TERRORISM (COMMUNITY SAFETY) AMENDMENT BILL 2004

EXPLANATORY NOTES

GENERAL OUTLINE

Objective of the Bill

The objective of the Bill is to strengthen the powers of Queensland law enforcement authorities to prevent and respond to terrorist acts by amending the:

- Crime and Misconduct Act 2001
- Criminal Code 1899
- District Court of Queensland Act 1967
- Freedom of Information Act 1992
- Police Powers and Responsibilities Act 2000
- Police Service Administration Act 1990
- Weapons Act 1990
- Witness Protection Act 2000

Reasons for the objective and how it will be achieved

The 11 September 2001 terrorist attack in the United States and the bombings in Bali on 12 October 2002 and Madrid on 11 March 2004, have prompted Australian jurisdictions to examine their counter terrorism arrangements including prevention, preparedness, response and recovery capabilities. Australian First Ministers held a summit on 5 April 2002 and agreed to a new national framework to combat terrorism and multi-jurisdictional crime. Included in the twenty resolution agreement was a commitment that all jurisdictions would "review their legislation and counter-terrorism arrangements to make sure they are sufficiently strong."

Since April 2002, Australian jurisdictions have entered an intergovernmental agreement on counter-terrorism, replaced the National Anti-Terrorism Plan with the National Counter Terrorism Plan and have prepared a handbook to support the plan. Those documents set out arrangements for responding to terrorist incidents in Australian states and territories.

The Commonwealth has the major role in gathering intelligence and responding to national terrorist situations. However, the states will play a vital role as first responders to terrorist incidents and will augment intelligence gathering by Commonwealth agencies. Investigations are expected to be led by Commonwealth officers in joint operations with state police using their respective powers. Commonwealth terrorism offences are also expected to be prosecuted more than state offences.

In 2002, Queensland began a process of reviewing our statute book to assess where legislation needed to be strengthened. The Bill is the response to requests for additional law enforcement powers from the Queensland Police Service and the Crime and Misconduct Commission and to suggestions from the Department of Justice and Attorney-General for a specific offence of sabotage and amendments to the *Freedom of Information Act 1992* to protect certain security documents from public disclosure.

In particular, the referral of legislative responsibility for the investigation of terrorism related major crime to the CMC is significant as it allows the full range of CMC coercive powers for terrorism- related major crime, including investigative hearings. The CMC had administratively taken on this function but this bill makes the function more comprehensive, and makes it more transparent because Parliament itself will be conferring the terrorism function.

The proposals are grouped into: (1) terrorism specific; (2) non-terrorism specific; and (3) other proposals. Some proposals are terrorism specific and others are not; but all will assist in terrorism investigations. Proposals that are non-terrorism specific are so because it is considered preferable that those powers be extended to all offences within the jurisdiction of the Queensland Police Service (QPS) and the Crime and Misconduct Commission (CMC) rather than just terrorism incidents. This is in recognition of the fact that investigators may not yet have established that the criminal activity in question is terrorism related.

Administrative cost to Government for implementation

The implementation of specific legislative provisions to strengthen the powers of Queensland law enforcement agencies to prevent and respond to terrorist acts will not have any direct financial implications. Given that the need to respond to terrorist acts is likely to be rare, it is not anticipated that there will be any long term resource implications.

Consistency with fundamental legislative principles

Generally, increased powers of law enforcement agencies raises issues about rights to privacy and other rights and liberties of individuals against whom the powers are potentially exercised. However, this is balanced by the need to ensure that Queensland legislation is sufficiently strong to counter terrorism.

In particular, the new freedom of information security exemption prevents access to sensitive security information. However, the exemption is justified as it is designed to protect national and state security information and therefore the safety of the community. The interest of national security has traditionally been a well recognised exception to full disclosure of information. The provision is based (with necessary modification) on a security exemption that has always been contained in the Commonwealth FOI legislation, and has also recently been incorporated into Victorian FOI legislation.

Consultation

Consultation has taken place with relevant government agencies including Queensland Police Service, the Department of Justice and Attorney-General, the Crime and Misconduct Commission, the Department of Emergency Services, the Security Planning and Coordination Unit in the Department of the Premier and Cabinet.

NOTES ON PROVISIONS

Clause 1 states the short title of the Act.

Clause 2 states how the Act will be commenced.

Clause 3 states that the Act amends the *Crime and Misconduct Act 2001.*

Clause 4 amends the definition section of the *Crime and Misconduct Act 2001* to include definitions for the terms "terrorist act", "electronic system", "physical harm", "public", "serious harm" and "threat". In an effort to achieve national consistency, the definition of "terrorist act" accords (with slight drafting variation) with that of the Commonwealth *Criminal Code Act 1995* and the New South Wales *Terrorism (Police Powers) Act 2002.* The definitions of "physical harm", "serious harm" and "threat" accord with definitions contained in the Commonwealth *Criminal Code Act 1995*.

The insertion of the definition of terrorist act is relevant to the extension of the Crime and Misconduct Commission's (CMC's) major crime jurisdiction to include terrorism (refer clause 12 below).

Clause 5 inserts a new sub-section 121(5) of the *Crime and Misconduct Act 2001*, to define a "relevant place" to include a public place, which may also be described by reference to a class of place.

Clause 6 amends sub-sections 123(b) (ii) and s123 (d) of the *Crime and Misconduct Act 2001,* regarding the judge's consideration of an application for a surveillance warrant, to incorporate the new definition of "relevant place".

Clause 7 amends section 124 of the *Crime and Misconduct Act 2001* to enable a judge to issue a warrant on the basis of a reasonable belief that either:

(a) the relevant person (defined in s122 (2) (a) to mean the person proposed to be placed under surveillance) has been, is or is likely to be involved in the major crime or misconduct; or

(b) evidence of the commission of the major crime or misconduct is likely to be obtained using a surveillance warrant at the relevant place.

Clause 8 amends section 157 of the *Crime and Misconduct Act 2001,* by expanding the provisions relating to applications for additional powers warrants (previously available only for misconduct) to a crime investigation relating to terrorism.

Clause 9 amends section 160(a) of the *Crime and Misconduct Act 2001* by adding "or terrorism" after "misconduct". This makes the wording of section 160(a) regarding the judge's consideration of the application consistent with the amended section 157.

Clause 10 amends section 162(b) of the *Crime and Misconduct Act 2001,* by adding "or terrorism" after "misconduct". This makes the wording of section 162 regarding what the additional powers warrant must state, consistent with the amended section 157.

Clause 11 inserts a new section 165(1)(c) into the *Crime and Misconduct Act 2001,* to enable a CMC officer the power, under warrant, to require any person to give a sworn affidavit or statutory declaration relating to the property, financial transactions or movements of money, of a person being investigated in relation to a terrorism-related major crime. Again this is consistent with the amended section 157.

Clause 12 amend*s* the definition of "major crime" in Schedule 2 of the *Crime and Misconduct Act 2001* by adding terrorism, something preparatory to the commission of terrorism; and something undertaken to avoid detection of, or prosecution for terrorism. The clause also defines "terrorism" as criminal activity that involves a terrorist act. This enables the CMC to exercise its full range of coercive powers available for crime investigations, in relation to terrorist acts.

Clause 13 states that the Act amends the *Criminal Code.*

Clause 14 inserts a new section 469A into the *Criminal Code.* Section 469A (1) creates a new crime of "sabotage" punishable by a maximum penalty of 25 years imprisonment. The crime is targeted at conduct where the actual sabotage is put into action (ie there is some damage to a public facility but not necessarily the major damage intended). "Damage" includes disruption to the use or operation of a public facility.

Section 469A (2) creates a new crime of "threatening sabotage" punishable by a maximum penalty of 14 years' imprisonment. It will be an offence for a person to make a threat to another person that a public facility will be damaged. It will need to be proven that the person making the threat intended to induce in another person a belief that the threat would be carried out. Additionally, the nature of the threat must be such that if it were carried out, it would be capable of causing major disruption to government functions or public services, or major economic loss.

A person can not be prosecuted for sabotage or threatening sabotage without a Crown Law officer's consent (ie the Attorney-General or Director of Public Prosecutions). This is to prevent inappropriate prosecution of minor matters or legitimate protest or strike action.

Clause 15 states that the Act amends the *District Court of Queensland Act 1967.*

Clause 16 amends the *District Court of Queensland Act 1967* to ensure that the District Court has jurisdiction over the new offences of sabotage and threatening sabotage.

Clause 17 states that the part amends the *Freedom of Information Act 1992*.

Clause 18 amends section 32(a) of the *Freedom of Information Act 1992* by adding a reference to the new section 42A. This has the effect of where practicable, allowing access to a document containing matter which is exempt under the new section 42A, if that exempt matter is deleted from the document.

Clause 19 amends section 35 of the *Freedon of Information Act 1992* by adding a reference to the new section 42A. This has the effect of clarifying that, in response to an application that relates to a document that includes matter exempted by the new section 42A, an agency or Minister may notify the applicant that the agency or Minister neither confirms nor denies the existence of that type of document but that, assuming the document exists, it would be an exempt document. Section 35 is designed for circumstances where the character of the document is such that the mere acknowledgement of its existence, albeit accompanied by a denial af access, could itself cause the damage against which the exemption provision is designed to guard.

Clause 20 amends section 42(1) (g) of the *Freedom of Information Act 1992* by inserting an example of exempt matter, to more clearly protect information about major hazard facilities.

Clause 21 inserts a new section 42A into the *Freedom of Information Act 1992*. Section 42A adds a new exemption that prevents disclosure of documents if disclosure could reasonably be expected to cause damage to the security of the Commonwealth or a State.

The exemption does not include reference to the public interest, precluding any consideration (by the original decision maker or the Information Commissioner) of competing grounds that might otherwise tend to warrant disclosure. The exemption permits the Attorney-General and Minister for Justice to certify that matter is exempt matter under the exemption.

It is intended that matters relevant to the security of the Commonwealth are not limited to external threats to the Commonwealth but also encompass internal developments or manifestations.

It is intended that matters relevant to the security of a State are not limited to external threats to a State but also encompass internal threats with very serious consequences for the security of the State.

Clause 22 amends section 71 of the *Freedom of Information Act 1992* by adding a reference to the new section 42A. This has the effect of expressly stating that it is a function of the Information Commissioner to investigate and review the grounds for a decision to certify that matter is exempt matter under the new section 42A.

Clause 23 amends section 84 of the *Freedom of Information Act 1992* by adding a reference to the new section 42A. This has the effect of expressly stating that the Information Commissioner may, on an application for review, consider the grounds on which a certificate was given to exempt matter under the new section 42A.

Clause 24 amends section 87 (3) of the *Freedonof Information Act 1992* by adding a reference to the new section 42A. This amendment is a consequence of the new reference in section 35 to section 42A. The amendment to section 87 (3) will have the effect that, in relation to applications for review that concern a document or part of a document to which access had been refused under section 42A, the Information Commissioner can give findings in terms that neither confirm nor deny the existence of the document.

Clause 25 amends section 90 of the *Freedom of Information Act 1992* by adding a reference to the new section 42A. This has the effect of preventing the Information Commissioner from delegating the power to compel the production of matter that is the subject of a certificate given to exempt that matter under the new section 42A.

Clause 26 inserts a new Part 8 into the *Freedom of Information Act 1992.* This new part clarifies that the new exemption under section 42A will apply to an application whether it was made before or after the commencement of the new section 42A. This affects the rights of applicants accrued prior to the commencement of the Bill. This breach of a fundamental legislative principle is justified in the public interest on the basis of the highly sensitive nature of the information to be exempted and the potential danger to the community that could be caused by its disclosure.

Clause 27 states that the Act amends the *Police Powers and Responsibilities Act 2000.*

Clause 28 inserts 124(5) of the *Police Powers and Responsibilities Act 2000* to define a "relevant place" to include a public place, which may also be described by reference to a class of place.

Clause 29 amends sub-sections 126(b) (ii) and s126 (d) *Crime and Misconduct Act 2001,* regarding the judge's consideration of an application for a surveillance warrant, to incorporate the new definition of "relevant place".

Clause 30 amends section 127 of the *Police Powers and Responsibilities Act 2000* to enable a judge to issue a warrant on the basis of a reasonable belief that either:

(a) the relevant person (defined in s125 (2) (a) to mean the person proposed to be placed under surveillance) has been, is or is likely to be involved in the commission of a serious indictable offence; or

(b) evidence of the commission of a serious indictable offence is likely to be obtained using a surveillance warrant at the relevant place.

Clause 31 cross references the fact that a surveillance warrant must state any condition a judge imposes, to the section that the enables the judge to do so.

Clause 32 inserts a new section 147A into the *Police Powers and Responsibilities Act 2000* to include definitions for the terms "terrorist act", "terrorism", "electronic system", "physical harm", "public", "serious harm" and "threat". In an attempt to achieve national consistency, the definition of "terrorist act" accords (with slight variation) with that of the Commonwealth *Criminal Code Act 1995* and the New South Wales *Terrorism (Police Powers) Act 2002.* The definitions of "physical harm", "serious harm" and "threat" accord with definitions contained in the Commonwealth *Criminal Code Act 1995.* The definition of "terrorism" is defined to mean criminal activity that involves a terrorist act or something preparatory to or undertaken to avoid detection or prosecution for criminal activity that involves a terrorist act. This definition of terrorism is relevant to the ability of police to apply for covert search warrants for one person (refer to clause 30), and where evidence is likely to be taken to the place within the next 72 hours (refer to clause 32).

Clause 33 amends section 148(1) and (2) of the *Police Powers and Responsibilities Act 2000* by adding the reference "or terrorism". This will allow police to apply to a Supreme Court judge for a covert search warrant to search a place for evidence of terrorism, even where only one person may be involved.

Clause 34 amends section 150(a) and (b) of the *Police Powers and Responsibilities Act 2000* regarding the judge's consideration of the

warrant application, by adding the reference "or terrorism". This makes the wording of section 150 consistent with the amended section 148.

Clause 35 amends section 151(1) of the *Police Powers and Responsibilities Act 2000* to allow the judge to issue a covert search warrant not only where there is evidence of organised crime or terrorism at a place, but also where evidence is likely to be taken to the place within the next 72 hours.

Clause 36 amends section 152(b) of the *Police Powers and Responsibilities Act 2000* by adding the reference "or details of the terrorism for which the warrant was issued". This makes the wording of section 152(b) regarding the requirements for the content of a covert search warrant, consistent with the amended section 148.

Clause 37 amends section 155(e) and (f) of the *Police Powers and Responsibilities Act 2000* by adding the reference "or terrorism". This makes the wording of section 155(e) and (f) regarding the powers under a covert search warrant consistent with the amended section 148.

Clause 38 inserts the definitions of "relevant place", "terrorism" and "terrorist act" into Schedule 4 of the *Police Powers and Responsibilities Act 2000.*

Clause 39 states that the Act amends the *Police Service Administration Act 1990.*

Clause 40 inserts a new section 5.17 into the *Police Service Administration Act 1990.* This provides that non-State police officers (from another State or the Commonwealth) who are urgently needed in Queensland to assist the Queensland Police Service to perform its functions effectively in an imminent terrorism incident or respond to a terrorist act, may be authorised by the Queensland Police Commissioner to use police powers in the *Police Powers and Responsibilities Act 2000*, subject to the directions of the Queensland Police Commissioner (the Commissioner) or a Queensland police officer.

5.17(1) requires the Commissioner to reasonably believe that a terrorist act has been committed or that there is an imminent threat, that the help of a non-State police officer is urgently needed and that it is impracticable in the circumstances (eg for time or distance reasons) to appoint these officers as special constables.

5.17(2) enables the Commissioner to authorise non-State police officers to exercise powers under the *Police Powers and Responsibilities Act 2000.*

5.17(3) requires the authorisation (whether written or oral), to name the non-State police officers who are so authorised.

5.17(4) provides that the authorisation may limit the range of powers available to non-State officers and the length of time of the authorisation. The authorisation may also be given on conditions.

5.17(5) ensures that where a timely police response is required, the authorisation may be given orally, provided it is subsequently put into writing as soon as is reasonably practicable.

5.17(6) clarifies that a failure to put the authorisation into writing does not invalidate the authorisation.

5.17(7) specifies that the non-State police officer may only exercise the powers only in accordance with the authorisation and subject to the directions of the Commissioner or another State police officer.

5.17(8) specifies that the provisions of the *Police Powers and Responsibilities Act 2000* apply to non-State officers as if they were a State police officer. This includes Chapter 10 safeguards, such as providing receipts for things seized and requirements regarding searches of persons.

5.17(9) requires that the Commissioner must ensure that non-State officers are provided an explanation of their powers and responsibilities under the *Police Powers and Responsibilities Act 2000* as soon as practicable after the authorisation is given.

5.17(10) ensures that a non-State police officer using these powers has the same protections and indemnities as provided under Part 10 of the *Police Service Administration Act 1990*. These include the Crown being vicariously liable for a police officer's torts committed in the execution of their duty and the provision of workers' compensation entitlements. This is equivalent to the coverage for a special constable.

5.17(11) requires the Commissioner to revoke the authorisation as soon as it is no longer needed.

5.17(12) allows the revocation to be made orally or in writing, but where given orally, must subsequently be put into writing as soon as is reasonably practicable.

5.17(13) clarifies that a failure to put the revocation into writing does not invalidate the revocation.

5.17(14) allows the Commissioner to delegate the authorisation powers down to Assistant Commissioner level.

5.17(15) requires the Commissioner to include in the Queensland Police Service annual report, instances where the authorisation was given and specified information about the authorisation. This is to ensure public accountability of the exercise of this authorisation power.

5.17(16) states that Commonwealth officers can only be authorised to carry out such functions as is constitutionally allowable. This does not purport to confer a duty on a federal police officer to perform a function or exercise a power if the conferral of the duty would be beyond the legislative power of the Parliament of the State.

5.17(17) provides definition of "authorization power", "non-State police officer" meaning police officers from other States, or Commonwealth police officers.

Clause 41 states that the Act amends the *Weapons Act 1990*.

Clause 42 amends section 2(1) (b) of the *Weapons Act 1990* by clarifying that the *Weapons Act 1990* exempts interstate police officers assisting the Queensland Police Service in the performance of their functions. This should remove any doubt that interstate police officers can carry weapons in Queensland when assisting the Queensland Police Service in the performance of its functions.

Clause 43 states that the Act amends the *Witness Protection Act 2000*.

Clause 44 inserts a new heading "Part 3-Protecting Identities".

Clause 45 inserts a new section 20A into the *Witness Protection Act 2000*. The new section 20A clarifies that the Chairperson may authorise the acquisition and use of assumed identities for witness protection officers in addition to the protected witnesses themselves.

Clause 46 amends section 36 of the *Witness Protection Act 2000* by expanding the offence of disclosures about protected witnesses to protected witness protection officers.