than 1 type of order may be made for a single offence) . . . . .	50
85	Insertion of new s 178A . . . . .	50
	178A Combination of graffiti removal order and probation and community service orders . . . . .	51
86	Amendment of s 180 (Combination of detention order and other orders)	51
87	Insertion of new s 180A . . . . .	51
	180A Combination of detention order and graffiti removal order	52
88	Amendment of s 183 (Recording of conviction) . . . . .	52
89	Insertion of new pt 7, div 7A . . . . .	52
	Division 7A Graffiti removal orders	
	194A Preconditions to making of graffiti removal order . . . . .	53
	194B Requirements to be set out in graffiti removal order . . . . .	53
	194C Obligation of chief executive . . . . .	54
	194D Graffiti removal service to be performed within limited period	54
	194E Multiple offences dealt with together . . . . .	55
	194F Limitation on number of hours of graffiti removal service for multiple graffiti offences . . . . .	55
	194G Limitation on number of hours of unpaid service . . . . .	56
	194H Limitation on number of hours of graffiti removal service when there is unperformed graffiti removal service . . . . .	56
	194I Limitation on number of hours of graffiti removal service when there is unperformed unpaid service . . . . .	57
	194J Unpaid service to be performed cumulatively . . . . .	58
	194K Cumulative effect of child and adult orders . . . . .	58
	194L Ending of graffiti removal order . . . . .	59
90	Amendment of s 245 (Court's power on breach of order other than conditional release order) . . . . .	59
91	Amendment of s 249 (Matters relevant to making further order) . . . . .	60

Contents

---

92	Amendment of s 252 (Variations by consent) . . . . .	60
93	Amendment of sch 4 (Dictionary) . . . . .	61



# 2013

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## A Bill

for

***An Act to amend the *Bail Act 1980*, the *Corrective Services Act 2006*, the *Criminal Code*, the *Drugs Misuse Act 1986*, the *Industrial Relations Act 1999*, the *Penalties and Sentences Act 1992*, the *Police Powers and Responsibilities Act 2000*, the *Summary Offences Act 2005*, the *Victims of Crime Assistance Act 2009*, the *Workers' Compensation and Rehabilitation Act 2003* and the *Youth Justice Act 1992* for particular purposes***

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[s 1]

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## The Parliament of Queensland enacts—

### Part 1 Preliminary

#### 1 Short title

This Act may be cited as the *Criminal Law and Other Legislation Amendment Act 2013*.

#### 2 Commencement

- (1) The following provisions commence on a day to be fixed by proclamation—
  - (a) parts 2, 9 and 13;
  - (b) section 42 other than to the extent that it inserts the definitions *corrective services facility* and *drug trafficking offence*;
  - (c) sections 45, 47, 49 to 54, 56 and 62.
- (2) Sections 38G, 38J to 38L and 38O commence on 1 September 2013.

### Part 2 Amendment of Bail Act 1980

#### 3 Act amended

This part amends the *Bail Act 1980*.

#### 4 Amendment of s 11 (Conditions of release on bail)

Section 11(9)—  
*omit, insert—*

- ‘(9) Without limiting a court’s power to impose a condition on bail under another provision of this section, a Magistrates Court may impose on the bail a condition that the defendant participate in a rehabilitation, treatment or other intervention program or course, after having regard to—
- (a) the nature of the offence; and
  - (b) the circumstances of the defendant, including any benefit the defendant may derive by participating in the program or course; and
  - (c) the public interest.’.

**5 Amendment of s 29 (Offence to breach conditions of bail)**

Section 29(2)(c)—

*omit.*

## **Part 3 Amendment of Corrective Services Act 2006**

**6 Act amended**

This part amends the *Corrective Services Act 2006*.

**7 Insertion of new s 182A**

After section 182—

*insert—*

**‘182A Parole eligibility date for prisoner serving term of imprisonment for drug trafficking offence**

- ‘(1) This section applies to a prisoner who is serving a term of imprisonment for a drug trafficking offence.

[s 8]

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- ‘(2) The prisoner’s parole eligibility date is the day after the day on which the prisoner has served 80% of the prisoner’s term of imprisonment for the drug trafficking offence.
- ‘(3) However, if a later parole eligibility date is fixed for the period of imprisonment under the *Penalties and Sentences Act 1992*, part 9, division 3, the prisoner’s parole eligibility date is the later date fixed under that division.
- ‘(4) This section is subject to section 185.’.

**8 Amendment of s 185 (Parole eligibility date for prisoner serving terms of imprisonment in particular circumstances)**

- (1) Section 185(1), after ‘182,’—  
*insert—*  
‘182A,’.
- (2) Section 185(3), entries for rules 1 and 2, after ‘182,’—  
*insert—*  
‘182A,’.

**9 Amendment of s 194 (Types of parole orders granted by parole board)**

- Section 194(5), definition *eligible prisoner*, paragraph (b), ‘182,’—  
*omit, insert—*  
‘181A, 182, 182A,’.

**11 Insertion of new ch 7A, pt 7**

- Chapter 7A—  
*insert—*

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**‘Part 7**                      **Transitional provision for  
Criminal Law and Other  
Legislation Amendment Act  
2013**

**‘490C Application of amendment Act**

‘Section 182A applies only to a prisoner who is serving a term of imprisonment for a drug trafficking offence committed after the commencement of that section.’.

**12 Amendment of sch 4 (Dictionary)**

Schedule 4—

*insert—*

*‘drug trafficking offence* means—

- (a) an offence against the *Drugs Misuse Act 1986*, section 5; or
- (b) an offence of counselling or procuring the commission of, or attempting or conspiring to commit, an offence mentioned in paragraph (a).’.

**Part 4**                      **Amendment of Criminal Code**

**13 Code amended**

This part amends the Criminal Code.

**15 Amendment of s 469 (Wilful damage)**

- (1) Section 469, punishment in special cases, item 9(1), ‘5 years’—

*omit, insert—*

[s 16]

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‘7 years’.

- (2) Section 469, punishment in special cases, item 9(2)—  
*omit.*
- (3) Section 469, punishment in special cases, item 9(3)—  
*renumber* as item 9(2).
- (4) Section 469, punishment in special cases, item 9, at the end of the item—  
*insert—*  
*Note—*
  - 1 For the requirement for the court to make a graffiti removal order see the *Penalties and Sentences Act 1992*, part 5A and the *Youth Justice Act 1992*, part 7, division 7A.
  - 2 For the discretion of the court to order the forfeiture of a thing used to record, store or transmit an image of, or related to, the commission of the offence see section 469AA.

## 16 Insertion of new s 469AA

After section 469—

*insert—*

### **‘469AA Forfeiture of thing used to record, store or transmit image of graffiti**

- ‘(1) This section applies if—
- (a) a person is convicted, whether on indictment or summarily, of an offence against section 469 that is punishable under section 469, item 9; and
  - (b) the person was an adult at the time of the commission of the offence; and
  - (c) the court is satisfied that a thing owned or possessed by the person was used to record, store or transmit an image of, or related to, the commission of the offence.

*Example of a thing used to record, store or transmit an image—*

a camera, mobile phone or computer

- ‘(2) When the court is imposing a sentence on the person for the offence, the court may order the thing be forfeited to the State.
- ‘(3) Subsection (2) applies whether the thing to be forfeited has been seized or is in its owner’s possession.
- ‘(4) The court may also make any order that it considers appropriate to enforce the forfeiture.
- ‘(5) This section does not limit the court’s powers under the *Penalties and Sentences Act 1992*, the *Criminal Proceeds Confiscation Act 2002* or another law.
- ‘(6) When forfeited to the State, the thing becomes the State’s property and may be dealt with as directed by the chief executive.’.

## **Part 6**                                      **Amendment of Drugs Misuse Act 1986**

### **37**      **Act amended**

This part amends the *Drugs Misuse Act 1986*.

### **38**      **Amendment of s 6 (Supplying dangerous drugs)**

- (1) Section 6(1), penalty—  
*omit, insert—*  
‘Maximum penalty—
  - (a) if the dangerous drug is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 1 and the offence is one of aggravated supply under subsection (2)(a)—life imprisonment; or
  - (b) if the dangerous drug is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 1 and the offence is

[s 38A]

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- one of aggravated supply under subsection (2)(aa), (b), (c), (d) or (e)—25 years imprisonment; or
- (c) if the dangerous drug is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 1 and paragraphs (a) and (b) do not apply—20 years imprisonment; or
  - (d) if the dangerous drug is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 2 and the offence is one of aggravated supply under subsection (2)(a)—25 years imprisonment; or
  - (e) if the dangerous drug is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 2 and the offence is one of aggravated supply under subsection (2)(aa), (b), (c), (d) or (e)—20 years imprisonment; or
  - (f) if the dangerous drug is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 2 and paragraphs (d) and (e) do not apply—15 years imprisonment.’.
- (2) Section 6(2)(a)—  
*omit, insert—*
- ‘(a) the person to whom the thing is supplied is a minor under 16 years; or
  - (aa) the person to whom the thing is supplied is a minor who is 16 years or more; or’.

## **Part 6A                      Amendment of Industrial Relations Act 1999**

### **38A    Act amended**

This part amends the *Industrial Relations Act 1999*.



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**38B Insertion of new s 246BA**

After section 246B—

*insert—*

**‘246BA Acting vice-president**

- ‘(1) This section applies if the vice-president temporarily can not perform the functions of office.
- ‘(2) The Governor in Council may, by gazette notice, appoint a person to act as the vice-president.
- ‘(3) The person must be a person who is qualified for appointment under section 246A(2).
- ‘(4) The person can not be a person mentioned in section 246A(3).
- ‘(5) A person who has acted as vice-president may attend sittings of the court for the purpose of giving a decision in, or otherwise completing, proceedings that were heard by the person while acting as vice-president.
- ‘(6) The person’s decision in the proceedings is taken to be the decision of the vice-president.’.

**38C Amendment of s 341 (Appeal from commission, magistrate or registrar)**

Section 341(1), after ‘determination under’—

*insert—*

‘section 149’.

**38D Amendment of s 355 (Power to require documents to be produced)**

Section 355(1)—

*omit, insert—*

- ‘(1) An inspector may require a person to make available for inspection by an inspector, or to produce to the inspector for inspection, at a reasonable time and place nominated by the inspector—

[s 38E]

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- (a) a document issued to the person under this Act; or
- (b) a document required to be kept by the person under this Act; or
- (c) a document relating to an employee, including, for example, a time sheet or pay sheet; or
- (d) a document relating to a matter under chapter 12; or
- (e) if a document or information required to be kept by the person under this Act or relating to an employee or a matter under chapter 12 is stored or recorded by means of a device—a document that is a clear written reproduction of the stored or recorded document or information.’.

**38E Amendment of s 372B (Employer’s notice about place to inspect information)**

- (1) Section 372B, heading—  
*omit, insert—*

**‘372B Employer notice in response to entry notice’.**

- (2) Section 372B(2), from ‘inspect’—  
*omit, insert—*  
‘exercise the powers under section 373 that are stated in the entry notice.’.
- (3) Section 372B(3)(a), after ‘workplace’—  
*insert—*  
‘, or a particular route to be used to access the part.’.
- (4) Section 372B(3)(b), before ‘another’—  
*insert—*  
‘if the entry notice states that the officer intends to inspect records—’.

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**38F Amendment of s 373 (Right to inspect and request information—authorised industrial officer)**

Section 373, heading—

*omit, insert—*

**‘373 Rights of authorised industrial officer after entering place’.**

**38G Amendment of ch 12, hdg (Industrial organisations)**

Chapter 12, heading, after ‘organisations’—

*insert—*

**‘and associated entities’.**

**38H Amendment of s 530C (Definitions for div 5)**

Section 530C(1)—

*insert—*

**‘*spouse*, of an officer, does not include a former spouse of the officer.’.**

**38I Insertion of new s 530G**

Chapter 12, part 9, division 5—

*insert—*

**‘530G Inspection of statement of interests**

‘A statement of the particulars of an interest held by the officer or the officer’s spouse and filed by the officer may be inspected by the following—

- (a) the registrar;
- (b) an inspector;
- (c) another person permitted by law to inspect the statement.’.

[s 38J]

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**38J Insertion of new s 553DA**

After section 553D—

*insert—*

**‘553DA When an entity is an *associated entity* of another entity**

- ‘(1) An entity is an *associated entity* of another entity (the *principal*) if—
- (a) the entity is, under the Corporations Act, an associated entity of the principal; or
  - (b) the entity receives payment from another entity (the *third party*) for—
    - (i) goods or services provided by the principal to the third party; or
    - (ii) the third party’s membership of the principal.
- ‘(2) Also, if—
- (a) an entity (the *first entity*) is an associated entity of another entity (also the *principal*); and
  - (b) an entity (the *second entity*) is an associated entity of the first entity;
- the second entity is an *associated entity* of the principal.’.

**38K Amendment of s 553F (Particular spending for political purposes must be authorised by ballot)**

Section 553F, heading, after ‘purposes’—

*insert—*

‘by organisation’.

**38L Insertion of new s 553FA**

Chapter 12, part 12, division 1B, subdivision 2—

*insert—*

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**‘553FA Particular spending for political purposes by associated entity of organisation must be authorised by ballot**

- ‘(1) This section applies if—
- (a) an associated entity of an organisation intends to spend an amount for a political purpose for a political object in a financial year for the organisation; and
  - (b) the associated entity has spent or, if the amount is spent, the associated entity will have spent, in the financial year, more than \$10000 for the same political purpose and the same political object.

- ‘(2) The associated entity may spend the amount for the political purpose only if the spending is authorised by an expenditure ballot.

Maximum penalty—85 penalty units.

- ‘(3) The spending of an amount for a political purpose is authorised by an expenditure ballot if—
- (a) the spending was the subject of the expenditure ballot; and
  - (b) more than 50% of the valid votes cast by the members of the organisation authorised the spending.

- ‘(4) The organisation must take all reasonable steps to ensure the associated entity conducts an expenditure ballot before spending the amount for the political purpose.

*Example of a reasonable step—*

giving the associated entity a roll of voters for the expenditure ballot in a way that complies with the rules prescribed under section 553G

Maximum penalty—40 penalty units.

- ‘(5) The associated entity must not use a document or information given to the associated entity under this section for any purpose other than conducting the expenditure ballot.

Maximum penalty—40 penalty units.

- ‘(6) The associated entity must, within 10 days after the declaration of the result of the expenditure ballot, give the

[s 38M]

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organisation the particulars about the expenditure ballot mentioned in section 553I(2).

Maximum penalty—40 penalty units.

- (7) For an expenditure ballot under this section—
- (a) section 553I applies to the organisation; and
  - (b) subdivision 3, other than section 553I, applies as if a reference in the subdivision to the organisation were a reference to the associated entity.’.

**38M Amendment of s 570 (Report and statement must be filed and published)**

Section 570(1)(b), after ‘general meeting’—

*insert—*

‘or management committee meeting’.

**38N Amendment of sch 2 (Appointments)**

Schedule 2, part 1A, section 4C(1), before ‘vice-president’—

*insert—*

‘president,’.

**38O Amendment of sch 5 (Dictionary)**

Schedule 5—

*insert—*

‘*associated entity*, of an entity, see section 553DA.’.

**38P Amendment of sch 5 (Dictionary)**

Schedule 5, definition *spouse*—

*omit, insert—*



[s 42]

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***graffiti removal order*** means a graffiti removal order in force under part 5A.

***graffiti removal service*** means—

- (a) the removal of graffiti; or
- (b) work related or incidental to the work mentioned in paragraph (a); or
- (c) other work related to or incidental to the clean up of public places whether or not it relates to the removal of graffiti.

***remove***, in relation to graffiti, includes the following—

- (a) repair;
- (b) conceal;
- (c) cover;
- (d) attempt to remove.

*Example—*

painting over graffiti

***unpaid service*** means—

- (a) community service required to be performed under a community service order; or
- (b) graffiti removal service required to be performed under a graffiti removal order.

***unperformed graffiti removal service***, for an offender, means graffiti removal service that the offender—

- (a) is required to perform under a graffiti removal order; and
- (b) has not performed.

***unperformed unpaid service***, for an offender, means unpaid service that the offender—

- (a) is required to perform under a community service order or a graffiti removal order; and
- (b) has not performed.’.



- (2) Section 4, definition *community based order*, after ‘community service order’—

*insert—*

‘, graffiti removal order’.

#### **43 Amendment of s 9 (Sentencing guidelines)**

- (1) Section 9(8), first occurring—

*renumber* as section 9(7B).

- (2) Section 9(10), definition *corrective services facility*—

*omit*.

#### **44 Amendment of s 99 (Termination of probation order)**

Section 99(1) and (2)—

*omit, insert—*

‘A probation order is terminated—

- (a) at the end of its period; or
- (b) if the offender is sentenced or further sentenced for the offence for which the order was made; or
- (c) if the order is revoked under section 120(1).’.

#### **45 Amendment of s 107 (Multiple offences)**

- (1) Section 107—

*insert—*

‘(4A) A court may make—

- (a) 1 or more community service orders for an offender who is subject to an existing graffiti removal order; or
- (b) 1 or more community service orders for an offender who is subject to an existing graffiti removal order and an existing community service order.

[s 46]

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‘(4B) The number of hours of unperformed unpaid service and the number of hours of community service ordered to be served under the orders made under subsection (4A)(a) or (b) must not, when added together, total more than 240.’.

(2) Section 107(5)—

*omit, insert—*

‘(5) Subject to subsections (2), (4) and (4B) all unpaid service to which this section applies is to be performed cumulatively unless the court orders otherwise.’.

#### **46 Amendment of s 108 (Termination of community service order)**

Section 108(1) and (2)—

*omit, insert—*

‘A community service order is terminated—

- (a) when the offender performs community service in accordance with the requirements of the order for the number of hours stated in the order; or
- (b) if the offender is sentenced or further sentenced for the offence for which the order was made; or
- (c) if the order is revoked under section 120(1).’.

#### **47 Insertion of new pt 5A**

After section 110—

*insert—*

### **‘Part 5A Graffiti removal orders**

#### **‘110A Making of an order**

‘(1) This section applies if a court convicts an offender of a graffiti offence, whether on indictment or summarily.

- ‘(2) The court must make a graffiti removal order for the offender, whether or not it records a conviction, unless the court is satisfied that, because of any physical, intellectual or psychiatric disability of the offender, the offender is not capable of complying with the order.
- ‘(3) The order may be made in addition to any other order the court may make under this or another Act.
- ‘(4) Subsection (2) is subject to sections 121(3), 125(7) and 126(6A).

#### **‘110B Effect of order**

‘The effect of the order is that the offender is required to perform unpaid graffiti removal service for the number of hours stated in the order.

#### **‘110C General requirements of graffiti removal order**

- ‘(1) The graffiti removal order must contain requirements that the offender—
  - (a) must not commit another offence during the period of the order; and
  - (b) must report to an authorised corrective services officer at the place, and within the time, stated in the order; and
  - (c) must report to, and receive visits from, an authorised corrective services officer as directed by the officer; and
  - (d) must perform in a satisfactory way graffiti removal service directed by an authorised corrective services officer—
    - (i) for the number of hours stated in the order; and
    - (ii) at the times directed by the officer; and
  - (e) must notify an authorised corrective services officer of every change of the offender’s place of residence or employment within 2 business days after the change happens; and

[s 47]

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- (f) must not leave or stay out of Queensland without the permission of an authorised corrective services officer; and
  - (g) must comply with every reasonable direction of an authorised corrective services officer.
- ‘(2) The total number of hours stated in the order—
- (a) must not be more than 40; and
  - (b) subject to subsection (3), must be performed within 1 year from the making of the order or another time allowed by the court.
- ‘(3) If, during the period mentioned in subsection (2)(b), the offender is detained in custody on remand or is serving a term of imprisonment in a corrective services facility—
- (a) the graffiti removal order is suspended for the period the offender is detained or imprisoned; and
  - (b) the period mentioned in subsection (2)(b) is extended by the period the offender is detained or imprisoned.
- ‘(4) A direction given under subsection (1)(d)(ii) applies to all graffiti removal orders made for the offender by the same court on the same day.
- ‘(5) In this section—
- another offence* does not include an offence against section 123(1).

### ‘110D Graffiti removal order to be explained

- ‘(1) Before making the graffiti removal order, the court must explain, or cause to be explained, to the offender—
- (a) the purpose and effect of the order; and
  - (b) what may follow if the offender contravenes the requirements of the order; and
  - (c) that the order may be amended or revoked, on application of the offender, an authorised corrective services officer or the director of public prosecutions, if

the court is satisfied that, because of any physical, intellectual or psychiatric disability of the offender, the offender is not capable of complying with the order.

- ‘(2) The explanation must be made in language or in a way likely to be readily understood by the offender.

### **‘110E Multiple orders for single graffiti offence**

- ‘(1) This section applies if—
- (a) an offender is before a court for sentence after being convicted of a single graffiti offence; and
  - (b) in relation to the offence, the court makes a graffiti removal order and also makes 1 or both of the following orders—
    - (i) a community service order;
    - (ii) a probation order.
- ‘(2) The court—
- (a) must make separate orders; and
  - (b) must not impose an order as a requirement of another order.
- ‘(3) If the court makes both a graffiti removal order and a community service order, the total number of hours of unpaid service ordered must not be more than 240.
- ‘(4) If the offender for whom the orders are made contravenes a requirement of any of the orders and is dealt with for the original offence in relation to the order, the other orders are discharged.

### **‘110F Multiple orders for multiple offences**

- ‘(1) Subsections (2) and (3) apply if an offender is convicted of 2 or more graffiti offences, whether or not the offender is also convicted of 1 or more other offences that are not graffiti offences.

[s 47]

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- ‘(2) The court—
  - (a) must make at least 1 graffiti removal order for the offender; and
  - (b) may make either or both of the following—
    - (i) more than 1 graffiti removal order for the offender;
    - (ii) 1 or more community service orders for the offender.
- ‘(3) If the court makes more than 1 graffiti removal order, the number of hours of graffiti removal service ordered must not, when added together, total more than 40.
- ‘(4) Subsection (5) applies if an offender is convicted of a graffiti offence and 1 or more other offences that are not graffiti offences.
- ‘(5) The court may, in addition to a graffiti removal order, make 1 or more community service orders for the offender.
- ‘(6) If, under subsection (2) or (5), the court makes 1 or more graffiti removal orders and also makes 1 or more community service orders, the total number of hours of unpaid service ordered must not be more than 240.

### ‘110G Successive orders

- ‘(1) Subsection (2) applies if an offender is—
  - (a) convicted of a graffiti offence; and
  - (b) subject to 1 or more existing graffiti removal orders.
- ‘(2) Subject to subsection (3), the number of hours of unperformed graffiti removal service and the number of hours of graffiti removal service ordered to be served for the graffiti offence must not, when added together, total more than 40.
- ‘(3) If the number of hours of unperformed graffiti removal service is 40, the graffiti removal service ordered to be served for the graffiti offence must be performed concurrently with the unperformed graffiti removal service.
- ‘(4) Subsection (5) applies if an offender is—

- (a) convicted of a graffiti offence; and
  - (b) subject to either of the following—
    - (i) 1 or more existing community service orders;
    - (ii) 1 or more existing graffiti removal orders and 1 or more existing community service orders.
- ‘(5) Subject to subsection (6), the number of hours of unperformed unpaid service and the number of hours of graffiti removal service ordered to be served for the graffiti offence must not, when added together, total more than 240.
- ‘(6) If the number of hours of unperformed unpaid service is 240, the graffiti removal service ordered to be served for the graffiti offence—
- (a) must be performed concurrently with any unperformed graffiti removal service to the extent that the number of hours of graffiti removal service ordered to be served for the graffiti offence is, when added to the number of hours of unperformed graffiti removal service, more than 40; or
  - (b) to the extent that paragraph (a) does not apply—must, when it is performed by the offender, be taken to be both—
    - (i) community service performed under 1 or more of the existing community service orders; and
    - (ii) graffiti removal service performed under the graffiti removal order made by the court for the offence.
- ‘(7) For subsection (6)(b), the chief executive (corrective services) must—
- (a) subject to any order of the court, identify the existing community service order, or orders, in relation to which the graffiti removal service is taken to have been performed; and
  - (b) notify the offender in writing of the matter mentioned in paragraph (a).

[s 48]

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**‘110H Unpaid service to be performed cumulatively**

‘All unpaid service to which the following sections apply is to be performed cumulatively unless the court orders otherwise—

- (a) section 110E, subject to subsection (3) of that section;
- (b) section 110F, subject to subsections (3) and (6) of that section;
- (c) section 110G, subject to subsections (2), (3), (5) and (6) of that section.

**‘110I Termination of graffiti removal order**

A graffiti removal order is terminated—

- (a) when the offender performs graffiti removal service in accordance with the requirements of the order for the number of hours stated in the order; or
- (b) if the offender is sentenced or further sentenced for the offence for which the order was made; or
- (c) if the order is revoked under section 120A.’

**48 Amendment of s 119 (Termination of intensive correction order)**

Section 119(1) and (2)—

*omit, insert—*

‘An intensive correction order is terminated—

- (a) at the end of its period; or
- (b) if the offender is sentenced or further sentenced for the offence for which the order was made; or
- (c) if the order is revoked under section 120(1); or
- (d) if the offender is committed to prison under section 127(1).’



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**49 Amendment of s 120 (Amendment and revocation of community based order)**

(1) Section 120, heading—

*omit, insert—*

**‘120 Amendment and revocation of community based order other than graffiti removal order**

(2) Section 120(1), after ‘community based order’—

*insert—*

‘other than a graffiti removal order’.

**50 Insertion of new s 120A**

After section 120—

*insert—*

**‘120A Amendment and revocation of graffiti removal order**

‘(1) The court that made a graffiti removal order may, on application under this division, amend or revoke the order if the court is satisfied that, because of any physical, intellectual or psychiatric disability of the offender, the offender is not capable of complying with the order.

‘(2) If a court other than the court that imposed the graffiti removal order amends or revokes the order, the first court must notify the original court of the amendment or revocation.’.

**51 Amendment of s 121 (Offender may be re-sentenced on revocation of order)**

Section 121—

*insert—*

‘(3) If the community based order mentioned in subsection (1) is a graffiti removal order, the court need not, but may, when re-sentencing the offender for the graffiti offence for which the order was made, make another graffiti removal order.’.

[s 52]

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**52 Amendment of s 125 (Powers of Magistrates Court that convicts offender of offence against s 123(1))**

(1) Section 125(2)—

*insert—*

‘(ba) an order to increase the number of hours for which the offender is required by the order to perform graffiti removal service;’.

(2) Section 125(2)(c), after ‘community service’—

*insert—*

‘or graffiti removal service’.

(3) Section 125—

*insert—*

‘(7) If the offence mentioned in subsection (1) relates to a graffiti removal order, the court, in taking action under subsection (4)(a), need not, but may, make another graffiti removal order.’.

**53 Amendment of s 126 (Powers of Supreme Court or District Court to deal with offender)**

Section 126—

*insert—*

‘(6A) If the community based order mentioned in subsection (1) is a graffiti removal order, the court, in taking action under subsection (4), need not, but may, make another graffiti removal order.’.

**54 Amendment of s 130 (Discharge of multiple community based orders where contravention taken into account)**

Section 130—

*insert—*

*Note—*

An offence against section 123(1) is an excluded offence under section 189 if the community based order to which the offence relates is a graffiti removal order.’.

**55 Amendment of s 134 (Requirements of order have effect despite appeal)**

Section 134(2)—

*omit.*

**56 Amendment of s 135 (Directions under community based order)**

Section 135(3), (4) and (5), ‘community service’—

*omit, insert—*

‘unpaid service’.

**57 Amendment of s 160A (Application of ss 160B–160D)**

Section 160A(5)(a), after ‘182(2)(a) or (b)’—

*insert—*

‘, 182A(2)’.

**58 Amendment of s 160C (Sentence of more than 3 years and not a serious violent offence or sexual offence)**

Section 160C, heading—

*omit, insert—*

**‘160C Sentence of more than 3 years and not a serious violent offence, sexual offence or drug trafficking offence’.**

**59 Amendment of s 160D (Sentence for a serious violent offence or sexual offence)**

(1) Section 160D, heading—

[s 60]

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*omit, insert—*

**‘160D Sentence for a serious violent offence, sexual offence or drug trafficking offence’.**

(2) Section 160D(1), ‘or a sexual offence’—

*omit, insert—*

‘, a sexual offence or a drug trafficking offence’.

**60 Amendment of s 160E (Automatic cancellation of parole release or eligibility dates)**

Section 160E(1)(b)(i) and (2)(b)(i), ‘or a sexual offence’—

*omit, insert—*

‘, a sexual offence or a drug trafficking offence’.

**61 Amendment of s 172D (Court not to have regard to possible order under Dangerous Prisoners (Sexual Offenders) Act 2003)**

Section 172D, note, ‘section 9(8)’—

*omit, insert—*

‘section 9(7B)’.

**62 Amendment of s 189 (Outstanding offences may be taken into account in imposing sentence)**

(1) Section 189(1)(b)(i), after ‘other offences’—

*insert—*

‘, that are not excluded offences,’.

(2) Section 189—

*insert—*

‘(12) In this section—

*excluded offence* means an offence against section 123(1) if the community based order to which the offence relates is a graffiti removal order.’

**63 Amendment of s 217 (Transitional provision for Dangerous Prisoners (Sexual Offenders) and Other Legislation Amendment Act 2010)**

Section 217(1) and (2), ‘section 9(8)’—

*omit, insert—*

‘section 9(7B)’.

**65 Amendment of sch 1 (Serious violent offences)**

- (1) Schedule 1, under the heading ‘Drugs Misuse Act 1986’, item 1—

*omit.*

- (2) Schedule 1, under the heading ‘Drugs Misuse Act 1986’, items 2 and 3—

*renumber* as items 1 and 2.

## **Part 9 Amendment of Police Powers and Responsibilities Act 2000**

**66 Act amended**

This part amends the *Police Powers and Responsibilities Act 2000*.

**67 Insertion of new s 379A**

After section 379—

*insert—*

[s 67]

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**‘379A Additional case when arrest for graffiti offence may be discontinued**

- ‘(1) This section applies if—
- (a) a child is arrested for, or is being questioned by a police officer about, a graffiti offence; and
  - (b) during an electronically recorded interview, the child admits having committed the offence; and
  - (c) the child had attained at least the age of 12 years at the time of the offence.
- ‘(2) A police officer may, at any time before the child appears before a court to answer a charge of the graffiti offence, offer the child the opportunity to attend a graffiti removal program.
- ‘(3) When making the offer, the police officer must give an oral or written explanation of the consequences of agreeing to attend a graffiti removal program to—
- (a) the child; and
  - (b) if a support person is present when the offer is made—the support person.
- ‘(4) If the child agrees, the child must sign an agreement to attend and complete a graffiti removal program.
- ‘(5) The agreement must include a provision authorising the provider of the graffiti removal program to disclose to the commissioner and the chief executive (youth justice services) information about—
- (a) the child’s attendance at, and completion of, the program; or
  - (b) if the child failed to attend or complete the program—the child’s failure to attend or complete the program.
- ‘(6) The police officer must—
- (a) give the child a written requirement to attend and complete a graffiti removal program in accordance with the agreement; and

- 
- (b) inform the child that failure to comply with the requirement is an offence against section 791.
- ‘(7) Also, the police officer must give the chief executive (youth justice services), or a person or organisation nominated by that chief executive for this section, a copy of the agreement.
- ‘(8) On the signing of the agreement, any thing used in the commission of the graffiti offence is forfeited to the State.
- ‘(9) It is the duty of a police officer to release an arrested child at the earliest reasonable opportunity if the police officer is satisfied subsections (4) and (6) have been complied with.
- ‘(10) In this section—
- chief executive (youth justice services)* means the chief executive of the department within which the *Youth Justice Act 1992* is administered.
- graffiti removal program* means a program for removing graffiti conducted with the approval of the chief executive (youth justice services).’.

## **68 Amendment of s 381 (Limit on rearrest)**

Section 381—

*insert—*

- ‘(2) Subsection (1) does not prevent a person being rearrested for a graffiti offence.’.

## **69 Amendment of sch 6 (Dictionary)**

Schedule 6—

*insert—*

‘*graffiti offence* means an offence against the Criminal Code, section 469 that is punishable under section 469, item 9.’.







[s 77]

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- (4) Section 15(8), example, second dot point—  
*omit.*

## **77 Insertion of new ss 15A and 15B**

After section 15—

*insert—*

### **‘15A Reading aloud of victim impact statement during sentencing**

- ‘(1) This section applies if a person has prepared a victim impact statement under section 15(5).
- ‘(2) The prosecutor for the offence may request, orally or in writing, that all or part of the victim impact statement be read aloud before the court by—
- (a) if the person mentioned in subsection (1) wishes to read aloud the victim impact statement—the person; or
  - (b) if the person mentioned in subsection (1) wishes the prosecutor to read aloud the victim impact statement—the prosecutor.
- ‘(3) If a request is made under subsection (2), the court must allow the person specified in the request to read the whole of the victim impact statement, or a part of the victim impact statement identified in the request, aloud before the court unless the court considers that, having regard to all relevant circumstances, it is inappropriate to do so.
- ‘(4) To avoid any doubt—
- (a) the purpose of the reading aloud of the victim impact statement before the court is to provide a therapeutic benefit to the person mentioned in subsection (1); and
  - (b) it is not necessary for a person, reading aloud the victim impact statement before the court under this section, to do so under oath or affirmation.

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**‘15B Special arrangements for reading aloud of victim impact statement during sentencing**

- ‘(1) This section applies if a person who is to read aloud a victim impact statement under section 15A (the *reader*) is the person who prepared the victim impact statement under section 15(5).
- ‘(2) The sentencing court may, on its own initiative or on the application of the prosecutor for the offence, direct that any of the following arrangements be made for the reading aloud of the victim impact statement that the court considers, having regard to all relevant circumstances, are appropriate—
- (a) that, while the reader is reading aloud the victim impact statement before the court, the offender be obscured from the view of the reader;
  - (b) that, while the reader is reading aloud the victim impact statement before the court, all persons other than those specified by the court be excluded from the courtroom;
  - (c) that a person approved by the court be present while the reader is reading aloud the victim impact statement in order to provide emotional support to the reader;
  - (d) if there is an audiovisual link within the court precincts—that the reader read aloud the victim impact statement outside the courtroom and the reading be transmitted to the courtroom by means of the audiovisual link.
- ‘(3) The person mentioned in subsection (2)(c) must be permitted to be in close proximity to the reader, and within the reader’s sight, while the reader is reading aloud the victim impact statement.
- ‘(4) The place outside the courtroom, from which the reader reads aloud the victim impact statement under subsection (2)(d), is deemed to be part of the sentencing court.
- ‘(5) It is not necessary that the place outside the courtroom, at which the reader reads aloud the victim impact statement under subsection (2)(d), be within the court precincts.

[s 78]

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‘(6) The court may, on its own initiative or on the application of the prosecutor, vary or revoke a direction made under subsection (2).’.

## **78 Amendment of sch 3 (Dictionary)**

Schedule 3—

*insert—*

‘**prosecutor**, for an offence, means—

- (a) the director of public prosecutions; or
- (b) a person prosecuting the offence on behalf of the director of public prosecutions; or
- (c) a police prosecutor prosecuting the offence.’.

# **Part 12A Amendment of Workers’ Compensation and Rehabilitation Act 2003**

## **78A Act amended**

This part amends the *Workers’ Compensation and Rehabilitation Act 2003*.

## **78B Amendment of s 71 (Issue or renewal of licence to a single employer)**

(1) Section 71(2)—

*renumber* as section 71(4).

(2) Section 71—

*insert—*

‘(2) However, if the Authority is not satisfied of 1 or more matters mentioned in subsection (1)(a) to (g), the Authority may still

issue or renew a licence to be a self-insurer to a single employer if the Authority is satisfied that, despite the Authority not being satisfied of the matters—

- (a) special circumstances justify the issue or renewal of the licence; and
- (b) the employer can appropriately—
  - (i) perform the functions and exercise the powers of a self-insurer; and
  - (ii) meet the obligations of a self-insurer.

‘(3) Without limiting subsection (2)(a), special circumstances that may justify the issue or renewal of a licence to be a self-insurer to a single employer who fails to satisfy the Authority only of the matter mentioned in subsection (1)(a) include the following—

- (a) the employer—
  - (i) holds a current licence to be a self-insurer under the laws of 2 or more other jurisdictions; and
  - (ii) has demonstrated a history of compliance with those laws and the conditions of those licences, and of acting reasonably in the performance of functions and exercise of powers under those laws or licences;
- (b) for a renewal of a licence—the employer has demonstrated a history of compliance with this Act and the conditions of the licence, and of acting reasonably in the performance of functions and exercise of powers under this Act or the licence.’.

(3) Section 71—

*insert—*

‘(5) In this section—

*jurisdiction* means the Commonwealth or a State.’.

[s 78C]

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**78C Amendment of s 72 (Issue or renewal of licence to a group employer)**

(1) Section 72(2)—

*renumber* as section 72(4).

(2) Section 72—

*insert*—

‘(2) However, if the Authority is not satisfied of 1 or more matters mentioned in subsection (1)(a) to (h), the Authority may still issue or renew a licence to be a self-insurer to a group employer if the Authority is satisfied that, despite the Authority not being satisfied of the matters—

(a) special circumstances justify the issue or renewal of the licence; and

(b) the employer can appropriately—

(i) perform the functions and exercise the powers of a self-insurer; and

(ii) meet the obligations of a self-insurer.

‘(3) Without limiting subsection (2)(a), special circumstances that may justify the issue or renewal of a licence to be a self-insurer to a group employer who fails to satisfy the Authority only of the matter mentioned in subsection (1)(b) include the following—

(a) the employer—

(i) holds a current licence to be a self-insurer under the laws of 2 or more other jurisdictions; and

(ii) has demonstrated a history of compliance with those laws and the conditions of those licences, and of acting reasonably in the performance of functions and exercise of powers under those laws or licences;

(b) for a renewal of a licence—the employer has demonstrated a history of compliance with this Act and the conditions of the licence, and of acting reasonably in

the performance of functions and exercise of powers under this Act or the licence.’.

(3) Section 72—

*insert—*

‘(5) In this section—

*jurisdiction* means the Commonwealth or a State.’.

#### **78D Amendment of s 570 (Powers of court on appeal)**

Section 570—

*insert—*

‘(4) Despite subsections (1) to (3), the court can not decide to issue or renew a licence to be a self-insurer under section 71(2) or 72(2).’.

#### **78E Insertion of new ch 30**

After section 674—

*insert—*

## **‘Chapter 30 Transitional provisions for Criminal Law and Other Legislation Amendment Act 2013**

#### **‘675 Definition for ch 30**

‘In this chapter—

*commencement* means the commencement of this section.

[s 78E]

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**'676 Application of s 71 to current applications by single employers**

- '(1) Subsection (2) applies to an application for the issue or renewal of a licence to be a self-insurer that—
  - (a) was made by a single employer before the commencement; and
  - (b) has not been decided under section 71 at the commencement.
- '(2) The Authority must decide the application under section 71 as in force after the commencement.
- '(3) Subsection (4) applies to the following—
  - (a) a decision of the Authority under section 77 relating to—
    - (i) a submission made by a single employer under section 77 before the commencement for which the Authority has not made a decision under section 77(4) at the commencement; or
    - (ii) a submission made by a single employer under section 77 after the commencement (if the period within which the submission may be made under that section ends after the commencement);
  - (b) a decision of the Authority under section 80 relating to—
    - (i) a submission made by a single employer under section 80 before the commencement for which the Authority has not made a decision under section 80(4) at the commencement; or
    - (ii) a submission made by a single employer under section 80 after the commencement (if the period within which the submission may be made under that section ends after the commencement).
- '(4) The Authority must make the decision on the basis of section 71 as in force after the commencement as if that had been the



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law in force when the matter the subject of the submission was decided.

**'677 Application of s 72 to current applications by group employers**

- '(1) Subsection (2) applies to an application for the issue or renewal of a licence to be a self-insurer that—
  - (a) was made by a group employer before the commencement; and
  - (b) has not been decided under section 72 at the commencement.
- '(2) The Authority must decide the application under section 72 as in force after the commencement.
- '(3) Subsection (4) applies to the following—
  - (a) a decision of the Authority under section 77 relating to—
    - (i) a submission made by a group employer under section 77 before the commencement for which the Authority has not made a decision under section 77(4) at the commencement; or
    - (ii) a submission made by a group employer under section 77 after the commencement (if the period within which the submission may be made under that section ends after the commencement);
  - (b) a decision of the Authority under section 80 relating to—
    - (i) a submission made by a group employer under section 80 before the commencement for which the Authority has not made a decision under section 80(4) at the commencement; or
    - (ii) a submission made by a group employer under section 80 after the commencement (if the period within which the submission may be made under that section ends after the commencement).

[s 79]

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- ‘(4) The Authority must make the decision on the basis of section 72 as in force after the commencement as if that had been the law in force when the matter the subject of the submission was decided.’.

## **Part 13                      Amendment of Youth Justice Act 1992**

### **79      Act amended**

This part amends the *Youth Justice Act 1992*.

### **80      Amendment of s 11 (Police officer to consider alternatives to proceeding against child)**

- (1) Section 11(1)—

*insert—*

‘(e) if the offence is a graffiti offence and the child may be offered an opportunity to attend a graffiti removal program under the *Police Powers and Responsibilities Act 2000*, section 379A—to offer the child that opportunity in accordance with that section.’.

- (2) Section 11(4) and (5), ‘or (d)’—

*omit, insert—*

‘, (d) or (e)’.

- (3) Section 11(6), ‘or (c)’—

*omit, insert—*

‘, (c) or (e)’.

### **81      Amendment of s 37 (Form and content of conference agreement)**

- (1) Section 37(7) to (11)—

*renumber* as section 37(9) to (13).

(2) Section 37—

*insert*—

- ‘(7) If the offence committed by the child is a graffiti offence, an agreement signed by the chief executive must provide for the child to be subject to a program similar to one a child is subject to under a graffiti removal order.
- ‘(8) However, subsection (7) does not apply if a victim of the offence participating in the conference requests that the agreement deal with the offence in another way mentioned in subsection (4).’.

(3) Section 37(13), as renumbered, ‘subsection (10)’—

*omit, insert*—

‘subsection (12)’.

## **82 Amendment of s 41 (If chief executive signs agreement for program)**

(1) Section 41(1), ‘or a probation order’—

*omit, insert*—

‘, a probation order or a graffiti removal order’.

(2) Section 41(2)—

*omit, insert*—

- ‘(2) The chief executive—
- (a) for a program similar to one a child is subject to under a graffiti removal order—must arrange the program and monitor the child’s participation; and
- (b) for a program similar to one a child is subject to under a community service order or a probation order—may arrange the program and monitor the child’s participation.’.

[s 83]

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**83 Insertion of new s 176A**

(1) After section 176—

*insert—*

**‘176A Sentence orders—graffiti offences**

‘(1) This section applies if—

- (a) a child is found guilty of a graffiti offence before a court; and
- (b) the child had attained at least the age of 12 years at the time of the offence.

‘(2) Without limiting section 175, the court must make a graffiti removal order for the child.

‘(3) Subject to sections 194A and 249(3), the graffiti removal order must order the child to perform graffiti removal service for a period no longer than—

- (a) if the child has not attained the age of 13 years at the time of sentence—5 hours; or
- (b) if the child has attained the age of 13 years, but not the age of 15 years, at the time of sentence—10 hours; or
- (c) if the child has attained the age of 15 years at the time of sentence—20 hours.’.

**84 Amendment of s 177 (More than 1 type of order may be made for a single offence)**

Section 177, ‘180’—

*omit, insert—*

‘180A’.

**85 Insertion of new s 178A**

After section 178—

*insert—*

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**‘178A Combination of graffiti removal order and probation and community service orders**

- ‘(1) This section applies if a court makes, for a single graffiti offence (the *original offence*), a graffiti removal order and also one or both of the following orders—
- (a) a probation order;
  - (b) a community service order.
- ‘(2) The court—
- (a) must make separate orders; and
  - (b) must not impose one of the orders as a requirement of the other.
- ‘(3) If the child contravenes one of the orders, other than the graffiti removal order, after the orders are made and is resentenced for the original offence—
- (a) the orders, other than the graffiti removal order, are discharged; and
  - (b) the court may, if it considers it appropriate, discharge the graffiti removal order.
- ‘(4) If the child contravenes the graffiti removal order after the orders are made and is resentenced for the original offence, all of the orders are discharged.’

**86 Amendment of s 180 (Combination of detention order and other orders)**

Section 180, heading—

*omit, insert—*

**‘180 Combination of detention order and probation order’.**

**87 Insertion of new s 180A**

After section 180—

*insert—*

[s 88]

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**‘180A Combination of detention order and graffiti removal order**

- ‘(1) This section applies if a court makes—
- (a) a detention order and a graffiti removal order for—
    - (i) a single graffiti offence; or
    - (ii) multiple offences of which one is a graffiti offence;  
or
  - (b) a detention order for a child subject to 1 or more existing graffiti removal orders.
- ‘(2) The graffiti removal order—
- (a) if subsection (1)(a) applies—starts when the child is released from detention under the detention order; or
  - (b) if subsection (1)(b) applies—is suspended until the child is released from detention under the detention order.
- ‘(3) Any period that, under section 194B(3) or 194D, applies to the graffiti removal order—
- (a) if subsection (1)(a) applies—starts when the child is released from detention under the detention order; or
  - (b) if subsection (1)(b) applies—is extended by the period the child is detained under the detention order.’.

**88 Amendment of s 183 (Recording of conviction)**

Section 183(3), after ‘176’—

*insert—*

‘or 176A’.

**89 Insertion of new pt 7, div 7A**

Part 7, after division 7—

*insert—*

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## **‘Division 7A Graffiti removal orders**

### **‘194A Preconditions to making of graffiti removal order**

- ‘(1) A court must make a graffiti removal order against a child found guilty by a court of a graffiti offence unless the court is satisfied that, because of the child’s physical or mental capacity, the child is not capable of complying with the order.
- ‘(2) A court must, when deciding the number of hours of graffiti removal service to order under a graffiti removal order, take into account the age, maturity and abilities of the child against whom the order will be made.

### **‘194B Requirements to be set out in graffiti removal order**

- ‘(1) A graffiti removal order must contain requirements—
  - (a) that the child report in person to the chief executive within 1 business day after the order is made or any longer period that is specified in the order; and
  - (b) that the child perform in a satisfactory way graffiti removal service, directed by the chief executive, for the number of hours specified in the order; and
  - (c) that the child, while performing graffiti removal service, comply with every reasonable direction of the chief executive; and
  - (d) that the child or a parent of the child inform the chief executive of every change in the child’s place of residence within 2 business days of the change; and
  - (e) that the child abstain from violation of the law during the period of the order; and
  - (f) that the child not leave, or stay out of, Queensland during the period of the order without the prior approval of the chief executive.
- ‘(2) An order may contain a requirement that the child must comply with outside the State.

[s 89]

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*Example—*

An order may require the child to perform graffiti removal service at a place outside the State.

- ‘(3) The order may contain a requirement that the child must perform the graffiti removal service within a period starting on the date of the order that is less than 1 year.

*Note—*

If a requirement is not imposed under this subsection, the period of 1 year mentioned in section 194D(a) will apply.

- ‘(4) Before imposing a requirement under subsection (3), a court must consider what is a reasonable period for the child to perform the graffiti removal in all the circumstances of the case.

### **‘194C Obligation of chief executive**

‘The chief executive, in giving directions to a child in relation to the child’s performance of graffiti removal service, is—

- (a) to avoid, if practicable, conflicts with the religious and cultural beliefs and practices of the child or the child’s parent; and
- (b) to avoid, if practicable, interference with the child’s attendance at a place of employment or a school or other educational or training establishment; and
- (c) to take all steps necessary to ensure that the child, if practicable, is kept apart from any adult under sentence for an offence.

### **‘194D Graffiti removal service to be performed within limited period**

‘Subject to section 180A, a child against whom a graffiti removal order is made must perform the number of hours of graffiti removal service specified in the order—



- (a) within the period of 1 year starting on the date of the order or, if the order states a lesser period, the lesser period; or
- (b) within any extended period that a court may order under section 245 or 247; or
- (c) within any extended period allowed by order of the proper officer of the court under section 252.

#### **‘194E Multiple offences dealt with together**

- ‘(1) A court—
  - (a) if a child is found guilty of 2 or more graffiti offences in the same proceeding—
    - (i) must make at least 1 graffiti removal order against the child; and
    - (ii) may make more than 1 graffiti removal order against the child; and
  - (b) if a child is found guilty of 2 or more offences in the same proceeding, one of which is a graffiti offence—must make a graffiti removal order against the child.
- ‘(2) This section does not limit section 176A.

#### **‘194F Limitation on number of hours of graffiti removal service for multiple graffiti offences**

- ‘(1) This section applies if—
  - (a) a court makes 1 or more graffiti removal orders against a child found guilty of 2 or more graffiti offences, whether or not the child is also found guilty of any other offence; and
  - (b) the child is not subject to an existing graffiti removal order.
- ‘(2) The total number of hours of graffiti removal service specified in the order, or orders, must not be more than the maximum

[s 89]

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appropriate to the child allowed by section 176A(3) for 1 graffiti offence.

**‘194G Limitation on number of hours of unpaid service**

- ‘(1) This section applies if—
- (a) a court makes 1 or more graffiti removal orders and 1 or more community service orders against a child found guilty of 1 or more graffiti offences, whether or not the child is also found guilty of any other offence; and
  - (b) the child is not subject to an existing graffiti removal order or an existing community service order.
- ‘(2) The total number of hours of unpaid service specified in the orders must not be more than the maximum number of hours of community service, appropriate to the child, allowed by section 175(1)(e) for 1 offence.

**‘194H Limitation on number of hours of graffiti removal service when there is unperformed graffiti removal service**

- ‘(1) This section applies if—
- (a) a court makes 1 or more graffiti removal orders against a child found guilty of 1 or more graffiti offences, whether or not the child is also found guilty of any other offence; and
  - (b) the child is subject to 1 or more existing graffiti removal orders.
- ‘(2) Subject to subsection (3), the number of hours of unperformed graffiti removal service and the number of hours of graffiti removal service ordered for the graffiti offence, or offences, mentioned in subsection (1)(a) must not, when added together, total more than the maximum number of hours of graffiti removal service, appropriate to the child, allowed by section 176A(3) for 1 graffiti offence.
- ‘(3) If the number of hours of unperformed graffiti removal service equals the maximum number of hours of graffiti

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removal service, appropriate to the child, allowed by section 176A(3) for 1 graffiti offence, the graffiti removal service ordered to be served for the graffiti offence, or offences, mentioned in subsection (1)(a) must be performed concurrently with the unperformed graffiti removal service.

**‘194I Limitation on number of hours of graffiti removal service when there is unperformed unpaid service**

- ‘(1) This section applies if—
- (a) a court makes 1 or more graffiti removal orders against a child found guilty of 1 or more graffiti offences, whether or not the child is also found guilty of any other offence; and
  - (b) the child is subject to either of the following—
    - (i) 1 or more existing community service orders;
    - (ii) 1 or more existing graffiti removal orders and 1 or more existing community service orders.
- ‘(2) Subject to subsection (3), the number of hours of unperformed unpaid service and the number of hours of graffiti removal service ordered for the graffiti offence, or offences, mentioned in subsection (1)(a) must not, when added together, total more than the maximum number of hours of community service, appropriate to the child, allowed by section 175(1)(e) for 1 offence.
- ‘(3) If the number of hours of unperformed unpaid service equals the maximum number of hours of community service, appropriate to the child, allowed by section 175(1)(e) for 1 offence, then the graffiti removal service ordered to be served for the graffiti offence, or offences, mentioned in subsection (1)(a)—
- (a) must be performed concurrently with any unperformed graffiti removal service to the extent that the number of hours of graffiti removal service ordered to be served for the graffiti offence, or offences, mentioned in subsection (1)(a) is, when added to the number of hours of

[s 89]

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unperformed graffiti removal service, more than the maximum number of hours of graffiti removal service, appropriate to the child, allowed by section 176A(3) for 1 graffiti offence; or

- (b) to the extent that paragraph (a) does not apply—must, when it is performed by the child, be taken to be both—
  - (i) community service performed under 1 or more of the existing community service orders; and
  - (ii) graffiti removal service performed under the graffiti removal order made by the court for the offence.

‘(4) For subsection (3)(b), the chief executive must—

- (a) subject to any order of the court, identify the existing community service order, or orders, in relation to which the graffiti removal service is taken to have been performed; and
- (b) notify the child in writing of the matter mentioned in paragraph (a).

#### **‘194J Unpaid service to be performed cumulatively**

‘All unpaid service to which the following sections apply is to be performed cumulatively unless the court orders otherwise—

- (a) section 194F, subject to subsection (2) of that section;
- (b) section 194G, subject to subsection (2) of that section;
- (c) section 194H, subject to subsections (2) and (3) of that section;
- (d) section 194I, subject to subsections (2) and (3) of that section.

#### **‘194K Cumulative effect of child and adult orders**

‘(1) This section applies if a person is subject to 1 or more of the following orders—

- 
- (a) a graffiti removal order under this Act;
  - (b) a community service order under this Act;
  - (c) a graffiti removal order under the *Penalties and Sentences Act 1992*;
  - (d) a community service order under the *Penalties and Sentences Act 1992*.
- ‘(2) To the extent that the total number of hours of service to which the person is subject under all of the orders is more than the maximum number of hours of unpaid service applicable to the person under this division or division 8 or under the *Penalties and Sentences Act 1992*, part 5 or 5A, the order or orders made by the court is or are of no effect.
- ‘(3) The hours of service in each order to which the person is subject are cumulative on the hours in each other order to which the person is subject, unless the court that makes the order directs otherwise.

#### **‘194L Ending of graffiti removal order**

‘A graffiti removal order made against a child remains in effect until—

- (a) the child has performed graffiti removal service in accordance with the requirements specified under section 194B(1)(b) and (c) for the number of hours specified in the order; or
- (b) the order is discharged under section 245 or 247; or
- (c) the expiry of the period within which the graffiti removal service is required to be performed under section 194D;

whichever first happens.’

#### **90 Amendment of s 245 (Court’s power on breach of order other than conditional release order)**

- (1) After section 245(1)(a)—

[s 91]

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*insert—*

‘(aa) for a graffiti removal order—

- (i) increase the number of graffiti removal service hours but not so that the total number of hours is more than the number allowed under section 176A(3) or sections 194F to 194I; or
- (ii) extend the period within which the graffiti removal service must be performed, but not so that the extended period ends more than 1 year after the court acts under this section; or’.

(2) Section 245(3), after ‘subsection (1)(a)’—

*insert—*

‘, (aa)’.

**91 Amendment of s 249 (Matters relevant to making further order)**

Section 249—

*insert—*

- ‘(3) If the community based order is a graffiti removal order, the court need not, when resentencing the child for the graffiti offence for which the order was made, make another graffiti removal order.’.

**92 Amendment of s 252 (Variations by consent)**

Section 252(5)—

*insert—*

‘(ca) for a graffiti removal order—an amendment that—

- (i) increases the number of graffiti removal service hours; or
- (ii) lessens the period within which the graffiti removal service is required to be performed;’.

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**93 Amendment of sch 4 (Dictionary)**

(1) Schedule 4—

*insert—*

***graffiti offence*** means an offence against the Criminal Code, section 469 that is punishable under section 469, item 9.

***graffiti removal order*** means a graffiti removal order in force under part 7, division 7A.

***graffiti removal program*** see the *Police Powers and Responsibilities Act 2000*, section 379A(10).

***graffiti removal service*** means—

- (a) the removal of graffiti; or
- (b) work related or incidental to the work mentioned in paragraph (a); or
- (c) other work related to or incidental to the clean up of public places whether or not it relates to the removal of graffiti.

***remove***, in relation to graffiti, includes the following—

- (a) repair;
- (b) conceal;
- (c) cover;
- (d) attempt to remove.

*Example—*

painting over graffiti

***unpaid service*** means the following—

- (a) community service required to be performed under a community service order;
- (b) graffiti removal service required to be performed under a graffiti removal order.

***unperformed graffiti removal service***, for a child, means graffiti removal service that the child—

[s 93]

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- (a) is required to perform under a graffiti removal order;  
and
  - (b) has not performed.
- unperformed unpaid service***, for a child, means unpaid service that the child—
- (a) is required to perform under a community service order or a graffiti removal order; and
  - (b) has not performed.’.
- (2) Schedule 4, definition *community based order*, after ‘probation order’—
- insert—*
- ‘, graffiti removal order’.