

# **Police Powers and Responsibilities and Other Acts Amendment Bill 2006**

## **Explanatory Notes**

### **General Outline**

#### **Objective of the Legislation**

The main objective of the *Police Powers and Responsibilities and Other Acts Amendment Bill 2006* (the Bill) is to amend the *Police Powers and Responsibilities Act 2000* (PPRA) to ensure police officers continue to perform their duties effectively by utilising legislation that is well balanced and reflective of community requirements.

#### **Reasons for the Legislation**

Police powers legislation has been subject to ongoing review since the passage of the *Police Powers and Responsibilities Act 1997*. The *Police Powers and Responsibilities Act 2000* ('PPRA') repealed that Act on 1 July 2000.

The PPRA provides the majority of powers used by police officers to enforce the laws of Queensland. The PPRA also contains responsibilities (safeguards) with which police officers must comply when powers are used to preserve the legal rights of an individual. It is necessary to ensure the PPRA remains contemporary to community and policing needs. Accordingly, section 458 "Review of Act" of the PPRA provides that the Minister for Police and Corrective Services must ensure the operation of the Act is regularly reviewed. This has resulted in a number of amendments being made to the PPRA since its commencement.

The most recent major review of the PPRA generated a significant number of legislative proposals from the Department of Police. As a result the Minister for Police and Corrective Services established a community and government based PPRA Review Committee ('the Committee') to consider the proposals and make recommendations to the Minister.

The Committee also received and considered written submissions from the Crime and Misconduct Commission ('CMC') and the Public Interest Monitor ('PIM'). Additionally, oral submissions from the Queensland Council for Civil Liberties, the PIM and the CMC were received and considered at Committee meetings. The proposals together with the Committee's recommendations were considered by the Minister for Police and Corrective Services.

### **Means of Achieving Policy Objectives**

The Bill achieves the objectives by amending the *Police Powers and Responsibilities Act 2000*, the Criminal Code, the *Cross-border Law Enforcement Legislation Amendment Act 2005*, the *Domestic and Family Violence Protection Act 1989*, the *Drugs Misuse Act 1986*, the *Evidence Act 1977*, the *Police Service Administration Act 1990*, the *Australian Crime Commission (Queensland) Act 2003*, the *Summary Offences Act 2005*, the *Tow Truck Act 1973*, and the *Weapons Act 1990*.

### **Alternative means of achieving policy objectives**

There are no alternatives that would achieve the policy objectives other than by way of the amendments proposed in the Bill.

### **Costs for Government of implementation**

No cost increases to Government are anticipated as a consequence of the implementation of this Bill. The Department of Police may experience an increase in workload and costs resulting from the legislation. These additional costs will be funded from within existing agency allocations.

### **Consistency with Fundamental Legislative Principles**

There are a number of amendments that may be relevant in terms of fundamental legislative principles. It is considered that the amendments have sufficient regard to the rights and liberties of individuals. The legislative amendments provide for a balance between community expectations and the rights and liberties of individuals.

## **PPRA Amendments**

### **1. Extending the power to enter etc. for relevant laws**

The amendments to section 20 of the PPRA will enable the Department of Police to monitor excessive sales of pseudoephedrine through pharmacies. Illicit drug manufacturers often purchase pseudoephedrine in bulk from dishonest pharmacists and convert it to ephedrine which is then used to make amphetamines ('speed'). The additional power is necessary to assist in identifying and deterring such pharmacists from indirect participation in the illicit drug trade. While a search warrant is not a prerequisite to the use of the power, it will be subject to the existing provisions of the PPRA.

Under those provisions, a police officer will be entitled to enter defined business premises to inspect a register required to be kept by the occupier of those premises. A police officer is also permitted access to items relating to that register, for example, a pawnbroker's register and pawned items. A police officer is not entitled to undertake a general search of the premises without a search warrant and may only enter at reasonable times and to those parts of the place where the register is kept and the items are stored. A police officer may not, for example, enter an associated part of the premises that might be used as a private residence. It is considered that on balance, the public interest in identifying persons involved in the illicit drug trade is sufficient to warrant this amendment.

### **2. Providing an additional prescribed circumstance for searching persons without warrant for an offence involving wilful damage**

Police already have the power to stop, detain or search a person or vehicle under this part for specified purposes. Police also have the power for example, to seize anything that may be evidence of an offence, or used to cause harm to the person or another person. These amendments prescribe additional lawful circumstances that have been identified as necessary to investigate and prevent crime. The amendments will give police officers the ability to effectively investigate regularly perpetuated offences involving wilful damage or destruction, and will contribute to the protection of public property such as trains and schools.

The inclusion of the amendments to sections 28 and 30 of the PPRA, which authorise the search of persons and vehicles in suspicious circumstances, will allow a police officer to search a suspect or their vehicle without warrant in order to seize evidence which may lead to a successful prosecution, such as a paint can used to spray graffiti on a fence or a screwdriver used to scratch the side of a vehicle. The provisions of section

28 and 30, to which section 27 and 29 respectively apply, require a police officer to have a reasonable suspicion prior to conducting such a search. Safeguards, including the pre-existence of a reasonable suspicion, protecting the dignity of persons during the search, the supplying of police officers' details, and recording information in the register of enforcement acts will continue to regulate the use of this type of power.

The potential impact of the new police powers on the rights and liberties of individuals will be outweighed by the benefit to the community, in terms of reducing crime and apprehending criminal offenders.

### **3. Providing police officers with the ability to obtain a warrant to obtain decryption for evidentiary purposes**

It is considered that this amendment is essential to ensure police officers have sufficient powers to investigate persons who engage in activities such as paedophilia, drug trafficking and identity fraud. In many instances, access to information stored on a suspect's computer, electronic teledex, mobile phone or similar electronic device is protected by a password or the information is encrypted. In the absence of a password or decryption code, it is often impossible to obtain the stored evidence to prosecute an offender. The requirement to provide the password or decryption code to a computer or mobile phone is not a telecommunication interception, as access will only be gained to data that has already been downloaded or received, e.g., files stored on a DVD, CD or the hard disk of a computer or SMS messages held on the storage space of a mobile phone.

Therefore, it is considered that the provision of a power to require a person to provide a password or decryption code that may lead to the gathering of evidence of a serious criminal offence is a matter in the public interest and will stop criminals from escaping prosecution merely because crucial evidence is initially concealed electronically from police.

### **4. Extending move on powers to all public places**

The amendments to the move on powers balance the need to ensure the safety of members of the public lawfully using public places. The use of the power continues to be governed by the parameters of Chapter 2, Part 4 of the PPRA.

The extension of the move on power does not affect a person's right of peaceful assembly or the rights of the community to enjoy public facilities. Existing safeguards under the PPRA requiring police officers to record the use of the power will remain.

**5. Enabling police to obtain the name and address and to take the identifying particulars of persons reasonably suspected of committing extradition offences**

The amendments are necessary to ensure police officers have the ability to effectively investigate offences where a person is reasonably suspected of committing an offence against the law of another State or Territory. Obtaining a suspect's name and address is essential to ensure that the person named in an extradition warrant is in fact the person in custody. The existing safeguard provisions of the PPRA relating to police obtaining a person's name and address and identifying particulars will apply to the new powers.

**6. Providing police officers investigating the death of a person with the power to search a place in accordance with Part 4A 'Powers for assisting Coroners' of the PPRA**

This amendment will prevent the potential loss of evidence from a place where a reportable death has occurred. The amendment allows police to search the place where a deceased person is found, in circumstances where the cause of death does not immediately justify the establishment of a crime scene e.g., the location of tablets used in a suicide. The use of the proposed provision will be regarded as an 'enforcement act' under the PPRA and a police officer exercising the power will be required to record any search in a manner as prescribed under the PPRA. However, where a death apparently results from natural causes, the provision explicitly states that a search is not permitted.

**7. Forfeiture provisions for the offence of evade police**

The scheme makes provision for the impoundment and forfeiture of an offender's vehicle, upon conviction and at the discretion of the court. This is in addition to any penalty otherwise imposed by the sentencing court. The provisions are similar to the *road hoon* impoundment and forfeiture provisions that are currently included in the PPRA.

**8. Reverse onus provisions for the offence of evade police**

The evade police provisions involve a reversal of onus. Where an owner or nominated person is served with an evasion notice and does not make a declaration as required by the notice, the owner will be taken to have been driving even though the actual offender may have been someone else. It is a defence for the owner or nominated person to prove on the balance of probabilities that the owner was not the driver of the motor vehicle involved in the offence at the time.

The Scrutiny of Legislation Committee has commented that justification for reversal of onus is sometimes found in situations where the matter that is subject of proof by the defendant is peculiarly within the defendant's knowledge and it would be extremely difficult for the State to prove.

The only time the State will rely upon the reverse onus provisions is when a notice is served on an owner or nominated person. This will only apply where an offender is not intercepted at the time of the offence and police do not have identification evidence as to the driver of a vehicle. In these circumstances, a limited reversal of onus on the balance of probabilities is considered justified.

### **9. Declaration in relation to places of safety**

Regulation, S.L. No. 167 of 2005, corrected a technical problem with respect to the declaration of places of safety under the *Police Powers and Responsibilities Regulation 2000* (the Regulation). The Regulation was operating in the absence of sections 8N and 8O for a short period due to an error in commencement dates. The error was corrected by an amendment to the Regulation. To ensure there is consistency in the operation of the Regulation it is necessary that a declaration be made in the PPRA to the effect that the Regulation, S.L. No. 84 of 2005 was effective to extend the operation of sections 371B-371F of the PPRA and Part 2B of the Regulation and that any action taken under the provisions in the interim between S.L. No. 84 of 2005 and S.L. No. 167 of 2005 was valid. Effectively, this will mean that the diversion of persons to a particular place of safety during the affected period for recovery from the effects of glue or petrol sniffing is valid.

### **10. Retrospective validation of authorised controlled activities**

Covert policing powers are regarded as being intrusive, particularly provisions relieving police officers of criminal responsibility for intentional actions that would otherwise be punishable offences. However, the infringement of civil liberties through the conferral of such powers, with appropriate safeguards as currently provided by the PPRA, is generally accepted as being necessary for the investigation of offences that may be difficult to investigate using conventional policing methods.

The necessity for the amendment arises out of the two competing legal arguments as to whether the classes of offences for which controlled activities powers are currently available under s. 190 of the PPRA are to be read down by reference to s. 163, so as to limit those powers to serious indictable offences, misconduct offences and organised crime. To remove

the uncertainty these amendments will provide that all past and present authorised controlled activities were validly authorised as if the offence, for which the controlled activity was authorised, was a serious indictable offence.

The controlled activity amendments will have retrospective effect in order to validate past and present authorised controlled activities, evidence obtained and relied upon in past or current proceedings, assuming those authorised controlled activities have otherwise been conducted fairly. The retrospective validation will not validate procedural irregularities associated with an application for, or during, the conduct of past authorised controlled activities. Consequently, a person may challenge the admissibility of evidence obtained if the application for the authorised controlled activity was not properly considered or the conduct of covert police officer during the controlled activity was outside the scope of the written authorisation. As such, it is considered that these amendments are justified.

#### **11. Conduct of multiple meetings for an authorised controlled activity and authorisation of controlled activity when identity of subject person is not known**

These amendments enable an application for, and the authorisation of, a controlled activity when identity of a suspect person is not known. Also they will allow for the conduct of multiple meetings for an authorised controlled activity during a 7 day period. These amendments are essential to ensure that police officers have sufficient powers to obtain and gather evidence, through an authorised controlled activity, and will prevent persons from escaping prosecution because:

- (1) police have been required to wait until the identity of a person, suspected of committing a controlled activity offence, is known before making an application for an authorised controlled activity; and
- (2) police are restricted from conducting more than one meeting for an authorised controlled activity where crucial evidence is initially concealed or withheld by a suspect in a first meeting.

These amendments will enable the timely application for an authorised controlled activity and will prevent loss of evidence that occurs when the suspect, at the first meeting, requires another meeting before committing the controlled activity offence. It is considered that these amendments provide a balance between community expectations, in terms of reducing

crime and apprehending offenders, and the rights and liberties of individuals.

## **12. Identification of additional relevant controlled activity offences**

The Bill includes a Henry VIII provision (that is, a potentially inappropriate delegation of parliamentary power). The provision concerned involves a power to declare by regulation an offence to be a controlled activity offence for a provision of the PPRA. However, it is considered that this is an appropriate delegation of parliamentary power as it is required to ensure the accuracy of the controlled activity scheme. This provision is limited in nature and will expire 12 months after commencement.

## **Consultation conducted in Development of the Bill**

The following departments were consulted during the preparation of the Bill:

- Department Premier and Cabinet
- Department of Justice and Attorney-General
- Department of Child Safety
- Department of Corrective Services
- Department of Industrial Relations
- Department of Local Government, Planning, Sport and Recreation
- Department of Employment and Training
- Department of State Development Trade and Innovation
- Department of Health
- Department of Housing
- Department of Natural Resources and Mines
- Department of Aboriginal and Torres Strait Islander Policy
- Department of Transport
- Department of Communities and Disability Services

## **Notes on Provisions**



## **Part 1 Preliminary**

### **Clause 1 - Short title**

This clause specifies the short title of the Bill.

### **Clause 2 - Commencement**

This clause details the commencement dates of various sections of the Act.

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

### **Clause 3 - Act amended in pt 2 and sch 1 and references**

This clause relates to references and the relationship between the *Police Powers and Responsibilities Act 2000*, the *Cross-border Law Enforcement Legislation Amendment Act 2005* and the *Police Powers and Responsibilities (Motorbike Noise) Amendment Act 2005*.

### **Clause 4 – Amendment of s 20 (Power to enter etc. for relevant laws)**

This clause amends section 20 of the PPRA to enable police officers to check compliance with recording requirements under the *Health (Drugs and Poisons) Regulation 1996*. Section 257 of the *Health (Drugs and Poisons) Regulation 1996* expressly states that a pharmacist is authorised to dispense an S3 poison. Because this ‘authorisation’ is not a licence within the meaning of the PPRA, section 20 of the PPRA requires amendment.

These amendments are similar to the provisions relating to controlled substances in section 20(4) of the PPRA. The amendment will provide that a person who is required under the *Health Act 1937* to keep a record of the sale of a prescribed item is taken to be a licence holder, and the place where the record is kept is taken to be a place used under a licence, under a relevant law. The PPRA currently refers to prescribed items rather than particular substances. This amendment to the *Police Powers and Responsibilities Act 2000* defines a prescribed item to include S3 pseudoephedrine.

**Clause 5 – Amendment of s 28 (Prescribed circumstances for searching persons without warrant)**

This clause amends section 28(a) of the PPRA by inserting a new subsection that expands the prescribed circumstances for searching a person without a warrant to include wilful damage and graffiti offences under section 469 of the Criminal Code and an offence relating to the unlawful possession of a graffiti instrument under section 17 of the *Summary Offences Act 2005*.

**Clause 6 – Amendment of s 30 (Prescribed circumstances for searching vehicles without warrant)**

This clause amends section 30 by omitting the words "the vehicle may have in it something" and inserting the words "there is something in the vehicle" which only corrects an abnormality in the language originally used. It does not change the meaning or operation of the section. Subsection 30(g) is amended by omitting and inserting the words "the *Racing Act 2002*" which replaced the *Racing and Betting Act 1980*. Subsection 30(k) is renumbered section 30(m) and a new section 30(k) is inserted to include evidence of the commission of an offence of wilful damage (Criminal Code, section 469). Section 30(l) is also inserted to include graffiti implements (*Summary Offences Act 2005*, section 17).

**Clause 7 - Amendment of s 33 (Prescribed circumstances for requiring name and address)**

This clause amends section 33(b) by inserting the words "including," after the words "an offence." This extends the provisions to permit police officers to require the name and address of a person suspected of committing an extradition offence.

**Clause 8 - Insertion of new s 35A (Application of pt 4)**

This clause inserts a new section 35A which defines "regulated places" for the purpose of part 4. This amendment applies the move on provisions to all public places as well as prescribed places that are not also public places, for example, a school during school hours.

### **Clause 9 – Amendment of s 37 (When power applies to behaviour)**

This clause amends section 37 which is a consequential amendment brought about the insertion of the new section 35A.

Subsection (1) amends section 37(1) by omitting the words "prescribed place" and inserting the words "regulated place" which is now defined in the new section 35A.

Subsection (2) amends section 37(2),(3) and (4) by renumbering as section 37(3),(5) and (6).

Subsection (3) amends section 37(5) as renumbered by subsection (2), by omitting the words "prescribed place" and inserting the words "regulated place" which is now defined in the new section 35A.

Subsection (4) amends section 37(2) by stating that if the regulated place is a public place, subsection (1) applies in relation to a person at or near the public place only if the person's behaviour has the effect mentioned in subsection (1)(a),(b), (c) or (d) in the part of the public place at or near where the person is. When a person is behaving in a manner described in either section 37(1)(a),(b),(c) or (d) and a direction under section 39 is given for that person to move on, this section does not exclude the offending person from all regulated places.

As way of an example, if a person is behaving in a manner described in either section 37(1)(a), (b), (c) or (d) at the Water Park on The Strand, Townsville and police attend and give a direction under section 39, that direction may just exclude the offending person from the area where the person is offending and not necessarily the whole of The Strand, Townsville.

Subsection (5) provides that that subsection (1)(b) and (3) do not limit subsection (1)(a), (c) and (d).

### **Clause 10 – Amendment of s 38 (When power applies to a person's presence)**

This clause amends section 38 which is a consequential amendment brought about the insertion of the new section 35A.

Subsection (1) amends section 38 by omitting the words "prescribed place" and inserting the words "regulated place" which is now defined in the new section 35A.

Subsection (2) has a renumbering function.

Subsection (3) amends section 38(2) by stating that if the regulated place is a public place, subsection (1) applies in relation to a person at or near the public place only if the person's presence has the effect mentioned in section 38(1)(a),(b) or (c) in the part of the public place at or near where the person is. The move on provisions have been expanded with the insertion of the provisions of the new section 35A, therefore this subsection has been included to clarify parliament's intention. This provision is be utilised where a person's presence can be described in either section 38(1)(a),(b) or (c) and a direction under section 39 is given for that person to move on, this section does not exclude the offending person from all regulated places.

As way of an example, if a person is behaving in a manner described in either section 38(1)(a), (b) or (c) at Southbank, South Brisbane and police attend and give a direction under section 39, that direction may exclude the offending person from just the area where the person is offending, rather than the whole of Southbank.

Subsection (4) provides that subsection (1)(b) and (3) do not limit subsection (1)(a) and (c).

### **Clause 11 – Amendment of s 39 (Direction may be given to person)**

This clause amends section 39 which is a consequential amendment brought about by the insertion of the new section 35A and the definition of "regulated place."

### **Clause 12 – Replacement of ss 40-41 (Review)**

This clause replaces sections 40 and 41. The previous sections dealt with notified areas in regards to move on powers which will become obsolete when this Act commences. A new section 40 is inserted. This relates to a Crime and Misconduct Commission Review of the move on powers 18 months after the commencement of this Act.

### **Clause 13 – Amendment of s 50 (Power for regulating traffic)**

This clause amends the section 50 heading by inserting after the word 'regulating' the words 'vehicular and pedestrian'.

The clause amends section 50(1) and (2) by omitting the words 'signal or order' which are incorporated in the definition of direction.

The clause also amends section 50(3) by omitting and inserting a new subsection (3), which authorises a police officer who reasonably suspects an emergency exists or it is otherwise necessary to temporarily prohibit, divert or direct traffic and pedestrians. The amendment also includes a number of examples which clarify the some of the circumstances where this section may be used.

**Clause 14 – Amendment of s 51 (Stopping vehicles for prescribed purposes)**

This clause amends section 51 to enable a police officer to require the driver or rider of an animal to stop the animal for the purposes prescribed in section 51.

**Clause 15 – Amendment of s 56 (Power to require vehicle inspections)**

This clause amends section 56 to apply the direction given under the section to an owner or registered operator of a vehicle. A definition of owner has been included in subsection (4) of section 56.

**Clause 16 – Amendment of s 57 (Power to prohibit use of vehicles)**

This clause amends section 57 to include a registered operator of a vehicle within the purview of the section. If a police officer reasonably suspects a vehicle is unsafe or defective the registered operator can be issued with an approved notice requiring registered operator or owner not to use it, or permit it to be used, on the road until compliance with certain conditions in subsection (a) or (b).

**Clause 17 – Amendment of s 58 (Power to prohibit persons driving)**

This clause amends section 58(1) and (2) by omitting the word ‘driver’ and inserting the words ‘person in control’. Section 58(2) is amended by omitting the words ‘a vehicle’ with the words ‘the vehicle’.

**Clause 18 – Amendment s 59LP (When application to be heard-vehicle related offence)**

This clause inserts a new subsection 59LP(3) of the PPRA, which gives the relevant court authority to consider an impounding order if the criteria for a forfeiture order no longer exist. That is, where one of the vehicle related offences relied upon for the forfeiture order under the provisions of section 59LP(2) results in a finding of not guilty or is discontinued, the relevant court may consider the impounding order under section 59LP(1). The subsection is qualified to the effect that if a particularised offence has previously resulted in a penalty of impoundment, that same offence cannot be relied upon to incur another penalty of impoundment.

**Clause 19 – Amendment of s 59LQ (When application to be heard – motorbike noise order offence)**

This clause inserts a new subsection 59LQ(3) of the PPRA, which gives the relevant court authority to consider an impounding order for a motorbike noise order offence if the criteria for a forfeiture order no longer exist. That is, where one of the offences relied upon for the forfeiture order under the provisions of section 59LQ(2) results in a finding of not guilty or is discontinued, the relevant court may consider an impounding order under section 59LQ(1). The subsection is qualified to the effect that if a particularised offence has previously resulted in a penalty of impoundment, that same offence cannot be relied upon to incur another penalty of impoundment.

**Clause 20 – Amendment of s 59LS (Consideration of application for forfeiture order)**

This clause amends subsection 59LS(2) of the PPRA.

A motor vehicle can be impounded after two vehicle related offences.

A motor vehicle can be forfeited after three vehicle related offences.

This section gives the court discretion to impound instead of forfeiting after three vehicle related offences. Therefore, this amendment states that impoundment is not for the offence for which an impoundment has previously been made but the offence for which the vehicle could have been forfeited.

### **Clause 21 – Amendment of s 59LU (Consideration of application for forfeiture order)**

This clause amends subsection 59LU(2) of the PPRA.

A motorbike can be impounded after one motorbike noise order offence.

A motorbike can be forfeited after two motorbike noise order offences.

This section gives the court discretion to impound instead of forfeiting after two motorbike noise order offences. Therefore, this amendment states that impoundment is not for the offence for which an impoundment has previously been made but the offence for which the motorbike could have been forfeited.

### **Clause 22 – Amendment of s 59O (Powers for enforcing court order)**

This clause amends subsection 59O(2) of the PPRA by omitting the word "seize" and inserting the words "impound, or if the motor vehicle is forfeited to the State, take possession of." This amendment clarifies the intention of this provision and what was originally intended by the use of the word "seize."

### **Clause 23 – Amendment of s 59Q (Release of motor vehicle impounded under section 59F)**

This clause amends subsection 59Q(3) of the PPRA by after the words "business hours," inserting the words "on a business day." The amendment allows for the circumstances where the expiry date for a vehicle impoundment may fall on a non-business day. For example, if police impound a vehicle after the owner is charged with an offence under division 2 of the PPRA on the Thursday before the Easter period, the next business day may not be until the following Tuesday.

### **Clause 24 – Amendment of s 59ZI (Power for regulating traffic)**

This clause amends section 59ZI of the PPRA by omitting the word "traffic" and inserting the words "animal traffic." The clause amends subsections (1) and (3) by omitting the words "signal or order." This clause also amends subsection (2) by omitting this subsection and inserting a new subsection (2) which provides police with authority to temporarily prohibit, divert or direct animal traffic and pedestrians when a police officer reasonably suspects an emergency exists or it is otherwise necessary.

### **Clause 25 – Insertion of new ch 2D, pt 3**

This clause inserts a new chapter 2D, part 3, after section 59ZI.

## **Part 3                      Stopping animals for prescribed purposes**

### **59ZJ Stopping animals for prescribed purposes**

A new section 59ZJ of the PPRA is inserted. Subsection (1) provides a police officer with authority to require the person in control of an animal, whether or not the animal is pulling a vehicle, to stop the animal for a prescribed purpose. Subsection (2) provides a penalty provision unless the person has a reasonable excuse for failing to comply with subsection (1). Subsection (3) outlines a number of circumstances where this provision may be utilised. Subsection (4) outlines a number of powers where this provision, may be exercised when a police officer is enforcing a liquor provision. The clause inserts a new subsection (5) which provides a definition of the words "in" and "liquor provision."

### **59ZK Power to enable effective and safe exercise of other powers**

New section 59ZK, subsection (1) of the PPRA provides a police officer with the authority to require a person in control of an animal pulling a vehicle to give the officer reasonable help to enable the officer to effectively exercise a power under this part in relation to the animal or vehicle. Subsection (2) provides a more specific authority to make a requirement of a person mentioned in subsection (1) to do or not to do something that the police officer reasonably believes is necessary to preserve safety or to enforce a transport Act. Subsection (3) provides a penalty provision for a person who fails to comply with subsection (1) or (2) unless the person has a reasonable excuse.

### **Clause 26 – Amendment of s 71 (Order in search warrant about documents)**

This clause amends section 71 of the PPRA to insert the words "or a judge" after the word "magistrate". This is to incorporate a judge as an issuer and cross reference section 71 with the new section 71A.



### **Clause 27 – Insertion of new s 71A**

This clause inserts a new section 71A of the PPRA which outlines the orders that can be made by a magistrate or a judge when issuing a search warrant in the context of a storage device.

### **Clause 28 – Amendment of s 73 (What search warrant must state)**

Subsection (1) amends section 73(1)(a) of the PPRA to state that a police officer may exercise search warrant powers under the authority of a warrant. Subsection (2) amends section 73(3) to make reference to a judge as well as a magistrate.

### **Clause 29 – Amendment of s 74 (Powers under search warrant)**

This clause amends section 74(1) of the PPRA by substituting the words ‘has the following powers’ with ‘may lawfully exercise the following powers’.

Additionally, section 74(1)(j) is amended to clarify that a police officer may photograph any item, whether or not it is seized under the warrant.

### **Clause 30 – Amendment of s 108 (What production order must state)**

This clause amends section 108 of the PPRA by renumbering section 108(2) as section 108(3) and inserting a declaratory provision in subsection (2) to provide police officers with a power to enter under a production order and to re-enter the place to enforce the order.

This amendment removes doubt that the intention of Parliament is and always has been, to provide police with the power of entry and re-entry to enforce a production order issued under this Act.

### **Clause 31 – Amendment of s 127 (What covert search warrant must state)**

This clause amends section 127 of the PPRA by inserting a new paragraph (g) providing for a report in relation to a warrant.

### **Clause 32 – Replacement of s 131 (Report on covert search)**

This clause replaces section 131 of the PPRA. The amended section permits a report to be made to either the Supreme Court judge who issued the warrant or to the public interest monitor. The public interest monitor may refer a report to a Supreme Court judge for the purpose of an order being made under this section regarding the way any thing seized is to be held or dealt with.

### **Clause 33 – Amendment of s 132 (Object of ch 5)**

This clause amends the section by omitting the word ‘offence’ and inserts the phrase ‘serious indictable offence’. This phrase is then replaced with ‘controlled activity offence’.

### **Clause 34 - Amendment of s 135 (Authorised controlled activities)**

This clause:

- (1) amends the section by omitting the word ‘an offence’ and inserting the phrase ‘serious indictable offence against a person’. This phrase is then replaced with ‘controlled activity offence’. These amendments will enable the authorisation of a controlled activity when the identity of a person suspected of the controlled activity offence is not known;
- (2) amends the section to enable the lawful conduct of one or more meetings between the police officer and a person within 7 days, whether or not the meetings were the result of a written or oral communication with the person; and
- (3) requires that before an authorised controlled activity is approved the senior officer, a police officer of or above the rank of inspector, must have regard to the nature or extent of the relevant controlled activity offence when considering whether it is appropriate in the particular circumstances to authorise a police officer to engage in a controlled activity.

### **Clause 35 – Amendment of s 141 (Relationship to other laws and matters)**

This clause amends section 141 of the PPRA to clarify that "function includes power."

**Clause 36 – Amendment of s 197ZK (Relationship to other laws and matters)**

The clause amends section 197ZK of the PPRA to make reference to the section rather than the chapter.

**Clause 37 – Amendment of s 199 (Arrest of escapees etc)**

This clause amends subsection 199 of the PPRA to enable the arrest without warrant of prisoners who are "unlawfully at large" within the meaning of section 112 of the *Corrective Services Act 2006*.

**Clause 38 – Amendment of s 203 (Arrest warrant application)**

This clause amends section 203 of the PPRA to provide that a police officer may apply for a warrant whether or not a proceeding has been started by complaint and summons or notice to appear.

The clause provides that if the application is for an offence other than an indictable offence and it is made because proceedings by complaint and summons or notice to appear would be ineffective, then the reasons for this belief are to be stated.

**Clause 39 – Amendment of s 204 (Issue of arrest warrant)**

This clause is consequential and contributory to the amendments to section 203 of the PPRA.

**Clause 40– Insertion of new s 205A**

This clause provides that if an arrest warrant is issued under section 204 of the PPRA, the proceedings are taken to be started for the purposes of section 52 of the *Justices Act 1886* or any other provision that serves to limit proceedings.

**Clause 41 - Insertion of new section 207A (Effect of release under pt 4)**

The clause also inserts a new section 207A of the PPRA which provides that if an arrested person is released under chapter 6, part 4, any charge of an offence for which the person is released is discontinued.

**Clause 42 – Amendment of s 211 (Additional case when arrest for minor drugs offence may be discontinued)**

This clause amends section 211(1)(c), (d) and (e) of the PPRA by renumbering it as section 211(1)(d), (e) and (f).

A new section 211(1)(c) is inserted to provide that a person is not eligible for drug diversion if the person has previously been sentenced to serve a term of imprisonment for specific drug offences, namely trafficking in dangerous drugs, supplying dangerous drugs or producing dangerous drugs.

This clause omits subsection 211(4) and inserts a new subsection (4) to permit a police officer to offer drug diversion any time before the person appears before the court to answer a charge of a minor drug offence. This allows a police officer to lawfully make the offer of drug diversion without being seen to imply threat, promise or inducement. It also allows for a person charged to come back to the police officer before the first court date and request a drug diversion.

The clause amends subsection 211(5) to require an oral or written explanation of the consequences of a person agreeing to attend a drug diversion assessment program.

New subsection 211(6) provides that if the person agrees to attend a drug diversion assessment program, the person must sign an agreement to attend and complete a drug assessment program.

New subsection 211(7) provides for a disclosure authorisation as part of the drug diversion agreement process. This overcomes difficulties health service providers experienced with confidentiality provisions of other legislation which prohibited disclosure unless the relevant person consented to such disclosure.

New subsection 211(8) provides that a police officer must give a person a written requirement to attend and complete a drug diversion assessment program in accordance with the agreement. It also requires the police officer to inform the person that failure to comply with the requirement is an offence against section 445.

New subsection 211(9) is a renumbered existing subsection (4). It authorises the police officer to give the chief executive (Queensland Health), or a person or organisation nominated by the chief executive for this section, a copy of that agreement.

New subsection 211(10) is existing subsection (5) renumbered. The subsection provides that upon signing of the agreement any drug or utensil are forfeited to the State.

New subsection 211(11) is existing subsection (6) renumbered. The subsection also takes into account the consequential effect of new subsection (6).

**Clause 43 – Amendment of s 214 (Notice to appear may be issued for offence)**

This clause amends section 214(4) of the PPRA by renumbering it section 214(5).

The clause also inserts a new section 214(4) to permit a notice to appear for an offence against the *Transport Operations (Road Use Management) Act 1995* to be served on a person by registered post if it is served in a way complying with the *Justices Act 1886*, section 56(2)(a) or (b). This will allow Superintendents of Traffic and officers in charge of police stations who adjudicate traffic incident matters, to commence proceeding by way of notice to appear instead of complaint and summons as is the current practice. This will alleviate the need to have the complaint and summons signed and issued by a justice of the peace.

**Clause 44 – Amendment of s 219 (Notice to appear equivalent to a complaint and summons)**

This clause amends section 219(3) of the PPRA by omitting the words "watch-house manager or officer-in-charge" and inserting the words "prescribed police officer". In the majority of cases, the watch-house manager or officer-in-charge are not present when a person is taken into custody. This amendment will allow the attending police officer to issue and serve a notice to appear on a person under section 225(2)(b). In such a case, the police officer who arrested the person and not the prescribed police officer, is taken to have started the proceeding against the person.

The clause also inserts a new section 219(5) of the PPRA, which provides a signpost definition of a "prescribed police officer" as per the *Bail Act 1980*, section 7.

**Clause 45 – Amendment of s 220 (Court may order immediate arrest of person who fails to appear)**

This clause amends section 220 of the PPRA by inserting into subsection (2) provisions consequential to the amendments to section 214 and 219 of that Act to reflect changes with respect to notices to appear being served by registered post.

The section provides that a document purporting to be a copy of the notice to appear signed on the day it is served by the police officer who served it and stating either of the following to be accepted as evidence of what it states:

- (a) if the notice to appear was personally served on the person – when and where it was served; or
- (b) if the notice to appear was served on the person by registered mail – the notice to appear was posted to the address stated in the notice by registered post, when and where it was posted, and the registered post identification number for the envelope containing the notice to appear.

The clause amends section 220(6) of the PPRA by renumbering it section 220(7).

The clause also amends section 220 of the PPRA by inserting a new subsection (6) which states that an adult arrested on a warrant issued under section 220(1)(b) is taken, for section 225, to have been arrested for the offence stated in the notice to appear. This means that the provisions of section 225 are available to a police officer receiving custody of the person arrested for an offence.

**Clause 46 – Amendment of s 224 (Duty of police officer after arrest etc. of person)**

This clause amends section 224(2) of the PPRA by inserting a new subsection (f). This states that the requirements of this section do not apply to a person who is arrested under the provisions of section 198(2) and later released under section 208 without having been charged with the offence for which the person was arrested.

### **Clause 47 – Amendment of s 229 (Application of pt 2)**

This clause amends section 229 of the PPRA to include the lawful arrest of a person for an indictable offence. This includes an arrest under section 198(2) for questioning about an offence or investigating an offence.

### **Clause 48 – Amendment of s 318ZZB (Evidentiary provision)**

This clause provides specifically for digital technology for fingerprints and the handling of DNA exhibits. The clause also extends the time frames from 3 to 15 business days before a hearing for service of notice of challenge by a defendant. This will provide for a more efficient court process. To facilitate this process fairly, the clause also extends the period for the supply of a prosecution certificate from 10 to 20 business days

### **Clause 49 – Amendment of s 371AB (Powers for reportable deaths)**

This clause amends section 371AB(4) of the PPRA by inserting the words "search for and" after the words "The officer may". This is to reflect changes brought about by the commencement of the *Coroners Act 2003* which resulted in the inclusion of Part 4A "Powers for Assisting Coroners" in PPRA. This section provides powers to enable a police officer to enter a place where there is a body of a deceased person and the officer reasonably believes the person's death is a death that must be reported to the Coroner.

It is usually impracticable to contact the Coroner to obtain a warrant from the scene of the sudden death. This amendment will provide a power of search and permits police to conduct investigations in locations in which deaths occur. A police officer will also be permitted to restrict entry to a place, stay on or re-enter the place and to seize anything at a place that is reasonably suspected to be relevant to an investigation of the death by the Coroner.

If a death occurs from natural causes, subsection (4) specifically prohibits search.

This amendment prevents the loss of evidence relating to deaths that may later turn out to be suspicious and minimises on-going stress on the families of deceased persons.

### **Clause 50 – Insertion of new ch 9, pt 5, div 1 hdg**

This clause inserts the heading for the new Chapter 9, part 5, division 1 of the PPRA before section 371A.

## **Division 1            Potentially harmful things**

### **Clause 51 – Insertion of new ch 9, pt 5, div 2, hdg**

This clause inserts the heading for the new Chapter 9, part 5, division 1 of the PPRA before section 372.

## **Division 2            Other miscellaneous powers**

### **Clause 52 – Amendment of s 372A (Police actions after domestic violence order is made)**

This clause amends section 372A of the PPRA to reflect changes required with the service of domestic violence protection orders issued under the provisions of the *Domestic Violence Family Protection Act 1989*.

Previously the legislation required that "the" police officer given a domestic violence order for service on a respondent was required to serve it as soon as practicable. This technically necessitated a police prosecutor or other police officer who received a domestic violence order from the court to effect service. In practice however, orders are often given to another police officer for service or directly forwarded by a clerk of the court to the officer in charge of the police station nearest to where the respondent resides. These amendments will remove this restriction on the service of such orders.

### **Clause 53 – Amendment of s 373 (Assistance in exercising powers)**

This clause amends section 373(5) of the PPRA by renumbering as subsection (7). It inserts a new subsection (5) which enables a person to assist a police officer with a search of a place, even though the police officer is not present at the time of the search.



The clause also amends section 373 of the PPRA by inserting a new subsection (6) which states that an assistant may not help search a dwelling unless a police officer is present while the assistant helps in the search.

**Clause 54 – Insertion of new s 377B-377C (Power to examine seized things)**

This clause inserts a new section 377B of the PPRA. Subsection (1) declares that a power to seize a thing under this Act includes and always has included a power to examine the thing and also to arrange for someone else to examine the thing.

The clause also inserts a new section 377C of the PPRA which outlines a power to conduct an examination or to do something that is reasonably necessary or as part of a scientific or other investigative procedure involving a thing, even if the action damages or destroys the thing. This will allow items seized to be properly tested and examined. The clause also provides examples for the section.

**Clause 55 – Replacement of s 380 (Receipt for seized property)**

This clause amends section 380 of the PPRA to provide that police officers are not required give or leave a receipt unless it is suspected that doing so would hinder or frustrate an investigation. This exception applies only for as long as a police officer continues to have this suspicion and while the place is kept under observation. The amendment also provides that where a receipt is required, one receipt may be issued for more than one item provided they are seized from the same person or place. The section does not apply if no one is in possession of the thing, the thing has been abandoned or the thing is of no value other than as evidence of the commission of an offence.

**Clause 56 – Amendment of s 387 (Removal of clothing for search)**

This clause amends section 387 of the PPRA to remove the ambiguity by deleting the words "or all items of ... to ... (b) if the person is a male — the lower part of the body." Prior to this amendment, an anomaly existed in the section in that it permitted a full search of female but only limited searches of males.

**Clause 57 – Amendment of s 390 (If video cameras monitor place where person is searched)**

This clause amends section 390 of the PPRA to clarify an ambiguity. The section did not differentiate between a camera which cannot be turned off for safety and accountability reasons and a monitor that may be turned off. To remove doubt, the section now specifically provides that if a camera can not be turned off, the monitor connected to the camera must be turned off or used to monitor another place while the search is being conducted.

**Clause 58 – Amendment of s 391 (Safeguards for directions or requirements)**

This clause amends section 391 of the PPRA by providing that the section relates to oral directions or requirements. Where a direction is given in writing, the section will no longer apply. This will overcome the difficulties that have been experienced when giving a person a written notice. Under the current law, if a person fails to comply with a written direction, a further opportunity to comply has to be given. By the time such further opportunity is given, the time frame for the original written requirement may have expired. The process could in theory, repeat ad infinitum.

Current Department of Police policy requires, in addition to the written warning that is provided on all reporting notices, the person must be:

- verbally warned that it is an offence to contravene the requirement to report to a police officer as stated on the notice and ensure the person understands this warning; and
- verbally advised that in addition to a possible prosecution for an offence of failing to comply with the requirement, if the person fails to comply with the identifying particulars notice, a court order may be obtained to have the identifying particulars taken.

**Clause 59 – Insertion of new ch 11, pt 1, div 1, hdg**

This clause inserts the heading for the new Chapter 11, part 1 of the PPRA before section 396.

## **Division 1           Persons in custody at watch-houses**

### **Clause 60– Amendment of s 397 (Transfer of persons in watch-houses)**

This clause amends section 397 of the PPRA by renumbering section 397(c), (d) and (e) as section 397(d), (e) and (f).

The clause amends section 397(c) by inserting the words "to a court cell; or." This is to enable a watch-house manager to transfer or cause a person to be transferred to a court cell.

The clause also amends section 397 by inserting a new subsection (2) which provides a definition of court cell to be a place within the precincts of a court that is used for detaining prisoners of the court.

### **Clause 61– Insertion of new ch 11, pt 1, div 2**

This clause inserts the heading for the new Chapter 11, part 1 of the PPRA after section 397. The clause consists of new sections 397A to 397S.

## **Division 2           Watch-house officer's functions and powers**

### **Subdivision 1    Functions**

#### **Insertion of s 397A (Functions of watch-house officers)**

A new section 397A outlines the functions of a watch-house officer.

Subsection 397A(1) states that a watch-house officer has the functions, and may exercise the powers, conferred on a watch-house officer by this Act.

Subsection 397A(2) states that subsection (1) applies subject to any directions of the commissioner or the watch-house manager for the watch-house.

Subsection 397A(3) provides that while a watch-house officer may exercise the powers and functions of a police officer, the watch-house officer is not taken to be a police officer.

Section 397A(4) states that this division does not limit the powers of a police officer under this Act in relation to a person in custody at a watch-house.

## **Subdivision 2 Powers for searching of entrants to watch-houses**

### **Insertion of s 397B (Power to require reasons for entry to watch-houses)**

A new section 397B provides the watch-house officer with the power to require a person in, entering or about to enter a watch-house to state their reason for being in, entering and about to enter a watch-house.

### **Insertion of s 397C (Use of electronic screening devices in watch-houses)**

A new section 397C provides for the use of electronic screening devices. Subsection (1) allows a watch-house officer to use the following electronic screening devices: a walk-through detector, an X-ray machine and a hand held scanner.

Subsection (2) permits a watch-house officer to ask a person entering the watch-house to either walk through a walk-through detector, pass the person's belongings through an X-ray machine, to allow the watch-house officer to pass a hand held scanner in close proximity to the entrant and to pass a hand held scanner in close proximity to the person or the person's belongings.

### **Insertion of s 397D (Watch-house officer may ask entrant to remove outer garment etc.)**

A new section 397D provides a watch-house officer with authority to request a person who enters a watch-house to do a number of things relating to the inspection of clothing and articles for the security of the watch-house. The section also places a requirement on the watch-house officer to explain the reasons for making such a request. While it is not obligatory for a person to comply with the watch-house officer's request, the consequence of failing to comply is that the person may be directed to leave the watch-house under new section 397E. The section also provides that the watch-house officer may touch the garment of a person entering the

watch-house only if they are of the same sex. Finally, the section provides a definition of the word "inspect."

### **Insertion of s 397E (Direction by watch-house officer to leave watch-house)**

A new section 397E provides the watch-house officer with the authority to direct a person to leave the watch-house if the person fails to state the person's reason for being in or about to enter the watch-house or to allow a watch-house officer to exercise a power under section 397C or 397D.

### **Insertion of s 397F (Seizure of proscribed things)**

A new section 397F provides an authority for a watch-house officer to seize a proscribed thing (which is defined in Schedule 4) unless the person has a lawful excuse for being in possession of the thing in the course of the person's trade, business or calling. For example a medical practitioner may be in possession of medicinal drugs or a carpenter may be in possession of tools.

### **Insertion of s 397G (Refusal of entry to and removal from watch-house)**

A new section 397G provides that if a person fails to comply with a request or direction under this subdivision or fails to satisfy the watch-house keeper as to a good and lawful reason to be in a watch-house, then the person may be removed from the watch-house or refused entry.

## **Subdivision 3 Powers relating to persons in custody in or reporting to watch-house**

### **Insertion of s 397H (Watch-house officer may require person to state name and address)**

A new section 397H provides watch-house officers with the authority to require name and address whilst performing duties as a watch-house officer only if a police officer would have the same power in the circumstances.

### **Insertion of s 397I (Watch-house officer may search person in custody at watch-house)**

A new section 397I provides for searching of persons in custody at watch-houses. Subsection (1) authorises a watch-house officer to search and re-search a person in custody at a watch-house.

Subsection (2) authorises a watch-house officer to seize from a person anything found during the search that the watch-house officer reasonably suspects may provide evidence of an offence. For example, drugs located on the person while being searched at the watch-house.

Subsection (3) provides a watch-house officer with the authority to take and retain anything that may endanger a person's safety, anything that may be used to escape or anything else the watch-house officer reasonably considers should be kept in safe custody while the person is in custody.

### **Insertion of s 397J (Watch-house officer may take identifying particulars of person at watch-house)**

A new section 397J authorises a watch-house to take identifying particulars from a person in the same manner as a police officer is authorised.

### **Insertion of s 397K (Commissioner may authorise watch-house officer to take DNA samples of person at watch-house)**

A new section 397K authorises a watch-house officer to take DNA samples in the same manner as a police officer, as long as the watch-house officer has complied with the training and qualifications prescribed by the commissioner.

### **Insertion of s 397L (Power to use force against individual at watch-house)**

A new section 397L outlines the use of force powers available to a watch-house officer. Subsection (1) authorises a watch-house officer to use reasonably necessary force to exercise a power under this Act.

Subsection (2) provides that a watch-house officer may use reasonably necessary force to prevent escape from lawful custody.

Subsection (3) states that a watch-house officer is not authorised to use force likely to cause grievous bodily harm to the person or the person's death.

### **Insertion of s 397M (Power to use force – transfer etc. of person in custody to or from court cell of other place)**

A new section 397M provides authority for a watch-house officer to transfer a person in custody to and from a court cell when authorised to do so by the watch-house manager. This section also authorises a watch-house officer to transfer a person in custody to receive medical, dental, optical or other health care. The section reiterates the provisions of section 397L(3) with respect to the use of force by watch-house officers.

## **Subdivision 4 Provisions about exercise of particular powers**

### **Insertion of s 397N (Search of persons)**

A new section 397N states that the watch-house officer has the same authority as a police officer to search a person in custody at a watch-house.

### **Insertion of s 397O (Property seized during search etc.)**

A new section 397O states that the provisions of the Act that apply to a police officer seizing property also apply to watch-house officers.

### **Insertion of s 397P (Giving directions and making requirements)**

A new section 397P provides an offence for a person who fails to comply with a direction of a watch-house officer under the authority of this part of the Act. The watch-house officer's direction or requirement must comply with the provisions of section 391 of the Act.

### **Insertion of s 397Q (Making entries in registers)**

A new section 397Q states that the watch-house officer is required to maintain the same registers as would a police officer performing the same function or duty.

### **Insertion of s 397R (Responsibilities Code)**

A new section 397R states that the responsibilities code applies to a watch-house officer as it would to a police officer performing the same function and duty.

### **Insertion of s 397S (Custody continues while person in custody is being transferred or escorted by watch-house officer)**

A new section 397S provides that the person in custody remains in custody while being transferred by a watch-house officer to or from a court cell or whilst being transferred to or from receiving, for example, health care.

### **Clause 62 – Amendment of s 415 (Persons to be given copy of information in register)**

This clause amends section 415 by limiting the information available to a person inspecting the register. In this way, private details of other persons are not available for inspection. Material relevant to the actual enforcement act is unaffected.

### **Clause 63 – Amendment of s 416 (Restriction on disclosure of certain information)**

This clause amends section 416 and is consequential to the amendment of section 415.

### **Clause 64 – Amendment of s 420 (Application of pt 3)**

This clause amends section 420 of the PPRA by inserting a new section 420(2) that applies to a vehicle impounded under chapter 2B or 11A or seized under section 59Y, or an animal seized under section 60.

The clause inserts a new subsection 420(3) which has a renumbering function for the subsections.

### **Clause 65 – Insertion of new s 422A-422B**

Insertion of s 422A – (Particular provisions about handling of animals in the possession of the police service)

This clause inserts a new section 422A of the PPRA which provides for the safe-keeping of animals that come into the care of the police service. The relevant thing that is an animal must be maintained and care for in an



efficient, safe and accountable way that has regard for the animal's welfare and relevant animal husbandry practices.

### **Insertion of s 422B – (Forfeiture in particular cases)**

A new section 422B of the PPRA is inserted. The section provides that if the commissioner is satisfied that a thing subject to this part has no value, the thing is forfeited to the State.

### **Clause 66 – Replacement of ch 11, pt 3, div 2, hdg**

This clause omits the heading and inserts a new heading for the new Chapter 11, part 3, division 2.

## **Division 2            Return of relevant things**

### **Clause 67 – Amendment of s 423 (Return of relevant things)**

This clause amends the heading applicable to section 423 of the PPRA. Subsection (1) provides that a police officer must return a relevant thing to a person who had the thing in lawful possession before it came into the possession of the police service if it is not required to be retained and it is lawful for the person to have possession of the thing.

Subsection (2) places a requirement on the police officer to minimise the need to retain the thing as evidence by photographing, testing or gathering secondary evidence in relation to the thing.

Other clarification amendments are made to subsections (3), (4) and (5) to reflect a consistent language and terminology in the section.

### **Clause 68 – Insertion of new s 423A (Application by owner etc. for return of relevant thing)**

This clause inserts a new section 423A of the PPRA. Subsection (1) states that this section applies to a relevant thing that has been in the possession of the police service for at least 30 days and is not the subject of an application under section 424 or that is a relevant thing described in a notice given under section 439(4).

Subsection (2) states that a person with a legal or equitable interest in the relevant thing may apply in writing for return of the relevant thing or may nominate another to whom the relevant thing can be returned.

Subsection (3) is a process requirement where the commissioner may request further information from the person to consider the application appropriately.

Subsection (4) sets out what action may follow once the commissioner has considered the application and any additional information. The commissioner may return the thing to the applicant, or deliver the thing to the nominated person as requested by the applicant or refuse to return the thing.

Subsection (5) states that the commissioner may only return the thing under subsection (4) if the commissioner is satisfied the applicant may lawfully possess the thing and it is appropriate that the thing be delivered to the person.

Subsection (6) applies if the commissioner intends to deliver the relevant thing to a nominated person. The commissioner must be satisfied that the nominated person may lawfully possess the relevant thing. For example, a firearm in the possession of the police service and the owner has nominated a person to take possession of the firearm, then the nominated person must be appropriately licensed under provisions of the *Weapons Act 1990*.

### **Clause 69 – Replacement of s 424 (Application by owner etc. for court order for return of relevant thing)**

This clause replaces section 424 of the PPRA and inserts a new section heading. The section applies if a relevant thing in possession of the police service for 30 days is not returned to the person who was in lawful possession of it under section 423A, or the relevant thing is subject to a forfeiture notice under section 439(4).

A relevant thing is defined in section 420 of the PPRA.

A person who has a legal or equitable interest in a relevant thing in these circumstances, may apply to a magistrate for its return. The magistrate may order in favour of the applicant if it is appropriate and lawful for the person or the nominee to have the thing.

Notice of the application must be given to the commissioner and any other person reasonably believed to have a legal or equitable interest in the thing.

Provision is also made for delivery to a nominee of the applicant.

The section does not apply to a thing that has been forfeited to the State.

A magistrate cannot make an order under this section if the thing is evidence in a proceeding already started, if the thing is for manufacturing a dangerous drug or may be subject to a forfeiture proceeding.

**Clause 70– Amendment of s 425 (Application by police officer if ownership dispute)**

This clause amends section 425(1) of the PPRA by omitting it and inserting a new subsection (1). This section applies if there is a dispute about the ownership of a relevant thing, whether the dispute is between two or more persons, each of whom claims to be the owner of the thing.

It also provides for a dispute about the ownership of the thing between a police officer and a person who claims to be the owner of the thing. This amendment permits a police officer to challenge a claim where a person may not be entitled to the thing or it is doubtful whether the person is the rightful owner.

**Clause 71– Amendment of s 426 (Application for order in relation to seized things)**

This clause amends section 426(2)(h) of the PPRA by omitting and inserting a new section 426(2)(h) which now states ‘it is returned under section 423, 423A or 424’. This is a consequential amendment due to the amendments to sections 423, 423A and 424.

**Clause 72 – Amendment to s 427 (Orders issuer may make in relation to seized thing)**

This clause renumbers subsection 427(2) as subsection 427(3) of the PPRA. The clause inserts a new section 427(2). This amendment authorises the issuer to order that a seized animal may be held by a named person until the end of the proceeding for the charge of an offence in which the animal is evidence or, if the animal is not breeding stock, for the sale of the animal in a way directed by the court. In such circumstances, the proceeds of the sale are disbursed to the cost of the sale and then into consolidated funds.

**Clause 73 – Insertion of new ss 427A- 427D**

Insertion of s 427A (Cost recovery for animals kept by commissioner under order s 427)

This clause inserts a new section 427A of the PPRA. Subsection (1) states that this section applies when an order under section 427(2) an animal is kept in the possession of the commissioner until the end of a proceeding for a charge of an offence in which the animal is evidence.

Subsection (2) states that the commissioner may by letter of demand require the owner of the animal to pay, within a stated reasonable time of at least 28 days, reasonable costs of keeping the animal and any offspring of the animal born while the animal is in possession of the police service.

Subsection (3) states that the commissioner must give the person at least 14 days notice of an intention to require payment of reasonable costs for the keeping of the animals.

Subsection (4) provides that if, after due consideration of all representations, the commissioner gives the person a letter of demand and the person fails to pay as required, the amount payable becomes a debt payable to the State that is recoverable in a court having jurisdiction up to the amount.

Subsection (5) provides that the letter of demand must inform as to the consequences of failing to reply and that the person may appeal to the Magistrates Court.

Subsection (6) provides that nothing in this section stops the owner of an animal voluntarily surrendering ownership of the animal to the State under the new section 427B.

Subsection (7) provides a definition of "animal" that includes offspring born while the animal is in possession of the police service.

### **Insertion of s 427B (Voluntary surrender of animal to State)**

The clause also inserts a new section 427B of the PPRA. Subsection (1) provides that a person who is given a letter of demand under section 427A may agree to surrender the animal to which the letter of demand relates to the State.

Subsection (2) states that the agreement to surrender the animal to the State must be in writing and witnessed by a person who may witness a statutory declaration.

Subsection (3) states that if the State agrees to the surrender of the animal, the animal becomes the property of the State and that the commissioner may sell or dispose of the animal in a way the commissioner considers appropriate.

Subsection (4) states that if the commissioner sells the animal, the proceeds of the sale will go towards the reasonable costs of keeping the animals and any balance to the consolidated fund.

### **Insertion of s 427C (Appeal if letter of demand given under s 427A)**

The clause also inserts a new section 427C of the PPRA. Subsection (1) states that a person given a letter of demand under section 427A, may appeal to the Magistrates Court within 28 days.

Subsection (2) provides that subsection (1) applies even if the amount stated in the letter of demand is greater than that which may be recovered in a personal action in the civil jurisdiction of the Magistrates Court.

Subsection (3) states that the appeal must be started by filing written notice of appeal with the Magistrates Court and by serving a copy of that notice on the commissioner.

Subsection (4) states that once a notice of appeal has been lodged in accordance with subsection (3), section 427A(4) stops having effect.

### **Insertion of s 427D (Deciding appeal)**

The clause also inserts a new section 427D of the PPRA. Subsection (1) states that the presiding magistrate has the same powers as the commissioner, is not bound by the rules of evidence and must comply with natural justice.

Subsection (2) outlines that the Magistrates Court can either confirm the decision of the commissioner, set aside the commissioner's decision or set aside the decision of the commissioner and substitute another decision.

Subsection (3) states that if the Magistrates Court confirms the decision of the commissioner, the person has 28 days from the date of decision to comply with the letter of demand.

Subsection (4) states that if the Magistrates Court substitutes another decision, then that decision is taken to be the decision of the commissioner and the person has 28 days to pay the amount stated in the substituted decision from the date of the Magistrates Court's decision.

### **Clause 74 – Replacement of ch 11, pt 3, div 3**

This clause replaces Chapter 11, part 3, division 3 of the PPRA.

## **Division 3            Dealing with controlled drugs,                                  dangerous drugs etc.**

### **Subdivision 1    Preliminary**

Chapter 11, part 3, division 3 of the PPRA is omitted and a replacement is inserted.

#### **Insertion of s 430 (Application of div 3)**

The clause inserts a new section 430 of the PPRA which states that this division applies to situations where a police officer seizes drug matter or drug matter otherwise comes into the possession of the police service.

#### **Insertion of s 431 (Definition for div 3)**

The clause inserts a new section 431 of the PPRA which provides a definition of "drug matter" for this division.

### **Subdivision 2    General provisions about destruction                                  of drug matter**

#### **Insertion of s 432 (Destruction of drug matter soon after it is seized etc.)**

The clause inserts a new section 432 of the PPRA. Subsection (1) provides that a police officer may destroy drug matter where it is located, if it is not practicable to move or store the drug matter and there is a risk that it may be used in the commission of an offence unless destroyed.

Subsection (2) authorises a police officer to destroy drug matter where it is located if it may be dangerous to move it, take it or store it. An example of this may be material seized from a clandestine laboratory for the production of amphetamines.

Subsection (3) provides that the disposal of hypodermic needles in a way required under the relevant regulation deems the needles destroyed.

Subsection (4) states that this section applies even though a proceeding for an offence in which the drug matter may be relevant has not commenced or

is yet to be finalised. The section applies even though a notice of the proposed destruction of the drug matter that is required to be given under section 433D has not been given.

### **Insertion of s 433 (Steps police officer must take before destroying drug matter under s 432)**

The clause inserts a new section 433 of the PPRA. Subsection (1) states a police officer must photograph drug matter where it is located before destroying the drug matter under section 432.

Subsection (2) states that a police officer must weigh the drug matter or count the number of plants before destroying the drug matter. The police officer must also retain a representative sample of the drug matter.

Subsection (3) states that this section does not apply to drug matter if section 433A applies to the drug matter.

### **Insertion of s 433A (Alternative to destruction if drug matter is thing used in the commission of a drug offence)**

The clause inserts a new section 433A of the PPRA. Subsection (1) states the section applies despite section 432.

Subsection (2) authorises the commissioner to direct drug matter that may be destroyed under the provisions of section 432 not be destroyed. The commissioner may direct that the thing first be photographed, then disposed of in a way the commissioner considers appropriate instead of destroying it. This clause provides an example.

## **Subdivision 3 Destruction of drug matter if notice required**

### **Insertion of s 433B (Application of sdiv 3)**

The clause inserts a new section 433B of the PPRA which states that this subdivision applies to drug matter that is not destroyed under subdivision 2.

### **Insertion of s 433C (Definitions for sdiv 3)**

The clause inserts a new section 433C of the PPRA, which provides definitions for this subdivision.

### **Insertion of s 433D (Destruction notice may be given to person)**

The clause inserts a new section 433D of the PPRA. Subsection (1) states that a police officer may give a person who he or she reasonably suspects has committed a drug offence a written notice under this section which is called a destruction notice.

Subsection (2) states that the destruction notice must be in an approved form and must include the person's name and address.

Subsection (3) provides that if the name and address are unknown, the requisite information, to the extent it is known, may be made available on the police service website.

Subsection (4) provides that the destruction notice issued under subsection (3) is to a child, it must not identify that child. But there must be sufficient information on the notice to allow the child or child's lawyer to identify the notice as relating to the child and the offence of which the drug matter is evidence.

Subsection (5) provides that the destruction notice is taken as been given to the person as soon as it may be viewed by a person on the internet. It is not necessary that the person to whom the notice relates knows it is accessible.

### **Insertion of s 433E (What destruction notice must state)**

The clause inserts a new section 433E of the PPRA which sets out the information that needs to be included in the destruction notice. The destruction notice must state that the commissioner possesses an analyst's certificate; what that certificate states; that within 30 days after the notice is given, the person may request a representative sample of the drug matter to be analysed by an appropriate qualified independent analyst; the analysis request must state the name, address and qualifications of the independent analyst; and the person must pay the costs for the independent analyst and if the person does not make the analysis request within 30 days, the commissioner may destroy the drug matter.

### **Insertion of s 433F (Making sample of drug sample available)**

The clause inserts a new section 433F of the PPRA. Subsection (1) provides that after due consideration, the commissioner may release a representative sample of the drug matter, if satisfied with the qualification of the independent analyst within 5 business days.



Subsection (2) states that if the commissioner is not satisfied with the independent analyst's qualifications, the commissioner may request the person to name another independent analyst within 30 days.

Subsection (3) provides that if satisfied, the commissioner may proceed as outlined in subsection (1).

### **Insertion of s 433G (When drug matter may be destroyed)**

The clause inserts a new section 433G of the PPRA. Subsection (1) authorises the commissioner to destroy any drug matter if the person does not make a nomination under section 433F.

Subsection (2) provides that the commissioner may destroy the drug matter from which a representative sample is taken 10 business days after the representative sample was made available.

Subsection (3) provides that if within 5 business days the independent analyst gives the commissioner a written notice disputing the analyst's certificate, the commissioner must not destroy the drug matter until the proceeding is finalised.

Subsection (4) provides that section 443I, which permits the keeping of drugs for police service training, is not limited by this section.

### **Clause 75 – Amendment of s 435 (What is the appointed day for disposal of weapons under s 434)**

This clause amends section 435 of the PPRA. Under the existing law, difficulties have been encountered in the identification of the appointed day for weapons seized as a result of police investigating domestic violence complaints. The section is amended to provide that the appointed day is three months after the day the protection order was made in accordance with the *Domestic and Family Violence Protection Act 1989*.

### **Clause 76 – Amendment of s 438 (Order for forfeiture of particular relevant things)**

This clause amends section 438 of the PPRA to deal with the disposal of things that are not connected with offences. The section requires that where the owner of property cannot be located, as an alternative to advertising in a newspaper, a notice of disposal of property may be advised on the Police Service web site. This method of notification will save the

cost of advertising items. Newspaper advertising will remain an option to be used at the commissioner's discretion.

### **Clause 77 – Amendment of s 441 (Dealing with forfeited things)**

This clause amends section 441(3)(b), by inserting the words 'and doing anything necessary to prepare it for sale' after the words 'the thing'. This clause also provides an example.

The clause also omits subsection 441(4).

### **Clause 78 – Insertion of new ch 11, pt 3, div 9**

This clause inserts a new chapter 11, part 3, division 9 of the PPRA.

## **Division 9            Evidentiary provisions**

### **Insertion of s 443AA (Evidentiary provision about particular things in the possession of the police service)**

The clause inserts a new section 443AA of the PPRA. This section relates to the continuity of possession of exhibits. All exhibits in possession of the Police Service have numbered exhibit tags (running statement) attached. When an exhibit is passed from one person to another for any reason, the receiving person signs the exhibit tag, acknowledging receipt. Thus, a record is kept of who has had possession of the exhibit.

This section introduces the exhibit tag into evidence after a certificate has been issued, but only in the absence of challenge from a defendant. This will save the prosecution and court system the time and cost of having witnesses available or on stand-by when their evidence is unchallenged. For example, for a hearing in Thursday Island, one officer may transport a drug exhibit for analysis to Cairns Airport and hand it to another officer who takes the exhibit to an analyst in Brisbane. In the absence of such a certificate, both officers have to travel to Thursday Island to give continuity evidence.

Subsection (1) provides that the section applies to a running statement.

Subsection (2) provides that a certificate issued by the commissioner and stating a running statement attached to the certificate regarding the running statement is evidence of what is stated.

Subsection (3) provides that a running statement is evidence of what it states.

Subsection (4) places a requirement on the prosecuting authority intending to rely upon the certificate to give a copy to the defendant or the defendant's lawyer at least 14 business days before the hearing day.

Subsection (5) states that the defendant who intends to challenge the certificate must give the prosecuting authority at least 10 business days notice before the hearing day. Notice of the matter to be challenged must be in the approved form.

Subsection (6) states that if the defendant takes action under subsection (5), the certificate stops being evidence of the matter challenged. Thus, the prosecution has to prove the matters in the ordinary way.

Subsection (7) provides a number of definitions.

### **Clause 79 – Insertion of new ch 11A**

The sections in the new chapter 11A of the PPRA collectively form clause 75. A heading for the new Chapter 11A after Chapter 11, part 5 is provided.

## **Chapter 11A Provisions about evading police officers**

### **Part 1                      Preliminary**

#### **Division 1                Explanation**

#### **Insertion of s 443V (Explanation of Chapter 11A)**

This section is an explanatory clause that is necessary to provide direction, purpose and clarity to the new chapter. Because section 14B of the *Acts Interpretation Act 1954* only permits the courts' referral to extrinsic

material such as explanatory notes in certain circumstances, it is desirable to include the necessary clarification clauses in the Bill.

Subsection (1) expresses the general mischief that the chapter sets out to address, namely the failure to stop by persons driving motor vehicles when directed to do so by a police officer using a police service motor vehicle. The failure to stop within the purview of this chapter only includes motorised interceptions. It does not include a failure to stop when directed by a police officer who is not in or on a police service motor vehicle, for example, a police officer in a private vehicle, or a police officer who is on foot. A failure to stop a motor vehicle is the pre-cursor to a police pursuit, which often results in the deaths of uninvolved persons, police and suspects. The policy initiating the chapter is premised upon the notion that the danger is inherent not only in a fleeing offender's vehicle but in the pursuing police vehicle, and sets in place a legislative scheme to assist investigations and prosecutions of persons who fail to stop.

Subsection (2) provides that a driver's failure to stop may be based on a desire to avoid prosecution for an offence. The use of the word "may" acknowledges that while interceptions are often as the result of an offence, there is no requirement that the person has committed another offence before the provisions of this chapter can take effect.

Subsection (3) expands upon subsection (2), stating that there are many reasons why a police officer gives a direction requiring a driver to stop, and lists a number of reasons for doing so. One of the examples is that the driver is driving dangerously. In this circumstance, the direction to stop would be in the investigation of an offence. Another of the examples is that the police officer proposes to perform a breath test. In such case, there may be no evidence of an offence at the time of interception.

Subsection (4)(a) states that the chapter provides for an offence called an evasion offence.

Subsection (4)(b) states that the chapter enables a court to order the impoundment or forfeiture of a motor vehicle after the court finds the driver of a motor vehicle guilty of an offence. Thus, impoundment and forfeiture is a penalty imposed by the courts as punishment for the offence. It is not an arbitrary or unqualified power of the state to confiscate private property.

## **Division 2            Interpretation**

### **Insertion of s 443W (Definitions for ch 11A)**

New section 443W provides a number of definitions for the purpose of chapter 11A.

### **Insertion of s 443X (Giving a direction for Chapter 11A)**

Subsection 443X(1) defines the giving of a direction. The conditions set out in paragraphs (a), (b) and (c) must be co-existent when a direction is given. Paragraph 443X(1)(a) explains that a police officer gives a direction to the driver of another vehicle if the police officer is in or on a police vehicle that is being used to attempt to intercept the motor vehicle. The police officer could be in or on any vehicle owned and designated as a police vehicle, including a marked or unmarked police car, van or motor cycle. The directions within the purview of this chapter do not include directions to stop by a police officer who is not in a police service motor vehicle.

Paragraph 443X(1)(b) provides that the police officer brings the police service vehicle to a position in relation to the other motor vehicle where a police officer can give the driver of the other vehicle a direction to stop the other vehicle. Whether a vehicle is in a position in relation to the other motor vehicle that a direction to stop can be given, is a question for determination by the tribunal of fact.

Paragraph 443X(1)(c) states that a direction includes the police officer giving a physical or audible signal or displaying a warning light or warning lights and sounding an alarm. For example, a police officer could give a physical signal by positioning a police service motor cycle along side a driver in traffic and clearly indicating to a driver by hand signal and other non-verbal communication to pull over to the side of the road. An audible signal could be a verbal direction to pull to the side of the road, where vehicle windows are open, the vehicles are travelling at low speed and the driver can clearly hear the instruction. Where an alternative physical or audible signal is not used, a warning light, warning lights and an alarm are necessary for a direction. There is nothing in the paragraph to exclude a combination of physical and audible signals and the use of lights and alarms constituting a direction.

Subsection 443X(2) states that a police officer gives a direction to a driver when the police officer first gives a physical or audible signal to the driver

or displays the warning light, warning lights and sounds the alarm fitted to the police service motor vehicle. This clause is designed to particularise the element of time for a charge, as to when a direction is first given. Once the tribunal of fact is satisfied on the evidence that a direction has been given, a person is liable to the consequences of disobeying the direction.

### **Insertion of new s 443Y (What is a *warning light* for ch 11A)**

Section 443Y provides a definition of warning light for chapter 11A.

### **Insertion of new s 443Z (When a person is charged for this chapter in relation to an evasion offence if proceeding for the offence is started by notice to appear or arrest)**

Subsection 443Z(1) states that this section applies if a proceeding for an evasion offence is started by either a notice to appear or arrest.

Subsection 443Z(2) provides that if the proceeding is commenced by notice to appear, the person is taken to be charged with having committed the offence when the notice to appear is issued and served on the person.

Subsection 443Z(3) provides that if the person is arrested for an evasion offence, the person is taken to be charged with having committed the offence when the person is arrested.

Subsections (2) and (3) are relevant in terms of the chapter's forfeiture and impounding provisions, particularly as to when an application can be made, and also as to the offence of modifying or selling a motor vehicle when a proceeding for an evasion offence is started.

### **Insertion of s 443ZA (Impounding or forfeiture of motor vehicle is in addition to other punishment)**

Section 443ZA, states that impoundment or forfeiture of motor vehicles is in addition to any other penalty imposed by the court.

### **Insertion of s 443ZB (Interaction between ch 2B and this chapter)**

The purpose of this section is to provide that applications for impoundment or forfeiture under chapter 2B and this chapter are not limited by the fact that applications may be made under both chapters. Sometimes a person will commit an offence prescribed under chapter 2B and an evasion offence

under this chapter, rendering the person liable to forfeiture under both chapters.

Subsection 443ZB(1) provides that this section applies if, before a police officer can impound a motor vehicle under Chapter 2B for a prescribed offence, the driver commits an evasion offence.

Subsection 443ZB(2) provides that if an impounding order under chapter 2B can not be made, an impounding order for the motor vehicle involved in the evasion offence may be made under this chapter. For example, if the person is found not guilty of the chapter 2B offence, an application may still be made for the evasion offence.

Subsection 443ZB(3) provides that if an application for impounding can be made for an offence under chapter 2B and an evasion offence, the vehicle may be impounded by application under either chapter 2B or this chapter.

Subsection 443ZB(4) provides that if the forfeiture order can not be made under chapter 2B, but may be made under this chapter, the application may be made under this chapter.

Subsection 443ZB(5) provides that if an application for a forfeiture order may be made under either chapter 2B or this chapter, the application for a forfeiture order may be made under chapter 2B or this chapter.

### **Division 3            Relationship with Consumer Credit Code**

#### **Insertion of s 443ZC (Relationship with Consumer Credit Code)**

Section 443ZC states that nothing in this chapter affects the right of a credit provider to repossess a motor vehicle under the Consumer Credit Code and sell it.

## **Part 2                    Offences and related provisions**

### **Division 1                Offences**

#### **Insertion of s 443ZD (Offence for driver of motor vehicle to fail to stop motor vehicle)**

Subsection 443ZD(1) states that this section applies if in the exercise of a power under an Act, a police officer driving a police service motor vehicle gives the driver of another vehicle a direction to stop that vehicle.

Subsection 443ZD(2) provides that the driver of the motor vehicle must stop the motor vehicle as soon as practicable, if a reasonable person would stop the motor vehicle in the circumstances. The phrases "reasonable person" and "in the circumstances" are intended to apply both objective and subjective tests to the operation of this section. The courts are familiar with the application of these tests and a great body of precedent has been set, particularly in relation to the concept of provocation, either as a defence or mitigating factor, in assault and homicide offences under the Criminal Code.

The penalty for failing to comply with this direction to stop carries a maximum penalty of 200 penalty units or 3 years imprisonment.

Subsection 443ZD(3) provides that an offence against subsection (2) is an evasion offence.

Subsection 443ZD(4) provides that it is sufficient evidence of the commission of the offence if the evidence is that the driver, in failing to stop, took some action to avoid being intercepted by a police officer. For example, a drink driver who overtly looks at the police and is aware of the police direction may continue to drive within the speed limit but simply refuse to pull over, thus avoiding interception. Low speed interception events are not excluded from the operation of this chapter. Also, the driver's action to avoid interception could be inferred in the circumstances, for example, by the vehicle accelerating, changing lanes, failing to stop at a red light or turning off a side street. The behaviour of the driver, the vehicle or both can infer the driver's action to avoid being intercepted.

Subsection 443ZD(5) provides that for subsection (2) it is immaterial that the driver had a mistaken belief that the motor vehicle from which the



police officer was giving the direction was an emergency vehicle unless the driver proves, on the balance of probabilities, that a reasonable person in the circumstances would have believed the motor vehicle was an emergency vehicle. This subsection effectively qualifies the use of the section 24 'Mistake of fact' defence under the Criminal Code. If the mistake of fact defence were left unqualified, a defendant would only have to fairly raise this defence and the prosecution would be unable to negate the defence beyond a reasonable doubt. Thus, charges where this defence was raised would be likely to fail.

Subsection 443ZD(6) provides that this section does not limit section 51 of the PPRA relating to stopping vehicles for prescribed purposes.

Subsection 443ZD(7) provides a definition of emergency vehicle.

## **Division 2            Matters about investigation of                                          evasion offence**

### **Insertion of s 443ZE (When evasion offence notice may be given to owner of motor vehicle involved in offence)**

Section 443ZE provides for a system of notices to assist investigations into evasion offences. The notice system is in addition to the ordinary investigative techniques employed by police officers and is not a binding or mandatory prerequisite to commencing a proceeding for an offence under this chapter. A police officer may or may not choose to use a notice in the investigation of an offence.

Subsection 443ZE (1) provides that this section applies if, on the investigation of an evasion offence, the investigating officer believes the use of a notice may assist the investigation.

Subsection 443ZE (2) provides that an evasion offence notice may be given to the owner (or nominated person by virtue of subsection (6)) of a vehicle requiring the owner to provide the name of the person the owner believes was using the vehicle when the evasion offence happened.

Subsection 443ZE (3) provides that if the owner is an individual, the evasion offence notice must be given to the owner personally.

Subsection 443ZE (4) provides that the police officer must explain the requirements of the notice and the consequences of not complying with the notice.

Subsection 443ZE (5) prescribes the contents of an evasion offence notice.

Subsection 443ZE (6) provides that this section applies to a nominated person in the same way as it applies to an owner. Therefore, if an owner nominates another person in a declaration, the nominated person who may be subsequently served with a notice by a police officer, has the same obligations to comply.

### **Insertion of s 443ZF (Who may be prosecuted for evasion offence if no response to evasion offence notice)**

Section 443ZF provides that a person who is served with an evasion offence notice and fails to comply with the requirements of that notice, may be charged with committing the offence. The onus is upon that person to prove on the balance of probabilities that they were not the driver at the time of the offence.

Subsection 443ZF(1) provides that the section only applies if a police officer give an evasion offence notice to a person and the person does not give the police officer a declaration as required within the requisite time.

Subsection 443ZF(2) provides that the person is taken to be the driver at the time of the offence, even though the actual driver may have been someone else.

Subsection 443ZF(3) provides that the liability of the actual offender, but the person served and the actual offender cannot both be punished for the offence.

Subsection 443ZF(4) provides that in a proceeding for an evasion offence started against an person because of this section, it is a defence for the person to prove on the balance of probabilities that the person was not the driver of the motor vehicle involved in the offence when the offence happened.

## **Division 3            Evidentiary provisions**

### **Insertion of s 443ZG (Evidentiary provision)**

Section 443ZG provides evidentiary provisions for the purpose of the chapter.

Subsection (1) provides for evidentiary certificates signed by the commissioner as evidence that the person was the owner of a motor vehicle.

Subsection (2) provides averments as evidence that the person was the owner of a motor vehicle; that the person was or was not over or under a stated age; and that a thing was a motor vehicle or particular class or description of motor vehicle.

Subsection (3) provides that it is not necessary for the prosecution to call a witness other than the person who gave a declaration that named the defendant. This obviates the need to call witnesses in continuity fashion. For example, if A nominates B; then B nominates C; then C nominates D; then A and B do not have to be called, as C is the person who has nominated D, and is the person with the first-hand knowledge that D was the user of the vehicle.

## **Part 3                      Obtaining impounding and forfeiture orders**

### **Division 1              Application provisions**

#### **Insertion of s 443ZH (Application for impounding order for evasion offence)**

Subsection 443ZH(1) provides that this section applies if a person not previously found guilty of an evasion offence, is charged with an evasion offence in circumstances that an application for a forfeiture order cannot be made under section 443ZI.

Subsection 443ZH(2) provides that a police officer may make application to the court for an impounding order for the motor vehicle involved in the evasion offence that the motor vehicle be held at a holding yard for a period of not more than 3 months.

Subsection 443ZH(3) provides that the vehicle subject to the impounding order under subsection (2) may be more than the maximum amount that may be claimed in a personal action in the civil jurisdiction of the Magistrates Court.

### **Insertion of s 443ZI (Application for forfeiture order for evasion offence)**

Subsection 443ZI(1) provides that this section applies if a person is charged with an evasion offence and the person has previously been found guilty of one evasion offence committed on a previous occasion or has previously been charged with an evasion offence which has not been decided.

Subsection 443ZI(2) provides that a police officer may apply to a relevant court for a forfeiture order.

Subsection 443ZI(3) provides that subsection (2) applies even though the value of the motor vehicle may be more than the maximum amount that may be claimed in a personal action in the civil jurisdiction of the Magistrates Court.

## **Division 2 Orders if offence not decided**

### **Insertion of s 443ZJ (Orders on application for impounding order if evasion offence not decided)**

Applications under this chapter can only be made when a person is charged with one or more evasion offences. Impounding orders can only be made upon a finding of guilt.

Subsection 443ZJ(1) provides that this section applies if an application for an impounding order is made to a relevant court in relation to a motor vehicle involved in an evasion offence and the evasion charge has not been decided.

Subsection 443ZJ(2) provides that a court must adjourn the application until the person whom the application relates has been found guilty of the evasion offence.

### **Insertion of s 443ZK (Orders on application for forfeiture order if evasion offence not decided)**

While an application for an order can be made when a person is charged, a forfeiture order cannot be made under this chapter unless the person has been found guilty of two evasion offences.

Subsection 443ZK(1) provides that this section applies if an application is made for a forfeiture order for a motor vehicle involved in an evasion offence and the proceeding in which the application relates has not been decided.

Subsection 443ZK(2) provides that the court must adjourn the application until the person has been found guilty on two occasions.

### **Division 3            Advice of date of hearing**

#### **Insertion of s 443ZL (Advice to owner of date of hearing)**

Subsection 443ZL(1) provides that a police officer must, as soon as reasonably practicable, give the owner written notice of the date, place and time of the hearing of an application for a forfeiture or impounding order.

Subsection 443ZL(2) provides that if the owner is a child, and it is reasonably practicable to do so, then the notice must be given to the child's parent or guardian.

## **Part 4                Deciding applications**

### **Division 1            Where and when applications may be heard**

#### **Insertion of s 443ZM (Where application is to be decided)**

Section 443ZM states that an application for forfeiture or impounding order must be heard and decided by the relevant court.

#### **Insertion of s 443ZN (When application to be heard)**

Subsection 443ZN(1) provides that the application for an impounding order must be heard and decided as soon as possible after the person is found guilty of one evasion offence.

Subsection 443ZN(2) provides that the application for a forfeiture order must be heard as soon as possible after the person has been found guilty of two evasion offences.

Subsection 443ZN(3) provides that if an application for a forfeiture order is before the relevant court and the person named in the application is found not guilty of one of the evasion offences or one offence is discontinued and the motor vehicle has not previously been impounded for an evasion offence, then the court may proceed with the application for forfeiture as if it were an application for an impounding order. This means that just because a forfeiture application is made, a court is not prevented from making an impounding order if one of the two offences does not end in a finding of guilt.

Subsection 443ZN(4) provides that an application for a forfeiture order in the context of subsection (3) is taken for divisions 2 and 3, to be an application for an impounding order.

## **Division 2            Consideration of applications**

### **Insertion of s 443ZO (Consideration of application for impounding order)**

Subsection 443ZO(1) states that upon hearing an application for an impounding order, the relevant court may order that the motor vehicle be impounded for a stated period of not more than three months.

Subsection 443ZO(2) allows the relevant court to order the person to perform community service.

Subsection 443ZO(3) provides that if the person was a child when the evasion offence was committed, the relevant court must consider a costs order under section 443ZS.

### **Insertion of s 443ZP (Consideration of application for forfeiture order)**

Subsection 443ZP(1) provides that the relevant court hearing an application for a forfeiture order may order that the vehicle be forfeited to the State or impounded for a period not longer than three months, if the person has been found guilty of two evasion offences.

Subsection 443ZP(2) provides direction as to what offence can initiate an impounding as an alternative to forfeiture.

A motor vehicle can be impounded after one evasion offence.

A motorbike can be forfeited after two evasion offences.

This section gives the court discretion to impound instead of forfeiting after two evasion offences.

Therefore, this subsection states that impoundment is not for the offence for which an impoundment has previously been made but the offence for which the motorbike could have been forfeited.

Subsection 443ZP(3) permits the relevant court to order the person to perform a period of community service.

Subsection 443ZP(4) provides that on making the forfeiture order, the motor vehicle becomes the property of the State, and that charges or security interests registered under the *Motor Vehicles and Boats Securities Act 1986* are extinguished.

## **Division 3            Other provisions about applications and others**

### **Subdivision 1    Community service orders**

Insertion of s 443ZQ (Community service instead of impounding or forfeiture order)

Subsection 443ZQ(1) provides that this section applies if the forfeiture or impounding order would cause financial hardship and the person was an adult at the time of the offence.

Subsection 443ZQ(2) provides that the court may order not more than 240 hours community service instead of impounding or forfeiting the motor vehicle.

Subsection 443ZQ(3) states that an order under subsection (2) is taken to be an order under the *Penalties and Sentences Act 1992* and is taken to have been made in the proceeding for the evasion offence giving rise to the impounding or forfeiture order.

## **Subdivision 2 Costs orders if child found guilty of evasion offence**

### **Insertion of s 443ZR (Costs order if child found guilty of evasion offence)**

Subsection 443ZR(1) states that this section applies to the court that makes an impounding order in relation to a child at the time of the evasion offence.

Subsection 443ZR(2) provides that the court must consider where a child has the capacity to pay costs for the removal and keeping of the motor vehicle. If the court does consider the child has the capacity, the court may make such an order.

Subsection 443ZR(3) provides that if there is a submission by the child or the child's parent that the child does not have the capacity to pay the costs, the court may call on the child's parent under an applied section 258 of the *Juvenile Justice Act 1992* (the JJA) as to why the parent should not pay the outstanding costs.

Subsection 443ZR(4) provides that the court may order under an applied section 259 of the JJA that the parent pay the costs incurred for the removing and keeping of the motor vehicle.

Subsection 443ZR(5) cross-references this section, section 443ZQ and sections 258 and 259 of the JJA.

### **Insertion of s 443ZS (Application of applied sections for s 443ZR)**

Subsection 443ZS(1) applies sections 258 and 259 of the JJA to section 443ZR.

Subsection 443ZS(2), is a machinery section linking with section 258 of the JJA.

Subsection 443ZS(3) is a machinery section linking with section 259 of the JJA.

Subsection 443ZS(4) states that section 260 of the JJA does not apply and that section 34 of the *State Penalties Enforcement Act 1999* does apply to an order made under applied section 259(5).



### **Subdivision 3 Offences**

#### **Insertion of s 443ZT (Motor vehicle not to be sold etc. before charge of offence is decided)**

Subsection 443ZT(1) provides that this section applies if a proceeding against an owner or driver have commenced.

Subsection 443ZT(2) that the owner of a motor vehicle subject to a charge of an evasion offence must not sell or modify the vehicle until the matter is decided. The section provides a maximum penalty of 40 penalty units.

Subsection 443ZT(3) provides a definition of "modify".

#### **Insertion of s 443ZU (Offence to remove motor vehicle impounded under court order)**

Section 443ZU creates an offence for removing a motor vehicle subject to an impounding order from a holding yard. The section provides a maximum penalty of 40 penalty units.

### **Subdivision 4 General**

#### **Insertion of s 443ZV (Defence)**

Section 443ZV provides that it is a defence for the owner of a motor named in an application for a forfeiture or impounding order to prove that the evasion offence happened without the person's knowledge or consent.

#### **Insertion of s 443ZW (Counting the occasions)**

Subsection 443ZW(1) specifies certain sections of this chapter and provides a direction as to what can be considered a separate occasion. A separate occasion is an event or series of events that happened on an occasion separate to the event or series of events making up the other occasion.

Subsection 443ZW(2) provides that in section 443ZI, a reference to an evasion offence committed on a previous occasion is a separate occasion to the occasion regarding the circumstances or grounds for the application for forfeiture order.

Subsection 443ZW(3) provides direction as to whether a person has been charged or found guilty in relation to an evasion offence committed on a previous occasion. A number of circumstances are declared to be immaterial and an example is provided.

Subsection 443ZW(4) provides that it is immaterial that the finding of guilt for an impoundment or forfeiture order was the offence in relation to which the application was started and that it is also immaterial that the finding of guilt was committed before or after the application was started. An example is given.

### **Insertion of s 443ZX (Appeal)**

Subsection 443ZX(1) provides that an order under section 443ZQ may be appealed against as a sentence imposed on the person.

Subsection 443ZX(2) provides that the person may appeal to the District Court within 28 days.

### **Insertion of s 443ZY (Powers for enforcing court order)**

Subsection 443ZY(1) states that the section applies if the relevant court has made either an impounding order or forfeiture order.

Subsection 443ZY(2) states that for giving effect to an impounding order or a forfeiture order, a police officer is authorised to enter any place without a search warrant where it is reasonably suspected the motor vehicle may be found. The police officer is authorised to search, impound or take possession of the motor vehicle.

Subsection 443ZX(3) states that the powers in subsection (2) also include the power to re-enter a place.

Subsection 443ZY(4) outlines a number of powers police have with respect to locating and dealing with a motor vehicle subject to an impounding or forfeiture order.

Subsection 443ZY(5) states that the powers described in subsection 4(a) and (b) may be used before or after the motor vehicle is seized.

### **Insertion of s 443ZZ (Duties of police officer after impounding or seizing motor vehicle)**

Subsection 443ZZ(1) provides that after impounding or taking possession of a motor vehicle under an impounding order or a forfeiture order, the

police officer must move the vehicle to a holding yard in a way the police officer considers appropriate.

Subsection 443ZZ(2) provides that when a motor vehicle is impounded, the police officer must give the owner notice of how the motor vehicle may be recovered and that the owner may need to show proof of ownership. The owner may be required to pay costs of removing and keeping the motor vehicle. If the owner was not the driver of the motor vehicle at the time of the evasion offence, the driver must pay the costs incurred. The owner must be informed of the penalty for removing a motor vehicle from a holding yard.

### **Insertion of s 443ZZA (Police officer may authorise tow)**

Subsection 443ZZA (1) provides that this section applies if a police officer arranges for a impounded motor vehicle or vehicle forfeited to the State to be moved to a holding yard.

Subsection 443ZZA(2) authorises a police officer to sign a towing authority for the motor vehicle.

Subsection 443ZZA(3) provides that the driver of a tow truck must tow the vehicle where the police officer directs or to a holding yard ordinarily used.

Subsection 443ZZA(4) provides a definition of "towing authority" for this chapter.

## **Part 5            Other provisions**

### **Division 1            Liability for costs of impounding**

#### **Insertion of s 443ZZB (Liability to pay costs of impounding – adult driver)**

Subsection 443ZZB(1) states that this section applies where a motor vehicle is impounded for an evasion offence.

Subsection 443ZZB(2) states that if the impounded vehicle was driven by an adult who was not the owner of the motor vehicle and who was found guilty of an evasion offence, the driver is liable to pay costs of removing and keeping of the motor vehicle.

Subsection 443ZZB(3) provides that if the motor vehicle was impounded because the owner is found guilty of an evasion offence, the owner is liable to pay costs of removing and keeping the motor vehicle.

### **Insertion of s 443ZZC (Liability to pay costs – child driver)**

Subsection 443ZZC(1) states that this section applies if the driver or owner of an impounded motor vehicle was a child at the time of the offence.

Subsection 443ZZC(2) provides that the child is liable to pay costs if the court orders under section 443ZR.

Subsection 443ZZC(3) states that under section 443ZR the court may order that the parents of the child are liable for the costs of removing and keeping the motor vehicle.

### **Insertion of s 443ZZD (Payment of costs if motor vehicle not recovered)**

Subsection 443ZZD(1) states that this section applies to a person who is entitled to recover a motor vehicle after a period of impoundment ends but fails to recover the motor vehicle.

Subsection 443ZZD(2) provides that the driver is liable to pay the costs of keeping the motor vehicle for each day after the period of impounding ends.

### **Insertion of s 443ZZE (Registration of costs under State Penalties Enforcement Act 1999)**

Subsection 443ZZE(1) provides that when an adult who is liable to pay costs under this division and fails to pay the amount owing in a reasonable time, the commissioner may give particulars of the costs to the registrar under the *State Penalties Enforcement Act 1999*.

Subsection 443ZZE(2) provides that the registrar must register the particulars in accordance with section 34 of the *State Penalties Enforcement Act 1999*.

Subsection 443ZZE(3) provides that for this section, the adult fails to pay costs if: the commissioner obtains an order for payment of costs against the person; the commissioner gives the person a copy of the order and a letter of demand for the payment of costs; and the person fails to pay within 28

days, after receiving the copy of the order and letter of demand or a longer period if agreed to by the commissioner.

## **Division 2      Release of impounded motor vehicle**

### **Insertion of s 443ZZF (Release of motor vehicle impounded under court order)**

Subsection 443ZZF(1) provides that this section applies if a motor vehicle is impounded under part 4, division 2.

Subsection 443ZZF(2) provides that when the period of impoundment ends, the owner is entitled to recover the motor vehicle from the holding yard. It is immaterial whether or not the State has paid the costs of removing and keeping the motor vehicle.

Subsection 443ZZF(3) provides that the person holding the motor vehicle must release the vehicle as soon as practicable during business hours on a business day to the owner or person nominated in writing by the owner.

Subsection 443ZZF(4) provides a definition of business hours.

## **Division 3      Sale, transfer or disposal of impounded or forfeited motor vehicle**

### **Insertion of s 443ZZG (Sale of motor vehicle if not recovered after impounding ends)**

Subsection 443ZZG(1) provides that if within 2 months after a period of impounding ends and the owner fails to recover the motor vehicle, the commissioner may sell the motor vehicle and anything in it or on it. The sale must be by way of public auction or in a manner the commissioner considers appropriate.

Subsection 443ZZG(2) provides that the sale or disposal must be advertised in a newspaper in the locality where the vehicle was impounded.

Subsection 443ZZG(3) provides that the commissioner must give written notice of the proposed sale or disposal of the motor vehicle to the owner.

### **Insertion of s 443ZZH (Voluntary transfer of ownership of motor vehicle to State)**

Subsection 443ZZH(1) provides that this section applies despite section 443ZT (a person must not modify or sell a vehicle subject to a forfeiture or impoundment order).

Subsection 443ZZH(2) provides that the owner of a motor vehicle subject to section 443ZT may agree to transfer ownership of the vehicle to the State.

Subsection 443ZZH(3) provides that the agreement must be in writing and witnessed by a person who may witness a statutory declaration.

Subsection 443ZZH(4) provides that if the State agrees to a transfer of ownership of the motor vehicle, the motor vehicle becomes the property of the State and the commissioner may sell or dispose of the motor vehicle in a manner the commissioner considers appropriate.

### **Insertion of s 443ZZI (Disposal of forfeited motor vehicle)**

Section 443ZZI provides that the commissioner may dispose of a motor vehicle forfeited to the State under this chapter in a way the commissioner considers appropriate, including by selling it.

### **Insertion of s 443ZZJ (Application of proceeds of sale)**

Subsection 443ZZJ(1) provides that this section applies if the commissioner decides to sell a motor vehicle under section 443ZZG or 443ZZI.

Subsection 443ZZJ(2) provides for the disbursement of the proceeds of the sale of the motor vehicle.

## **Division 4            Other provisions**

### **Insertion of s 443ZZK (Protection from liability)**

Subsection 443ZZK(1) provides a police officer with protection from liability with respect to damage, loss or depreciation to a motor vehicle during impounding if the police officer acts in good faith and without negligence.

Subsection 443ZZK(2) provides that if the police officer is protected from liability because of subsection (1), liability attaches instead to the State.

Subsection 443ZZK(3) provides that if a police officer signs a towing authority under this chapter, the State is not liable for any damage, loss or depreciation to a motor vehicle while it is being moved or impounded.

### **Insertion of s 443ZZL (Third party protection from forfeiture order)**

Subsection 443ZZL(1) provides that a person (other than the defendant) who has an interest in a forfeited vehicle may apply to the relevant court for an order under subsection (6).

Subsection 443ZZL(2) provides that it is immaterial that the value of the motor vehicle exceeds the maximum amount that may be claimed in a personal action in the civil jurisdiction of a Magistrates Court.

Subsection 443ZZL(3) provides that unless leave is granted, the application must be made before the end of the period of 6 months starting on the day the forfeiture order was made.

Subsection 443ZZL(4) provides that the court may give leave for a later application if it is satisfied that the delay was not due to the applicant's neglect.

Subsection 443ZZL(5) provides that unless the court grants leave, the person given notice of the application for the forfeiture order can not apply for an order under subsection (6).

Subsection 443ZZL(6) provides that upon application an order may be made, declaring the nature, extent and if necessary for the order, the value of the applicant's interest . The court may direct the State, to transfer ownership of the vehicle to the applicant or pay the applicant a sum of money to the value of the interest in the motor vehicle.

Subsection 443ZZL(7) provides that the court may only make such an order if it is satisfied that the applicant has a genuine interest in the motor vehicle and the relevant evasion offence occurred without the knowledge and consent of the applicant.

Subsection 443ZZL(8) provides that the applicant must give notice to the commissioner and any other party to the application.

Subsection 443ZZL(9) provides a number of definitions for this section.

### **Insertion of s 443ZZM (Review)**

Subsection 443ZZM(1) provides that the CMC must review the use of this chapter by police officers.

Subsection 443ZZM(2) provides that the review must started as soon as practicable after 30 June 2009.

Subsection 443ZZM(3) provides that the conduct of the review and the preparation of the report is to be in accordance with the *Crime and Misconduct Commission Act 2001*.

Subsection 443ZZM(4) provides that the CMC must consult with the Minister.

Subsection 443ZZM(5) provides that the CMC must give a copy of the report to the Speaker for tabling in the Legislative Assembly.

### **Clause 80 – Replacement of s 447 (Helping at fire or hazardous materials emergency)**

This clause amends section 447 of the PPRA by providing definitions of "fire officer" and "hazardous materials emergency."

### **Clause 81– Insertion of new s 447B (Disposal of clothing of deceased person)**

This clause inserts a new section 447B of the PPRA. Subsection (1) provides that this section applies to clothing worn by a deceased person.

Subsection 447B(2) provides that a police officer may dispose of clothing worn by a deceased person if the officer believes it to be appropriate. Examples include blood or fluid soiled clothing and clothing damaged in accidents that would be inappropriate to return to relatives.

Subsection 447B(3) provides that if the officer decides to dispose of the clothing, the clothing is taken to have been forfeited to the State immediately before the disposal.

### **Clause 82 – Amendment of s 448 (Assistance to courts, etc.)**

This clause amends section 448(3) of the PPRA by renumbering it as section 448(4). The clause inserts a new subsection (3) which provides that a watch-house officer must comply with any reasonable request of a



presiding judge or other presiding officer when transferring or escorting a person under section 397.

### **Clause 83 – Amendment of s 455 (Compensation)**

This clause amends section 455 of the PPRA by omitting the existing subsection (1) and inserting a new subsection (1) to include assistants exercising powers under this Act in accordance with a request of a police officer given under section 373.

### **Clause 84 – Insertion of new s 459A (Renumbering of Act)**

This clause amends section 459A of the PPRA which enables the PPRA to be renumbered. The renumbering of the PPRA will require amendments to a number of other Acts that refer to provisions within the *Police Powers and Responsibilities Act 2000*.

### **Clause 85 – Insertion of new ch 13, pt 7**

## **Part 7                      Transitional and Other provisions for Police Powers Responsibilities and Other Acts Amendment Act 2006**

### **Insertion of s 509 (Particular evidentiary certificates under s 318ZZB)**

New section 509 of the PPRA creates a transitional provision for certificates given to defendants under section 318ZZB as it exists immediately before the commencement of this Bill. The existing law continues to apply to certificates given in these circumstances.

### **Insertion of s 510 (Effect of declaration under s 371F)**

This clause inserts a new section 510 of the PPRA. Subsection 510(1) is a declaration of the expiry date of sections 371B to 371E.

Subsection 510(2) of the PPRA declares that sections 371B to 371F are taken to have never expired.

Subsection 510(3) declares that anything done under sections 371B to 371E is as valid and effective as if the declaration had been made before the end of the period for the expiry of the sections.

Subsection 510(4) makes a declaration validating any extension regulation made before the commencement of this section with respect to sections 371B to 371E.

Subsection 510(5) declares that anything else done under the extension regulation has effect.

### **Insertion of s 511 (Transitional provision for former s 432)**

This clause inserts a new section 510 of the PPRA which declares that section 432, as in force immediately before 1 July 2006, continues to apply in relation to a drug destruction notice given under section 432, as if section 68 had not been enacted.

### **Insertion of s 512 (Controlled activities)**

This clause inserts a new section 512 of the PPRA which declares that a controlled activity that was purportedly authorised under section 190, as in force immediately before the commencement of the *Cross-Border Law Enforcement Legislation Amendment Act 2005*, section 12 in relation to an offence other than a serious indictable offence is and always has been as valid as it would have been had the offence for which the controlled activity was authorised been a serious indictable offence. It also provides that it would have been lawfully done if the thing had been done under a validly authorised controlled activity in relation to a serious indictable offence is taken to have been lawfully done. This approach resolves competing legal arguments as to whether the classes of offences for which controlled activities powers are currently available under s. 190 of the PPRA are to be read down by reference to s. 163, so as to limit those powers to serious indictable offences, misconduct offences and organised crime.

### **Insertion of s 513 (Transitional regulation-making power)**

This clause inserts a new section 513 of the PPRA that enables any additional controlled activity offences to be included in Schedule 3B by regulation a period of 12 months from commencement of the Amendment Act.

**Clause 86 – (Insertion of new schs 3A-3B)**

This clause inserts new schedules 3A (Renumbered cross-references) and Schedule 3B (Additional controlled activity offences). This is a machinery section.

**Clause 87 – (Amendment of sch 4 Dictionary)**

This clause inserts a number of amendments to schedule 4 (Dictionary) of the PPRA.

**Clause 88 – (Act amended in pt 3)**

This clause states that this part amends the Criminal Code.

**Clause 89 – Amendment of s 340 (Serious assault)**

This clause amends section 340 of the Criminal Code by providing a new subsection (2A) that declares that the act of spitting on, biting or throwing bodily fluids or faeces at a police officer is within the scope of the section.

This provision is not intended to have any effect upon the definition or application of the term "assault" as it applies in this section, the Criminal Code or any other criminal or civil law of Queensland, past, present or future.

**Part 4                      Amendment of Crime and  
                                         Misconduct Act 2001**

**Clause 90 – (Act amended in pt 4 and references)**

The clause states that this part amends the *Crime and Misconduct Act 2001* and provides cross-reference to provisions of the *Cross-Border Law Enforcement Legislation Amendment Act 2005*.

**Clause 91 – (Omission of ch 3, pt 6A, div 5)**

This clause omits the nominated chapter, part, division.

## **Clause 92 – (Insertion of new ch 3, pt 6B)**

New provisions are inserted to replace the omitted provisions.

## **Part 6B            Assumed identities**

### **Division 1            Preliminary**

#### **Insertion of s 146O (Purpose of pt 6B)**

Section 146O sets out the purpose of this part. The part recognises that for investigations and intelligence gathering it is sometimes necessary for law enforcement officers and authorised civilians to conceal their true identity.

#### **Insertion of s 146P (How purpose is achieved)**

Section 146P sets out that the principal ways the part achieves its purpose. The part achieves this through the creation of a scheme for acquiring and using assumed identities.

#### **Insertion of s 146Q (Definitions for pt 6B)**

Section 146Q provides definitions for terms used in this part. These definitions are necessary to complement the Bill.

#### **Insertion of s 146R (Relationship to other laws)**

Section 146R provides that activities and records under divisions 2 to 7 of this part are exempt from the listed Acts.

### **Division 2            Authorities for assumed identities**

#### **Insertion of s 146S (Application for authority to acquire or use assumed identity)**

Section 146S contains the scheme by which a commission officer may apply in writing to the commission's chairperson for authority to acquire and/or use an assumed identity. The provision requires a separate

application for each identity and also sets out the information required in the application. The chairperson may request additional information.

Nothing in this section prevents the commission from acquiring one or more assumed identities to be kept for future use by an authorised officer without knowing the context in which they will be used.

### **Insertion of s 146T (Deciding application)**

Section 146T provides that the chairperson may grant or refuse the authority to acquire and/or use an assumed identity after considering the application and any additional information that has been provided. The chairperson may grant the authority subject to conditions. The section sets out the range of matters that the chief executive officer must take into account before granting the authority. Unless the chairperson is satisfied on reasonable grounds that the circumstances set out in the section exist, he or she may not grant the authority.

The section also establishes supervision requirements that the commission must comply with when the authority for an assumed identity is for a civilian.

### **Insertion of s 146U (Form of authority)**

Section 146U provides an authority to acquire and/or use an assumed identity may be granted by way of a written formal authority. The section also sets out the particulars required to be covered in the authority

### **Insertion of s 146V (Period of authority)**

Section 146V clarifies that an authority can be cancelled under section 146W and unless an authority is sooner cancelled, an authority is valid for the period stated in the authority.

### **Insertion of s 146W (Variation or cancellation of authority)**

Section 146W enables the chairperson to vary or cancel the authority for the acquisition and/or use of an assumed identity that has been granted. The section places a requirement upon the chairperson to cancel the authority if he or she is satisfied, upon a review of the authority or for any other reason, that the authority is no longer necessary. The section also clarifies when the variation or cancellation has effect.

The section places a notification requirement on the chairperson when an authority is varied or cancelled, including who is to be notified and what the written notice must contain.

### **Insertion of s 146X (Review of authority)**

Section 146X creates a scheme for the review of an assumed identity authority. The section sets out how often a review is to be conducted by the chairperson and requires the chairperson to decide whether the authority is still necessary and as a result must either cancel the authority or record his or her reasons why the authority is still necessary.

## **Division 3 Evidence of assumed identities**

### **Subdivision 1 Creation of birth certificates for assumed identities**

#### **Insertion of s 146Y (Approval for creation of birth certificate for assumed identity)**

Section 146Y sets out the scheme for the chairperson to apply to the independent member by written application for an authority to create a birth certificate for use as an assumed identity.

Subsection (2) provides that the independent member may only grant the approval if satisfied that the creation and use of a birth certificate is justified having regard to the nature of activities to be undertaken.

#### **Insertion of s 146Z (Giving effect to birth certificate approval)**

Section 146Z sets out the scheme for the creation of the birth certificate as evidence of an assumed identity.

#### **Insertion of s 146ZA (Destruction of birth certificate created under s 146Z)**

Section 146ZA creates a requirement for the chairperson to cause the created birth certificate to be destroyed as soon as practicable after the authority for the assumed identity is cancelled. The section further requires

the chairperson to notify the registrar-general when the certificate has been destroyed.

## **Subdivision 2 Other provisions about evidence of assumed identities**

### **Insertion s 146ZB (Request for evidence of assumed identity)**

Section 146ZB enables a chairperson who gave an assumed identity authority to request the chief executive officer of any issuing agencies named in the authority to produce evidence of an assumed identity as set out in the authority, and to give evidence to the officer or person named in the authority.

The evidence of the assumed identity is defined broadly in the section and may include a variety of items including driver's licences, birth certificates, credit/EFTPOS cards, and Medicare cards.

### **Insertion of s 146ZC (Government issuing agency to comply with request)**

Section 146ZC compels government issuing agencies to comply with requests under this part for assumed identity documentation. The provision clarifies that the decision to create an assumed identity rests with the commission and obviates the need for a government issuing agency to have a decision-making apparatus.

### **Insertion of s 146ZD (Non-government issuing agency may comply with request)**

Section 146ZD provides non-government bodies with a discretion as to whether to issue evidence of an assumed identity in response to a request from the chairperson.

Nothing under this section prevents the commission from using documentation acquired through government issuing agencies such as a driver's licence, to acquire identity documents from other institutions such as financial institutions, without alerting those institutions that the documentation is being acquired for investigations and intelligence gathering of misconduct offences as part of a legally acquired assumed identity.

### **Insertion of s 146ZE (Cancelling evidence of assumed identity)**

Section 146ZE requires the issuing agency to cancel any evidence of identity or other record of identity on the written direction of the chairperson.

## **Subdivision 3 Protections and indemnities**

### **Insertion of s 146ZF (Protection from criminal responsibility – officer of issuing agency)**

Section 146ZF provides for protection from criminal responsibility for any person who, apart from this section, commits an offence in giving effect to a birth certificate approval.

Subsection (2) provides protection from criminal responsibility to officers and employees of issuing agencies who provide evidence of an assumed identity in response to a requirement or request to do so under this chapter.

### **Insertion of s 146ZG (Indemnity for issuing agency and officers in relation to creation of birth certificates)**

Section 146ZG provides that the commission must indemnify the registrar-general and their employees for any civil liability and reasonable costs incurred as a consequence of complying with section 146Z subject to any requirements prescribed by regulation having been met.

### **Insertion of s 146ZH (Indemnity for issuing agency and officers in relation to other evidence of assumed identities)**

Section 146ZH provides that the commission must indemnify the issuing agency or an officer of the agency for any civil liability and reasonable costs incurred as a consequence of complying with the request or requirement made under this part and subject to any requirements prescribed by regulation having been met.

### **Insertion of s 146ZI (Protection from criminal responsibility for particular ancillary conduct)**

Section 146ZI provides protection from criminal responsibility to a person who engages in ancillary activity including conspiracy to commit offences



and aiding or enabling the commission of an offence in relation to assumed identities where another person engages in conduct for which the person is exempt from criminal responsibility under section 146ZF.

Subsection (2) provides protection from criminal responsibility despite any other law of this jurisdiction if at the time the person engaged in the ancillary conduct they believed that the other related conduct was or would be engaged in by an authorised person or an issuing officer of an agency.

## **Division 4            Effect of authorities**

### **Insertion of s 146ZJ (Assumed identity may be acquired and used)**

Section 146ZJ enables an authorised identity officer or authorised civilian to acquire and use an assumed identity if the acquisition and/or use is in accordance with the authority, and for an authorised identity officer, in the course of his or her duty. In relation to an authorised civilian, a further level of protection and supervision is provided, which is that the acquisition and use must also be in accordance with any directions given by the person's supervisor.

### **Insertion of s 146ZK (Protection from criminal responsibility – authorised person)**

Section 146ZK provides that an authorised person who acquires and uses evidence of an assumed identity will not be criminally responsible for the acquisition and use. However, authorised persons will only receive protection if their conduct meets the specified conditions. An authorised officer will be protected for conduct engaged in the course of duty and in accordance with the authorisation conditions. An authorised civilian will only receive protection for conduct that is in accordance with the instruction of a supervising officer and any authorisation conditions. This protection from criminal responsibility will only be available for conduct which would not constitute an offence if the assumed identity was the person's real identity.

### **Insertion of s 146ZL (Indemnity for authorised person)**

Section 146ZL requires the commission to indemnify the authorised person against any civil liability incurred in the acquisition and/or use of an

assumed identity for persons authorised to acquire and/or use an assumed identity. The indemnity would only be available if the actions of the authorised person was in accordance with the authority and any conditions or directions.

### **Insertion of s 146ZM (Particular qualifications)**

Section 146ZM provides that an authorised person would not receive protection from liability or indemnity for conduct that requires a qualification if that person does not in fact have that qualification, regardless of whether the authorised person has acquired documentation that establishes that he or she has that qualification. This limitation ensures that authorised persons cannot use an assumed identity to engage in activities they are not qualified to engage in.

### **Insertion of s 146ZN (Effect of being unaware of variation or cancellation of authority)**

Section 146ZN provides that a person authorised to acquire and/or use an assumed identity would continue to be protected from criminal responsibility and receive the indemnity for civil liability for the acquisition and use of the identity in certain circumstances even if the authority has been varied or cancelled. If the authority had been varied or cancelled, and the person is unaware of this change, the person would still be protected from civil and criminal liability, unless he or she is reckless about the existence of the variation or cancellation.

## **Division 5                      Misuse of assumed identity and information**

### **Insertion of s 146ZO (Misuse of assumed identity)**

Section 146ZO creates offences for the misuse of assumed identities by authorised officers or authorised civilians.

### **Insertion of s 146ZP (Disclosing information about assumed identity)**

Section 146ZP is designed to provide protection to persons acquiring and using assumed identities and to ensure the integrity of investigations and

intelligence gathering by creating offences for a person, in particular circumstances, to disclose certain information relating to assumed identities.

## **Division 6            Reporting and record keeping**

### **Insertion of s 146ZQ (Report about authorities for assumed identities etc.)**

Section 146ZQ establishes a reporting scheme for the chairperson on identified criteria relating to assumed identities. The report is required to be given to the parliamentary commissioner with a copy of the report being required to be tabled in the Legislative Assembly within 14 sitting days by the parliamentary commissioner.

The reporting scheme also provides for protection from the disclosure of specified types of sensitive information through identifying the nature of information that must not be contained in the report.

### **Insertion of s 146ZR (Record keeping)**

Section 146ZR places a requirement upon the chairperson to keep records about the agency's operations under this part. The section sets out the information required to be contained in the records.

### **Insertion of s 146ZS (Audit of records)**

Section 146ZS creates a scheme for the auditing of records about authorities for assumed identities kept under section 146ZR. The section sets out the frequency of the audits and that the parliamentary commissioner is required to undertake the audit. The section also imposes a duty on the parliamentary commissioner to report back to the chairperson the results of the audit.

## **Division 7            Delegation**

### **Insertion of s 146ZT (Delegation generally)**

Section 146ZT clarifies that the chairperson is restricted from delegating his or her powers under this part except as provided by this part. This restriction exists despite any power of the chairperson to delegate that might exist in other legislation.

### **Insertion of s 146ZU (Delegation - chairperson)**

Section 146ZU enables the delegation of the chairperson's powers under this part. The section sets out the class of person stated powers may be delegated to. The section also limits the number of delegation that may be in force under this section.

### **Clause 93 – Amendment of s 255 (Secondment of officers)**

This clause rennumbers section 255(5) as section 255(6) and inserts a new section 255(5).

New section 255(5) provides that a police officer seconded to the commission continues to be a police officer for all purposes and retains all the functions and powers of a police officer under other Acts. These functions and powers are not limited by the commission's functions.

### **Clause 94 – Amendment of s 381 (Transitional provisions for authorities for birth certificates)**

This clause amends s381 to set out the transitional requirements for authorities for birth certificates.

### **Clause 95 – Amendment of s 382 (Identity documents other than birth certificates)**

This clause omits section 382(2) and inserts a new section 382(2) which sets out transitional requirements for identity documents other than birth certificates.

### **Clause 96 – Amendment of sch 2 (Dictionary)**

This clause amends the Schedule 2 Dictionary of the Crime and Misconduct Act. The clause inserts references to new definitions for terms used in the Bill. These are necessary to complement the Bill.

## **Part 5                      Amendment of Domestic and Family Violence Protection Act 1989**

### **Clause 97 – Act amended in part 5**

This clause states that this part amends the *Domestic and Family Violence Protection Act 1989* (the DV Act.)

### **Clause 98 – Amendment of s 47 (Service of application on respondent may be accompanied by summons)**

This clause amends section 47 of the DV Act. New subsection 47(8) provides for the issue of a notice to appear in place of a summons to a respondent in a domestic violence application.

New subsection 47(9) of the DV Act provides that the notice need not state an offence. This provision is necessary to obviate the general requirements of a notice to appear in sections 215 and 217 of the PPRA. A notice given to a person in these circumstances is taken to be a summons for the purpose of section 49 of the DV Act.

### **Clause 99 – Amendment of s 49 (Non-appearance of respondent)**

This clause amends section 49(1)(c) of the DV Act by inserting the words "holding cell or" after the words "released from the".

### **Clause 100– Amendment of s 69 (Presence at domestic violence incident)**

This clause amends section 69 of the DV Act by inserting consequential amendments in terms of the amendments to section 49 of the DV Act.

**Clause 101– Replacement of s 70 (Duty of police officer who has taken a person into custody under s 69)**

This clause amends section 70 the DV Act by omitting and inserting a new section 70. Subsection 70(1) enables police officer who detains a person from a domestic violence incident to detain that person in a police holding cell rather than a watch-house, if appropriate. For example, Morningside Police Station has a holding cell that is suitable for short term lodging of prisoners in domestic violence detentions. This will obviate the need for police officers from Morningside to travel to the Brisbane City Watch-house or the Holland Park Watch-house for a domestic violence detention, provided that there are sufficient staff at Morningside Police Station to meet operational needs and prisoner supervision. The benefits of this provision are even more evident in country stations where it can be several hours travel to the nearest watch-house.

Subsection 70(2) relates specifically to a holding cell. It places a requirement upon the officer in charge of a station to enter the person's particulars in the register as required by a regulation.

Subsection 70(3) relates specifically to a watch-house. It places a requirement upon the watch-house manager to enter the person's particulars in the register as required by a regulation.

Subsection 70(4) requires that the person's particulars must be entered in the relevant register as soon as possible.

Subsection 70(5) requires the police officer taking the person to the relevant place to confirm that the entry by signing it.

**Clause 102 – Amendment of s 71 (Police officer must apply for protection order etc.)**

This clause amends section 71(3)(d) and (4) the DV Act by omitting the words "watch-house manager" and inserting the words "appropriate police officer".

**Clause 103 – Amendment of s 75 (Entry of registers)**

This clause amends section 75 the DV Act to include the words "holding cell or". This is a consequential amendment.

### **Clause 104 – Amendment of sch (Dictionary)**

This clause amends the dictionary in the schedule of the DV Act.

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

### **Clause 105 – Act amended in pt 6**

This clause amends the *Drugs Misuse Act 1986* (the DMA).

### **Clause 106 – Insertion of new ss 122A-122C**

#### **Insertion of s 122A (Particular proceedings for minor drugs offences)**

This clause inserts a new section 122A of the DMA. Subsection (1) states that this section applies to a proceeding for an offence against this Act that is a minor drugs offence as defined in schedule 4 of the PPRA

Subsection 122A(2) states that this section only applies to a person charged with committing a minor drug offence who pleads guilty to the offence.

Subsection 122A(3) provides that the court may order the person charged with a minor drug offence the opportunity to attend a drug diversion assessment program.

Subsection 122A(4) provides that before making the order, the court must inform the person that if the person fails to complete the program as required, the court may deal with the person for the original offence as if the order had not been made.

Subsection 122A(5) provides that the court may make other orders that the court considers appropriate for ensuring the defendant's attendance at the program including requiring the program provider to report on the defendant's attendance and completion of the program.

Subsection 122A(6) provides that the court may adjourn the proceeding subject of an order under this section until a particular date fixed by the court or to an open date to be fixed.

### **Insertion of s 122B (Provision of information to court)**

The clause inserts a new section 122B of the DMA. Subsection (1) provides that if the court makes an order under section 122A, the provider must give the court a written report on whether the person attended and completed the program or if the person failed to attend or complete the program.

The clause inserts a new section 122B(2) which states that the provider may give the report by filing the report with the court and giving a copy of the report to the commissioner.

The clause inserts a new section 122B(3) which states that the commissioner must give the prosecuting authority and person's lawyer a copy of the written report.

The clause inserts a new section 122B(4) which provides a definition of "prosecuting authority."

### **Insertion of new section 122C (Further consideration of charge of minor drugs offence)**

The clause inserts a new section 122C. Subsection (1) provides that the court must strike out the proceeding if the court is satisfied that the defendant attended and completed the program as required by section 122A.

Subsection (2) provides that the court may proceed with the charge or make any other order the court considers appropriate if the defendant does not complete the program to the satisfaction of the court.

## **Part 7                      Amendment of Evidence Act 1977**

### **Clause 107 – Act amended in pt 7 and references**

This clause provides that this part amends the *Evidence Act 1977* and that a reference in the part to section 21G or 21KE is a reference to that section as inserted by section 51 of the *Cross-Border Law Enforcement Legislation Amendment Act 2005*.





the functions, powers and responsibilities of a police officer performing watch-house duties to be addressed to watch-house officers.

## **Clause 114 – Insertion of new pt 5, div 1, hdg**

### **Division 1            Officers and other police personnel**

#### **Clause 115 – Insertion of new pt 5, div 2**

Insert new Part 5, div 2 after section 5.17.

### **Division 2            Watch-house officers**

#### **Insertion of section 5.18 (Appointment of watch-house officers)**

This clause inserts a new section 5.18 of the PSAA. Subsection(1) provides that this section applies where the commissioner proposes to appoint a person who is or to become a staff member to be a watch-house officer.

Subsection 5.18(2) provides that the commissioner may appoint a person who has the qualifications and experience to perform the functions of a watch-house officer.

Subsection 5.18(3) sets out the qualifications and experience required to perform the role of watch-house officer and places a requirement upon a person to successfully complete an approved training course.

#### **Clause 116 – Amendment of s 5A.2 (Definition for pt 5A)**

This clause amends section 5A.2 of the PSAA by inserting a definition of "analyst."

#### **Clause 117 – Insertion of new s 5A.4A (Analysts)**

This clause inserts a new section 5A.4A of the PSAA which states that an analyst can be appointed by the Minister.

**Clause 118 – Amendment of sch (Relevant information)**

This clause amends the schedule of the PSAA by omitting the words "in QPS" and inserting the words "in a QPS".

**Part 9                      Other Acts amended****Clause 119 – Acts amended in sch 2**

This clause amends schedule 2 and amends the Acts mentioned in it. These are minor amendments.