Serious and Organised Crime Legislation Amendment Bill 2016

Explanatory Notes

Short title

The short title of the Bill is the Serious and Organised Crime Legislation Amendment Bill 2016.

Policy objectives and the reasons for them

The main objective of the Serious and Organised Crime Legislation Amendment Bill 2016 (the Bill) is to implement a new Organised Crime Regime in Queensland to tackle serious and organised crime in all its forms. The Regime draws on the recommendations of the three reviews commissioned by the Government into organised crime:

- the Queensland Organised Crime Commission of Inquiry (the Commission);
- the Taskforce on Organised Crime Legislation (the Taskforce); and
- the statutory review of the *Criminal Organisation Act 2009* (the COA Review).

A further object is to improve the clarity, administration and operation of particular occupational and industry licensing Acts through a number of technical and editorial amendments.

The Commission

The Commission commenced on 1 May 2015, by the *Commissions of Inquiry Order (No. 1) 2015*, to make inquiry into the extent and nature of organised crime in Queensland and its economic and societal impacts. The Commissioner, Mr Michael Byrne QC, presented the final report of the Commission to the Premier and the Minister for the Arts on 30 October 2015. The Commission identified the illicit drug market, online child sex offending including the child exploitation material market, and sophisticated financial crimes such as cold call or 'boiler room' investment frauds as key organised crime threats in Queensland. The Commission made 43 recommendations to improve the regulation of organised crime in Queensland and the Bill implements 14 recommendations that require legislative reform.

The Taskforce

The Taskforce was established in June 2015 by the Honourable Yvette D'Ath MP, Attorney-General and Minister for Justice and Minister for Training and Skills, to conduct a review of the suite of legislation introduced in October and November 2013 to combat organised crime, in particular outlaw motorcycle gangs (OMCGs).

The Taskforce was chaired by the Honourable Alan Wilson QC and its membership consisted of senior representatives from the Queensland Police Service (QPS), the Queensland Police Union, the Queensland Police Commissioned Officers' Union of Employees, the Queensland

Law Society, the Bar Association of Queensland, the Public Interest Monitor (PIM), the Department of Justice and Attorney-General, and the Department of the Premier and Cabinet. On 31 March 2016, Mr Wilson QC delivered the Report of the Taskforce, which made 60 recommendations.

The Taskforce was given broad Terms of Reference by the Attorney-General. It was asked to consider whether the following legislation was effectively facilitating the successful detection, investigation, prevention and deterrence of organised crime and how it should be repealed or amended:

- *Criminal Law (Criminal Organisations Disruption) Amendment Act 2013*
- *Tattoo Parlours Act 2013*
- *Vicious Lawless Association Disestablishment Act 2013* (the VLAD Act)
- *Criminal Law (Criminal Organisations Disruption) and Other Legislation Act 2013*
- *Criminal Code (Criminal Organisations) Regulation 2013*

The Taskforce Report refers to this group of legislation collectively as the '2013 suite'. The Taskforce Report makes it clear that the Taskforce did not feel compelled or constrained by its Terms of Reference to recommend that every aspect of the 2013 suite should be repealed (page 3 of the Report); indeed, the Taskforce in some instances recommended the retention of amendments made in 2013.

Chapter 1 of the Taskforce Report sets out in detail how the Taskforce approached its review, which included regular meetings, the gathering of statistics, inviting submissions from the public and engaging in consultation with experts.

> *'The Taskforce was, in effect a gathering of experts in criminal law. Recognising that, members saw their individual roles as carrying the responsibility usually attached to expert witnesses in courts of law – ie, as having a primary obligation to give properly (even fiercely) independent, unbiased advice'* (page 7 of the Report).

The final chapter of the Report notes that the Taskforce's final recommendations were a product of compromise by its diverse expert membership but that:

> *'…all members agree that it represents an appropriate balance of sometimes competing views and one which they recommend to the government of Queensland.*
>
> *In particular, it removes what all members came to accept were unnecessary, excessive and disproportionate elements of the 2013 suite while maintaining a strong legislative response to organised crime in all its forms, including OMCG crime.'*

The Bill implements the ethos of the Taskforce Report; and largely implements all of the recommendations either in full or in-principle.

COA Review

The Taskforce was required by its Terms of Reference to have regard to the findings of the COA Review. The COA commenced operation on 15 April 2010 and allows the Supreme Court of Queensland, upon an application by the Commissioner of Police, to declare an organisation a 'criminal organisation' if satisfied that members of the organisation associate

for the purpose of engaging in, or conspiring to engage in, serious criminal activity and the organisation is an unacceptable risk to the safety, welfare or order of the community.

Mr Wilson QC conducted the COA Review concurrently with the work of the Taskforce. He delivered his report to the Queensland Government on 15 December 2015 and recommended that the COA be repealed or allowed to lapse but with certain elements redeployed elsewhere in Queensland's organised crime legislative framework. The Bill largely reflects the recommendations.

Government initiative – extending the prohibition on wearing or carrying prohibited items

The Taskforce accepted that members of the public have the right to enjoy themselves in licensed premises free from any fear or intimidation that the presence of 'colour-wearing' OMCG members might incite. The Government considers that the same should apply to public places generally.

A majority of the Taskforce recommended retaining the provisions in the *Liquor Act 1992* that banned the wearing of 'prohibited items', such as colours and other clothing related to OMCGs, in licensed premises with some amendment to reduce the applicable maximum penalties and remove the tiered penalty regime and provide appropriate defences for licensees and staff. A prohibited item is defined under the Liquor Act and includes the colours of 26 OMCGs currently listed in the *Criminal Code (Criminal Organisations) Regulation 2013*; such list to be replicated into the *Liquor Regulation 2002* by the Bill.

Colours commonly refers to a three piece cloth patch, worn on the back of club member's vest or motorcycle jacket, showing the name, location or chapter, and logo or emblem of an OMCG. Colours also includes the '1%' patch which is internationally recognised as the primary identifier of membership of an OMCG and is proudly worn by members.

Prohibited items under the *Liquor Act 1992* are defined to include not only colours but an item of clothing, jewellery or an accessory that displays the name, acronym, insignia, image or symbol of a declared criminal organisation.

The role of colours is to identify the wearer as a member of an OMCG and as an adherent to OMCG culture. Moreover, colours of OMCGs, and in particular the '1%' patch, identify that OMCG and the member wearing them, as operating outside the law and having a propensity to be involved in criminal activities. Other patches or symbols may be used to denote that an OMCG member has served time in goal, committed an offence of violence or some other significant illegal activity.

The wearing of colours is tightly controlled by OMCGs. They make a deliberate statement of membership and are designed to create a climate of fear and intimidation among members of the general community with an implicit threat of violence in the event of any confrontation with the wearer. This can facilitate criminal activity by members of OMCGs because of a reluctance of the public to report crime committed by such members. The QPS has advised of several incidents where witnesses have been reluctant to come forward due to the fear and intimidation caused by the wearing of colours.

International experience also bears this out. A Canadian court has found beyond reasonable doubt that chapters of the Hells Angels Motorcycle Club (HAMC) use colours as a brand name to intimidate, threaten and extort. The wearing of colours allows members to be

confident that when conducting drug trafficking or other illegal activities with someone wearing HAMC colours, they are not dealing with a police officer.

The QPS has advised that members of OMCGs have been involved in public acts of violence and other criminal acts, both in Queensland and other jurisdictions, where colours or OMCG insignia were known to be featured. Examples include:

- an affray and riot at the Royal Pines Resort Carrara on 18 March 2006 between members of the Hells Angels OMCG and the Finks OMCG during which three people were shot, two stabbed and $40,000 worth of damage caused;

- an affray and riot at Sydney Airport on 22 March 2009 between members of the Hells Angels OMCG and the Comancheros OMCG during which an associate of the Hells Angels OMCG was murdered;

- a breach of the peace at Willowbank Raceway on 16 March 2012 where two members of Hells Angels OMCG jointly assaulted a security guard;

- an affray and breach of the peace at Toscani's Restaurant, Garden City Shopping Centre, Upper Mount Gravatt on 17 April 2012 between members of the Hells Angels OMCG and Bandidos OMCG;

- an affray at Cooly Rocks On Festival at Cooloongatta on 8 June 2013 where a number of Finks OMCG members assaulted a male who photographed the members; and

- an affray and riot outside the Aura Restaurant, Broadbeach on 27 September 2013 between approximately sixty members of the Bandidos OMCG. The brawl erupted after approximately twenty members entered the restaurant and confronted Finks OMCG associates.

The Australian Crime and Intelligence Commission (ACIC) has identified OMCGs as one of the most high profile manifestations of organised crime which have an active presence in all Australian States and Territories. OMCGs have become one of the most identifiable components of Australia's criminal landscape and identify themselves through the use of colours.

Having considered the Taskforce Report, and information obtained from sources such as the QPS, the Government was confirmed in its view that the problem posed by 'colour-wearing' OMCG members in public places demanded a strong legislative response, which would unavoidably have some impact on individual freedoms and liberties.

After considering a number of alternative legislative solutions, and considering the effectiveness of existing provisions, the Government reached the view that other options would not be as effective in addressing the problem.

Achievement of policy objectives

The Bill will achieve its policy objective to tackle serious and organised crime in Queensland by making the following amendments to deliver the new Organised Crime Regime:

Amendments related to the recommendations of the Commission

Crime and Corruption Act 2001

The Bill amends the *Crime and Corruption Act 2001* to allow Crime and Corruption Commission officers to request, as part of a search warrant or after a search warrant has been issued, an order requiring a person (either the suspect or a specified person with the necessary information) to provide information necessary to use a computer or other storage device to gain access to information stored electronically. Corresponding amendments will be made to the *Police Powers and Responsibilities Act 2000* to amend the current provisions in that Act that allow for a police officer to request this type of 'access information' from a person.

Criminal Code

The following amendments are made to the Criminal Code in response to the proliferation of child exploitation material over the internet, the increased use of technology to promote and distribute offending material as well as to conceal offending, and to address legislative gaps and limitations:

- the creation of new offences, each with a maximum penalty of 14 years imprisonment, that will target persons who:
  - administer websites used to distribute child exploitation material;
  - encourage the use of, promote, or advertise websites used to distribute child exploitation material; and
  - distribute information about how to avoid detection of, or prosecution for, an offence involving child exploitation material;

- an increase in the maximum penalties for the offences in sections 228A (Involving child in making child exploitation material) and 228B (Making child exploitation material) from 14 to 20 years imprisonment;

- the creation of a new circumstance of aggravation to apply to the existing and new offences related to child exploitation material in Chapter 22, if a person uses a hidden network or an anonymising service in committing the offence (maximum penalty of 25 years imprisonment for sections 228A and 228B (Involving child in making child exploitation material and Making child exploitation material) and 20 years imprisonment for each of the other child exploitation offences); and

- the creation of a new offence when a person contravenes an order about information necessary to access information stored electronically made under the *Police Powers and Responsibilities Act 2000* or the *Crime and Corruption Act 2001* with a maximum penalty of five years imprisonment.

The following amendments to the Criminal Code are made in response to the increasing prevalence and seriousness of cold call investment or 'boiler room' fraud and evolving threats in financial crimes (particularly identity crime) that may not be adequately deterred by existing penalties:

- an increase in the maximum penalties for existing aggravated offences in section 408C (Fraud) from 12 to 14 years imprisonment;

- the creation of a new circumstance of aggravation for the offence of fraud, carrying a maximum penalty of 20 years imprisonment, where the property or yield to the offender from the fraud is over $100 000;

- the creation of a new circumstance of aggravation for the offence of fraud, carrying a maximum penalty of 20 years imprisonment, where the offender participates in carrying on the business of committing fraud; and

- an increase in the maximum penalties for the offences in section 408D (Obtaining or dealing with identification information) from three to five years imprisonment.

Drugs Misuse Act 1986

The following amendments are made to the *Drugs Misuse Act 1986*:

- the maximum penalty for the offence of trafficking in dangerous drugs listed in schedule 2 of the *Drugs Misuse Regulation 1987* is increased to 25 years imprisonment, consistent with the existing maximum penalty for dangerous drugs listed in schedule 1 of the *Drugs Misuse Regulation 1987*; and

- to address adverse comments of the Court of Appeal in *R v Clark* [2016] QCA 173, the minimum 80% non-parole period is removed and the offence of trafficking in a dangerous drug is restored to the serious violent offences regime.

Amendments related to the recommendations of the Taskforce and the COA Review

Bail Act 1980

The 2013 suite amended section 16 of the Bail Act so that where there is an allegation a person is a 'participant in a criminal organisation' (i.e. all that is required is that the charge itself make the allegation not that actual evidence be produced) a person is required to show cause why their remand in custody is not justified (a show cause position). This reverses the ordinary presumption in favour of bail for a person who has been charged but not yet convicted of a criminal offence. The 2013 amendments apply whether charged with an indictable offence, simple offence or a regulatory offence.

The Taskforce was satisfied that the Bail Act, prior to the 2013 amendments, adequately addressed any risks that might be associated with a grant of bail to a person charged with an offence that is alleged to have been committed in connection with organised crime (see page 152 of the Taskforce Report).

The Bill reflects the unanimous recommendation of the Taskforce (recommendation 12) by providing for the repeal of the entirety of 2013 amendments to the Bail Act (with the exception of amendments which assist in the use of audio visual technology as they related to bail hearings).

The Bill also makes a consequential amendment to the Bail Act on account of the repeal of the COA (under the Bill), to provide that someone who is alleged to have breached the new Organised Crime Control Orders (as detailed under the *Penalties and Sentences Act 1992* below), or who is alleged to have contravened a public safety order (as detailed under the

Peace and Good Behaviour Act 1982 below) is in a show cause position; consistent with the prevailing position in terms of the analogous orders issued under the COA.

Further, the Bill inserts a legislative example under section 11 (Conditions of release on bail) to overcome any doubt that the types of special conditions that the bail granting authority may include to ensure a person, while released on bail, does not endanger the safety or welfare of members of the public, includes those analogous to the types of conditions under the new Organised Crime Control Order. For example: conditions that restrict who (including a class of persons) the person can have contact with and/or mix with or place restriction conditions; conditions considered necessary to protect the public by preventing, restricting or disrupting their involvement in serious criminal activity.

Corrective Services Act 2006

The 2013 suite amended the Corrective Services Act to establish a *Criminal Organisation Segregation Order* (COSO) scheme, which provides Queensland Corrective Services with enhanced powers to manage prisoners identified as participants in criminal organisations. A COSO can include segregation from other prisoners and restricted privileges such as visits, mail and access to activities (page 265 of the Taskforce Report provides further examples).

The 2013 amendments were found by the Taskforce to be unnecessary because, prior to those changes, Queensland Corrective Services already had a well-developed and effective prisoner management regime that was sufficient for the supervision and management of all offenders (in custody and in the community), including those identified as participants in criminal organisations. The Bill reflects the unanimous recommendation of the Taskforce (recommendation 33) in repealing all of the 2013 amendments to the Corrective Services Act.

Crime and Corruption Act 2001

- *Creation of an oversight function for the CCC immediate response function*

The 2013 amendments provided the CCC with a new immediate response function which allows it to undertake a crime investigation or to hold an intelligence function hearing in relation to an actual or potential threat to public safety. The majority of the Taskforce considered that the nature of the powers provided to the CCC by the immediate response function required an oversight function (see page 330 of the Taskforce Report).

The Bill implements the Taskforce recommendation 43 by providing for the Crime Reference Committee to perform an oversight role regarding the CCC's exercise of this function.

- *Replacement of the fixed mandatory minimum sentencing regime for contempt with an escalating maximum penalty regime*

The CCC has special investigative powers which are not ordinarily available to police and which override long standing common law legal rights to silence. These powers are often referred to as its 'coercive powers'. The CCC may compel a person to give evidence or produce information regardless of whether that information or evidence incriminates the person or others. A person who fails to comply with the CCC's coercive powers may be held in contempt of the CCC (section 198 and 199 of the Crime and Corruption Act).

The 2013 amendments introduced a new fixed mandatory minimum sentencing regime for punishment of contempt of the CCC, which provides that for the 'first contempt' a person

must serve a term of actual imprisonment, increasing to two and half years imprisonment to be served wholly in prison for the 'second contempt' and increasing to five years imprisonment to be served wholly in prison for a 'third or subsequent contempt'.

The majority of the Taskforce considered the mandatory penalty scheme to be unjustly harsh (see page 330 of the Taskforce Report) and recommended its repeal (recommendation 44) and replacement with an escalating, tiered maximum penalty scheme (recommendation 45).

The Bill provides for the repeal of the fixed mandatory minimum sentencing regime and replaces it with a sentencing regime which reflects the ethos of the Taskforce recommendation. The Bill also makes it clear that Parliament's intention is that, absent exceptional circumstances, each 'repeated contempt' must be punished to a greater extent than the previous.

- *Repeal of the 2013 amendment removing fear of retribution as a reasonable excuse for not complying with the CCC's coercive powers*

The 2013 amendments specifically exclude a person's genuinely held fear of retribution as a reasonable excuse for failing to comply with the CCC's coercive powers. The majority of the Taskforce found that this change could have serious consequences for the personal safety of some individuals and could also encourage perjury (see pages 338-341 of the Taskforce Report). The Bill implements the majority recommendation (recommendation 47) by providing for the repeal of these provisions.

- *Repeal of the 2013 amendments providing the CCC with an absolute discretion to refuse to disclose evidence to a person that could be used in a person's defence of criminal charges*

The 2013 amendments inserted new section 201(1A) in the Crime and Corruption Act which gives the CCC authority to refuse to disclose information given or produced at an intelligence hearing or hearing authorised under the immediate response power. The effect of the amendment is that it allows the CCC to withhold information that may be of an exculpatory nature and that could potentially assist a person in their defence of a criminal charge.

The majority of the Taskforce was concerned that this amendment may cause a breach of a person's right to a fair trial (see pages 343-347 of the Taskforce Report). The Bill reflects the majority recommendation (recommendation 50) to repeal section 201(1A).

- *Repeal of the 2013 amendment excluding a person's right to apply for financial assistance for legal representation at a crime hearing under the immediate response function*

Section 205 of the Crime and Corruption Act allows a person who has been required to attend a CCC hearing to apply for financial assistance for legal representation at the hearing. The 2013 suite inserted section 205(1A) which removes a person's right to apply for financial assistance if they are required to attend a hearing under the immediate response function.

The Bill reflects the majority Taskforce recommendation (recommendation 52) by repealing subsection (1A); and also implements the Taskforce suggestion that the right to apply for financial assistance for legal representation under section 205 be extended to all persons appearing before the CCC in a coercive hearing (see pages 351-352 of the Taskforce Report).

Criminal Code

- *Section 60A (Participant in criminal organisation being knowingly present in public places)*

  Section 60B (Participant in criminal organisation entering prescribed places and attending prescribed events)

  Section 60C (Participant in criminal organisation recruiting persons to become participants in the organisation)

The majority of the Taskforce recommended that the offences under sections 60A (the 'anti-association offence'), 60B (the 'clubhouse offence') and 60C (the 'recruitment offence') of the Criminal Code be repealed. The majority of the Taskforce believed that because of the inherent unfairness of the offences, difficulties experienced (and anticipated) in prosecuting them, and their constitutional vulnerability, the retention of these three offences cannot be justified (see pages 191-192 of the Taskforce Report).

The Bill reflects the majority recommendation of the Taskforce (recommendation 20) by repealing the recruitment offence under section 60C of the Criminal Code and replacing it with the offence under section 100 of the COA (noting, the Bill repeals the COA as recommended by the COA Review). The replacement offence applies to any person who is a participant in a criminal organisation, or who is subject to the new Organised Crime Control Order (see below), and draws on a definition of 'recruit' which includes concepts of counselling, procuring, soliciting, inciting and inducing, including by promotion.

The Bill also provides that the anti-association offence under section 60A and the clubhouse offence under section 60B are to be repealed after a two year transitional period. The transitional period will facilitate a smooth transition to the new Organised Crime Regime. The Bill addresses concerns identified by the Taskforce (at chapter 11 of its Report) by amending both offences to repeal the mandatory minimum terms of imprisonment and to designate them as indictable offences rather than simple offences. This will take effect upon proclamation and will apply during the two year transitional period.

It is intended that section 11 of the Criminal Code will ensure that a person who has been charged with the anti-association (section 60A) or clubhouses offence (section 60B) before the commencement of this Bill will not be subjected to a punishment greater than that which applies under the amended provisions. That is, they will not be liable to a mandatory minimum term of six months imprisonment.

Specific transitional provisions are included in the Bill, not to alter the application of section 11 of the Criminal Code, but to make absolutely clear the Government's intended outcome for persons who are charged with the anti-association and clubhouse offences during the transitional period and whose charges have not been finalised by the time of their repeal (i.e. the end of the transitional period for sections 60A and 60B). These transitional provisions are intended to put beyond doubt that section 11 of the Criminal Code does not prevent those persons being prosecuted and punished despite the repeal of the offences without an exact replacement. Noting, that the new consorting offence and the new Organised Crime Control Orders are intended to replace the anti-association offence (section 60A); and the combination of orders under the new Public Safety Protection Order scheme is intended to replace the clubhouse offence (section 60B) under the Organised Crime Regime.

- *Creation of a new offence of habitually consorting with recognised offenders*

The Bill reflects, in-principle, Taskforce recommendation 18 by providing for a new offence of *habitually consorting with recognised offenders*. The Taskforce majority recommended that the anti-association offence (section 60A) be replaced with a temporary consorting offence as it would provide a more constitutionally robust, fairer, efficient and effective approach as compared to the 2013 anti-association offence (see pages 194-195 of the Taskforce Report).

The consorting offence in the Bill includes many of the elements from the model offence recommended by the Taskforce majority; and is also based on the equivalent offence in New South Wales (NSW) under section 93X of the *Crimes Act 1900* (NSW).

The Bill provides that it will be a misdemeanour (i.e. an indictable offence) for a person to consort with two *recognised offenders* after having been given an official warning by police with respect to each of those individuals. The offence carries a maximum penalty of three years imprisonment or 300 penalty units, or both.

The offence under the Bill does not apply to persons under the age of 18, and is framed to reflect the Government's intention that the consorting offence be targeted at disrupting the type of consorting that facilitates and enables serious and organised criminal activity.

A 'recognised offender' for the purposes of this offence is a person, aged 18 years or over, who has a recorded conviction for an indictable offence punishable by a maximum penalty of at least five years imprisonment and other prescribed offences that may be associated with serious and organised crime (which carry maximum penalties less than five years imprisonment). Unrecorded convictions and convictions that have become 'spent' under the *Criminal Law (Rehabilitation of Offenders) Act 1986* are excluded from the definition of 'recognised offender'.

A person consorts with another person if they associate with the person in a way that involves seeking out or accepting the other person's company. This definition reflects the comments of his Honour Justice Keane (paragraphs 205-206) in *Tajjour v NSW* (2014) 313 ALR 221 in his examination of the NSW consorting offence. This means that random social interactions that occur in the course of daily life (e.g. purchasing stamps at the post office or a bus ticket from a bus driver) will not amount to acts of consorting that are captured by the offence in the Bill. For an act of consorting to be captured there needs to be an intentional seeking out of a personal social relationship with another person.

The Bill provides for a reverse onus defence whereby certain acts of consorting will be disregarded if they are reasonable. Acts of consorting that will be disregarded will cover consorting that is necessary for participation in civic life e.g. consorting with close family members or for the purposes of legitimate employment or genuinely obtaining education or health services. The Bill reflects the recommendation of the Taskforce (see page 198 of the Report) by specifically providing that Aboriginal and Torres Strait Islander norms of kinship can be taken into account for consorting that occurs between close family members.

The Bill also amends the *Police Powers and Responsibilities Act 2000* to facilitate the giving of the official warnings for the consorting offence; and powers to stop, search, detain, move on and take identifying particulars from persons reasonably suspected of consorting with recognised offenders (see below).

The Bill gives the PIM an oversight function with respect to official warnings (see further in the *Police Powers and Responsibilities Act 2000* below).

The Bill provides for a review of the operation of the consorting offence and associated police powers by a retired Supreme or District Court Judge as soon as practicable five years after the offence commences operation.

The Bill provides that the consorting offence provisions will commence three months after assent.

- *Repeal of the 2013 circumstances of aggravation*

The 2013 suite introduced five new circumstances of aggravation into the Criminal Code which created harsher penalties for participants in a criminal organisation committing the existing Criminal Code offences of affray, misconduct in relation to a public office, grievous bodily harm, serious assault and obtaining or dealing with identification information. The Bill reflects the unanimous recommendation of the Taskforce (recommendation 21) to repeal all of the circumstances of aggravation created in the Criminal Code by the 2013 suite.

Under the Organised Crime Regime, the replacement for these circumstances of aggravation is the new Serious Organised Crime circumstance of aggravation inserted under the *Penalties and Sentences 1992* (see below).

- *Amendment to the definition of 'participant' in a 'criminal organisation' including the repeal of section 708A – Executive declaration*

Section 708A allows the Minister to make a recommendation to the Governor-in-Council to have an organisation declared to be a criminal organisation by a regulation. The Taskforce Report identified many issues with the granting of this power to the executive (see pages 129 -135 of the Taskforce Report). The Taskforce also examined whether any safeguards could be introduced so that section 708A could address their issues of concern but the majority concluded that no level of safeguards could overcome the inherent flaws, it saw, in the provision (see pages 138-140 of the Taskforce Report).

The Bill reflects the majority recommendation of the Taskforce by providing for the repeal of section 708A at the end of the two year transitional period for the anti-association offence (section 60A) and the clubhouse offence (section 60B).

See also – Penalties and Sentences Act below for amended definition of 'criminal organisation'.

Criminal Proceeds Confiscation Act 2002

The Bill makes amendments to the money laundering offence provisions under sections 250 and 251 of the Criminal Proceeds Confiscation Act to remove the requirement for Attorney-General's consent to prosecute the offence. This amendment implements the recommendations of both the Taskforce (recommendation 5) and the Commission (recommendation 6.1), and brings Queensland into line with other Australian jurisdictions.

Criminal Organisation Act 2009

The COA Review recommended that the Act be repealed or allowed to lapse but that certain measures under the COA be retained and adapted (elsewhere in Queensland's laws – see, for example, the explanation of public safety orders below, which the Bill provides for in the Peace and Good Behaviour Act).

The Bill provides for the repeal of the COA in its entirety, in accordance with the recommendation of the COA Review, and makes the necessary consequential amendments across various statutes which draw upon the COA provisions and definitions.

Liquor Act 1992

Ban on wearing or carrying of colours in licensed premises

The 2013 suite introduced the following offences into the *Liquor Act 1992*:

- a licensee, permittee or their staff must not knowingly allow a person wearing or carrying a prohibited item to enter, or remain in, a premises to which a licence or permit relates (section 173EB);
- a person wearing or carrying a prohibited item must not enter, or remain in, a premises to which a licence or permit relates (section 173EC);
- a person wearing or carrying a prohibited item must not refuse to leave, or resist removal from, a premises to which a licence or permit relates (section 173ED).

Section 173EA of the *Liquor Act 1992* defines a prohibited item as an item of clothing or jewellery, or an accessory that displays:

- the name of a declared criminal organisation; or
- the club patch, insignia or logo of a declared criminal organisation; or
- any image, symbol, abbreviation, acronym or other form of writing that indicates membership of, or an association with, a declared criminal organisation, such as the 1% symbol.

The phrase 'declared criminal organisation' is defined as an entity declared to be a criminal organisation under the Criminal Code, section 1, definition 'criminal organisation', paragraph (c) (referred to as Limb 3).

Collectively, these offences are often referred to as the 'colours offences'. The colours offences were intended to strengthen the protection of members of the public, lawfully present at liquor licensed premises, from the violent and intimidating conduct of criminal OMCG members, as well as conflicts and confrontations between rival gangs.

The offences do not prevent an OMCG member from attending a licensed premises; only from entering or remaining in a licensed premises whilst wearing or carrying a prohibited item.

The Taskforce recommended that the colours offences be retained (Taskforce recommendations 35 to 37). However, the Taskforce recommended and suggested particular modifications to the provisions, to ensure validity, fairness and ongoing effectiveness. The Bill makes a number of amendments to the *Liquor Act 1992* and *Liquor Regulation 2002* in response to the Taskforce's recommendations and suggestions, which are outlined below.

Repeal of section 173EC and retention of section 173EB and 173ED

Although the Taskforce recommended the retention of section 173EC of the *Liquor Act 1992* (Taskforce recommendation 36), the Bill repeals this provision. The Government is committed to protecting the community from fear and intimidation and reducing the likelihood of public disorder and acts of violence in all public places. To meet this commitment, the Bill inserts a new offence into the *Summary Offences Act 2005* to prohibit a person from visually wearing or carrying their colours in a public place. Licensed and permitted premises are considered to be public places under both the *Liquor Act 1992* and the *Summary Offences Act 2005*. Given the new *Summary Offences Act 2005* offence addresses the conduct in section 173EC of the *Liquor Act 1992*, section 173EC will no longer be required and will be repealed.

The offences contained in section 173EB and 173ED of the *Liquor Act 1992* will be retained.

Declaration of identified organisations

The prohibition on the wearing of colours in licensed premises under the *Liquor Act 1992*, and specifically the definition of prohibited item, links to criminal organisations declared under an executive declaration power provided in Limb 3 of the definition of 'criminal organisation', set out in section 1 of the Criminal Code. The Taskforce recommended that Limb 3 be repealed (Taskforce recommendation 10); however, the Taskforce noted that this repeal, alongside the recommendation to retain the colours offences, would necessitate amendment of the definition of prohibited item in section 173EA of the *Liquor Act 1992*.

Given specific, identified risks relating to OMCGs, the Taskforce stated that it may be appropriate for Queensland to adopt a similar approach to that taken in New South Wales, where the *Liquor Regulation 2008* (NSW) excludes, in certain precincts, persons wearing or carrying items relating to listed OMCGs (Taskforce report, page 294).

Accordingly, to ensure the colours offences remain effective following changes to, and the ultimate repeal of, the executive declaration power in the Criminal Code and the related regulation, the Bill amends the *Liquor Act 1992* to provide a new head of power to declare 'identified organisations' in the *Liquor Regulation 2002*. The Bill also amends the definition of prohibited item to make reference to the declared identified organisations.

To allow for a seamless transition to the new framework, the Bill prescribes the 26 entities declared as criminal organisations in section 2 of the *Criminal Code (Criminal Organisations) Regulation 2013* as identified organisations in the *Liquor Regulation 2002*.

The Bill specifies that, in order to recommend the declaration of additional entities in the future, the Minister must be satisfied the wearing or carrying of proposed prohibited items by a person in a public place may cause other persons to feel threatened, fearful or intimidated; or may otherwise have an undue adverse effect on the health or safety of members of the public, or the amenity of the community, including by increasing the likelihood of public disorder or acts of violence. The Bill ensures the term 'public place' takes on a wide meaning, consistent with the definition of the term in the *Summary Offences Act 2005*.

In considering the matters for which the Minister must be satisfied in recommending the regulation, the Minister must have regard to whether any person, while they were a participant in the entity:

- engaged in serious criminal activity; or
- committed an offence involving a public act of violence or damage to property; or
- committed an offence involving disorderly, offensive, threatening or violent behaviour in public.

In the event that the Attorney-General is not the Minister responsible for the *Liquor Act 1992*, the Bill provides that the Minister must reach agreement with the Attorney-General, prior to making a recommendation to the Governor in Council.

Defences for licensees and their employees

The Taskforce stated that the offence in section 173EB of the *Liquor Act 1992* places a heavy onus on licensees, permittees and their staff to either refuse entry to a person wearing colours, or require them to leave the premises, regardless of the circumstances, and irrespective of any risk that might be associated with a challenge to the entrant.

Taskforce members were concerned about the potential to place the safety of individual staff at risk in their attempts to adhere to the provision and avoid committing an offence themselves. The Taskforce considered that an employee, when placed in a position envisaged by the offence, would potentially feel intimidated and/or threatened by an OMCG member attempting to gain entry, and that there is a clear distinction between refusing entry to, or excluding an OMCG member from a premises, as opposed to a non-OMCG member. The Taskforce believed that it followed from this that the legislation must impliedly acknowledge the existence of a risk to the personal safety of the employee, as well as members of the public. Accordingly, the Taskforce recommended that section 173EB of the *Liquor Act 1992* should be amended to afford protections to licensees and their staff (Taskforce recommendation 35).

The Bill amends section 173EB of the *Liquor Act 1992* to provide that a licensee, permittee or employee does not commit an offence if:

- they have taken reasonable steps to refuse entry to, or exclude or remove, a person wearing colours; or
- they reasonably believed their safety would have been endangered if they had refused entry to, or excluded or removed, a person wearing colours; or
- they reasonably believed it was not otherwise safe or practical to refuse entry to, or exclude or remove, a person wearing colours.

Penalties

The majority of the Taskforce concluded the maximum penalties that attach to offences under section 173EC and section 173ED are unnecessarily harsh and inconsistent with the balance of offences under the *Liquor Act 1992*.

The Taskforce pointed out for a first offence under either section the maximum penalty is 375 penalty units. The penalties then escalate for repeat offences, with any third or subsequent offence being punishable by a maximum of 750 penalty units or 18 months imprisonment.

The Taskforce noted, in comparison, the maximum penalty attached to both the broader removal and refusal powers under sections 165 and 165A of the *Liquor Act 1992* is 50 penalty units, which is approximately 1/8th of the penalty under 173EC and 173ED. The Taskforce struggled with the notion that the new offences are, objectively, eight times more serious than the pre-existing broader offences.

Accordingly, the Taskforce recommended that the maximum applicable penalties be reduced, and the tiered punishment regime for repeat offences be removed (Taskforce recommendations 36 and 37).

For the offences in section 173ED of the *Liquor Act 1992*, the Bill removes the tiered penalty system, and reduces the maximum penalty, in line with suggestions by the Taskforce. As the Bill repeals section 173EC of the *Liquor Act 1992*, no amendments regarding penalties are required for this section.

Peace and Good Behaviour Act 1982

- *Creation of new objects for the Peace and Good Behaviour Act*

The Bill significantly amends the Peace and Good Behaviour Act to create a scheme of three new public safety protection orders: public safety orders; restricted premises orders and fortification removal orders. These orders will provide a multi-level strike to pre-emptively disrupt criminal and anti-social behaviour and protect public safety. The scheme provides for orders and notices to be issued by commissioned police officers and the Magistrates Court.

The Bill amends the Peace and Good Behaviour Act to set out new objects for the Act to make it clear that its main object is to protect the safety, welfare, and peace and good order of the community from risks presented by people engaging in anti-social, disorderly or criminal conduct. Importantly, the objects clarify that it is not Parliament's intention that the powers under the Peace and Good Behaviour Act should be exercised in a way that diminishes the freedom of persons in the State to participate in advocacy, protest, dissent or industrial action.

For each of the new orders created by the Bill, the decision maker (whether it be a police officer or a judicial officer) must take into account whether the making of the order will assist in achieving the objects of the Act before deciding whether an order should be made.

The public safety protection order scheme created by the Bill is a civil scheme and therefore all questions of fact in proceedings brought under the scheme (other than proceedings for a criminal offence) will be decided on the balance of probabilities.

- *Public Safety Orders*

The Bill reflects the recommendation of the COA review to transfer the public safety orders from the COA to the Peace and Good Behaviour Act (Part 9.3 of the COA Review Report), through the establishment of Public Safety Orders in Part 2 of the Act.

The Bill provides that a public safety order can prohibit a person or group of people from entering, attending, remaining or doing certain things on a premises, at an event or in a stated area. To breach a public safety order is a misdemeanour (i.e. an indictable offence) punishable by a maximum penalty of three years imprisonment or 300 penalty units.

A variation from the existing public safety orders under the COA is that the Bill enables a Commissioned police officer (i.e. rank of Inspector or above) to make a public safety order of up to seven days duration if satisfied that: the presence of a person or group of persons at an event, or within an area poses a serious risk to public safety; and the making of the order is appropriate in the circumstances.

Information provided to the QPS in relation to planned events or activities is often received at short notice. Where QPS need to protect public safety and security on an immediate basis, applying to the court would not be practical or effective. It is likely that by the time the officer had prepared the application, served it on the relevant person or group and appeared before a court to obtain the order, the public safety or security risk would be over. Police-issued public safety orders for a period of 7 days will address this issue.

The well-known 'Ballroom Blitz' at Carrara on the Gold Coast in March 2006 provides a good example of how the scheme could have been applied. The Ballroom Blitz involved a fight between members of the Finks and Hells Angels OMCGs at a boxing match at the Royal Pines Resort, during which three people were shot, two stabbed and $40,000.00 in damage was caused. The incident developed over a short period of time. A police issued public safety order may have assisted the police to separate and remove persons from the location once they became aware of the situation developing, and may have prevented the incident from occurring or reducing its severity. It would not have been possible for the officers to prepare, appear before a court and obtain a public safety order in time to allow the powers to be exercised to respond to the situation that was developing.

A police-issued public safety order that is 72 hours or longer can be appealed to the Magistrates Court. If police require an order that is longer than seven days in duration they must make an application to the Magistrates Court.

The Bill gives the PIM an oversight function with respect to police-issued public safety orders (see further in the Police Powers and Responsibilities Act below).

The Bill provides police with additional enforcement powers for the public safety orders both in the Police Powers and Responsibilities Act (see below) and the Peace and Good Behaviour Act. In the Peace and Good Behaviour Act police are empowered to: stop persons from entering places the subject of public safety orders (a public safety place); stop, search and detain vehicles approaching or leaving a public safety order place; and remove persons from a public safety place.

- *Restricted Premises Orders*

The majority of the Taskforce found that a scheme based on the *Restricted Premises Act 1943* (NSW) would be more effective, fairer and have better safeguards than the clubhouse offence at section 60B of the Criminal Code (see page 200 of the Taskforce Report). The Bill reflects the Taskforce recommendation (recommendation 19) by creating restricted premises orders in the Peace and Good Behaviour Act.

The scheme in the Bill provides that a senior police officer (i.e. Sergeant or above) may make an application to the Magistrates Court for a restricted premises order. The Magistrates Court may make a restricted premises order if it is satisfied that: the senior police officer reasonably suspects that one or more *disorderly activities* have taken place on the premises and are likely

to take place again on the premises; and that making the order is appropriate in the circumstances.

'Disorderly activity' is defined to include behaviour that is both anti-social and criminal. Further, a 'recognised offender' for the purpose of the consorting offence (see above) or a person who has been given an official warning under the consorting offence powers (an 'associate of recognised offender') being at premises is a 'disorderly activity' for the purpose of the restricted premises orders.

The Bill also provides that the premises already declared to be 'prescribed premises' under the *Criminal Code (Criminal Organisations) Regulation 2013* are declared to be subject to a restricted premises order upon commencement of the new scheme; a declaration that will last for two years and with an option for a police officer to apply to the Magistrates Court to further extend the order for another two years. The Magistrate must make the order to extend if taking into account activity that occurred on the premises both *before* and after commencement of the Bill it is considered that disorderly activities are likely to take place on the premises again and that making the order is appropriate in the circumstances.

It is an offence for disorderly activity to take place on the premises after a restricted premises order has been made. The owner and/or occupier of the premises is liable to: for a first offence, a maximum penalty of 18 months imprisonment or 150 penalty units, and for a second or subsequent offence, a maximum penalty of three years imprisonment or 300 penalty units.

Police officers are empowered under a restricted premises order to search premises, subject to such declaration, without warrant on an unlimited number of occasions for the duration of the order.

The Bill also provides that the police are empowered under the Police Powers and Responsibilities Act to apply to a Magistrate to obtain a search warrant for *any premises* (i.e. including premises that are not yet subject to a restricted premises order) if they reasonably believe that disorderly activities are taking place on the premises and are likely to take place again on the premises.

Police officers searching premises under a search warrant or subject to a restricted premises order may seize any item defined as a 'prohibited item' under the scheme. Prohibited items include: alcohol, drugs, firearms, explosives and anything that is capable of being used inside premises to contribute to or enhance the ambience of the premises in support of the sale or consumption of liquor or drugs or entertainment of demoralising character e.g. a bar fit out, an entertainment system, a pool or billiard table or a stripper's pole.

The Bill further provides that items that are seized during the exercise of search powers (either under the Peace and Good Behaviour Act or the Police Powers and Responsibilities Act) can be forfeited to the State by the Commissioner of Police. An application to the Magistrates Court for the return of the prohibited item can be made within 21 days. A Magistrate can order the return of the item only if the applicant can prove that: they are the lawful owner of the item, the item was seized on an unlawful basis and it is appropriate for the item to be returned.

- *Fortification Removal Orders*

The COA Review provided the Government with three options with respect to fortification removal orders: 1) relocate the court-ordered model under the COA to another legislative instrument; 2) initiate a police-issue model; or 3) expand police search powers (see 9.4 of the COA Review Report). The scheme provided for in the Bill consists of two parts: stop and desist notices that are issued by a Commissioned police officer (a variant of a police-issued model) and fortification removal orders which are issued by the Magistrates Court (a court-ordered model).

The Bill creates a 'stop and desist notice' scheme that empowers a Commissioned police officer (i.e. rank of Inspector or above) to issue a notice if they observe excessive fortifications being erected on premises that are being used for criminal activity, or are habitually occupied by recognised offenders and associates of recognised offenders, or participants in a criminal organisation. This is not a feature of the COA fortification removal order provisions. The stop and desist notice will provide the police officer with 14 days to make an application for a fortification removal order. If an application for the order is not lodged in 14 days the stop and desist notice will lapse. If a person breaches the stop and desist notice it will be evidence of the grounds required for the police to obtain a fortification removal order unless the respondent can prove otherwise.

A senior police officer (rank of Sergeant of above) may apply to the Magistrate Court for a fortification removal order which will require an owner or occupier of a premises to remove fortifications from a premises within a certain period of time. If the fortifications are not removed police are empowered to remove the fortifications by whatever force is necessary. The Magistrates Court will be able to make a fortification removal order if they are satisfied that: the premises may be connected to serious criminal activity; or are habitually occupied by recognised offenders, associates of recognised offenders or participants in criminal organisations; and the extent of the fortification is excessive for the lawful use of the premise; and making the order is appropriate in the circumstances.

The Bill empowers police to enter premises and remove fortifications. The Commissioner of Police has the power to forfeit fortifications that are removed by police.

A person who intentionally hinders the removal or modification of a fortification or the taking of any enforcement action under the Act commits a misdemeanour (i.e. an indictable offence). The offence is punishable by a maximum penalty of five years imprisonment.

Penalties and Sentences Act 1992

- *Amended definitions of 'criminal organisation' and 'participant' in a criminal organisation*

Queensland's lack of a single definition of the terms 'criminal organisation' and 'participant' across its legislation was criticised by His Honour Justice Hayne in *Kuczborski v Queensland* (2014) 89 ALJR 59, [65-66]. The benefits of clear consistent definitions of these key terms were discussed by the Taskforce (see page 127 of the Taskforce Report).

The Bill reflects the unanimous recommendations of the Taskforce (recommendation 6, 7, 8 and 11) by substantially amending the definitions of 'criminal organisation' and 'participant'. The definitions are inserted under the Penalties and Sentences Act, along with the new Serious Organised Crime circumstance of aggravation, and are cross-referenced under the

Criminal Code. These amended definitions are used consistently throughout the Organised Crime Regime; and the Bill makes consequential amendments to relevant Acts accordingly.

The new definition of 'criminal organisation' is intended to be sufficiently broad enough to capture both traditional and hierarchically structured criminal groups; as well as shape-shifting, opportunistically formed and flexible criminal groups. This enhancement acknowledges that while OMCGs have traditionally favoured hierarchical and highly visible models of organisation, other crime groups are now frequently informally arranged and adaptable in their structure (as emphasised under all three Reports – the Commission, COA Review and Taskforce). In framing the new definitions, the Bill takes into account the recent decision of the Honourable Justice Peter Lyons in *R v Hannan, Hannan, Gills, Murrell & Hannan* [2016] QSC 161; to ensure the scenario illustrated by that case is captured by the definition.

Other than in the context of the *Summary Offences Act 2005* offence and the *Liquor Act 1992* offences (in terms of the banning of the visible wearing or carrying of prohibited items in licensed premises and in public, such as OMCG items) the Bill repeals the ability to declare a group as criminal by regulation (see reference to section 708A of the Criminal Code above).

The new definition of 'participant' is focused on individuals who are actively involved in the affairs of criminal organisation or who identify and promote themselves as being associated with a criminal organisation.

- *A new Serious Organised Crime circumstance of aggravation*

The Bill reflects the unanimous recommendation (recommendation 22) of the Taskforce that a new Serious Organised Crime circumstance of aggravation should be established.

The circumstance of aggravation applies to a prescribed list of serious offences (recommendation 23), often associated with organised criminal activity and of a type based on the findings of the Commission. The prescribed offences are predominantly contained in the Criminal Code but the Bill also amends the Criminal Proceeds Confiscation Act, the Drugs Misuse Act and the *Weapons Act 1990* to apply the new circumstance of aggravation to discrete serious offences under those Acts. The Bill ensures that the jurisdictional limits of the District Court and Supreme Court are not altered by the inclusion of the new circumstance of aggravation.

The Bill provides that it is a circumstance of aggravation if at the time the person commits the prescribed offence the person was a participant in a criminal organisation and the person knew or ought reasonable to have known that: the offence was being committed at the direction of a criminal organisation; or in association with a participant in a criminal organisation; or for the benefit of a criminal organisation. To remove any doubt, the Bill makes it clear that the criminal organisation that directed or benefited from the offending does not need to be the same criminal organisation to which the person is a participant. Similarly, the participant with whom the person committed the offence need not belong to the same criminal organisation as the person.

The Serious Organised Crime circumstance of aggravation incorporates the amended definitions of 'participant' and 'criminal organisation' (as discussed above) under the Bill (recommendation 24).

The circumstance of aggravation must proceed on indictment and requires the consent of the Director of Public Prosecutions for presentation of the indictment (recommendation 25). Although inserted under the Penalties and Sentences Act, the Bill ensures the Criminal Code applies with regards to the availability of an alternative verdict at trial.

The consequence of conviction for a prescribed offence committed with the Serious Organised Crime circumstance of aggravation is to enliven a new targeted sentencing regime specific to these offenders (recommendation 26); namely that the court:

- must sentence the person to a *term of imprisonment* for the prescribed offence. The length of this 'base sentence' is to be decided by the court having regard to the circumstances of the case. However, the court cannot have regard to the mandated component of the sentence and therefore cannot ameliorate the 'base sentence' in any way because of this; and

- must also impose the 'mandated component of the sentence' (option 3 of Taskforce recommendation 27). That is, a fixed cumulative jail term to be served wholly in prison without parole release. The length is to be seven years imprisonment (or for a prescribed offence that is punishable by a maximum penalty of less than seven years imprisonment, the fixed cumulative term is to be the length of the maximum penalty for that offence). The Bill makes particular provision to accommodate those cases where the 'base sentence' is life imprisonment or an indefinite sentence; and

- must impose the new *Organised Crime Control Order* (discussed below).

(Recommendation 27)

This penalty regime cannot be mitigated or varied except in prescribed circumstances. That is, the person provides cooperation of significant use to a law enforcement agency in the investigation of or in a proceeding about a *major criminal offence* (recommendation 28). A 'major criminal offence' means an indictable offence for which the maximum penalty is at least 5 years imprisonment. The cooperation can be of significant use to a *law enforcement agency* (it is not intended that the use be restricted to the QPS only); and it can be of a type contemplated by section 13A or section 13B of the Penalties and Sentences Act.

The Bill provides that the utility of the cooperation is to be assessed and determined by the sentencing judge; consistent with the prevailing approach under sections 13A and 13B of the Penalties and Sentences Act. This is a fundamental point of distinction with the approach under the VLAD Act.

It is also intended that section 13A (or section 13B) will dictate the process for accepting and recognising the cooperation.

- *Organised Crime Control Orders*

The Taskforce unanimously recommended a conviction-based control order regime as a new sentencing order for Queensland to be inserted under the Penalties and Sentences Act (recommendation 30). The Bill implements this initiative.

The sentencing court can impose any conditions under the control order it considers reasonably necessary to protect the public by preventing, restricting or disrupting involvement by the person in serious criminal activity.

However, certain caveats are incorporated under the Bill to ensure a control order cannot compel a person to do certain things anchored to confidentiality, legal professional privilege, certain privilege against self-incrimination, preservation of the right to silence; and protections for the individual in the event that a condition does for some reason result in them providing this type of information (to remove any doubt in this regard and in recognition of the concerns raised in the cases of *Lee v The Queen* (2014) 253 CLR 455 and of *X7 v Australian Crime Commission* (2013) 248 CLR 92 regarding the use of compelled evidence).

The Bill provides that the control order regime applies whether or not a conviction is recorded; and

- (**Mandatory control orders) –** applies as a mandatory consequence of conviction for an offence aggravated by the new Serious Organised Crime circumstance of aggravation; and

- (**Discretionary control orders) –** applies at the court's discretion, upon application by the prosecuting authority (or on its own initiative), for the following:

  - *any* indictable offence, where the court is satisfied on the balance of probabilities that the offender was a 'participant in a criminal organisation' at the time of the offence having regard to all of the circumstances (the offence for which the person is convicted need not relate to their participation in a criminal organisation for a control order to be made – section 15 of the Penalties and Sentences Act is consequentially amended to accommodate this additional information); or

  - conviction of the new Habitually consorting with recognised offender offence; and

  - the court is satisfied, on the balance of probabilities, that it is reasonably necessary to protect the public by preventing, restricting or disrupting involvement by the person in serious criminal activity.

A control order imposed as a result of conviction for the offence of consorting is restricted as to its conditions (to conditions that restrict who (including a class of persons) the person can have contact with and/or mix with and place restriction conditions only) and in its length (not longer than two years). Otherwise, a control order can be up to five years in duration; with extension upon conviction for a breach. Also, a mechanism to delay commencement of the control order to accommodate an initial period of incarceration is included.

A contravention of a control order is an offence punishable by a maximum penalty of three years imprisonment, increasing to five years imprisonment for a second breach. The first offence is a misdemeanour and the second or subsequent offence is a crime. Provision is made to enable summary disposition of these indictable offences and to ensure that no time limits apply for these prosecutions despite summary disposition.

In terms of contravening conduct, the Bill expressly ensures the extra-territorial application of the control order, so long as there is sufficient nexus, to ensure that persons subject to an order cannot travel interstate to circumvent their conditions.

The Bill also provides for mutual recognition of control orders originating in other Australian jurisdictions, giving legal effect in Queensland to the control orders of other States. At this time, it is intended that control orders issued in NSW and South Australia (whether they are

conviction-based or non-conviction based) will be recognised by Queensland as valid and enforceable control orders. It is not proposed at this time to extend the mutual recognition provisions to the analogous COA legislation in each Australian jurisdiction – those orders (noting, the COA Review found that no control orders have been made at this time under those respective regimes) rely on a declaration-based model deeming entire organisations as criminal as distinct from focusing on the *actual* convictions of the individuals within.

The Bill includes provisions to vary or revoke the control order under limited circumstances. Where a person is subject to more than one control order at the same time the Bill ensures that regard must be had to the conditions of the pre-existing control order in framing the new one. This is to ensure that overall the conditions upon the person remain objectively fair.

Police Powers and Responsibilities Act 2000

- *Repeal of the 2013 powers to stop, search and detain participants in criminal organisations*

The 2013 suite gave police officers the power to stop, search, detain and take identifying particulars from a person reasonably suspected of being a participant in a criminal organisation. The majority of the Taskforce recommended that these powers should be repealed (recommendation 40).

The Bill reflects this recommendation in providing for the repeal of these powers three months from assent.

- *Repeal of Chapter 4A (Motor vehicle forfeiture for particular criminal organisation offences) of the Act*

The 2013 suite created a specific motor vehicle impoundment scheme that applied to persons charged or convicted of five 'criminal organisation offences' namely: the anti-association offence at section 60A of the Criminal Code; the clubhouse offence at section 60B of the Criminal Code; the recruitment offence at section 60C of the Criminal Code; the offence of Affray at section 72 of the Criminal Code with the criminal organisation participant circumstance of aggravation; and the 'evade police' offence at section 754 of the Police Powers and Responsibilities Act with the criminal organisation participant circumstance of aggravation.

The Taskforce noted that the other recommendations to repeal all of the 'criminal organisation offences' under the scheme effectively made Chapter 4A redundant. The Bill provides for the repeal of the Chapter 4A scheme three months from assent.

- *Repeal of the circumstance of aggravation for the offence of 'evade police' at section 754 of the Act*

The offence of failing to stop a motor vehicle when directed to do so by police (the 'evade police' offence) carries a mandatory minimum penalty of 50 days imprisonment served wholly in a corrective services facility or 50 penalty units. The maximum penalty for the offence is 3 years imprisonment or 200 penalty units.

The 2013 suite added a circumstance of aggravation to the offence of failing to stop a motor vehicle when directed to do so by a police officer. The circumstance of aggravation is being a

participant in a criminal organisation. Committing the offence with the circumstance of aggravation attracts a mandatory minimum penalty of 100 days actual imprisonment or 100 penalty unit fine and a two year driver's licence disqualification.

The majority of the Taskforce held the view that the offence of evading police is very serious regardless of whether it is committed by a participant in a criminal organisation or any other citizen (see pages 318-319 of the Report). The Bill reflects the Taskforce's recommendation (recommendation 41) by providing for the immediate repeal of this circumstance of aggravation.

The mandatory minimum penalty for the simpliciter offence, that was introduced to support the 'no police pursuit' policy, will not be impacted by the removal of the 2013 circumstance of aggravation.

- *Powers to support the new habitual consorting offence in the Criminal Code*

The Bill provides police officers the power to stop a person that they reasonably suspect has consorted, is consorting or is likely to consort with one or more 'recognised offenders' (see the definition under the new habitual consorting offence above).

Where a person has been stopped under this power a police officer may:

- confirm their suspicion by requiring them to provide their name, address and date of birth;
- take a person's identifying particulars if it is necessary to confirm their name, address and date of birth if a person cannot provide those details on the spot or at a convenient location;
- give a person an official warning for the habitual consorting offence.

The Bill also provides that a police officer can give a person a direction to move on from a place where an official warning has been issued.

Any identifying particulars taken to confirm a person's identity under these powers must be destroyed as soon as practicable after a person's identity has been confirmed.

The Bill provides that a police officer may search a person or a vehicle without a warrant if they reasonably suspect the person has consorted, is consorting or is likely to consort with one or more recognised offenders. Similar powers are provided with respect to the new offence prohibiting the wearing of colours in a public place under the Summary Offences Act (see below).

The power to stop and search a person who has consorted, is consorting, or is likely to consort, with a recognised offender is required because there may be something in the person's possession relevant to the act of consorting. A search of a person who is suspected of consorting may reveal evidence such as written messages, or mobile telephone communications between the person and the recognised offender that establishes that they have consorted. This in turn may provide evidence as to why the person has sought out, or accepted the company, of a recognised offender.

Without a power to stop the person suspected of consorting, there are no other lawful means to detain the person to establish that they have been consorting. The power to detain is important to assist police in establishing whether any of the defences to consorting provided in the Criminal Code apply, for example, consorting with a recognised offender while the person is genuinely conducting a lawful business. The enhanced ability of police to effectively establish whether an act of consorting for the purpose of the offence is occurring will facilitate the issuing of a consorting warning notice thereby potentially preventing further acts of consorting and the commission of an offence.

The powers to require a person give their name, address and date of birth and to take identifying particulars (if it is necessary to confirm those details) are required in order to establish the true identity of the person. The accurate establishment of a person's identity is crucial to the proper issue of official warnings and the enforcement of the consorting offence. Without confirmation of person's identity it is more likely that official warnings will be given in error.

These search powers are also required to ensure the safety of front line police officers who, in the course of giving the warning, will necessarily be brought into contact with recognised offenders who, the QPS advises, often carry concealed weapons. These powers recognise the view the QPS put forward strongly at the Taskforce, that is, stop, search and detain powers can assist police officers to engage safely with integrity and legitimacy in the proactive policing of high risk persons of interest.

The reality of the dangers faced by frontline police officers when their regular duties bring them into contact with high risk individuals is evidenced by the experience of two officers in 2008. The officers were patrolling in a dingy at Round Hill Creek near Gladstone when they approached a Rebels bikie member who had earlier in the day failed to provide identification upon request. The Rebels member pointed a gun at the two police officers (their own guns were out of reach in waterproof cases). After 20 minutes of the police officers trying to calm the Rebels member down, he turned the gun on himself. On 25 August 2016, both police officers were awarded the Queensland Police Bravery Medal.

A recent media report highlighted the increasing danger to frontline police in Australia from persons involved in serious and organised crime.[1]

Before exercising their powers to issue an official consorting warning to a person the Bill provides that a police officer must consider whether it is appropriate to exercise the power having regard to the object of disrupting and preventing criminal activity by deterring recognised offenders from establishing, maintaining or expanding their criminal network.

The Bill provides that official warnings can be given orally or in writing. However if a warning is given orally if must be confirmed in writing within 72 hours or the warning itself will lapse and have no effect.

Queensland police officers will be empowered to issue 'pre-emptive warnings' for the habitual consorting offence. The amendments to the Police Powers and Responsibilities Act in the Bill make it clear that the warning can be given before, during or after a person has consorted with a recognised offender.

[1] Australian Federal Police Assistance Commission Ian Harvey, as quoted in The Australian newspaper dated 3 September 2016.

- *Powers to support the new public safety protection order scheme in the Peace and Good Behaviour Act*

The Bill provides a police officer with the power to require names and addresses from persons when a police officer is about to give, is giving or has given a person a public safety order; a restricted premises order; or a fortification removal order. A police officer also has the power to stop a vehicle to give a person any one of the three orders.

The Bill amends section 150 of the Police Powers and Responsibilities Act to allow a police officer to apply for a search warrant for a premises in order to find prohibited items if the officer reasonably *believes* one or more disorderly activities have taken place and are likely to take place again on the premises. This power supports the restricted premises orders (see above).

The Bill makes amendments to section 686 of the Police Powers and Responsibilities Act to ensure that items seized under restricted premises orders and fortification removal orders are treated consistently with other property seized by police officers in the course of their duties.

- *New oversight functions for the Public Interest Monitor (PIM)*

The Bill gives new oversight functions to the PIM.

The PIM's new function will be to gather statistical information about the use and effectiveness of official warnings for consorting and public safety orders issued by commissioned officers. The PIM will be required to provide an annual report setting out how many warnings and orders are issued each year and the extent to which the requirements of the legislation has been complied with by police officers. The PIM will also be required to report on the use of official warnings and commissioned officer issued public safety orders generally. The PIM will be required to provide a copy of that report to the Ministers administrating the Peace and Good Behaviour Act, the Criminal Code and the Police Powers and Responsibilities Act and that report must then be tabled in the Legislative Assembly within 14 sitting days.

- *The creation of new enforcement acts in the Police Powers and Responsibilities Regulation 2012*

The Bill provides that many of the new powers listed above with respect to official warnings and the public safety protection order scheme will have to be recorded as 'enforcement acts'. This will ensure that there is an appropriate source of data available when these powers are reviewed five years after commencement.

Police Service Administration Act 1990

The 2013 suite made amendments to the Police Service Administration Act to give the Commissioner of Police the power to make public the criminal history of any person who is, or was, a participant in a criminal organisation.

Section 10.2AAB confers on the Commissioner of Police the power to disclose, to any entity (which includes a media outlet), the criminal history of a current or former participant in a criminal organisation (the notion of a former participant extends to a person who has, at any time in their life, been identified as a participant in a criminal organisation).

Section 10.2AAC provides that the disclosed criminal history may be passed on to others. That is, the Commissioner of Police is empowered (a power that cannot be delegated) to authorise that the entity to which the criminal history was disclosed, may publish or further disclose it to another entity.

The Taskforce majority considered there to be no compelling reason or justification for maintaining the 2013 changes. The Taskforce majority was concerned by the 2013 changes for a number of reasons, including: the provisions potentially jeopardise the independence, impartiality and political neutrality of the Commissioner of Police; the absence of any guidance about the factors relevant to the discretion to disclose exercised by the Commissioner of Police or to provide reasons for the decision; the potential for public disclosure of a person's criminal history to jeopardise a person's right to a fair trial; and that the policy undermines the importance of offender rehabilitation (by overriding the 'spent conviction' legislation under the Criminal Law (Rehabilitation of Offenders) Act and the prohibition against publication of the criminal histories of young people under the *Youth Justice Act 1992*).

The Bill implements the recommendation of the Taskforce majority (recommendation 34) to repeal the 2013 amendments to the Police Service Administration Act in their entirety.

Repeal of the VLAD Act

The Bill repeals the VLAD Act in its entirety as unanimously recommended by the Taskforce (recommendation 29). The Taskforce considered that the criticisms of the VLAD Act by the High Court of Australia (*Kuczborski v Queensland* (2014) 89 ALJR 59) could not be overcome. The Taskforce considered there to be genuine concern over its constitutional vulnerability, in particular that the effect of the discretion vested in the Commissioner of Police in assessing the calibre of cooperation by an offender may be a usurpation of judicial power.

In addition to the constitutional concerns, the Taskforce considered other matters to present significant problems for the continued existence of the VLAD Act, including: the misleading and prejudicial nature of its title, its location outside of Queensland's ordinary sentencing framework, the tension between the Act's objects and the fundamental sentencing principle of proportionality, and a lack of transparency and fairness in the operation of its section 9 (i.e. the scheme to encourage cooperation) (see Chapter 13 of the Taskforce Report).

In its place, the Bill creates the new Serious Organised Crime circumstance of aggravation with its targeted sentencing regime.

Government initiative – extending the prohibition on wearing or carrying prohibited items

To protect the community from fear and intimidation and reduce the likelihood of public disorder and acts of violence in public places, the Bill creates a new offence in the *Summary Offences Act 2005* prohibiting the wearing or carrying of a prohibited item in a public place in a way that it can be seen. A person in a vehicle that is in a public place, is also prohibited from wearing or carrying a prohibited item in a way that the item can be seen from the public place.

The applicable maximum penalties will escalate for repeat offending, to deter such conduct. The maximum penalty for the offence will be six months imprisonment or 40 penalty units, increasing to nine months imprisonment or 60 penalty units for a second offence and 12 months imprisonment or 100 penalty units for any subsequent offence.

The Bill includes a defence if the person proves that they engaged in the conduct alleged to constitute the offence for a genuine artistic, educational, legal or law enforcement purpose and the conduct was, in the circumstances, reasonable for that purpose. This is similar to section 228E of the Criminal Code which provides a defence to child exploitation material offences under sections 228A-228D of the Criminal Code.

Upon conviction, a prohibited item to which the offence relates, that is lawfully in the possession of the Queensland Police Service, will be automatically forfeited to the State.

The Bill amends existing provisions in the *Police Powers and Responsibilities Act 2000* to allow police to stop, detain and search a person or a vehicle and seize anything that may be evidence of the commission of the new offence; such powers based on the police officer holding the necessary reasonable suspicion.

The Bill also includes a mechanism for additional identified organisations to be declared by regulation.

Amendments related to the recommendations of the Taskforce about occupational licensing

One of the policy objectives of the 2013 suite (particularly in regard to the *Tattoo Parlours Act 2013* and the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013*) was to prevent criminal organisations (including outlaw motorcycle gangs) and their members from infiltrating legitimate industries and occupations. The occupational licensing and industry regulation Acts affected by the 2013 suite are the:

- *Electrical Safety Act 2002*
- *Liquor Act 1992*
- *Motor Dealers and Chattel Auctioneers Act 2014*
- *Racing Act 2002*
- *Racing Integrity Act 2016*
- *Second-hand Dealers and Pawnbrokers Act 2003*
- *Security Providers Act 1993*
- *Tattoo Parlours Act 2013*
- *Tow Truck Act 1973*
- *Queensland Building and Construction Commission Act 1991 (formerly the Queensland Building Services Authority Act 1991)*
- *Weapons Act 1990*
- *Work Health and Safety Act 2011*

While the *Motor Dealers and Chattel Auctioneers Act 2014* was not directly part of the 2013 suite, it included provisions based on the principles of the 2013 suite upon its enactment in 2014. Similarly, the *Racing Integrity Act 2016* had not been enacted at the time of the passage of the 2013 suite. Since that time however, relevant occupational licensing arrangements that were provided for in the *Racing Act 2002* (and which were affected by the 2013 suite) have been relocated to the *Racing Integrity Act 2016*.

The 2013 suite substantially increased licensing restrictions and regulation of industries considered to be at risk including through an increased and determinative role for the Commissioner of Police in assessing a person's suitability to hold particular types of occupational licences, certificates or other authorities. The 2013 suite also established a significant role for the use of confidential criminal intelligence in occupational licensing frameworks, while prohibiting the disclosure of criminal intelligence, including to a person adversely affected by an occupational licensing decision based on criminal intelligence.

Under the 2013 suite, a person's mere association with a criminal organisation (or members of a criminal organisation) excluded the person from holding a range of occupational licences, certificates and authorities, notwithstanding that the person may not have been charged or convicted with any offence themselves.

The 2013 suite also imposed significant constraints on the ability of a person adversely affected by an occupational licensing decision based on criminal intelligence to contest, refute or otherwise seek a review of the licensing decision.

As part of its review of organised crime legislation, the Taskforce considered whether the 2013 suite properly balanced the rights of individuals to obtain lawful employment against the need to protect the community from organised crime. The Taskforce recommended substantial changes to occupational licensing frameworks affected by the 2013 suite.

While the Taskforce considered the amendments to the *Weapons Act 1990* generally as part of occupational and licensing industry regulation, it recognised that the *Weapons Act 1990* was distinct in two important aspects:

- oversight and enforcement of the Act is the sole responsibility of the QPS and is not shared between agencies; and

- the restriction on ownership of weapons by reason of participation in a criminal organisation existed prior to the 2013 suite.

Unlike other occupational and licensing industry Acts which are primarily focused on preventing inappropriate persons from being able to work in certain industries, the *Weapons Act 1990* has a slightly different purpose in that it regulates the possession and use of weapons more generally to ensure public and individual safety.

The Bill achieves the policy objective of implementing the Queensland Government's response to the views, findings and recommendations of the Taskforce through a range of measures relating to occupational and industry licensing.

The amendments to implement the Government's response to the Taskforce's views, findings and recommendations relating to occupational and industry licensing are described in more detail below. However, in summary, the Bill contains provisions to:

1. repeal requirements for chief executives to refuse or cancel a licence, permit, certificate or other authority solely on the basis that an entity or person is alleged to be a criminal organisation or a participant in a criminal organisation, and include a prohibition on the use of confidential criminal intelligence in occupational licensing decisions (apart from the *Weapons Act 1990* which is discussed further below);

2. replace requirements established by the 2013 suite that compel chief executives to refer all applications for a licence, permit, certificate or other authority to the Commissioner of Police for assessment with general arrangements (through new or existing provisions) that allow chief executives to enter into agreements to exchange information with the Commissioner of Police (and other authorities) to assist in the administration of legislation within the responsibilities of the respective agencies;

3. restore appeal and review rights that were restricted by the 2013 suite, and enhance procedural fairness in licensing decisions by re-establishing the right of people adversely affected by a licensing decision to be given reasons for the decision;

4. retain, rename and substantially amend the *Tattoo Parlours Act 2013* to adopt a more traditional and transparent approach to occupational licensing of the body-art tattoo industry in Queensland, and to improve the administration and operation of the body-art tattoo licensing legislation including in response to a number of issues raised by stakeholders in submissions to the Taskforce;

5. repeal particular amendments to the *Electrical Safety Act 2002*, *Queensland Building and Construction Commission Act 1991* (formerly the Queensland *Building Services Authority Act 1991*) and the *Work Health and Safety Act 2011* that were contained in the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013* and are due to commence on 1 July 2017.

Repeal requirements for chief executives to refuse or cancel a licence, permit, certificate or other authority solely on the basis that an entity or person is alleged to be a criminal organisation or a participant in a criminal organisation, and include a prohibition on the use of confidential criminal intelligence in occupational licensing decisions

As a result of the 2013 suite, a person is excluded from holding particular occupational licences and other authorities under the *Liquor Act 1992*, *Motor Dealers and Chattel Auctioneers Act 2014*, *Racing Integrity Act 2016*, *Second-hand Dealers and Pawnbrokers Act 2003*, *Security Providers Act 1993* and *Tow Truck Act 1973* if the Commissioner of Police advises the relevant chief executive for the licensing Act that the entity or person is a criminal organisation or identified participant in a criminal organisation. Upon receipt of such advice, chief executives responsible for relevant occupational and industry licensing Acts have no discretion but to refuse the licence. The *Tattoo Parlours Act 2013* has a different process for assessing the suitability of licence applicants and licensees, which is discussed below.

In its report, the Taskforce recommended that people should not be refused a licence, permit, certificate or other authority, or have a licence, permit, certificate or other authority cancelled, solely on the basis that the person is alleged to be a participant in a criminal organisation (recommendation 56).

The Taskforce also recommended that licences, permits, certificates and other authorities should only be refused or cancelled on the basis that there is evidence specific to the individual which demonstrates that the individual (and not those with whom they associate) is not a suitable person to hold the licence, permit, certificate or other authority (recommendation 56).

More generally, the Taskforce recommended that requirements for chief executives to refuse or cancel licence applications solely on the basis of *criminal intelligence* should be repealed (recommendation 15). In this respect, the Taskforce highlighted the limitations and issues associated with the use of confidential criminal intelligence in occupational licensing determinations, particularly in relation to breaches of fundamental legislative principles and principles of procedural fairness in administrative decision-making.

The phrase 'criminal intelligence' has a number of meanings across the Queensland statute book. In terms of occupational licensing legislation, 'criminal intelligence' generally means advice given, or information held by the Commissioner of Police that an entity or person is a criminal organisation or an identified participant in a criminal organisation (for example, see Schedule 2 of the *Security Providers Act 1993*).

In this respect, the Taskforce has recommended a consistent definition of 'criminal intelligence' based on section 59 of the *Criminal Organisation Act 2009* should be applied across the statute book. Section 59 of the *Criminal Organisation Act 2009* provides a broader definition of criminal intelligence which, in summary, provides that criminal intelligence is information relating to actual or suspected criminal activity, the disclosure of which could reasonably be expected to:

- prejudice a criminal investigation; or

- enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement; or

- endanger a person's life or physical safety.

The Bill relocates the definition of 'criminal intelligence' from the *Criminal Organisation Act 2009* to the *Criminal Code.*

In accordance with the Taskforce recommendations, the Bill amends the *Liquor Act 1992*, *Motor Dealers and Chattel Auctioneers Act 2014*, *Racing Integrity Act 2016*, *Second-hand Dealers and Pawnbrokers Act 2003, Security Providers Act 1993* and *Tow Truck Act 1973* by repealing requirements for chief executives to refuse or cancel a licence or other authority on the basis that an entity or person is alleged to be a criminal organisation or a participant in a criminal organisation.

In addition, the amendments to those Acts also make it clear that licensing authorities must not have regard to criminal intelligence when making occupational licensing decisions.

However, the new serious and organised crime offences (and control orders) are intended to become relevant in the assessment of a person's suitability for a licence, permit, certificate or other authority under the affected occupational licensing Acts.

The current scheme under the *Weapons Act 1990* is effectively a dual scheme. A 'fit and proper person' test which existed prior to the 2013 suite will continue to exist and requires the Authorised Officer under the Act to make a decision with respect to whether a person is appropriate to hold a licence. The 2013 suite introduced an additional stand-alone requirement that a person is not a fit and proper person to hold a licence if the person is an identified participant in a criminal organisation. Whilst a person's membership of a criminal organisation may have previously been a general consideration for the Authorised Officer

under public interest and public safety considerations, the 2013 suite removed the need to apply the usual fit and proper person test in cases where the persons was an identified participant in a criminal organisation.

The Bill amends the *Weapons Act 1990* to return to the position prior to the 2013 suite, allowing the application of a 'fit and proper person' test, with an applicant's participation in a criminal organisation to be considered as part of the general 'fit and proper person' test, which was the case prior to the 2013 suite.

In relation to the use of criminal intelligence under the *Weapons Act 1990*, the previous scheme included the ability to use criminal intelligence as part of the existing fit and proper person test. Given that the ability to use criminal intelligence in determining weapons licences existed prior to the 2013 suite and the purposes of the *Weapons Act 1990* are public and individual safety focused, the ability of the Authorised Officer to use criminal intelligence as part of the fit and proper person test will be maintained.

Replace requirements established by the 2013 suite that compel chief executives to refer all applications for a licence, permit, certificate or other authority to the Commissioner of Police for assessment with general arrangements (through new or existing provisions) that allow chief executives to enter into agreements to exchange information with the Commissioner of Police (and other authorities) to assist in the administration of legislation within the responsibilities of the respective agencies.

The 2013 suite resulted in requirements for all applications for licences, permits, certificates and other authorities under the *Liquor Act 1992*, *Motor Dealers and Chattel Auctioneers Act 2014*, *Racing Integrity Act 2016*, *Second-hand Dealers and Pawnbrokers Act 2003, Security Providers Act 1993* and *Tow Truck Act 1973* to be referred to the Commissioner of Police for assessment as to whether the applicant (or another relevant person as applicable) was an identified participant in a criminal organisation (the *Tattoo Parlours Act 2013* has a different process for assessing the suitability of licence applicants and licensees, which is discussed below).

The Taskforce concluded that the allocation of resources required to conduct these stricter probity assessments was disproportionate to the risk posed to the community by organised crime (Taskforce Report, page 368) and recommended that the requirement under the 2013 suite for all applications to be referred to police should be repealed and replaced with a mechanism that allows the Commissioner of Police to supply relevant information to chief executives on a case by case basis (Recommendation 58).

Consistent with the Taskforce's recommendation, the Bill contains amendments to the *Liquor Act 1992*, *Motor Dealers and Chattel Auctioneers Act 2014*, *Racing Integrity Act 2016*, *Second-hand Dealers and Pawnbrokers Act 2003, Security Providers Act 1993* and *Tow Truck Act 1973* to remove the requirements introduced in 2013 for all applications to be referred to the Commissioner of Police.

While the Taskforce was highly critical of the use of criminal intelligence as a basis for occupational licensing decisions-making, a majority of Taskforce members concluded that there remains some limited circumstances where it would be beneficial for the Commissioner of Police to provide sensitive intelligence information to chief executive officers with a view

to preventing a criminal organisation from utilising legitimate industries (Taskforce Report, page 164).

However, the Taskforce also cautioned that Government departments which administer the relevant legislation ought to proceed on the basis that criminal intelligence should be utilised by decision-makers only as a last resort and only when the criminal intelligence can be corroborated by actual evidence (Taskforce Report, page 165).

The Bill amends the *Liquor Act 1992*, *Motor Dealers and Chattel Auctioneers Act 2014*, *Racing Integrity Act 2016*, *Second-hand Dealers and Pawnbrokers Act 2003*, *Security Providers Act 1993* and *Tow Truck Act 1973* to include a general provision authorising the exchange of information between chief executives responsible for the relevant licensing Acts and other authorities, including the Queensland Police Service. In this respect, the Bill reflects that the exchange of information between government agencies can be beneficial in the administration of legislation within respective agencies' responsibilities. The provisions allowing for the exchange of information between agencies is based on an existing provision in the *Tattoo Parlours Act 2013.* The information exchange provisions are also supported by provisions designed to appropriately protect the confidentiality of information and to prevent unlawful disclosure of the information.

However, in recognition of the views, findings and recommendations of the Taskforce regarding the limitations and issues associated with the use of criminal intelligence in administrative decision-making, the Bill also amends the *Liquor Act 1992*, *Motor Dealers and Chattel Auctioneers Act 2014*, *Racing Integrity Act 2016*, *Second-hand Dealers and Pawnbrokers Act 2003*, *Security Providers Act 1993*, *Tow Truck Act 1973* and *Tattoo Parlours Act 2013* to include a specific prohibition on the use of criminal intelligence in occupational licensing decisions.

As recognised by the Taskforce, the *Weapons Act 1990* is different to other industry schemes in that oversight and enforcement of the Act is the sole responsibility of the QPS. The 2013 suite introduced a requirement that the Commissioner must comply with a request made by the Authorised Officer for criminal intelligence. This statutory requirement is somewhat artificial as the Authorised Officer currently has, and had prior to the 2013 suite, access to criminal intelligence when considering a person's fitness to hold a licence under the *Weapons Act 1990*.

Restore appeal and review rights that were restricted by the 2013 suite, and enhance procedural fairness in licensing decisions by re-establishing the right of people adversely affected by a licensing decision to be given reasons for the decision.

As a result of the 2013 suite, provisions are contained in the *Liquor Act 1992*, *Motor Dealers and Chattel Auctioneers Act 2014*, *Racing Integrity Act 2016*, *Second-hand Dealers and Pawnbrokers Act 2003*, *Security Providers Act 1993* and *Tow Truck Act 1973* that significantly constrain the application of general principles of procedural fairness, as well as appeal and review rights, in relation to licensing decisions that are made on the basis of criminal intelligence provided by the Commissioner of Police that an entity or person is a criminal organisation or a participant in a criminal organisation. In particular, provisions are in place that:

- exclude the operation of section 27B of the *Acts Interpretation Act 1954* (Content of statement of reasons for decision) in relation to a decision to refuse (or cancel) a licence on the basis of criminal intelligence that the applicant (or licensee) is a criminal organisation or an identified participant in a criminal organisation;

- maintain confidentiality of criminal intelligence forming the basis of a licensing decision in proceedings for the review of the decision; and

- exclude the operation of the *Judicial Review Act 1991* in relation to a decision to refuse (or cancel) a licence on the basis of criminal intelligence that the applicant (or licensee) is a criminal organisation or an identified participant in a criminal organisation.

Similar restrictions apply to the *Tattoo Parlours Act 2013*.

The Taskforce recommended that applicants or existing licensees who have an application for a licence or other authority refused, or an existing licence or authority cancelled, on the basis that the applicant or licensee is not, or is no longer a suitable person, must have the right to be given reasons for the decision and an opportunity to contest the allegation (Taskforce, Recommendation 59). The Taskforce went on to recommend that appeal and review rights (including judicial review) regarding licensing decisions must be restored (Taskforce, Recommendation 59).

Consistent with the Taskforce's recommendation, the Bill contains amendments to the *Liquor Act 1992*, *Motor Dealers and Chattel Auctioneers Act 2014*, *Racing Integrity Act 2016*, *Second-hand Dealers and Pawnbrokers Act 2003*, *Security Providers Act 1993* and *Tow Truck Act 1973* to restore appeal and review rights affected by the 2013 suite, and to ensure that a person adversely affected by a licensing decision is entitled to be given reasons for the decision. The Bill also contains similar amendments to the *Tattoo Parlours Act 2013* to ensure that the occupational licensing for the body-art tattoo industry is characterised by increased transparency and procedural fairness, and subject to appropriate review and appeal rights.

Prior to the 2013 suite, a scheme was already in place under the *Weapons Act 1990* to protect the use of criminal intelligence in review hearings. This scheme was modified under the 2013 suite to enhance the protection of criminal intelligence in reviews and to ensure consistency with other industry licencing schemes. As the ability to use criminal intelligence in determining weapons licences will continue, this scheme will continue as it is necessary to ensure that appropriate arrangements are in place to protect the use of intelligence in review hearings.

Retain, rename and substantially amend the Tattoo Parlours Act 2013 to adopt a more traditional and transparent approach to occupational licensing of the body-art tattoo industry in Queensland, and to improve the administration and operation of the body-art tattoo licensing legislation including in response to a number of issues raised by stakeholders in submissions to the Taskforce

The *Tattoo Parlours Act 2013* established an occupational licensing framework for the body-art tattoo industry in Queensland. The legislation was introduced as part of the 2013 suite

with the objective of eliminating and preventing the infiltration of the Queensland tattoo industry by criminal organisations, including criminal motor cycle gangs and their associates.

Unlike other occupational and industry licensing legislation affected by the 2013 suite, the *Tattoo Parlours Act 2013* contains a relatively unique process for the assessment of a person's eligibility and suitability to hold a licence. In summary, all applications for a licence under the *Tattoo Parlours Act 2013* are referred to the Commissioner of Police for a security assessment. If the Commissioner makes an 'adverse security determination' about an applicant, then the chief executive responsible for the *Tattoo Parlours Act 2013* is required to refuse the licence. Neither the chief executive nor the licence applicant are informed about the basis for the 'adverse security determination'.

In its report, the Taskforce recommended that the *Tattoo Parlours Act 2013* should be retained (recommendation 54). Accordingly, the Government has decided to retain the *Tattoo Parlours Act 2013*, subject to a range of amendments designed to respond to other recommendations of the Taskforce relating to occupational licensing principles, as well as amendments to improve the general administration and operation of the Act (outlined below).

In addition to recommending the retention of the legislation, the Taskforce also recommended that consideration could be given to renaming the *Tattoo Parlours Act 2013* to remove and replace the reference to the word 'parlour' (recommendation 55). This recommendation responds to concerns that have been raised by some tattoo industry stakeholders about the negative connotations that can be associated with the term 'parlour'.

Key amendments to the *Tattoo Parlours Act 2013* contained in the Bill are intended to:

- change the short title of the *Tattoo Parlours Act 2013* to the *Tattoo Industry Act 2013*;

- establish a more procedurally fair process for assessing the probity of tattoo licence applicants (and licensees), guided by other occupational licensing frameworks, such as that established under the *Security Providers Act 1993*;

- disqualify people who have been convicted of one of the new serious and organised crime offences from holding a licence under the *Tattoo Parlours Act 2013*;

- exclude the use of confidential criminal intelligence in licensing decisions made under the *Tattoo Parlours Act 2013*, consistent with amendments to other occupational licensing Acts being amended by the Bill;

- reduce unnecessary regulation and red tape by making provision for the renewal of licences under the *Tattoo Parlours Act 2013* and to allow the chief executive to issue more than 2 visiting tattooist permits or exhibition permits to an applicant, where appropriate;

- increase flexibility of the licensing framework under the *Tattoo Parlours Act 2013* by catering for different types of business models (for example, mobile tattooing).

Repeal particular amendments to the Electrical Safety Act 2002, Queensland Building and Construction Commission Act 1991 (formerly the Queensland Building Services Authority Act 1991) and the Work Health and Safety Act 2011 that were contained in the Criminal

Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013 and are due to commence on 1 July 2017

Amendments to the *Electrical Safety Act 2002*, *Queensland Building and Construction Commission Act 1991* (formerly the *Queensland Building Services Authority Act 1991*) and the *Work Health and Safety Act 2011* contained in the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013* are scheduled to commence on 1 July 2017.

However, as the amendments are not consistent with the Government's approach to dealing with serious and organised crime, having regard to the views, findings and recommendations of the Taskforce on Organised Crime Legislation, the Bill contains provisions to repeal the amendments prior to their commencement, with the exception of two minor technical amendments to the *Electrical Safety Act 2002*.

Occupational licensing and industry legislation – Other amendments

Probity tests under the Liquor Act 1992

The Bill makes minor amendments to the *Liquor Act 1992* to ensure probity tests to hold a licence, permit or other approval are consistent throughout the *Liquor Act 1992*. This will support the shift in focus toward convictions for offences being a relevant consideration when determining suitability to hold an approval.

Additionally, the Bill ensures permits and approvals to let or sublet licensed premises, or enter into a franchise or management agreement, can be cancelled if a person becomes disqualified under the *Liquor Act 1992*, or is no longer a fit and proper person. The Bill also clarifies that adult entertainment permits cannot be granted if a person is disqualified under the *Liquor Act 1992*.

Person of Interest Monitoring under the Liquor Act 1992

Given the shift of focus toward convictions for offences being a relevant consideration when determining suitability to hold a licence, permit or other approval, it is important to ensure the Commissioner for Liquor and Gaming has access to accurate, timely information about the criminal history of applicants and existing approval holders.

The *Liquor Act 1992* does not contain a process to facilitate ongoing notification regarding change in a person's criminal history. This can cause difficulties for the Commissioner for Liquor and Gaming in ascertaining whether an existing licensee, permittee or approval holder has been convicted of an offence. This has the potential to result in unsuitable persons continuing to hold licences, permits and other approvals.

Accordingly, the Bill amends the *Liquor Act 1992* to provide an ability for the Commissioner of Police to notify the Commissioner for Liquor and Gaming if a licensee, permittee or approval holder is charged with an offence. This will assist the Commissioner for Liquor and Gaming to monitor if the licensee, permittee or other approval holder is subsequently convicted of an offence and take action in a timely manner, if required. It is not intended to take action with respect to a licence, permit or other approval until a conviction occurs. The type of charge information that will be provided will be agreed between the Commissioner for Liquor and Gaming and Commissioner of Police.

In addition, the Bill makes a number of technical and editorial amendments to improve the clarity, administration and operation of particular occupational and industry licensing Acts. These amendments do not relate to the deliberations of the Taskforce in its review of organised crime legislation.

Miscellaneous amendments to the Second-hand Dealers and Pawnbrokers Act 2003* and *Motor Dealers and Chattel Auctioneers Act 2014

Miscellaneous amendments are proposed to reduce unnecessary red tape under the *Second-hand Dealers and Pawnbrokers Act 2003* and the *Motor Dealers and Chattel Auctioneers Act 2014*. Specifically, the amendments will enable licensees to keep the Office of Fair Trading (OFT) informed about changes in particular types of information held by OFT about the licensee by a range of methods (including by telephone), rather than necessarily having to provide written notification.

In addition, the Bill contains an amendment to the *Second-hand Dealers and Pawnbrokers Act 2003* to enable the Commissioner of Police to inform the chief executive of a change in a licensee's criminal history. Similar provisions already appear in other occupational licensing Acts, such as the *Security Providers Act 1993* and the *Motor Dealers and Chattel Auctioneers Act 2014.*

The Bill also makes a number of minor and technical or consequential amendments.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives other than through legislative amendment.

The occupational licensing frameworks for individuals and businesses providing services and performing functions associated with building, electrical, liquor, used motor dealing, racing, second-hand dealing and pawn broking, private security, body-art tattooing, tow trucks, weapons and work health and safety are established by legislation. Accordingly, legislative amendment is the only way to achieve the policy objectives relating to occupational and industry licensing frameworks.

Estimated cost for government implementation

Occupational and industry licensing

The changes to occupational and industry licensing arrangements under the *Liquor Act 1992, Motor Dealers and Chattel Auctioneers Act 2014, Racing Integrity Act 2016, Second-hand Dealers and Pawnbrokers Act 2003, Security Providers Act 1993, Tattoo Parlours Act 2013, Tow Truck Act 1973* and *Weapons Act 1990* provided for in the Bill will result in implementation costs for agencies that administer the relevant occupational and industry licensing Acts.

Implementation costs are expected to include expenses associated with:

- staff training;
- changes to current processes and procedures for information sharing and assessing licence applications, including changes to approved forms;

- alteration and enhancement of occupational licensing systems; and
- updates to information and education resources available to licence applicants and licensees (including web content).

Implementation costs associated with the changes to occupational and industry licensing are expected to be met from existing resources of administering agencies. The future allocation of resources will be determined through normal budgetary processes.

The repeal of particular amendments to the *Electrical Safety Act 2002*, *Queensland Building and Construction Commission Act 1991* (formerly the *Queensland Building Services Authority Act 1991*) and the *Work Health and Safety Act 2011* that were contained in the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013* is not expected to result in significant implementation or other costs for government.

Any other costs arising from these legislative amendments will be met from existing agency resources. The future allocation of resources will be determined through normal budgetary processes.

Consistency with fundamental legislative principles

Consorting offence

The Bill amends the Criminal Code to create a new offence of habitually consorting with recognised offenders. The offence has a maximum penalty of three years imprisonment. This amendment constitutes a potential infringement of the fundamental legislative principle that legislation has sufficient regard to the rights and liberties of individuals (section 4(2)(a) of the *Legislative Standards Act 1992*).

The provision reverses the onus of proof for the offence, meaning the defendant bears the burden of proving that the consorting was reasonable in the circumstances and occurred in the course of certain specified activities. This reversal is justified on the basis that the factual issues the defendant must prove in order to raise the defence do not relate to an essential element of the offence itself, and also relate to facts which the defendant is well-positioned to prove in the context of the offence.

By preventing persons from having contact with and/or mixing with recognised offenders, the offence potentially impacts on an individual's common law right to freedom of association. This impact is justified on the basis that the provision is narrow in its application in that it is largely limited to persons consorting with persons convicted of offences carrying a maximum penalty of 5 years imprisonment or more (reflecting the policy intention to target serious and/ or organised criminals), and there are prescribed defences which facilitate participation in ordinary civic life (such as association in the conduct of lawful employment, or with family members).

The charging of the offence of habitually consorting first requires a police officer to issue an official warning to the relevant person. The contents of this warning will necessarily include the disclosure that another person has a conviction for a criminal offence, potentially intruding on that person's right to privacy. This potential intrusion is considered justified on the basis that convictions which have become 'spent' under the *Criminal Law (Rehabilitation of Offenders) Act 1986* are not relevant for the purpose of the offence in recognition of the principles of rehabilitation.

To facilitate the issuing of the official warning for the offence, a police officer will have the power to stop and detain a person and to require them to provide their name, date of birth and address and in some circumstances their identifying particulars. This potential breach of a person's right to personal liberty, rights to privacy and their common law right to silence is justified on the basis that these interactions are required in order to appropriately administer the warning for the offence and the safeguards in the Police Powers and Responsibilities Act will ensure these interactions are recorded appropriately, identifying particulars are destroyed as soon as practicable after a person's identity is confirmed, and that the powers will only apply to persons consorting with serious convicted offenders. Finally, the Bill gives the PIM an oversight role in relation to the issuing of official warnings whereby the PIM must report on compliance with the provisions of the legislation annually to the Minister and the Minister must table that report in the Legislative Assembly.

All potential breaches of the fundamental legislative principles are further justified on the basis that they are necessary measures required to protect the community from the specific public safety risk identified by the Taskforce Report, as well as by the QPS and the CCC. It is also of note that the operation of the offence will be reviewed by a retired District Court or Supreme Court Judge.

Serious Organised Crime circumstance of aggravation

The Bill amends the Penalties and Sentences Act to establish a Serious Organised Crime circumstance of aggravation. Conviction of this circumstance of aggravation enlivens a new sentencing regime which subjects the offender to a mandatory term of imprisonment and an Organised Crime Control Order. The mandatory nature of the new sentencing regime can only be avoided if the offender provides significant cooperation to a law enforcement agency. The amendments potentially breach the fundamental legislative principle in section 4(2)(a) of the *Legislative Standards Act 1992*, that requires that legislation has sufficient regards to the rights and liberties of individuals.

This potential breach is justified on the basis that a person will only be subjected to this punishment if the State can prove beyond reasonable doubt that they were a participant in a criminal organisation, as defined under the Bill, at the time and that they have committed the prescribed offence at the direction of, in association with, or for the benefit of a criminal organisation or a participant in a criminal organisation. An additional safeguard is also provided by the requirement for the consent of the Director of Public Prosecutions to indict the circumstance of aggravation.

The penalty regime is high but is justified to punish and signal the community's disapproval of serious and organised crime; and to be a disincentive to involvement in criminal organisations. The penalty regime also aims to disband criminal organisations by encouraging participants to break the 'code of silence' often associated with organised crime and to significantly cooperate with law enforcement agencies. The circumstance of aggravation, which targets only a confined cohort of serious offenders, reflects that participation in these groups presents an unacceptable risk to the safety, welfare or order of the community.

Organised Crime Control Orders

The Bill amends the Penalties and Sentences Act to establish an Organised Crime Control Order that can be imposed on a convicted offender at sentence. The order will enable the sentencing court to impose conditions on an offender that are considered reasonably

necessary to prevent, restrict or disrupt the person's involvement in serious criminal activity. The maximum length of the control order is 5 years, however can be extended upon conviction for a breach.

By empowering the sentencing court to make an order which may place conditions and restrictions on a person's movements, day-to-day activities, types of employment, associations (even if for political purposes); the provision constitutes a potential infringement of a person's common law rights to personal liberty, privacy, work and free association (section 4(2)(a) of the *Legislative Standards Act 1992*), and the implied right to freedom of political communication.

This is justified on the basis that the conditions or restrictions on a person's liberties may only be imposed on an individual if the Court is satisfied that such conditions or restrictions are reasonably necessary to protect the public by preventing, restricting or disrupting a person's involvement in *serious* criminal activity. The imposition of a control order is restricted to a prescribed cohort of offenders (i.e. a person convicted of a prescribed offence committed with the new Serious Organised Crime circumstance of aggravation (it is to these offenders only that the mandatory control order regime applies); or who the sentencing court has found, on the balance of probabilities, was a participant in a criminal organisation at the time of their offending, or who is convicted of the new Habitually consorting offence (for the latter two categories of offenders the court retains complete discretion as to whether or not to make the order). The control order is a conviction-based regime and forms part of the penalty imposed by the sentencing court.

Further, whether a mandatory or discretionary control order, the court retains complete discretion as to the conditions reasonably necessary to prevent, restrict or disrupt the offender from involvement in serious criminal activity.

Safeguards have also been incorporated into the control order regime to ensure an order may not require an offender, for example, to give information or answer a question if to do so would infringe upon their right to silence, be a contravention of the law, breach legal professional privilege, oblige the person to incriminate him/herself regarding a charged matter or compel them to testify in a proceedings. The Bill also expressly provides for the restrictions upon the use of compelled information (i.e. information given by an offender in compliance with a control order made for them).

The conditions that may be imposed by the sentencing court may also constitute a potential infringement on the fundamental legislative principle that the power to enter a premises should only be exercised where it is conferred with a warrant issued by a judicial officer (section 4(3)(e) of the *Legislative Standards Act 1992*). This breach is considered justified on the basis that individuals who are subject to control orders are those who have proven themselves, by virtue of their criminal convictions, to be serious offenders whose behaviours must be controlled in the community in order to ensure community safety and the safety of police officers.

The Bill makes it an indictable offence punishable by a maximum penalty of three years imprisonment, increasing to five years imprisonment, for the contravention of a control order. The sentencing court retains its full discretion in determining the appropriate penalty in all of the circumstances. It is a defence for the person to prove that they had a reasonable excuse for the contravention (i.e. a reversal of the onus of proof). This reversal is justified as the factual

issues the person must prove are matters to which they are best positioned to know and establish in order to disprove guilt in all of the circumstances.

The Bill provides for the partial retrospective application of the control order regime in terms of offenders convicted of committing an indictable offence and found, by the sentencing court, to have been a participant in a criminal organisation at the time of offending. The control order regime applies irrespective of whether the offence was committed before or after commencement (see section 4(3)(g) of the *Legislative Standards Act 1992*). The potential infringement is considered justified to protect the public by preventing, restricting or disrupting the offender from committing serious criminal offences. The sentencing court retains complete discretion as to whether or not to impose the control order. However the Bill does not extend the application of the control order regime to offenders who have already been convicted prior to commencement.

The Bill also expressly provides for the extraterritorial application of the control order regime, provided there is sufficient nexus to Queensland. This is justified to maintain the integrity of the regime by ensuring an offender cannot, in effect, circumvent the conditions imposed upon them, as considered by the court to be reasonably necessary, by contravening the conditions and requirements outside of Queensland. For example, avoiding a non-association condition by meeting with that other person in NSW instead of Queensland.

Public Safety Order

The Bill amends the Peace and Good Behaviour Act to create public safety orders which allows a Commissioned Police Officer to make a public safety order for up to seven days duration. The public safety order can prevent one or more persons from being at or going to an area, premises or an event. Police issued public safety orders can be made without notice to a person and without providing a person or group of persons an opportunity to present arguments as to why an order should not be made against them. Appeal rights to the Magistrates Court are enlivened if the duration of the Police issued public safety order is longer than 72 hours.

The scheme constitutes a potential infringement of the fundamental legislative principle that legislation has sufficient regard to the rights and liberties of individuals (section 4(2)(a) of the *Legislative Standards Act 1992*) in that it may restrict a person's common law right of freedom of movement and association. This potential breach is justified on the basis that a Magistrate can only make a public safety order if they are satisfied that there is a *serious* risk to public safety or security.

The making of the police issued public safety order of up to seven days duration is arguably inconsistent with the principles of procedural fairness and natural justice (section 4(3)(b) of the *Legislative Standards Act 1992*) in that the application is not determined by an independent decision maker and is made without notice to a respondent and without affording the respondent the opportunity to respond. Also, police issued public safety orders that are less than 72 hours in duration cannot be appealed which is arguably a further breach of natural justice. These breaches are justified on the basis that the orders provide police with a fast and effective method of protecting public safety in circumstances where it may not be practicable to prepare a court application. The Bill provides that persons have appeal rights for orders that exceed 72 hours in length and specifically provides that short term police orders cannot be made repetitively in a short period of time so as to avoid the long duration court order process. Finally, the Bill gives the PIM an oversight role in relation to the making

of police issued public safety orders whereby the PIM must report on compliance with the provisions of the legislation annually to the Minister and the Minister must table that report in the Legislative Assembly.

Restricted Premises Order

The Bill amends the Peace and Good Behaviour Act to create a restricted premises order which allows a Magistrates Court to make a restricted premises order on the basis that there is a reasonable suspicion that unlawful and/or disorderly conduct is occurring on the premises.

A restricted premises order will allow police officers to search a restricted premises without warrant at any time during the order. The amendment also establishes that it is a criminal offence for an owner or occupier to allow unlawful and/or disorderly behaviour to occur on declared premises. This amendment constitutes a potential infringement of the fundamental legislative principle that legislation has sufficient regard to the rights and liberties of individuals (section 4(2)(a) of the *Legislative Standards Act 1992*) in that it may restrict a person's common law right of freedom of movement and association. This potential breach is justified on the basis that a Magistrate can only make a restricted premises order if they are satisfied that disorderly activities are occurring with respect to the premises and the order must be made with the public safety imperative of disrupting the disorderly activities of persons convicted of serious offences.

By declaring certain premises to automatically be subject to a restricted premises order the Bill breaches the fundamental legislative principle that the legislation should be consistent with the principles of natural justice (section 4(3)(b) of the *Legislative Standards Act 1992*). The declaring of the premises denies the owners and occupiers of the deemed premises an opportunity to have their position about whether their premises should be subject to an order considered by a neutral decision maker. This breach of the fundamental legislative principles is justified because it forms part of the Government's commitment to provide a seamless and safe transition from the 2013 suite measures to the new Organised Crime Regime. The temporary and transitional nature of these provisions is evidenced by the fact that the automatic declaration will only be in effect for two years, after which the order will either lapse or police will have to make an application to the Magistrates Court to have the order extended. Further, the Bill provides that the regulation making power in the Act only allows the Minister to remove premises from the list of declared premises not to add new premises to the list. Finally, at the end of the two year period if the police make an application to have the order extended the owner and occupier will have an opportunity to make submissions to an independent decision maker (ie, the Court) about whether the order should be extended.

The Bill provides that a Court considering whether to extend a restricted premises order over a premises declared by the regulation may consider disorderly activities that occurred on the premises before the commencement of the legislation. This is a breach of the fundamental legislative principle that legislation does not adversely affect right and liberties, or impose obligations, retrospectively (section 4(3)(g) of the *Legislative Standards Act 1992*). This breach is justified on the basis that it is necessary to provide appropriate transitional arrangements to assist in the safe and seamless transition from the 2013 suite to the Organised Crime Regime.

By establishing a scheme which provides for items related to disorderly activities to be seized and forfeited to the state without compensation, the amendment also constitutes a potential

breach of the fundamental legislative principle of fair compensation for the compulsory acquisition of property under section 4(3)(i) of the *Legislative Standards Act 1992.* This potential breach is justified on the basis that the items that can be seized under the scheme only relate to items used in connection with the storage, supply or consumption of liquor or drugs. Further, the seizure powers are only activated when the Court has identified the premises as being a place where it is reasonably suspected disorderly activity is occurring, or where a senior police officer has obtained a warrant on the basis of their reasonable belief that disorderly activity is taking place at a premises. The scheme also provides an avenue for a person to make an application for the return of property if the property was unlawfully seized.

The provision also allows for a warrantless search of a declared restricted premises which constitutes a breach of the fundamental legislative principle that the power to enter a premises should only be exercised where it is conferred with a warrant issued by a judicial officer (section 4(3)(e) of the *Legislative Standards Act 1992*). This potential breach is justified on the basis that before a restricted premises order is made, the Court must be satisfied that a senior police officer has grounds for a reasonable suspicion disorderly activities are occurring. Additionally, the owner or occupier of the premises subject to a restricted premises order application is afforded the opportunity to respond and make submissions to the Court to prove on the balance of probabilities that disorderly activities are not taking place at the premises. The potential breach is further justified on the basis that public safety and good order are ensured by providing police with the power to search high risk premises for weapons and items associated with unlawful liquor and drug consumption.

Fortification Removal Orders

The creation of the stop and desist orders which can be issued by a Commissioned police officer and that prevent the erection of fortifications on a premises without a court determination is arguably inconsistent with the principles of procedural fairness and natural justice (section 4(3)(b) of the *Legislative Standards Act 1992*). The decision to issue a stop and desist notice is not made by an independent decision maker and is made without affording the respondent the opportunity to respond. This breach is justified because if the Commissioned police officer does not institute proceedings in the Magistrates Court for a fortification removal order within 14 days of issuing the notice, the notice will lapse and cease to have effect. Further, the stop and desist orders protect public and police officer safety by preventing premises associated with criminal activity and criminal associates becoming heavily fortified.

The Fortification Removal Scheme provides police with the power to forcibly remove fortifications from a premises. This amendment constitutes a potential infringement of the fundamental legislative principle that legislation has sufficient regard to the rights and liberties of individuals (section 4(2)(a) of the *Legislative Standards Act 1992*) will interfere with a person's property which could include a private residential home. This breach is justified because the Bill provides that police's power to forcibly remove fortifications is only enlivened if a person fails to comply with an order of the Magistrates Court requiring that they remove the excessive fortifications themselves. Further, the Magistrates Court can only make such an order if they are satisfied that: the premises are linked to criminal activity; or the owner or occupier is linked to criminal activity by virtue of their criminal record or connection with a criminal organisation; and the premises are fortified to an extent that is excessive for the lawful use of those premises.

Fortification removal orders provides for the forfeiture of removed fortifications to the State. This constitutes a potential breach of the fundamental legislative principle of fair compensation for the compulsory acquisition of property under section 4(3)(i) of the *Legislative Standards Act 1992*. This breach is justified because orders under the scheme can only be made in circumstances where: the premises are linked to criminal activity; or the owner or occupier is linked to criminal activity by virtue of their criminal record or connection with a criminal organisation; and the premises are fortified to an extent that is excessive for the lawful use of those premises.

New offence extending the prohibition on wearing or carrying prohibited items to all public places

The Bill creates a new offence prohibiting the wearing or carrying of a prohibited item, in a public place in a way that it can be seen, or in or on a vehicle that is in a public place in a way that the item can be seen from the public place. The maximum penalty for the offence is six months imprisonment or 40 penalty units, increasing to nine months imprisonment or 60 penalty units for a second offence and 12 months imprisonment or 100 penalty units for any subsequent offence. The new offence extends an existing restriction on wearing or carrying prohibited items in and around licensed premised

The amendment is a potential infringement of the fundamental legislative principle that legislation has sufficient regard to the rights and liberties of individuals (section 4(2)(a) of the *Legislative Standards Act 1992*).

The potential breaches are justified to protect the community from fear and intimidation and to reduce the likelihood of public disorder and acts of violence in public places.

The extension of the existing restriction on wearing prohibited items is limited to public places and circumstances where members of the public can see the item. Possession of the item is otherwise lawful allowing a person to own and wear the item on private property or to transport the item in a way that it cannot be seen.

A defence is provided if the alleged offending conduct was for a genuine artistic, educational, legal or law enforcement purpose and, in the circumstances, was reasonable for that purpose. The defence necessarily reverses the onus of proof as the defendant is best placed to provide evidence of the purpose of their conduct. This is similar to section 228E of the Criminal Code which provides a defence to child exploitation material offences under sections 228A-228D of the Criminal Code.

The Bill also provides for automatic forfeiture of property. This is justified as the property to be forfeited was seized as evidence of the commission of an offence and the offender has subsequently been convicted. While possession of the prohibited item is prima facie lawful, automatic forfeiture is justified given the offender has dealt with the item unlawfully.

The Bill also applies existing powers in the *Police Powers and Responsibilities Act 2000* to stop, detain and search a person or vehicle and seize evidence of the commission of the offence. The application of this police power is necessary for the proper enforcement of this offence to facilitate the protection of members of the public from fear and intimidation.

The application of the police powers is limited to only those circumstances necessary for the direct enforcement of the offence by requiring a reasonable suspicion to be formed that the person (or driver or passenger of a vehicle) has committed or is committing the offence.

Declaration of identified organisations

The Bill provides a head of power in the *Liquor Act 1992* to declare identified organisations in the *Liquor Regulation 2002*.

This approach may potentially be considered to breach section 4(4)(c) of the *Legislative Standards Act 1992*, which provides that a Bill must have sufficient regard to the institution of Parliament, and should only authorise the amendment of an Act by another Act. In this case, the *Liquor Regulation 2002* will prescribe 'identified organisations', and the items that constitute 'prohibited items' under the *Liquor Act 1992* will be defined with reference to these organisations. This potential breach is considered justified on the basis that the approach is in the public interest, as it will allow the Minister to quickly respond to identified threats to the safety of the community, and public order, in licensed premises and other public places.

Child Exploitation Material Offences

The Bill creates three new offences in the Criminal Code that target people who are administrators of websites that distribute child exploitation material, encourage the use of, advertise or promote websites that distribute child exploitation material, or who provide information about how to avoid detection for, or prosecution of, child exploitation material offences. Consistent with the current offences in sections 228C (Distributing child exploitation material) and section 228D (Possessing child exploitation material), each new offence has a maximum penalty of 14 years imprisonment.

The new offence of administering a child exploitation material website includes a specific defence to protect legitimate website administrators who become aware that a website is being used to distribute child exploitation material and take all reasonable steps to prevent access to the child exploitation material. The defence necessarily reverses the onus of proof as the defendant is best placed to provide evidence of the steps they have taken.

The Bill also increases the maximum penalties available for the offences in the Criminal Code, sections 228A (Involving child in making child exploitation material) and 228B (Making child exploitation material) from 14 to 20 years imprisonment.

The Bill also applies a new circumstance of aggravation to each of the existing and new offences related to child exploitation material in the Criminal Code increasing the maximum penalty if a person uses an anonymising service or hidden internet network in committing the offence.

Each of these amendments are potential infringements of the fundamental legislative principle that legislation has sufficient regard to the rights and liberties of individuals (section 4(2)(a) of the *Legislative Standards Act 1992*).

These potential breaches are justified as they directly reflect the findings of the Commission that the internet has provided a forum for the proliferation of child exploitation material. In addition, the new offences and increase in particular penalties are justifiable given the

Commission's findings that the conduct involved in making new material to be distributed over the internet, especially when it is known that the market is becoming increasingly depraved and voracious, often involves the use of anonymising tools to conceal a person's identity. This makes the detection of offending behaviour, identification of perpetrators and protection of children at risk, more difficult. The amendments will address legislative gaps and limitations identified by the Commission to deter this conduct and protect the community from this abhorrent offending.

Fraud offences in sections 408C and 408D of the Criminal Code

The Bill increases the maximum penalties for the offences in sections 408C (Fraud) and 408D (Obtaining or dealing with identification information) of the Criminal Code when a circumstance of aggravation applies.

The Bill inserts two new circumstances of aggravation to the offence in section 408C, with maximum penalties of 20 years imprisonment, when the value of a fraud is greater than $100,000 or when an offender carries on the business of committing fraud.

Each of these amendments are potential infringements of the fundamental legislative principle that legislation has sufficient regard to the rights and liberties of individuals (section 4(2)(a) of the *Legislative Standards Act 1992*).

The increases to maximum penalties are justified to reflect the findings of the Commission that the existing circumstances of aggravation and maximum penalties in sections 408C and 408D of the Criminal Code are insufficient to deter organised crime involvement in fraudulent activities.

The introduction of the new circumstances of aggravation are necessary to respond to the finding of the Commission that cold-call investment fraud (also referred to as 'boiler-room' fraud) has flourished in Queensland. Existing offences and penalties are insufficient to protect the community from and properly deter, this increasingly sophisticated and targeted criminal conduct. Moreover, the social, economic and psychological harm caused by these crimes should be recognised by an appropriate and specific circumstance of aggravation.

Amendments to the *Drugs Misuse Act 1986*

The Bill increases the maximum penalty for the offence of trafficking in dangerous drugs listed in schedule 2 of the *Drugs Misuse Regulation 1987* to 25 years. The increase will mean the maximum penalty for trafficking is the same for all dangerous drugs.

The amendment is a potential infringement of the fundamental legislative principle that legislation has sufficient regard to the rights and liberties of individuals (section 4(2)(a) of the *Legislative Standards Act 1992*). The amendment partially implements recommendation 3.4 of the Commission; that schedule 2 listed drugs should carry the same maximum penalties as those that apply for schedule 1 listed drugs for trafficking. The amendment is justified to provide sufficient deterrence to combat the findings of the Commission that:

- illicit drug markets remain the most prominent and visible form of organised crime activity in Queensland; and
- over one third of organised crime networks linked to the illicit drug trade are involved with multiple drug types.

Access information orders

The Bill also enhances the existing power in the *Police Powers and Responsibilities Act 2000* and introduces into the *Crime and Corruption Act 2001* the power to obtain access information orders that will allow relevant officers to require a person to provide necessary passwords or other like information to allow access to electronically stored information.

These amendments clarify that the privilege against self-incrimination does not apply and are potential infringements of the fundamental legislative principle that legislation has sufficient regard to the rights and liberties of individuals (section 4(2) and 4(3)(f) of the *Legislative Standards Act 1992*).

The departure from the fundamental legislative principles is justified as the departure recognises the importance of this major investigative tool to combat serious criminal activity. In particular, the abrogation of the privilege against self-incrimination and impact on privacy are justified when balanced against the law enforcement benefits in detecting offending, including child exploitation material offending or other offending behaviour that can easily be engaged in via the internet and which are able to be concealed by technology.

New offence for failing to comply with an access information order in the Criminal Code

The Bill creates a new offence for contravening an access information order with a maximum penalty of five years imprisonment. The introduction of this new offence may infringe the fundamental legislative principle that legislation has sufficient regard to the rights and liberties of individuals (section 4(2) of the *Legislative Standards Act 1992*).

The current offence that relates to disobeying a lawful order, section 205 of the Criminal Code carries a maximum penalty of one year imprisonment. The new offence and penalty, proposed as five years imprisonment, is justified to ensure a balance between the penalty for non-compliance with an order of the court and the maximum penalty for offending behaviour, for example child exploitation material offences, which may be concealed by technology.

Occupational and industry licensing

Overall, the amendments to occupational and industry licensing provisions of the *Liquor Act 1992, Motor Dealers and Chattel Auctioneers Act 2014, Racing Integrity Act 2016, Second-hand Dealers and Pawnbrokers Act 2003, Security Providers Act 1993, Tattoo Parlours Act 2013* and *Tow Truck Act 1973* are consistent with fundamental legislative principles. In particular, amendments designed to restore and enhance transparency and procedural fairness in occupational licensing decision-making accord with the fundamental legislative principle that legislation have sufficient regard to the rights and liberties of individuals (section 4(2)(a) and section 4(3)(b) of the *Legislative Standards Act 1992*).

In this respect, the repeal of particular amendments to the *Electrical Safety Act 2002*, *Queensland Building and Construction Commission Act 1991* (formerly the *Queensland Building Services Act 1991*) and the *Work Health and Safety Act 2011* that were contained in the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013* and are due to commence on 1 July 2017 is similarly consistent with fundamental legislative principles.

The inclusion of a transitional regulation-making power in the *Tattoo Parlours Act 2013* may contravene the fundamental legislative principle that legislation have sufficient regard to the institution of Parliament by authorising the amendment of an Act by means other than another Act (section 4(4)(c) of the *Legislative Standards Act 1992*). More specifically, the proposed transitional regulation-making power broadly allows for a regulation to make provision of a saving or transitional nature for any matter necessary to achieve the transition from the existing *Tattoo Parlours Act 2013* to the amended *Tattoo Industry Act 2013*, for which the Act does not make provision or sufficient provision.

The amendments contained in the Bill reflect a substantial change in the occupational licensing framework provided under the *Tattoo Parlours Act 2013*, particularly in relation to the initial and ongoing assessment of the eligibility of licence applicants and licensees to hold a licence.

The inclusion of a transitional regulation-making power is intended to be a temporary measure to facilitate as smooth a transition to the new licensing arrangements as possible by enabling a regulation to be made to address any emerging or unforeseen transitional issues. Importantly, the potential contravention of fundamental legislative principles is mitigated in that the Bill provides for the expiry of the transitional regulation-making power two years after the day of commencement.

Other regulation making powers are also included to ensure the Act provides a contemporary and appropriate regulatory framework and to address emerging issues as they arising having regard to the main purpose of the Act which is to minimise the risk of criminal activity in the tattoo industry.

Consultation

In the course of its inquiries the Commission conducted interviews and hearings, wrote to key stakeholders and advertised in the Courier Mail and the Australian newspapers, as well as on the Commission website, inviting submissions. The Commission met with the following key stakeholders: Bar Association Queensland, Crime and Corruption Commission, Director of Public Prosecutions, Legal Aid Queensland, Queensland Law Society, Queensland Police Service, Legal Services Commission Queensland, Integrity Commissioner and the Australian Commission for Law Enforcement Integrity.

The Taskforce was chaired by the Honourable Alan Wilson QC and its membership consisted of senior representatives from the Queensland Police Service (QPS), the Queensland Police Union, the Queensland Police Commissioned Officers' Union of Employees, the Queensland Law Society, the Bar Association of Queensland, the Public Interest Monitor (PIM), the Department of Justice and Attorney-General, and the Department of the Premier and Cabinet. The Taskforce published its Terms of Reference on its website, called for public submissions and made targeted requests for submissions from key stakeholders. All submissions to the Taskforce were published on the website except those from persons or organisations who specifically requested that their submissions remain confidential. Additionally, the CCC was consulted by the Taskforce under its Terms of Reference.

The Crime and Corruption Commission and Director of Public Prosecutions were consulted on an overview of the policy proposals under the Bill and provided with extracts of a draft Bill.

The PIM, who was also a member of the Taskforce, was consulted on the new oversight functions under the Bill.

The Queensland Law Society was provided with a detailed briefing on the policy proposals under the Bill.

The Queensland Police Union was consulted regarding the policy proposals under the Bill in terms of the Taskforce recommendations.

Additionally, the Premier and Minister for Arts, Attorney-General and Minister for Justice and Minister for Training and Skills, and the Minister for Police, Fire and Emergency Services and Minister for Corrective Services, together with the Commissioner of Police, travelled to NSW to meet with the Honourable Mike Baird MP, Premier and Minister for Western Sydney, the Honourable Troy Grant MP, Deputy Premier, Minister for Justice and Police, Minister for the Arts and Minister for Racing and the NSW Commissioner of Police, to discuss greater collaboration between the two States and the law enforcement entities in tackling serious organised crime.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland and is not uniform with or complementary to legislation of the Commonwealth or another state.

Notes on provisions

Part 1 Preliminary

Clause 1 states that, when enacted, the Bill will be cited as the Serious and Organised Crime Legislation Amendment Act 2016.

Clause 2 provides that certain provisions in the Bill commence three months after the date of assent, or two years after the date of assent (otherwise all other provisions commence on assent).

Part 2 Amendment of Bail Act 1980

Clause 3 states that this Part amends the *Bail Act 1980.*

Clause 4 amends section 6 (Definitions) to repeal the definitions of 'criminal organisation' and 'participant'. Subclause (2) amends the definition of 'court' to remove a section reference as a result of the repeal of section 15A (Conduct of proceeding by Magistrates Court outside district or division).

Clause 5 amends section 11 (Conditions of release on bail) to emphasise that where a court or police officer considers the imposition of special conditions to be necessary to ensure the person, while released on bail, does not endanger the safety or welfare of members of the public. Some examples of such conditions might include: prohibiting the person from associating with another or other persons and/or prohibiting or restricting the places or events to which the person may go or attend.

Clause 6 repeals section 15A (Conduct of proceeding by Magistrates Court outside district or division).

Clause 7 amends section 16 (Refusal of bail) to omit subsection (3)(e) as a consequential amendment to the repeal of the *Criminal Organisation Act 2009*, and inserts a new subsection (3)(e) which refers to the new provisions under the *Penalties and Sentences Act 1992* and the *Peace and Good Behaviour Act 1982*.

Subclause (2) also amends section 16 (Refusal of bail) to repeal subsections (3A), (3B), (3C) and (3D). This reinstates the position prior to the 2013 amendments to the Bail Act which reversed the presumption of bail for any person alleged to be a participant in a criminal organisation in a show cause position. Consequentially, subclause (3) repeals a subsection (3A) reference in subsection (4).

Clause 8 amends section 20 (Undertaking as to bail) to amend the definition of 'passport surrender condition' as a consequence of the amendments to repeal the reference to the repealed subsections of section 16.

Part 3 Amendment of Child Protection (Offender Reporting) Act 2004

Clause 9 states that this Part amends the *Child Protection (Offender Reporting) Act 2004.*

Clause 10 adds the three new offences inserted into the Criminal Code; section 228DA (Administering child exploitation material website), section 228DB (Encouraging use of child exploitation material website), and section 228DC (Distributing information about avoiding detection), to the list of offences in Schedule 1 (Prescribed offences). This is consistent with the approach taken to the existing offences related to child exploitation material in sections 228A (Involving child in making child exploitation material), 228B (Making child exploitation material), 228C (Distributing child exploitation material), 228D (Possessing child exploitation material) of the Criminal Code.

Part 4 Amendment of Corrective Services Act 2006

Clause 11 states that this Part amends the *Corrective Services Act 2006.*

Clause 12 amends section 12 (Prisoner security classification) to repeal subsection (1B). This is a consequential amendment to the repeal of the Criminal Organisation Segregation Order provisions under Chapter 2, Part 2, Division 6A.

Clause 13 amends section 13 (Reviewing prisoner's security classification) to repeal subsection (1B). This is a consequential amendment to the repeal of the Criminal Organisation Segregation Order provisions under Chapter 2, Part 2, Division 6A.

Clause 14 amends section 41 (Who may be required to give test sample) to repeal subsection (1)(c). This repeals the ability of the chief executive to require a test sample from an offender, subject to a community based order, who is an identified participant in a criminal organisation.

Clause 15 repeals Chapter 2, Part 2, Division 6A (Criminal Organisation Segregation Orders).

Clause 16 amends section 71 (Reconsidering decision) to repeal subsection (5) as a consequence of the repeal of the Criminal Organisation Segregation Order provisions under Chapter 2, Part 2, Division 6A. Consequentially, subclause (2) sequentially renumbers the remaining subsections.

Clause 17 amends section 178 (Definitions for sdiv 2) consequential to the insertion of Part 9D of the *Penalties and Sentences Act 1992,* under the Bill. Definitions of 'prescribed offence' and 'relevant further period' are included.

The term 'prescribed offence' is a reference to new section 161N of the Penalties and Sentences Act.

The term 'relevant further period' in relation to a prisoner serving a term of imprisonment imposed under section 161R (2) of the Penalties and Sentences Act, means the period of the mandatory component of the sentence imposed on the prisoner under that section.

Clause 18 amends section 181 (Parole eligibility date for prisoner serving term of imprisonment for life) to insert new subsections (2A) and (2B) consequential to the insertion of Part 9D of the *Penalties and Sentences Act 1992,* under the Bill.

New subsection (2A) provides that: However, if the term of imprisonment for life was imposed as the base component of a sentence under section 161R(2) of the Penalties and Sentences Act, the prisoner's parole eligibility date is the day that is worked out by adding seven years to the parole eligibility date that would otherwise apply to the prisoner under subsection (2).

New subsection (2B) provides that: Also, if a prisoner who is serving a term of imprisonment for life is sentenced under section 161R(2) of the Penalties and Sentences Act for a prescribed offence (as defined under section 178), the prisoner's parole eligibility date is the day that is worked out by adding, to the parole eligibility date that would otherwise apply to the prisoner under subsection (2) or (2A), the lesser of the following periods: seven years or the period of imprisonment provided for under the maximum penalty for the prescribed offence.

Subclause (2) provides a consequential amendment to subsection (3) to include a reference to new subsections (2A) and (2B).

Clause 19 amends section 181A (Parole eligibility date for prisoner serving term of imprisonment for life for a repeat serious child sex offence) to insert new subsections (3) and (4) consequential to the insertion of Part 9D of the *Penalties and Sentences Act 1992,* under the Bill.

New subsection (3) provides that: However, if the term of imprisonment for life under section 161E of the Penalties and Sentences Act was imposed as the base component of a sentence under section 161R(2) of that Act, the prisoner's parole eligibility date is the day that is worked out by adding seven years to the parole eligibility date that would otherwise apply to the prisoner under subsection (2).

New subsection (4) provides that: Also, if a prisoner who is serving a term of imprisonment for life under section 161E of the Penalties and Sentences Act is sentenced under section 161R(2) of the Penalties and Sentences Act for a prescribed offence (as defined under section 178), the prisoner's parole eligibility date is the day that is worked out by adding, to the parole eligibility date that would otherwise apply to the prisoner under subsection (2) or (3), the lesser of the following periods: seven years or the period of imprisonment provided for under the maximum penalty for the prescribed offence.

Clause 20 amends section 182 (Parole eligibility date for serious violent offender) to insert new subsections (2A) and (2B) consequential to the insertion of Part 9D of the *Penalties and Sentences Act 1992,* under the Bill.

New subsection (2A) provides that: However, if the term of imprisonment for the serious violent offence was imposed under section 161R(2) of the Penalties and Sentences Act the prisoner's parole eligibility date is the day that is worked out by adding the relevant further period to the notional parole eligibility date fixed for the prisoner under subsection (2B).

New subsection (2B) provides that: The notional parole eligibility date is the day that would apply under subsection (2) if the term of imprisonment imposed on the prisoner under section 161R(2) of the Penalties and Sentences Act consisted only of the base component of the sentence imposed under that section.

Subclause (2) provides a consequential amendment to subsection (3) to include a reference to new subsections (2A) and (2B).

Clause 21 amends section 182A (Parole eligibility date for prisoner serving term of imprisonment for other particular serious offences).

Subclause (1) limits the application of the section, which imposes a mandatory minimum 80% non-parole period for persons convicted and sentenced to imprisonment for drug trafficking under section 5(2) of the *Drugs Misuse Act 1986*, to persons sentenced before the commencement of this amending Bill. The amendment is consequential to the amendment to section 5 of the Drugs Misuse Act in this Bill which omits the mandatory minimum 80% non-parole period. Subclause (2) provides that subsection (3) applies despite subsections (2) and (2A).

Subclause (3) also inserts new subsections (3A) and (3B) consequential to the insertion of Part 9D of the *Penalties and Sentences Act 1992*, under the Bill.

New subsection (3A) provides that: However, if the term of imprisonment for the offence against the Criminal Code, section 314A, was imposed under the Penalties and Sentences Act, section 161R(2), the prisoner's parole eligibility date is the day that is worked out by adding the relevant further period to the notional parole eligibility date fixed for the prisoner under subsection (3B).

New subsection (3B) provides that: The notional parole eligibility date is the day that would apply under subsection (3) if the term of imprisonment imposed on the prisoner under the Penalties and Sentences Act, section 161R(2), consisted only of the base component of the sentence imposed under that section.

A consequential amendment is made to subsection (4) to include a reference to new subsections (3A) and (3B).

Clause 22 amends section 183 (Parole eligibility date for prisoner detained for a period directed by a judge under *Criminal Law Amendment Act 1945*, pt 3) to insert new subsections (2A) and (2B) consequential to the insertion of Part 9D of the *Penalties and Sentences Act 1992*, under the Bill.

New subsection (2A) however provides that: Subsection (2B) applies if the offence for which the prisoner is being detained is a prescribed offence (as defined under section 178) committed with the circumstance of aggravation stated in the Penalties and Sentences Act, section 161Q; and the prisoner has been sentenced for the offence under section 161R(2) of that Act.

New subsection (2B) provides that: The prisoner's parole eligibility date is the day that is worked out by adding the relevant further period to the parole eligibility date that would otherwise apply to the prisoner under subsection (2).

A consequential amendment is made to subsection (3) as a result of the insertion of the new subsections.

Clause 23 amends section 184 (Parole eligibility date for other prisoners) consequential to the insertion of Part 9D of the *Penalties and Sentences Act 1992*, under the Bill.

Clause 24 amends section 185B (Parole eligibility date for prisoner serving term of imprisonment for an offence against *Weapons Act 1990*, sections 50, 50B or 65) to insert new subsection (3) consequential to the insertion of Part 9D of the *Penalties and Sentences Act 1992*, under the Bill.

New subsection (3) provides that: However, if the term of imprisonment was imposed under section 161R(2) of the Penalties and Sentences Act for an offence against the *Weapons Act 1990*, section 50B or 65, the prisoner's parole eligibility date is the day that is worked out by adding the relevant further period to the parole eligibility date that would otherwise apply to the prisoner under subsection (2).

Clause 25 repeals section 267A (Directions to identified participant in criminal organisation).

Clause 26 repeals section 344AA (Commissioner may provide information about particular offender's participation in criminal organisation).

Clause 27 repeals section 350A (Confidentiality of criminal intelligence in proceedings) and section 350B (Application of *Judicial Review Act 1991*) as a consequence of the repeal of the Criminal Organisation Segregation Order provisions under Chapter 2, Part 2, Division 6A and the repeal of section 267A (Directions to identified participant in criminal organisation).

Clause 28 inserts a new Part 9 into Chapter 7A to provide the transitional provisions for the Bill.

New section 490E (Definition for part) provides the definition for the new Part.

New section 490F (Prisoner classifications) provides the transitional arrangements for the repeal of subsection (1B) under section 12 (Prisoner security classification). Subsection (1) provides that this section applies if a prisoner was subject to a Criminal Organisation Segregation Order under the pre-amended Act immediately before the commencement of the Bill. Subsection (2) provides that on commencement of the Bill the prisoner's security classification under previous section 12(1B) is the prisoner's security classification under section 12(1). Subsection (3) provides that the chief executive must review the prisoner's security classification under section 13 (Reviewing prisoner's security classification) as soon as practical after commencement of the Bill.

New section 490G (Keeping records) provides transitional arrangements for the repeal of the Criminal Organisation Segregation Order provisions under Chapter 2, Part 2, Division 6A. Subsection (1) requires the chief executive to continue to keep the record of relevant information about a prisoner. Subsection (2) defines 'record of relevant information' as meaning the record under section 65D of the pre-amended Act, including copies of any advices mentioned in subsection (3).

New section 490H (Criminal organisation segregation orders) provides the transitional arrangements for the repeal of the Criminal Organisation Segregation Order provisions under Chapter 2, Part 2, Division 6A. Subsection (1) provides that on commencement of the Bill any Criminal Organisation Segregation Order in effect is cancelled. Subsection (2) provides

that a doctor or nurse must examine the prisoner who was subject to the Criminal Organisation Segregation Order as soon as practicable after commencement of the Bill. Subsection (3) requires the chief executive to record the date on which the Criminal Organisation Segregation Order was cancelled and the date on which the prisoner was examined under subsection (2). Subsection (4) requires the chief executive to record the information mentioned in subsection (3) in the record kept under section 490G (Keeping records).

New section 490I (Requirement for test sample before commencement) provides the transitional arrangements for the repeal of section 41(1)(c) of the pre-amended Act. The section provides that any requirement made of a person under that section ends on commencement of the Bill.

New section 490J (Directions to identified participant) provides the transitional arrangements for the repeal of section 267(3)(a) and (c) of the pre-amended Act. Subsection (1) provides that on commencement of the Bill, any direction given under those sections ends. Subsection (2) requires the chief executive to tell the offender subject to the direction that it is no longer in place.

New section 490K (Monitoring devices) provides the transitional arrangements for the repeal of section 267(3)(b) of the pre-amended Act. Subsection (1) provides that on commencement of the Bill any direction given under that section continues in force according to its terms. Subsection (2) requires the chief executive to review the direction as soon as practicable after commencement of the Bill. Subsection (3) provides that if the chief executive does not consider it reasonably necessary for the offender to wear a device for monitoring the offender's location, the chief executive must cancel the direction and tell the offender that the direction is no longer in place.

Clause 29 adds the three new offences inserted into the Criminal Code; section 228DA (Administering child exploitation material website), section 228DB (Encouraging use of child exploitation material website), and section 228DC (Distributing information about avoiding detection), to the list of offences in Schedule 1 (Sexual offences). This is consistent with the approach taken to the existing offences related to child exploitation material in sections 228A (Involving child in making child exploitation material), 228B (Making child exploitation material), 228C (Distributing child exploitation material), 228D (Possessing child exploitation material) of the Criminal Code.

Clause 30 amends Schedule 4 (Dictionary) to repeal the definitions of 'COSO', 'criminal organisation', 'criminal organisation segregation order', 'identified participant' and 'participant' as a consequence of this Bill.

Part 5 Amendment of Crime and Corruption Act 2001

Clause 31 states that this Part amends the *Crime and Corruption Act 2001*.

Clause 32 amends section 25 (Commission's crime function) by repealing subsection (b) and replacing it with a new subsection (b) to provide that it is part of the Crime and Corruption Commission's (the Commission) crime function to investigate, under the immediate response function authorised under new section 55D, incidents that threatens, have threatened or may

threaten public safety and that criminal organisations or participants in criminal organisations have engaged in, are engaging in, or are planning to engage in.

Clause 33 amends section 53(b) to omit a section reference as a consequence of the repeal of Chapter 2, Part 4, Division 2B (Public safety).

Clause 34 amends the heading of Chapter 2, Part 4, Division 2A to 'Specific intelligence operations'.

Clause 35 amends the heading of section 55A to 'Authorising specific intelligence operation'.

Clause 36 amends the heading of section 55B to 'Matters reference committee must consider'.

Clause 37 amends the heading of section 55C to 'Reference committee may give commission directions'.

Clause 38 repeals Division 2B (Public safety) of Chapter 2, Part 4, and replaces it with new Division 2B (Immediate responses to threats to public safety).

New section 55D (Authorising immediate response) provides the process for how and when the Crime Reference Committee (reference committee) may authorise the use of the immediate response function. Subsection (1) provides that the section applies if the reference committee is satisfied there are reasonable grounds to suspect that a criminal organisation, or a participant in a criminal organisation, has engaged in, is engaging in or is planning to engage in an incident that has threatens, threatened or may threaten public safety. Subsection (2) provides that the reference committee may authorise the commission to undertake an investigation or conduct a hearing, or both, in response to, or to prevent, the threat to public safety. Subsection (3) provides that the reference committee's authorisation must be in writing and must identify the criminal organisation or participant, the nature of the incident and the purpose of the investigation or hearing. Subsection (4) provides that the authorisation may be given by the reference committee on its own initiative or if asked by the senior executive officer (crime), or senior executive officer (corruption).

New section 55E (Matters reference committee must consider) provides that the reference committee may only authorise the commission to undertake the investigation or conduct the hearing if it is satisfied that it is required under section 55D(1) and that it is in the public interest to authorise. Subsection (2) provides that in considering the public interest the reference committee may have regard to the likely effectiveness of an investigation into criminal activity or corruption without the use of the powers available under this Division. Subsection (3) defines 'criminal activity' for the purpose of the section.

New section 55F (Reference committee may give commission directions) provides that the reference committee may give directions to the commission imposing limitations on the commission's investigation or hearing under an authorisation under section 55D, including limitations on the exercise of the commission's powers for the investigation or hearing. Subsection (2) provides that the reference committee may also direct the commission to end an investigation or hearing under an authorisation under section 55D in certain listed circumstances. Subsection (3) provides that the commission must comply with a direction

given by the reference committee under subsections (1) or (2). Subsection (4) provides that the reference committee may amend the terms of the authorisation on its own initiative or if asked by the senior executive officer (crime) or senior executive officer (corruption). Subsection (5) declares that subsection (2)(d) is not limited by section 55D(2).

Clause 39 amends section 74 (Notice to produce for crime investigation, specific intelligence operation (crime) or witness protection function) to repeal subsections (5A) and (9) to reinstate the position that fear of reprisal is capable of amounting to a reasonable excuse for failing to comply with a notice to produce in relation to a specific intelligence operation or crime investigation about a criminal organisation or participant in a criminal organisation.

Clause 40 amends section 82 (Notice to attend hearing – general) to repeal subsections (6) and (9) to reinstate the position that fear of reprisal is capable of amounting to a reasonable excuse for failing to comply with a notice to attend a hearing in relation to a specific intelligence operation or crime investigation about a criminal organisation or participant in a criminal organisation. Subclause (2) replaces a section reference regarding the authorisation of the immediate response function. Subclause (3) corrects a section reference and subclause (4) provides for the sequential renumbering of the section.

Clause 41 amends section 85 (Notices requiring immediate attendance may be issued only by or with the approval of a Supreme Court judge) to amend a section reference as a consequence to the renumbering of section 82 (Notice to attend hearing – general).

Clause 42 inserts a new section 85A (Definitions for part) into chapter 3, part 2 (Search warrants generally). New section 85A contains definitions for the terms 'access information', 'employee', 'issuer', 'relevant evidence', 'specified person', 'storage device' and 'stored'. The terms are used in subsequent new sections that provide for an authorised commission officer to apply to a judge or magistrate to issue an order to require access information (e.g. a password or encryption key) from a specified person (e.g. the owner) to access a storage device (e.g. computer) to search for evidence of an offence that might be stored in the device (e.g. child exploitation material).

Clause 43 inserts new sections 88A (Order in search warrant about information necessary to access information stored electronically), 88B (Order for access information after storage device has been seized) and 88C (Compliance with order about information necessary to access information stored electronically).

New section 88A provides that a magistrate or judge (the issuer) may include an order in a search warrant requiring a specified person to give access to a device and 'access information' (such as passwords or other like information) to a commission officer to enable the officer to access, examine, copy and convert information stored on a storage device. New section 88A also provides that an order can apply to a specified person even if the storage device has been removed from the specified place. In this instance, the section provides that the order must state the time and place where the information or assistance must be provided and any conditions that apply to the person.

New section 88B provides that if a search warrant did not contain an order requiring a person to provide access information, or if a search warrant did contain an order and further access information is required to gain access after a storage device has been seized, an authorised

commission officer may make an application, to a judge or magistrate (depending on who issued the original warrant), for a new or additional order.

An order under this section must state the time and place where the information or assistance must be provided, any conditions that apply to the person, and that failure to comply may be dealt with under new section 205A (Contravening order about information necessary to access information stored electronically) of the Criminal Code, to be inserted by the Bill. The provision also provides that an order under the section can only be made if the magistrate or judge is satisfied there are reasonable grounds for suspecting there is information in the storage device that may be relevant evidence.

New section 88C provides that a person will not be excused from complying with an order made under new sections 88A or 88B on the ground that compliance would tend to incriminate the person or make them liable to a penalty.

Clause 44 amends section 91 (What search warrant must state) to include a new provision that a search warrant must state that if a person fails, without reasonable excuse, to comply with an order made under the new section 88A (Order in search warrant about information necessary to access information stored electronically) that the person may be dealt with under new section 205A (Contravention of order in search warrant about information necessary to access information stored electronically) of the Criminal Code. The provision also stipulates that if a warrant contains an order under section 88 (Order in search warrants about documents), that warrant must state that failure to comply with the order may be dealt with under the Criminal Code, section 205 (Disobedience to lawful order issued by statutory authority).

Clause 45 amends section 176 (Commission may hold hearings) as a consequence to the renumbering of Chapter 2, Part 4, Division 2B.

Clause 46 amends section 185 (Refusal to produce – claim of reasonable excuse) to repeal subsections (3A) and (10) to reinstate the position that fear of reprisal is capable of amounting to a reasonable excuse for refusing to produce a stated document or thing at a commission hearing in relation to a specific intelligence operation or crime investigation about a criminal organisation or participant in a criminal organisation.

Clause 47 amends section 190 (Refusal to answer question) to repeal subsections (4) and (5) to reinstate the position that fear of reprisal is capable of amounting to a reasonable excuse for refusing to answer a question at a commission hearing in relation to a specific intelligence operation or crime investigation about a criminal organisation or participant in a criminal organisation.

Clause 48 amends section 199 (Punishment of contempt) to amend or replace subsections (8A), (8B) and (8C). Definitions are also inserted under section 199 with new subsection (12).

Subclauses (1) and (2) amend subsection (8A) consequential to the insertion of replacement subsections (8B) and (8C). Subsection (8A) provides that if the contempt that is certified is a failure by the person of a type there mentioned, the court must punish the person in contempt by imprisonment.

Subclause (3) omits and replaces subsections (8B) and (8C). The prescribed mandatory minimum sentencing regime for particular contemnors and particular repeat contemnors under subsection (8B) is repealed; and in its place, a tiered maximum penalty regime is inserted.

For the person's first contempt the maximum penalty the court may impose for a contempt mentioned in subsection (8A) is 10 years imprisonment; increasing to 14 years imprisonment for the person's second contempt; and increasing to life imprisonment for the person's third or subsequent contempt. The court otherwise retains its discretion as to the length of the imprisonment for these prescribed contemnors. Subsection (8) applies if the contempt that is certified is of a type not mentioned in subsection (8A).

Replacement subsection (8C) provides that, despite any other law, the term of imprisonment imposed under subsection (8B) for a person's first contempt; and second, third and any subsequent contempt (of a type mentioned in subsection (8A)), must be ordered to be served wholly in a corrective services facility. All other forms of punishment, including combinations of punishment, are excluded (the use of '*despite any other law*' is intended to address the interpretation in *Forbes v Jingle* [2014] QDC 204).

Further, it is intended that a repeat contemnor must be punished to terms of imprisonment, required to be served wholly in a corrective services facility, that are of increasing duration, unless there are exceptional circumstances.

To remove any doubt, the failure by the person of a type mentioned in subsection 8(A) that constitutes the person's second contempt, or third or subsequent contempt, may be the same failure by the person of a type mentioned in subsection 8(A) that constituted their first contempt (or other preceding contempt). For example, a person's second contempt can be committed by a failure to answer a question that is the same as the question the subject of the person's first contempt.

Definitions of the terms 'first contempt', 'second contempt' and 'third or subsequent contempt' are provided at new subsection (12).

For example, a second contempt means: a failure by the person of a type mentioned in subsection (8A) (i.e. whether a failure described at subsection (8A)(a)(i) or (a)(ii) or (a)(iii) and regardless of whether the contempt that constituted the first contempt was of the same type or a different type under that subsection) that takes place in relation to a hearing dealing with the same subject matter as that dealt with in the hearing in which the person's first contempt was certified *and* for which the person has served a term of imprisonment imposed under subsection (8B). To remove any doubt, the reference to hearings mentioned in the definition may be the same hearing (which addresses the interpretation in *Witness JA v Scott* [2015] QCA 285).

Subclause (4) amends subsections (8D) and (8E) to omit the reference to 'subsection (8A)' to enable any contemnor punished by imprisonment under section 199 to be brought before the commission to ascertain whether the person wishes to purge the contempt; and for the person to be brought before the Supreme Court for declaration that the person has purged the contempt.

Clause 49 amends section 201 (Commission must give evidence unless court certifies otherwise) by repealing subsection (1A) to provide that the section applies to all evidence obtained by the commission (including anything stated at, or a document or thing produced at, a commission hearing).

Clause 50 amends section 205 (Legal assistance for crime investigations). Subclauses (1) and (2) amend subsections (1)(a) and (1)(b) to broaden the application of the section to a person who has been given a notice to attend a commission hearing. Subclause (3) repeals subsection (1A) which previously excluded crime investigations authorised under section 55F from the ambit of the section.

Subclause (4) inserts new subsections (6), (7) and (8). New subsection (6) provides that the Attorney-General may delegate a function under subsection (3) or (4) to the chief executive (justice). New subsection (7) provides that the chief executive (justice) may subdelegate the function to an appropriately qualified employee of the department administered by the chief executive (justice). New subsection (8) defines 'chief executive (justice)' as meaning the chief executive of the department in which the Criminal Code is administered, and defines 'function' to include power.

Clause 51 amends section 213 (Secrecy) to omit references to the *Criminal Organisation Act 2009* as a consequence of its repeal by this Bill.

Clause 52 amends section 270 (Delegation – chairperson) as a consequence to the renumbering of Chapter 2, Part 4, Division 2B, and of section 82 (Notice to attend hearing – general).

Clause 53 amends section 348 (Regulation-making power) to remove the ability for an entity to be declared a criminal organisation by regulation.

Clause 54 omits section 348A (Criteria for recommending an entity be declared a criminal organisation) consequential to the amendment to section 348.

Clause 55 inserts new Chapter 8 into Part 14 to provide the transitional provisions for the Bill.

New Division 1 provides the general transitional arrangements.

New section 427 (Authorisation by chairperson of immediate response function) provides the transitional arrangements for the use of the immediate response function by the commission. Subsection (1) provides that the section applies to a crime investigation or the holding of an intelligence hearing, or both, in response to, or to prevent, a threat to public safety that was authorised by the chairperson before the commencement of the Bill but not finalised. Subsection (2) provides that in those circumstances the investigation or hearing is taken to have been authorised by the reference committee under section 55D.

New section 428 (Refusal to comply with notice to produce for fear of reprisal) provides the transitional arrangements for refusal to comply with a notice to produce under section 74 for fear of reprisal. Subsection (1) provides that the section applies if a notice has been issued under section 74 prior to commencement of the Bill, and the person has not complied with

the notice and has not been convicted of an offence against section 74(5). Subsection (2) provides section 74, as amended by the Bill, applies in relation to the notice to produce.

New section 429 (Refusal to comply with attendance notice for fear of reprisal) provides the transitional arrangements for refusal to comply with an attendance notice under section 82 for fear of reprisal. Subsection (1) provides that the section applies if a notice has been issued under section 82 prior to commencement of the Bill, and the person has not complied with the attendance notice and has not been convicted of an offence against section 82(5). Subsection (2) provides section 82, as amended by the Bill, applies in relation to the attendance notice.

New section 430 (Refusal to comply with requirement to produce stated document or thing for fear of reprisal) provides the transitional arrangements for refusal to comply with a requirement to produce a document or thing at a commission hearing under section 185 for fear of reprisal. Subsection (1) provides that the section applies if the requirement has been given prior to commencement of the Bill, and the person has not complied with the requirement and has not been convicted of an offence against section 185(1). Subsection (2) provides that section 185, as amended by the Bill, applies in relation to the requirement.

New section 431 (Refusal to answer questions for fear of reprisal) provides the transitional arrangements for refusal to answer a question under section 190 for fear of reprisal. Subsection (1) provides that the section applies if a witness was required to answer a question at a hearing prior to commencement of the Bill, and the person has not answered the question and has not been convicted of an offence against section 190(1). Subsection (2) provides that section 190, as amended by the Bill, applies in relation to the requirement.

New section 432 provides for the transitional application of amended section 199. To remove any doubt, it is declared that a first contempt, second contempt, or third or subsequent contempt under amended section 199 means a contempt committed after the commencement of the *Criminal Law (Criminal Organisations Disruption) Amendment Act 2013* (i.e. the 2013 Act that inserted the prescribed mandatory minimum sentencing regime repealed under clause 48).

Further, amended section 199 applies to a proceeding for a contempt that has not been finalised before commencement of the Bill, whether the contempt was committed before or after commencement (that is, the repealed mandatory minimum sentencing regime will not apply to punish for the contempt).

New section 433 (Commission must give evidence to defence) provides the transitional arrangements for the requirement that the commission give evidence to defence under section 201. The section provides that section 201, as amended by the Bill, applies to anything stated at, or a document or thing produced at, a commission hearing whether the commission hearing was started before or after the commencement of the Bill.

New Division 2 provides the transitional arrangements for proceedings for offences and contempts relating to fear of reprisal.

New section 434 (Definitions for division) provides the definitions for the Division. ‘Fear of reprisal’ is defined as a person’s genuine fear of personal physical harm or damage to their property, or physical harm to someone else, or damage to the property of someone else, with

whom the person has a connection or bond. 'Pre-amended Act' is defined as the Act in force before the commencement of the Bill.

'Requirement the subject of the offence' is defined by reference to the offences against section 74(5) (Notice to produce for crime investigation, specific intelligence operation (crime) or witness protection function), 82(5) (Notice to attend hearing – general), 185(1) (Refusal to produce – claim of reasonable excuse) and 190(1) (Refusal to answer question) of the Crime and Corruption Act.

'Requirement the subject of the contempt' is defined as a contempt constituted by: a failure by a person to take an oath when required by the presiding officer, under section 183; a failure to produce a stated document or thing at a commission hearing under an attendance notice or a section 75B requirement, under sections 185 or 188; or a failure to answer a question put to the person at the hearing by the presiding officer, under sections 190 or 192.

New section 435 (Application of division) sets out the application of the Division. Subsection (1) provides that the Division applies if a person has been convicted of an offence under sections 74(5), 82(5), 185(1) or 190(1) of the pre-amended Act, and the person may have had a reasonable excuse based on a fear of reprisal for failing to comply with the requirement the subject of the offence.

Subsection (2) provides the Division applies if a person has been found guilty of contempt by the Supreme Court, and the contempt was constituted by one of the failures set out in section 434 under the definition of 'requirement the subject of the contempt', and the person may have had a reasonable excuse based on a fear of reprisal for failing to comply with the requirement the subject of the contempt.

Subsection (3) provides that it does not matter if the reasonable excuse based on the fear of reprisal is raised by the person for the first time in an application under the Division.

New section 436 (Application to Supreme Court) provides that a person may apply to the Supreme Court to set aside the conviction for an offence set out in section 435(1)(a), or to set aside the finding of guilt and any punishment for the contempt imposed by the court for a contempt set out in section 435(2)(a), on the grounds that at the time of failing to comply with the requirement the subject of the offence or the contempt, the person had a reasonable excuse for failing to comply based on a fear of reprisal.

Subsection (2) provides that the application must be made within three months after the commencement of the Bill. Subsection (3) provides that the court may, at any time, extend the time mentioned in subsection (2). Subsection (4) provides that the court must give a copy of the application to the commission. Subsection (5) provides that within 10 business days of the making of the application, the court must give directions to enable the application to be heard. Subsection (6) provides that subject to any directions given by the court, the application must be heard within 20 business days after the day on which the application is made.

New section 437 (Hearing – offence) provides that on hearing an application under section 436(1)(a) to set aside a conviction for an offence the Supreme Court may set aside or confirm the conviction. Subsection (2) provides that the court can have regard to any material relevant to the application.

New section 438 (Hearing – contempt) provides that on hearing an application under section 436(1)(b) to set aside a finding of guilt and any punishment for the contempt imposed by the court, the Supreme Court may set aside or confirm the conviction. Subsection (2) provides that the court can have regard to any material relevant to the application.

New section 439 (Appeals) provides that a person making an application under section 436, or the Attorney-General, may appeal the decision of the Supreme Court under section 437 or section 438 on a ground involving a question of law alone.

New section 440 (No cause of action) provides that no cause of action may be started or continued against the State in relation to any period of imprisonment the person may have actually served in relation to a conviction for an offence or finding of guilt and imposition of punishment for contempt that is set aside by the Division.

Clause 56 amends Schedule 2 (Dictionary) to omit and replace the definitions of 'criminal organisation' and 'participant'. The term 'criminal organisation' has the meaning given by section 161O of the *Penalties and Sentences Act 1992* and the term 'participant' has the meaning given by section 161P of the Penalties and Sentences Act.

The definition of 'intelligence function hearing' is also amended consequential to the renumbering of provisions.

Schedule 2 is further amended to include the terms 'access information', 'employee', 'issuer', 'relevant evidence', 'specified person', 'storage device', and 'stored' and provide that the terms are defined in new section 85A.

Part 6 Amendment of Crime and Corruption Regulation 2015

Clause 57 states that this Part amends the *Crime and Corruption Regulation 2015.*

Clause 58 omits section 20 (Entities declared to be criminal organisations) consequential to the change in definition of 'criminal organisation' in Schedule 2 of the *Crime and Corruption Act 2001* (the Act), and the amendment to section 348 of the Act.

Clause 59 omits Schedule 2 (Entities declared to be criminal organisations) consequential to the omission of section 20.

Part 7 Amendment of Criminal Code

Division 1 Preliminary

Clause 60 states that this Part amends the Criminal Code.

Division 2 Amendments commencing on assent

Clause 61 amends section 1 (Definitions) to omit and replace the definitions of 'criminal organisation' and 'spent conviction' and insert a definition of 'participant' in a criminal organisation.

The term ‘criminal organisation’ has the meaning given by new section 161O (Meaning of criminal organisation) of the *Penalties and Sentences Act 1992*, as inserted by the Bill.

For the purposes of sections 60A (Participant in criminal organisation being knowingly present in public places) and 60B (Participant in criminal organisation entering prescribed places and attending prescribed events) the definition of criminal organisation also includes an entity declared by regulation to be a criminal organisation (the Bill provides for the repeal of this aspect of the definition of criminal organisation two years after assent, which corresponds with the repeal of sections 60A and 60B).

The term ‘participant’ in a criminal organisation has the meaning given by new section 161P (Meaning of participant) of the Penalties and Sentences Act, as inserted by the Bill.

The clause also amends section 1 to insert definitions of ‘anonymising service’, ‘distribute’, ‘hidden network’, ‘information’ and ‘network’. These definitions relate to the amendments in the Bill to the child exploitation material offences (clauses 87 to 90) and the insertion of new child exploitation material-related offences by clause 91. The definitions in section 1 refer to the definitions inserted into section 207A of the Criminal Code (clause 76).

These definitions commence on assent.

Clause 62 amends section 60A (Participants in criminal organisation being knowingly present in public places).

Subclause (1) changes the classification of the offence from simple to indictable by providing that the offence is now a misdemeanor.

Subclause (2) repeals the mandatory minimum penalty of 6 months imprisonment to be served wholly in a corrective services facility.

Subclause (3) omits the definition of *participant* under subsection (3) consequential to the insertion of the definition (as amended by the Bill) under section 1 (Definition). The definition of ‘member’ is omitted and not replaced.

Clause 63 amends section 60B (Participants in criminal organisation entering prescribed places and attending prescribed events).

Subclause (1) changes the classification of the offence from simple to indictable by providing that the offence is now a misdemeanor.

Subclause (2) repeals the mandatory minimum penalty of 6 months imprisonment to be served wholly in a corrective services facility.

Subclause (3) repeals the definition of ‘participant’.

Subclause (4) inserts a new definition of ‘criminal activity’ for section 60B. The words *criminal activity* are used in the defence located at section 60B(2).

Clause 64 repeals section 60C (Participants in criminal organisation recruiting persons to become participants in the organisation).

Clause 65 amends section 61 (Riot) to insert new subsections (2A) and (2B) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence against this section with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 66 amends section 72 (Affray).

Subclause (1) repeals the circumstance of aggravation (and the associated penalties) if the person convicted of the offence of Affray is a participant in a criminal organisation. It also repeals the definition of 'participant' and the specific defence for the circumstance of aggravation.

Subclause (2) removes the reference to the circumstance of aggravation repealed in subclause (1) from section 72(3A).

Subclause (3) provides for consequential renumbering of section 72.

Clause 67 inserts new section 76 (Recruiting person to become participant in criminal organisation) which provides that it is an offence for a person who is a participant in a criminal organisation, or who is subject to a control order, to recruit or attempt to recruit another person to become or associate with a participant in a criminal organisation. The offence carries a maximum penalty of 500 penalty units or 5 years imprisonment. The term 'control order' is defined by reference to an order under the *Penalties and Sentences Act 1992*. The term 'recruit' is defined for the purpose of the section.

Clause 68 amends section 86 (Obtaining of or disclosure of secret information about the identity of informant).

Subclause (1) repeals the definition of 'external agency' which is defined with reference to the *Criminal Organisation Act 2009* (COA). The COA is repealed by this Bill.

Subclause (2) provides for amendments that are consequential to the repeal of the COA. It inserts definitions of 'criminal intelligence', 'external agency' and 'officer' into section 86(3) which are required for the definition of criminal organisation informant.

Subclause (3) is a further amendment consequential to the repeal of the COA. It removes the reference to a person giving criminal intelligence for the purpose of the COA and replaces it with a reference to a person giving criminal intelligence about a criminal organisation or a participant in a criminal organisation.

Subclause (4) is another amendment that is consequential to the repeal of the COA. It repeals the reference to an informant under the COA by repealing section 86(3)(d).

Clause 69 amends section 87 (Official corruption) to insert new subsections (1B) and (1C) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 70 amends section 92A (Misconduct in relation to public office) to omit subsections (4A) and (4B), and the definition of *participant* under subsection (5).

New subsections (4A) and (4B) provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 71 amends section 119B (Retaliation against or intimidation of judicial officer, juror, witness etc.) to insert new subsections (1B) and (1C) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 72 amends section 122 (Corruption of jurors) to insert new subsections (2) and (3) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 73 amends section 127 (Corruption of witnesses) to insert new subsections (3) and (4) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 74 amends section 140 (Attempting to pervert justice) to insert new subsections (2) and (3) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 75 inserts new section 205A (Contravening order about information necessary to access information stored electronically) which creates an offence where a person fails to comply with a requirement made under sections 154(1) or 154A(2) of the *Police Powers and Responsibilities Act 2000*, or sections 88A(1) or 88B(2) of the *Crime and Corruption Act 2001* regarding the provision of access information and assistance necessary to gain information stored on the device. The offence is a crime and carries a maximum penalty of five years imprisonment.

Clause 76 amends section 207A (Definitions for this chapter) to insert definitions of 'anonymising service', 'distribute', 'hidden network', 'information' and 'network'. The definitions of 'anonymising service' and 'hidden network' relate to a new circumstance of aggravation addressing the anonymous nature of this type of offending and the increased use of technology to conceal offending related to child exploitation material. The new circumstance of aggravation will be applied to each of the existing offences in sections 228A (Involving child in making child exploitation material), 228B (Making child exploitation material), 228C (Distributing child exploitation material), 228D (Possessing child exploitation material), and each of the three new offences in new sections 228DA (Administering child exploitation website), 228DB (Encouraging use of child exploitation website) and 228DC (Distributing information about avoiding detection).

The definition of 'distribute' has been relocated from sections 227B and 228C and now applies to Chapter 22.

Clause 77 amends section 201 (Indecent treatment of children under 16) to insert new subsections (4B) and (4C) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 78 amends section 213 (Owner etc. permitting abuse of children on premises) to insert new subsections (3A) and (3B) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 79 amends section 215 (Carnal knowledge with or of children under 16) to insert new subsections (4B) and (4C) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 80 amends section 217 (Procuring young person etc. for carnal knowledge) to insert new subsections (1A) and (1B) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 81 amends section 218 (Procuring sexual acts by coercion etc.) to insert new subsections (3A) and (3B) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 82 amends section 218A (Using internet etc. to procure children under 16) to insert new subsections (2A) and (2B) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 83 amends section 218B (Grooming children under 16) to insert new subsections (2A) and (2B) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 84 amends section 219 (Taking child for immoral purposes) to insert new subsection (3A) and (3B) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 85 Amends section 227B(2) (Distributing prohibited visual recordings) to omit the definition of 'distribute' as a result of the relocation of the definition to section 207A.

Clause 86 amends section 228 (Obscene publications and exhibitions) to provide that the definition of 'distribute' in section 207A does not apply to the section.

Clause 87 amends section 228A (Involving child in making child exploitation material).

Subclause (1) inserts a new circumstance of aggravation if the offender used a hidden network or anonymising service in committing the offence, with a maximum penalty of 25 years imprisonment; and otherwise to increase the maximum penalty from 14 years to 20 years imprisonment.

Subclause (2) renumbers subsection (2) to become subsection (4), consequential to the insertions under subclause (2).

Subclause (3) inserts new subsections (2) and (3) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 88 amends section 228B (Making child exploitation material).

Subclause (1) inserts a new circumstance of aggravation if the offender used a hidden network or anonymising service in committing the offence, with a maximum penalty of 25 years imprisonment; and otherwise to increase the maximum penalty from 14 years to 20 years imprisonment.

Subclause (2) renumbers subsection (2) to become subsection (4), consequential to the insertions under subclause (2).

Subclause (3) inserts new subsections (2) and (3) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 89 amends section 228C (Distributing child exploitation material).

Subclause (1) amends subsection (1) to insert a new circumstance of aggravation if the offender used a hidden network or anonymising service in committing the offence, with a maximum penalty of 20 years imprisonment.

Subclause (2) omits subsection (2) as a result of the relocation of the definition of 'distribute' to section 207A.

Subclause (3) inserts new subsections (2) and (3) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 90 amends section 228D (Possessing child exploitation material).

Subclause (1) inserts a new circumstance of aggravation if the offender used a hidden network or anonymising service in committing the offence, carrying a maximum penalty of 20 years imprisonment.

Subclause (2) inserts new subsections (2) and (3) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 91 inserts new offence sections 228DA (Administering child exploitation website), 228DB (Encouraging use of child exploitation website) and 228DC (Distributing information about avoiding detection).

New section 228DA provides that a person who administers a website, knowing it is used to distribute child exploitation material, commits a crime. The maximum penalty is 20 years imprisonment if the offender used a hidden network or anonymising service in committing the offence or otherwise 14 years imprisonment. The new offence relies on definitions provided in section 207A.

New subsection (4) provides a defence to a charge under section 228DA(1) if a person can prove that when they became aware that the website they were administering was being used to distribute child exploitation material they took all reasonable steps in the circumstances to

prevent use of the website to access child exploitation material. Examples are provided of steps that may be considered reasonable in the circumstances.

Subsection (5) provides a non-exhaustive definition of 'administer'.

New section 228DB provides that a person who, knowing a website is used to distribute child exploitation material, distributes information to encourage someone to use the website, or to promote or advertise the website to someone, commits a crime. It does not matter whether the information to encourage the use of, advertise or promote the website is directed to a particular person or not. The maximum penalty if the offender used a hidden network or anonymising service in committing the offence is 20 years imprisonment or otherwise 14 years imprisonment.

New section 228DC provides that a person who distributes information about how to avoid detection of, or prosecution for, conduct that involves a child exploitation material offence commits a crime. It does not matter if the information was directed to a particular person or not. It does not matter if a person who received or accessed the information acted upon it or not. The maximum penalty is 20 years imprisonment if the offender used a hidden network or anonymising service in committing the offence or otherwise 14 years imprisonment.

Subsection (4) provides a definition of 'child exploitation material offence'.

Clause 92 applies the defence in section 228E(1) (Defences for ss228A-228D) to the offences in new sections 228DA (Administering child exploitation website), 228DB (Encouraging use of child exploitation website) and 228DC (Distributing information about avoiding detection).

Clause 93 applies the provisions of section 228G (Forfeiture of child exploitation material etc) to the new offences in sections 228DA (Administering child exploitation website), 228DB (Encouraging use of child exploitation website) and 228DC (Distributing information about avoiding detection).

Clause 94 applies the exceptions in section 228H (Possession etc. of child exploitation material by law enforcement officer) to the new offences in sections 228DA (Administering child exploitation website), 228DB (Encouraging use of child exploitation website) and 228DC (Distributing information about avoiding detection).

Clause 95 amends section 229B (Maintaining a sexual relationship with a child) to insert new subsection (6A) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill (Note: existing subsection (6) already provides that an adult cannot be prosecuted for the crime without a Crown Law Officer's consent).

Clause 96 amends section 229G (Procuring engagement in prostitution) to insert new subsections (2A) and (2B) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 97 amends section 229H (Knowingly participating in provision of prostitution) to insert new subsections (3) and (4) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 98 amends section 229HB (Carrying on business of providing unlawful prostitution) to insert new subsections (2A) and (2B) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 99 amends section 229K (Having an interest in premises used for prostitution etc.) to insert new subsections (9) and (10) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 100 amend section 229L (Permitting young person etc. to be at place used for prostitution) to insert new subsections (2) and (3) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 101 amend section 302 (Definition of murder) to insert new subsection (5) to provide that presentation of an indictment charging an offence against this section with the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill, requires the consent of a Crown Law Officer.

Clause 102 amends section 303 (Definition of manslaughter) to insert new subsection (2) to provide that presentation of an indictment charging an offence against this section with the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill, requires the consent of a Crown Law Officer.

Clause 103 amends section 305 (Punishment of murder) to insert new subsection (5) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill.

Clause 104 amends section 306 (Attempt to murder) to insert new subsections (2) and (3) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 105 amends section 307 (Accessory after the fact to murder) to insert new subsections (2) and (3) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 106 amends section 308 (Threats to murder in document) to insert new subsections (2) and (3) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 107 amends section 309 (Conspiring to murder) to insert new subsections (2) and (3) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 108 amends section 310 (Punishment of manslaughter) to insert new subsection (2) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill.

Clause 109 amends section 314A (Unlawful striking causing death) to insert new subsections (1A) and (1B) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 110 amends section 317 (Acts intended to cause grievous bodily harm and other malicious acts) to insert new subsections (2) and (3) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 111 amends section 317A (Carrying or sending dangerous goods in a vehicle) to insert new subsections (2A) and (2B) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 112 amends section 320 (Grievous bodily harm).

Subclause (1) repeals the circumstance of aggravation (and the associated mandatory minimum penalty) of a participant in a criminal organisation doing grievous bodily harm to a

police officer while acting in the execution of the officer's duty. This subsection also repeals the specific defence to this circumstance of aggravation at section 320(3).

Subclause (2) provides a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill.

Subclause (3) inserts new subsection (4) to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 113 amends section 320A (Torture) to insert new subsections (1A) and (1B) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 114 amends section 321 (Attempting to injure by explosive or noxious substances) to insert new subsections (2) and (3) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 115 amends section 339 (Assault occasioning bodily harm) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to insert new subsection (5) to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 116 amends section 340 (Serious assaults).

Subclause (1) repeals the circumstance of aggravation (and associated mandatory minimum penalty) of a participant in a criminal organisation assaulting a police officer. This subsection also repeals the specific defence to this circumstance of aggravation at section 340(1B).

Subclause (2) provides a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill.

Subclause (3) inserts new subsection (1D) to provide that presentation of an indictment charging an offence against subsection (1)(b) with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Subclause (4) repeals the definition of 'participant' in section 340(3).

Clause 117 amends section 349 (Rape) to insert new subsections (4) and (5) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide

that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 118 amends section 350 (Attempt to commit rape) to insert new subsections (2) and (3) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 119 amends section 351 (Assault with intent to commit rape) to insert new subsections (2) and (3) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 120 amends section 352 (Sexual assaults) to insert new subsections (4) and (5) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 121 amends section 354 (Kidnapping for ransom) to insert new subsections (3) and (4) provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 122 amends section 354A (Kidnapping for ransom) to insert new subsections (5) and (6) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 123 amends section 359 (Threats) to insert new subsections (3) and (4) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 124 amends section 359E (Punishment of unlawful stalking) to insert new subsections (5) and (6) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 125 amends section 398 (Punishment of stealing) to insert new subsections (2) and (3) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to

provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 126 amends section 408C (Fraud).

Subclause (1) provides that a person who commits the crime of fraud without a circumstance of aggravation will be liable for a maximum penalty of 5 years imprisonment. This is the current maximum penalty for the offence of fraud simpliciter; the amendment is consequential to amendments to subsection (2).

Subclause (2) replaces subsection (2) and inserts new subsections (2A), (2B) and (2C).

New subsection (2) increases the maximum penalty for existing circumstances of aggravation from 12 to 14 years imprisonment. Subsection 408C (2)(d) is varied to reference an amount of at least $30,000 and less than $100,000 to accommodate the introduction of new subsection 408C (2A).

New subsection (2A) creates two new circumstances of aggravation; where the monetary value of the fraud is at least $100,000 or where the offender carries on the business of committing the offence. The maximum penalty applicable for the new circumstances of aggravation is 20 years imprisonment. It is intended that fraudulent conduct referred to colloquially as 'boiler room' fraud, will be caught by new subsection (2A)(b).

New subsections (2B) and (2C) provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 127 amends section 408D (Obtaining or dealing with identification information).

Subclause (1) repeals the circumstance of aggravation (and associated maximum penalty) if the person supplies identification information to a participant in a criminal organisation. This subsection also repeals the specific defence to this circumstance of aggravation at section 408D(1AB).

Subclause (2) increases the maximum penalty for an offence against the section from 3 years imprisonment to 5 years imprisonment.

Subclause (3) inserts new subsections (1B) and (1C) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Subclause (4) repeals the definition of 'participant' in section 408D(7).

Clause 128 amends section 409 (Definition of robbery) to insert new subsection (2) to provide that presentation of an indictment charging an offence against this section with the Serious Organised Crime circumstance of aggravation under new section 161Q of the

Penalties and Sentences Act 1992, inserted by the Bill, requires the consent of a Crown Law Officer.

Clause 129 amends section 411 (Punishment of robbery) to insert new subsection (3) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill.

Clause 130 amends section 412 (Attempted robbery) to insert new subsections (4) and (5) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 131 amends section 415 (Extortion) to insert new subsections (1A) and (5A) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 132 amends section 419 (Burglary) to insert new subsections (5) and (6) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 133 amends section 433 (Receiving tainted property) to insert new subsections (1A) and (1B) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 134 inserts new section 205A (Contravention of order about information necessary to access information stored electronically) on the list of offences in section 552A(1)(a) which provides for the charges of offences that must be heard and decided summarily on prosecution election.

Clause 135 amends section 552B (Charges of indictable offences that must be heard and decided summarily unless defendant elects for jury trial) to provide that charges for the following offences in the Criminal Code must be heard and decided summarily unless the defendant elects for a jury trial: section 60A (Participants in criminal organisation being knowingly present in public places); section 60B (Participants in criminal organisation entering prescribed places and attending prescribed events); section 76 (Recruiting person to become participant in criminal organisation); and section 77B (Habitually consorting with recognised offenders). The offence at section 77B will commence three months after this Bill's assent.

Clause 136 amends section 552D (When Magistrates Court must abstain from jurisdiction) to omit subsection (2A) consequential to the repeal of the *Vicious Lawless Association Disestablishment Act 2013*, under the Bill; and to insert new subsection (2A) consequential to

the insertion of the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*. New subsection (2A) provides that the Magistrates Court must abstain from dealing summarily with a charge of a prescribed offence (which has the meaning given by new section 161N of the Penalties and Sentences Act) if the defendant is alleged to have committed the offence with the Serious Organised Crime circumstance of aggravation.

Clause 137 amends section 590AD (Definitions for ch div 3). Division 3 of Chapter 62 is about the prosecution's duty of disclosure in criminal proceedings. This clause repeals the definition of 'spent conviction' in section 590AD. An earlier clause in this Bill places this definition into section 1 of the Criminal Code.

Clause 138 amends section 708A (Criteria for recommending an entity be declared a criminal organisation) to omit and replace the definition of 'participant' in an entity. The amended definition in effect replicates the definition of 'participant' given by new section 161P of the *Penalties and Sentences Act 1992*, inserted by the Bill.

New subsection (1A) also provides that for the purposes of section 708A, the auxiliary definitions of 'honorary member', 'prospective member' and 'office holder' take the meaning given by new section 161N of the Penalties and Sentences Act and apply as if a reference in those definitions to an 'organisation' were a reference to an 'entity' (i.e. the definition of *participant* under the Penalties and Sentences Act uses the term 'organisation' whereas section 708A uses the term 'entity'). Note: the Bill provides for the repeal of section 708A two years after assent, which corresponds with the repeal of sections 60A and 60B).

The definition of 'serious criminal activity' is omitted and replaced consequential to the repeal of the *Criminal Organisation Act 2009*, under the Bill. 'Serious criminal activity' means conduct constituting an indictable offence for which the maximum penalty is at least seven years imprisonment.

Clause 139 creates a new chapter in the Criminal Code. This new chapter 96 contains the transitional provisions that are required in the Criminal Code as a result of this Bill.

New section 736 provides for the review of the consorting provisions in the Criminal Code and the *Police Powers and Responsibilities Act 2000*. Subsection (1) provides that the Minister must appoint a retired judge (the reviewer) to conduct a review as soon as practicable five years after the commencement of the consorting provisions. The consorting provisions will commence three months after this Bill's assent. Subsection (1) also provides that the reviewer must prepare and give to the Minister a written report on the outcome of the review. Subsection (2) states that the terms of reference for the review will be decided by the Minister. Subsection (3) provides for the matters that must be addressed in the review. Subsection (4) states that the Minister must table a copy of the review in the Legislative Assembly within 14 days after having received the review. Subsection (5) sets out the consorting provisions which must be reviewed. Subsection (5) also provides that the retired judge who is appointed to conduct the review must be a retired Supreme Court or District Court judge.

New section 737 provides that the regulation for the Criminal Code created by this Bill, i.e., the *Criminal Code (External Agencies) Regulation 2016*, is subordinate legislation and Part 6 of the *Statutory Instruments Act 1992* does not apply to the regulation.

Division 3 Amendments commencing 3 months after assent

Clause 140 amends the Criminal Code to insert definitions into section 1 that will be used in the new chapter 9A (Consorting). This amendment will commence three months after this Bill's assent.

Clause 141 creates a new chapter 9A (Consorting) which contains an offence of habitually consorting with recognised offenders. This chapter will commence three months after this Bill's assent.

New section 77 provides the definitions of the terms 'consort', 'conviction', 'recognised offender' and 'relevant offence' for new chapter 9A.

New section 77A defines the meaning of the term 'consort'. Subsection (1) provides that a person consorts with another person if they associate with the person in a way that involves seeking out or accepting the other person's company. Subsection (2) clarifies that an act of consorting does not have to have a purpose related to criminal activity. Subsection (3) clarifies that an act of consorting does not have to happen in person and can occur in any way including electronically.

New section 77B creates the offence of habitually consorting with recognised offenders.

Subsection (1) provides that a person commits a misdemeanour if: they habitually consort with at least two recognised offenders (whether together or separately); and on at least one occasion, with respect to each recognised offender, an act of consorting occurs after the person has been given an official warning. Subsection (1) also provides that the offence is punishable by a maximum penalty of 300 penalty units or 3 years imprisonment. Subsection (2) defines what 'habitually consort' means for the purpose of this offence, that is, consorting that occurs on at least two occasions. Subsection (3) provides that this offence does not apply to a child. Subsection (4) defines 'official warning' for the purpose of this offence as the official warning for consorting in the *Police Powers and Responsibilities Act 2000*.

New Section 77C provides that particular acts of consorting are to be disregarded if the consorting was reasonable in the circumstances. Subsection (1) lists the acts of consorting that must be disregarded if they are reasonable in the circumstances. Subsection (2) provides that this is a reverse onus defence, that is, proof that the consorting was reasonable in the circumstances lies on the defendant. Subsection (3) makes it clear that an act of consorting is not reasonable if the purpose or one of the purposes of the consorting act is related to criminal activity. Subsection (4) provides definitions for the purposes of the new section 77C.

Division 4 Amendments commencing 2 years after assent

Clause 142 amends section 1 (Definitions) to provide that, two years after assent, the definition of 'criminal organisation' will be a reference to section 161O of the *Penalties and Sentences Act 1992*, inserted by the Bill (that is, consequential to the repeal of sections 60A (Participants in criminal organisation being knowingly present in public places), 60B (Participants in criminal organisation entering prescribed places and attending prescribed

events) and 708A (Criteria for recommending an entity be declared a criminal organisation), the definition will no longer include reference to an entity declared to be a criminal organisation by regulation).

Clause 143 repeals section 60A (Participants in criminal organisation being knowingly present in public places). This clause commences two years after this Bill's assent.

Clause 144 repeals section 60B (Participants in criminal organisation entering prescribed places and attending prescribed events). This clause commences two years after this Bill's assent.

Clause 145 omits section 708A (Criteria for recommending an entity be declared a criminal organisation) to take effect two years after assent, consequential to the repeal of sections 60A and 60B.

Clause 146 creates a new section 738 (Offences against sections 60A and 60B before repeal).

Subsection (1) provides that this section applies to persons:

- who are charged with either of the offences at sections 60A and 60B of the Criminal Code during the two year period between this Bill's assent and the repeal of those two sections; and
- whose charges have not been finalised before the date of sections 60A and 60B's repeal.

Subsection (2) makes it clear that the person to whom this section applies may be punished for the offence. Subsection (3) expressly clarifies that section 11 of the Criminal Codes does not limit subsection (2). The purpose of this section is to remove any doubt that what is intended is that section 11 of the Criminal Code and section 20 of the *Acts Interpretation Act 1954* will apply so that a person to whom this section relates may be convicted and punished to the extent provided for in sections 60A and 60B before their repeal. This transitional provision is not intended to alter the general application of section 11 of the Criminal Code.

Part 8 Amendment of Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013

Legislation ultimately amended: *Electrical Safety Act 2002, Queensland Building and Construction Commission Act 1991* and *Work Health and Safety Act 2011*

Clause 147 states that this Part amends the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013.*

Clause 148 amends section 2 (Commencement) of the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013* for a number of purposes:

- Reference to Part 14 of the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013* is omitted from the commencement provision to reflect the repeal of Part 14, which when passed contained amendments to the *Queensland Building Services Authority Act 1991* (discussed further below).

- Reference to Part 24 of the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013* is omitted from the commencement provision to reflect the repeal of Part 24, which when passed contained amendments to the *Work Health and Safety Act 2011* (discussed further below).

- Reference to Part 8 of the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013* is retained in the commencement provision to allow for the commencement of minor technical amendments to the *Electrical Safety Act 2002* that are not being omitted by the Bill. Those provisions are contained in sections 56, 64 and 69 of the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013*. The Bill retains the current commencement date for those provisions, which is 1 July 2017.

Clause 149 omits sections 57-63 of the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013*.

Clause 150 omits sections 65-68 of the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013*.

Clause 151 omits sections 70-71 of the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013*.

Sections 57-63, 65-68 and 70-71 contained in Part 8 of the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013* amend the *Electrical Safety Act 2002* to prevent people identified as participants in a criminal organisation from obtaining an electrical licence.

The commencement of Part 8 of the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013* was postponed until 1 July 2017, pursuant to section 6B of the *Penalties and Sentences (Queensland Sentencing Advisory Council) Amendment Act 2016* to allow time for the Government to determine its policy and legislative response to the findings and recommendations of the Taskforce on Organised Crime Legislation.

The amendments to the *Electrical Safety Act 2002* contained in sections 57-63, 65-68 and 70-71 of the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013* are not consistent with the Government's approach to dealing with serious and organised crime, having regard to the views, findings and recommendations of the Taskforce on Organised Crime Legislation. Accordingly, the Bill omits those sections from Part 8 of the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013*.

However, the Bill does not omit sections 56, 64 or 69 from the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013*. These sections make minor, technical amendments to the *Electrical Safety Act 2002.*

Clause 152 omits Part 14 of the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013*, which contains amendments to the then *Queensland Building Services Authority Act 1991* (now named the *Queensland Building and Construction Commission Act 1991*) to prevent people identified as participants in a criminal organisation

from obtaining particular types of licence, including a contractor's licence, nominee supervisor's licence, site supervisor's licence and fire protection occupational licence.

The commencement of Part 14 of the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013* was postponed until 1 July 2017, pursuant to section 6B of the *Penalties and Sentences (Queensland Sentencing Advisory Council) Amendment Act 2016* to allow time for the Government to determine its policy and legislative response to the findings and recommendations of the Taskforce on Organised Crime Legislation.

The amendments to the *Queensland Building and Construction Commission Act 1991* contained in Part 14 of the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013* are not consistent with the Government's approach to dealing with serious and organised crime, having regard to the views, findings and recommendations of the Taskforce on Organised Crime Legislation. Accordingly, the Bill omits Part 14 of the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013* in its entirety.

Clause 153 omits Part 24 of the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013*, which contains amendments to the *Work Health and Safety Act 2011* to prevent people identified as participants in a criminal organisation from obtaining particular types of licence and other authorities.

The commencement of Part 24 of the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013* was postponed until 1 July 2017, pursuant to section 6B of the *Penalties and Sentences (Queensland Sentencing Advisory Council) Amendment Act 2016* to allow time for the Government to determine its policy and legislative response to the findings and recommendations of the Taskforce on Organised Crime Legislation.

The amendments to the *Work Health and Safety Act 2011* contained in Part 24 of the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013* are not consistent with the Government's approach to dealing with serious and organised crime, having regard to the views, findings and recommendations of the Taskforce on Organised Crime Legislation. Accordingly, the Bill omits Part 24 of the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013* in its entirety.

Part 9 Amendment of Criminal Proceeds Confiscation Act 2002

Clause 154 states that this Part amends the *Criminal Proceeds Confiscation Act 2002.*

Clause 155 amends section 250 (Money laundering).

Subclause (1) amends subsection (2B)(a) to replace the term 'criminal' with 'unlawful'. This is a minor amendment to alter the language in subsection (2B)(a) to ensure consistency with subsection (2A).

Subclause (2) inserts new subsection (3A) to provide that the circumstance of aggravation under section 161Q of the *Penalties and Sentences Act 1992* applies to the offence of Money laundering. The subclause also inserts new subsection (3B) to provide that the indictment charging the offence of Money laundering with the circumstance of aggravation under section

161Q of the *Penalties and Sentences Act 1992* may not be presented without the consent of a Crown Law Officer.

Clause 156 amends section 251 (Charging of money laundering). Subclause (1) omits subsections (1) to (3) to remove the requirement to obtain the Attorney-General's written consent to commence a proceeding for the offence of money laundering under section 250. Consequentially, subclause (2) sequentially renumbered the remaining subsections.

Clause 157 inserts new Chapter 12 into Part 5 to provide the transitional provisions for the Bill.

New section 295 provides the transitional arrangements for the amended section 251 (Charging of money laundering). Subsection (1) provides that the section applies if a relevant money laundering proceeding has started, but not been decided, before the commencement of the Bill, and where the Attorney-General's written consent for the proceeding has not been obtained. Subsection (2) provides that those proceedings mentioned in subsection (1) may be heard and decided without the Attorney-General's written consent. Subsection (3) defines the term *relevant money laundering proceeding* for the purpose of the section.

Part 10 Amendment of Disability Services Act 2006

Clause 158 states that this Part amends the *Disability Services Act 2006.*

Clause 159 adds the three new offences inserted into the Criminal Code; section 228DA (Administering child exploitation material website), section 228DB (Encouraging use of child exploitation material website), and section 228DC (Distributing information about avoiding detection), to the list of offences in Schedule 2 (Current serious offences). This is consistent with the approach taken to the existing offences related to child exploitation material in sections 228A (Involving child in making child exploitation material), 228B (Making child exploitation material), 228C (Distributing child exploitation material), 228D (Possessing child exploitation material) of the Criminal Code.

Clause 160 adds the three new Criminal Code offences mentioned above to the list of offences in schedule 4 (Current disqualifying offences). This is consistent with the approach taken to the existing offences related to child exploitation material in sections 228A (Involving child in making child exploitation material), 228B (Making child exploitation material), 228C (Distributing child exploitation material), 228D (Possessing child exploitation material) of the Criminal Code.

Part 11 Amendment of District Court of Queensland Act 1967

Clause 161 states that this Part amends the *District Court of Queensland Act 1967.*

Clause 162 amends section 61 (Criminal jurisdiction if maximum penalty more than 20 years).

Subclause (1) provides that the District Court will have the jurisdiction to hear offences against the *Drugs Misuse Act 1986*, section 5 (Trafficking) where the drug, the subject of the charge, is a drug listed in the *Drugs Misuse Regulation* 1987, Schedule 2. The amendment is

necessary to maintain the jurisdiction of the District Court for matters that it can currently deal with regardless of the increase from 20 years to a maximum penalty of 25 years imprisonment for the offence of trafficking in all dangerous drugs.

Subclause (2) inserts new subsections (4), (5) and (6), which in combination, provide that the prevailing jurisdiction of the District Court of Queensland to try a person charged with one of the prescribed offences listed under new Schedule 1C of the *Penalties and Sentences Act 1992*, is not altered by the establishment of the Serious Organised Crime circumstance of aggravation (see – new section 161Q of the *Penalties and Sentences Act 1992*) which is punishable by a new targeted mandatory sentencing regime (see – new Part 9D of the Penalties and Sentences Act). That is, if the District Court had jurisdiction to try a person charged with a particular indictable offence prior to commencement, the District Court continues to have jurisdiction to do so irrespective of the insertion of the new circumstance of aggravation by the Bill.

Part 12 Amendment of Drugs Misuse Act 1986

Clause 163 states that this Part amends the *Drugs Misuse Act 1986.*

Clause 164 amends section 5 (Trafficking in dangerous drugs) to apply the maximum penalty of 25 years imprisonment to all dangerous drugs listed in Schedules 1 and 2 of the Act.

Subclause (2) removes the provisions that relate to the current mandatory minimum 80% non-parole period which applies for trafficking. The Bill amends the *Penalties and Sentences Act 1992* to restore the offence to the serious violent offences regime. This addresses recent adverse comments of the Court of Appeal (in *R v Clark* [2016] QCA 173).

New subsections (2) and (3) provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 165 amends section 6 (Supplying dangerous drugs) to insert new subsections (3) and (4) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 166 amends section 7 (Receiving or possessing property obtained from trafficking or supplying) to insert new subsections (2A) and (2B) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 167 amends section 8 (Producing dangerous drugs) to insert new subsections (3) and (4) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to

provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 168 amends section 9B (Supplying relevant substances or things) to insert new subsections (2) and (3) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 169 amends section 9C (Producing relevant substances or things) to insert new subsections (2) and (3) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 170 amends section 9D (Trafficking in relevant substances or things) to insert new subsections (2) and (3) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 171 amends section 13 (Certain offences may be dealt with summarily) to insert new subsection (2A) which provides that, despite subsection (1), a proceeding for a person charged with an offence under sections 6, 7, 8, 9B or 9C where it is alleged that it was committed with the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, cannot be taken summarily. That is, with regards to these aggravated indictable offences, the Magistrates Court must abstain from jurisdiction.

Part 13 Amendment of Evidence Act 1977

Clause 172 states that this Part amends the *Evidence Act 1977*.

Clause 173 amends section 21A of the Evidence Act (Evidence of Special Witnesses). Some of the amendments reflect the creation of new definitions of ‘criminal organisation’ and ‘participant’ created by this Bill to be used across all Queensland legislation. Other amendments are consequential to the repeal of the COA.

Subclause (1) repeals the definitions of ‘criminal organisation’, ‘prescribed proceeding’ and ‘serious criminal offence’ in section 21A(1).

Subclause (2) inserts new definitions of ‘criminal organisation’, ‘participant’ and ‘serious criminal offence’ into section 21A(1).

Subclause (3) amends subsection (c) of the definition of ‘special witness’ in section 21A. The amendment removes the words ‘member of’ and replaces them with the words ‘participant in’.

Subclause (4) provides for a consequential amendment to the repeal of the COA by removing the concept of a prescribed proceeding from section 21A(2)(a) of the Evidence Act.

Clause 174 creates a transitional provision that provides that any order or direction given under section 21A of the Evidence Act before the commencement of this Bill continues to have effect as an order or direction given under section 21A as amended by this Bill.

Part 14 Amendment of Liquor Act 1992

Clause 175 states that this Part amends the *Liquor Act 1992.*

Clause 176 makes a number of amendments to section 4 (Definitions). This includes: omitting a number of definitions which are no longer required due to the repeal of section 228B (Disqualification from holding licence, permit or approval—identified participants and criminal organisations), or are otherwise not required to be in the *Liquor Act 1992*; ensuring the definition of 'disqualified person' no longer includes a person disqualified under section 228B; and inserting new definitions of 'control order', 'criminal intelligence', 'identified organisation', 'prescribed offence', 'prohibited person' and 'registered corresponding control order'.

'Control order' is defined by reference to the *Penalties and Sentences Act 1992*, the Act under which control orders can be imposed. Control orders enable the court to impose conditions on an offender convicted of certain offences to protect the public by preventing, restricting or disrupting the offender's involvement in serious criminal activity. 'Registered corresponding control order' is also defined by reference to the *Penalties and Sentences Act 1992*, which allows for certain controls orders issued interstate to be registered in Queensland. The terms of a control order or registered corresponding control order will be a relevant consideration for probity tests under the *Liquor Act 1992*.

The definition of 'prescribed offence' incorporates offences introduced by the new criminal law framework, including new offences in the Criminal Code (Habitually consorting with recognised offenders and Recruiting person to become participant in criminal organisation), the *Peace and Good Behaviour Act 1982* (Contravention of public safety order, Offence by owner or occupier of restricted premises, and Hindering removal or modification of a fortification) and the *Penalties and Sentences Act 1992* (Contravention of order). In addition, a prescribed offence will include certain offences committed with a serious organised crime circumstances of aggravation. Convictions for these prescribed offences will be a relevant consideration for probity tests under the *Liquor Act 1992.*

Clause 177 repeals section 11B (Particular entities not exempt) from the *Liquor Act 1992*, as the provision is no longer required, due to the repeal of section 228B.

Clause 178 amends subsection 13(4) (Exemption for the sale of liquor at fundraising event) to remove the reference to an entity that is 'a criminal organisation under the *Criminal Organisation Act 2009'*, which will no longer be relevant due to the repeal of the *Criminal Organisation Act 2009*.

Clause 179 amends the heading for part 2 (Jurisdiction of tribunal and application of Judicial Review Act 1991), to remove the reference to the *Judicial Review Act 1991*, due to the repeal of section 38 within this part, which limits review rights under the *Judicial Review Act 1991*.

Clause 180 amends section 21 (Jurisdiction and powers of tribunal), to remove references to certain provisions that will be removed from the *Liquor Act 1992*, due to the repeal of section 228B.

Clause 181 repeals part 2, division 3 (Review of decisions relating to particular disqualified persons), as this division relates to the review of section 228B decisions, which will no longer be required due to the repeal of section 228B.

Clause 182 replaces sections 47B (Requesting and using information from police commissioner—section 228B decisions) and 47C (Application of Acts Interpretation Act 1954 in giving reasons for section 228B decisions), due the repeal of section 228B.

The clause inserts a new section 47B (Exchange of information) to provide for the Commissioner for Liquor and Gaming to enter into an information sharing agreement with the Commissioner of Police for the purpose of sharing or exchanging information that is held by either Commissioner, or to which they have access. The information exchanged may only relate to information that will assist with the performance of the functions of the Commissioner for Liquor and Gaming under the *Liquor Act 1992*, or the functions of the Commissioner of Police. The new section also specifies that criminal intelligence given to the Commissioner for Liquor and Gaming under the information-sharing arrangement may be used only for monitoring compliance with the Liquor Act.

The clause also inserts a new section 47C (Police commissioner to notify of charges) to provide an ongoing ability for the Commissioner for Liquor and Gaming to ask the Commissioner of Police if the holder of a licence, permit or other approval under the Liquor Act, and other defined relevant persons, has been charged with any offences, and obtain particulars of these charges.

Clause 183 amends subsection 107(1) (Restrictions on grant of licence or permit) to provide that a conviction for a prescribed offence, and the terms of a control order or registered corresponding control order, are relevant considerations the Commissioner for Liquor and Gaming may have regard to when determining whether a person is a fit and proper person to hold a licence or permit.

Additionally, the clause amends subsection 107(6) to ensure that, when providing a criminal history report, the Commissioner of Police must provide details as to whether the person is, or has been, the subject of a control order or registered corresponding control order. The clause also amends subsection 107(6) to ensure that, if the person is or has been the subject of one of these orders, the criminal history report must state the details of the order, or be accompanied by a copy of the order.

The clause also inserts a new subsection 107(6A), which explicitly provides that the Commissioner for Liquor and Gaming may not have regard to criminal intelligence in deciding whether a person is a fit and proper person to hold a licence or permit. The clause also renumbers the subsections.

Clause 184 amends subsections 107E(1)(b), 107E(1)(c) and 107E(1)(d) (Suitability of applicant for adult entertainment permit) to provide that, in deciding whether an applicant for an adult entertainment permit is a suitable person to provide adult entertainment, the Commissioner for Liquor and Gaming must consider whether the applicant has been convicted of a prescribed offence; is an associate of a person who has been convicted of a prescribed offence; or is an associate of a corporation, an executive officer of which has been convicted of a prescribed offence.

The clause also removes subsections 107E(1)(h) to (k), as these are no longer required due to the repeal of section 228B. In place of these sections, the clause inserts a new subsection 107E(1)(h), to ensure that it is a relevant consideration if the applicant is a disqualified person; and a new section 107E(1)(i), to ensure that, if the applicant, or an associate of an applicant, is (or has been) the subject of a control order or registered corresponding control order, the terms of the control order are also a relevant consideration. The clause also renumbers an existing subsection.

The clause also inserts a new subsection 107E(3), which explicitly provides that the Commissioner for Liquor and Gaming may not have regard to criminal intelligence in deciding whether a person is, or continues to be, a suitable person to hold an adult entertainment permit.

Clause 185 replaces subsection 107F(2)(a) (Application to be referred to police commissioner) and inserts a new subsection 107F(2)(aa) to ensure that, when providing a police commissioner's report, the Commissioner of Police must make enquiries about the criminal history of the applicant and each associate of the applicant, including whether the applicant or associate of the applicant is, or has been, the subject of a control order or a registered corresponding control order. The clause also renumbers the amended, new and existing subsections.

Additionally, the clause amends subsection 107F(5) to ensure that, if the applicant or an associate of the applicant is, or has been, the subject of one of these orders, the police commissioner's report must state the details of the order, or be accompanied by a copy of the order.

Clause 186 repeals subsection 129(2)(e) (Applications to continue trading in certain circumstances) from the *Liquor Act 1992*, as it is no longer needed, due to the repeal of sub sections 137A(1A), 136(2) and section 228B.

Clause 187 amends section 134 to insert a new subsection 134(1)(c), to clarify that the Commissioner for Liquor and Gaming may cancel, suspend or vary a permit if satisfied that the permittee is not (or is no longer) a fit and proper person to hold the permit. The clause also inserts a new subsection 134(2B), which clarifies that the matters mentioned in section 107 are considerations for whether an permittee is a fit and proper person to hold a permit under new subsection 134(1)(c).

Additionally, the clause amends subsection 134(3), to remove a reference to cancellation of a permit held on behalf of a criminal organisation. Subsection 134(3) will continue to provide that the Commissioner for Liquor and Gaming must immediately cancel a permit if satisfied that the permittee has become a disqualified person.

Clause 188 replaces sections 134A (Ground for taking relevant action relating to particular permits) and 134B (Show cause notice), given the repeal of section 228B. The new section 134A (Ground for taking relevant action relating to adult entertainment permits) provides that the Commissioner for Liquor and Gaming may take a relevant action for an adult entertainment permit on the ground that a person who holds the permit is no longer a suitable person to provide adult entertainment.

New section 134B (Show cause notice) provides that the section applies if, having regard to relevant matters, the Commissioner for Liquor and Gaming believes that a ground for taking a relevant action for an adult entertainment permit exists, and lists the actions that may be taken. The new section then defines 'relevant matters' as meaning matters mentioned in section 107E regarding suitability to provide adult entertainment.

Clause 189 amends section 134C (Decision about relevant action relating to permit) to change the heading of the section to 'Decision about relevant action relating to adult entertainment permit'. The clause also amends subsection 134C(1) to change a reference to 'permit' to 'adult entertainment permit'.

Additionally, the clause repeals subsection 134C(2) from the *Liquor Act 1992*, as it is no longer required, due to amendments to section 134A. The clause also changes a sectional reference in subsection 134C(4), and renumbers some sections.

Clause 190 repeals section 134D (Urgent suspension) from the *Liquor Act 1992*, as it is no longer required, due to amendments to section 134A.

Clause 191 amends section 135 (Summary cancellation, suspension or variation) to remove a reference to section 134D, which is being repealed.

Clause 192 amends subsection 136(1)(b) (Grounds for disciplinary action) to provide that, if a licensee is convicted of a prescribed offence, this is a ground for taking disciplinary action. The clause also amends subsection 136(1)(e) to clarify that the matters mentioned in section 107 are considerations which the Commissioner for Liquor and Gaming must have regard to in deciding whether a person is not a disqualified person and is a fit and proper person to hold a licence. Additionally, the clause repeals subsection 136(2) from the *Liquor Act 1992*, as it is no longer required, due to the repeal of section 228B.

Clause 193 repeals subsections 137(3) and (4) (Procedure for taking disciplinary action in relation to licence) from the *Liquor Act 1992*, as they are no longer required, due to the repeal of subsection 136(2).

Clause 194 repeals subsection 137A(1A) (Decision about disciplinary action) from the *Liquor Act 1992*, as it is no longer required, due to the repeal of subsection 136(2).

Clause 195 repeals subsection 137C(2) (Urgent suspension) from the *Liquor Act 1992*, as it is no longer required, due to the repeal of subsection 136(2).

Clause 196 repeals section 137CA (Immediate cancellation of particular licences) from the *Liquor Act 1992*, as it is no longer required, due to the repeal of section 228B.

Clause 197 repeals section 139B (Urgent suspension of approval) from the *Liquor Act 1992*, as it is no longer required, due to the repeal of section 228B.

Clause 198 replaces section 139C (Show cause notice for withdrawal of approval), given the repeal of section 139B. New subsection 139C(1) provides that the section applies if, having regard to relevant matters, the Commissioner for Liquor and Gaming reasonably believes that the lessee, sublessee, franchisee or manager is a disqualified person, or is not (or is no longer) a fit and proper person to lease, sublease, franchise or manage the licensed premises. New subsection 139C(2) provides that a written notice must be provided to the licensee and the lessee, sublessee, franchisee or manager, and outlines the requirements for that notice.

New subsection 139C(3) then defines 'relevant matters' as meaning matters mentioned in section 107 to which the Commissioner for Liquor and Gaming must have regard in deciding whether a person is not a disqualified person and is a fit and proper person to hold a licence.

Clause 199 amends subsection 139D(1)(a) (Decision about withdrawing approval of relevant agreement) to change the reference to '139B(1)' to instead read '139C(1)'. This amendment ensures that, if the Commissioner for Liquor and Gaming is satisfied of the matter mentioned in amended subsection 139C(1), the approval must be withdrawn.

Clause 200 repeals section 139E (Immediate withdrawal of approval and direction to terminate relevant agreement) from the *Liquor Act 1992*, as it is no longer required, due to the repeal of section 228B.

Clause 201 amends subsection 139F(1) (Requirement to terminate relevant agreement on withdrawal of approval) to remove a reference to section 139E, due to its repeal.

Clause 202 amends subsection 142R(2) (Deciding application) to ensure that being a disqualified person under subsection 228B(1) no longer disqualifies a person from holding an approved manager approval. The clause also amends subsection 142R(3) to provide that a conviction for a prescribed offence or the terms of a control order or registered corresponding control order are relevant considerations in whether an applicant is a suitable person to hold an approved manager approval.

The clause also inserts a new subsection 142R(3A), which explicitly provides that the Commissioner for Liquor and Gaming may not have regard to criminal intelligence in deciding whether a person is a suitable person to hold an approved manager approval.

Additionally, the clause amends subsection 142R(4) to ensure that, when providing a criminal history report, the Commissioner of Police must provide details as to whether the person is, or has been, the subject of a control order or registered corresponding control order. The clause also amends subsection 142R(5) to ensure that, if the applicant is or has been the subject of one of these orders, the criminal history report must state the details of the order, or be accompanied by a copy of the order.

Clause 203 repeals section 142ZAA (Immediate cancellation—identified participants) from the *Liquor Act 1992*, as it is no longer required, due to the repeal of section 228B.

Clause 204 amends subsection 142ZK(2) (Deciding application) to ensure that being a disqualified person under subsection 228B(1) no longer disqualifies a person from holding an

adult entertainment controller approval. The clause also amends subsection 142ZK(3) to provide that a conviction for a prescribed offence or the terms of a control order or registered corresponding control order are relevant considerations in whether an applicant is a suitable person to hold an adult entertainment controller approval.

The clause then inserts a new subsection 142ZK(3A), which explicitly provides that the Commissioner for Liquor and Gaming may not have regard to criminal intelligence in deciding whether a person is a suitable person to hold an adult entertainment controller approval.

Clause 205 replaces subsection 142ZO(3)(a) (Police commissioner's information report). The new subsection 142ZO(3)(a) provides that, upon receiving a request from the Commissioner for Liquor and Gaming for a police information report in relation to a new or existing adult entertainment controller approval, the Commissioner of Police must make enquiries about the person's criminal history, including whether the person is, or has been, the subject of a control order or registered corresponding control order. The clause also amends subsection 142ZO(5)(a) to ensure that, where a person is or has been the subject of one of these orders, the police information report must state the details of the order, or be accompanied by a copy of the order.

Clause 206 amends subsection 142ZQ(b) (Grounds for suspension or cancellation) to provide that the Commissioner for Liquor and Gaming may suspend or cancel a person's approval as an adult entertainment controller if the Commissioner for Liquor and Gaming believes, on reasonable grounds, that the person has been convicted of a prescribed offence. The clause also inserts a new subsection 142ZQ(2), to clarify that the matters mentioned in section 142ZK are considerations for whether a person is a suitable person under the ground for suspension or cancellation in renumbered subsection 142ZQ(1)(d).

Clause 207 repeals section 142ZQA (Immediate cancellation of approval—identified participants) from the *Liquor Act 1992*, as it is no longer required, due to the repeal of section 228B.

Clause 208 amends the heading for part 6, division 5 (Prohibited items for declared criminal organisations), to reflect that 'prohibited items' will now relate to 'identified organisations', as defined in section 173EA, instead of 'declared criminal organisations'.

Clause 209 amends section 173EA (Definitions for div 5) to repeal the definition of 'declared criminal organisation', and insert new definitions for 'identified organisation' and 'prohibited person', which will apply to sections 173EB and 173ED, as amended. The clause amends the definition of 'prohibited item' to omit the references to 'declared criminal organisation' and insert references to 'identified organisation'.

Clause 210 inserts new section 173EAA (Identified organisations) to prescribe a regulation making power to declare an entity as an identified organisation.

The section provides that the Minister may only recommend the making of a regulation to declare an entity if the Minister is satisfied the wearing or carrying of a proposed prohibited item by a person in a public place may cause members of the public to feel threatened, fearful or intimidated; or may have an undue adverse effect on the health or safety of members of the public, or the amenity of the community, including by increasing the likelihood of public

disorder or acts of violence. The definition of 'public place' in the *Summary Offences Act 2005* will apply to this section.

In considering the criteria for recommending the making of a regulation, the Minister must have regard to whether any person has engaged in serious criminal activity, or has been convicted of a relevant offence, while the person was a participant in the entity.

The section defines 'serious criminal activity' as conduct constituting an indictable offence for which the maximum penalty is at least 7 years imprisonment. A 'relevant offence' is defined to mean offences involving a public act of violence to a person or damage to the property of a person; or disorderly, offensive, threatening or violent behaviour in public. The section also provides definitions for 'participant' in an entity and 'proposed prohibited item'.

In the event that the Attorney-General is not the Minister responsible for the *Liquor Act 1992*, the section provides that the Minister must reach agreement with the Attorney-General, prior to making a recommendation to the Governor in Council.

The declaration of entities as identified organisations, in accordance with the criteria and relevant considerations specified in this section, will support the purposes of the colours offences in the *Liquor Act 1992*, and the new offence in section 10C of the *Summary Offences Act 2005*, which bans the wearing or carrying of prohibited items in public places. These offences, relying on the associated declaration of identified organisations, seek to protect the community from fear and intimidation caused by the wearing of prohibited items, and reduce the likelihood of public disorder and acts of violence in public places, including licensed premises.

Clause 211 amends section 173EB (Exclusion of persons wearing or carrying prohibited items) to change the heading of the section to 'Exclusion of prohibited persons'. The clause also amends the section to replace the phrase 'a person who is wearing or carrying a prohibited item' with a reference to 'prohibited person'. Additionally, the clause inserts a new subsection 173EB(2), which outlines certain situations and circumstances in which an offence under subsection 173EB(1) will not be committed. This provides protections for licensees, permittees and their staff if they took reasonable steps to remove a person wearing a prohibited item from their premises, or chose not to do so due to safety concerns.

Clause 212 repeals section 173EC (Entering and remaining in licensed premises wearing or carrying a prohibited item) from the *Liquor Act 1992*, as new section 10C of the *Summary Offences Act 2005* covers this offence.

Clause 213 amends section 173ED (Removal of person wearing or carrying prohibited item from premises) to change the heading of the section to 'Removal of prohibited person'. The clause also amends subsection 173ED(1) to omit the phrase 'person who is wearing or carrying a prohibited item' and insert a reference to 'prohibited person'. Additionally, the clause amends subsections 173ED(1) and (3) to reduce the tiered penalty for the offences to a single maximum penalty of 100 penalty units.

Clause 214 amends subsection 173EQ(5) (Approval of persons to operate ID scanning systems) to provide that, in determining whether an individual is a suitable person to operate an approved ID scanning system, the Commissioner for Liquor and Gaming must have regard to whether the individual has been convicted of a prescribed offence, and the terms of any

control order or registered corresponding control order (noting this does not limit the matters to which the Commissioner for Liquor and Gaming may have regard). The clause also clarifies that a criminal history report from the Commissioner of Police about the person must include whether the individual is, or has been, the subject of a control order or registered corresponding control order.

Additionally, the clause inserts a new subsection 173EQ(5A), which explicitly provides that the Commissioner for Liquor and Gaming may not have regard to criminal intelligence in deciding whether an individual is a suitable person to operate an approved ID scanning system. The clause also inserts a new subsection 173EQ(5B), which provides that, where the individual is, or has been, the subject of a control order or a registered corresponding control order, the criminal history report must state the details of the order, or be accompanied by a copy of the order.

Clause 215 repeals section 228B (Disqualification from holding licence, permit or approval—identified participants and criminal organisations) from the *Liquor Act 1992*. This section immediately disqualified corporations and individuals from holding a licence, permit or approval under the Liquor Act if, and while, they were a criminal organisation or a participant in a criminal organisation. In accordance with recommendations of the Taskforce, this automatic disqualification is being repealed. In its place, fit and proper person and suitability tests under the Liquor Act are being amended to ensure that convictions for certain prescribed offences, and the terms of control orders, are relevant considerations in the granting or holding of a licence, permit or other approval.

Clause 216 inserts a new part 12, division 18 (Transitional provisions for Serious and Organised Crime Legislation Amendment Act 2016), which includes a number of transitional provisions.

New section 342 (Applications not finally decided) provides that, if the Commissioner for Liquor and Gaming had not finally decided an application for the grant or renewal of a licence, permit, approval or authority immediately prior to the amendment of the *Liquor Act 1992*, the Commissioner for Liquor and Gaming must decide the application under the Liquor Act as amended.

New section 343 (Show cause process not finally decided) provides that, if the Commissioner for Liquor and Gaming had given a show cause notice to a person, and immediately prior to the amendment of the *Liquor Act 1992*, the matters in the notice had not been finally dealt with, the show cause process must continue under the Liquor Act as amended.

New section 344 (Proceedings not finally decided) provides that, if a proceeding before a tribunal or before the Supreme Court about a section 228B decision mentioned in repealed subsection 36(1) of the *Liquor Act 1992* had not been finally dealt with immediately prior to the amendment of the Liquor Act, the proceeding is discontinued, and must be remitted to the Commissioner for Liquor and Gaming to decide again under the Liquor Act as amended. A proceeding is considered to not have been finally dealt with if the tribunal or Supreme Court has not made a decision; has made a decision and the appeal period for the decision has not ended; or has made a decision and an appeal against the decision has been started, but not ended. The new section also provides that the tribunal or Supreme Court must return any criminal intelligence relating to the proceeding to the Commissioner of Police.

The clause inserts new section 345 (First regulation under s 173EAA(1) exempt from particular requirements), to provide that the first time a regulation is made declaring an entity to be an 'identified organisation', the requirements in new subsections 173EAA(2) to (4) do not apply. These requirements relate to the consultation process and the criteria for recommending an entity be declared as an 'identified organisation'. In accordance with this new section, the 26 entities already declared as 'criminal organisations' in section 2 of the *Criminal Code (Criminal Organisations) Regulation 2013* will be prescribed as 'identified organisations' in the *Liquor Regulation 2002*. This will allow for a seamless transition to the new framework.

Part 15 Amendment of Liquor Regulation 2002

Clause 217 states that this Part amends the *Liquor Regulation 2002.*

Clause 218 inserts a new Part 1C (Identified organisations) in the *Liquor Regulation 2002*. The clause also inserts a new section 3G (Entities declared to be identified organisations) which, for new subsection 173EAA(1) of the *Liquor Act 1992*, declares 26 entities as 'identified organisations'. These 26 entities reflect the organisations that are currently declared as *criminal* organisations in the *Criminal Code (Criminal Organisations) Regulation 2013.* This section as inserted by the clause is made in accordance with transitional section 345 of the Liquor Act, which provides that subsections 173EAA(2) to (4) do not apply to the making of the first regulation.

Part 16 Amendment of Motor Dealers and Chattel Auctioneers Act 2014

Clause 219 states that this Part amends the *Motor Dealers and Chattel Auctioneers Act 2014.*

Clause 220 amends section 19 (Particular persons can not make application). Section 19(1) provides that a 'disqualified person' can not make an application for a licence during the period of their disqualification. The clause expands the existing section 19(5) definition of a 'disqualified person' (a person disqualified by consequence of a QCAT or court order), to include a person subject to a relevant control order. Control orders and relevant corresponding control orders, as introduced into the *Penalties and Sentences Act 1992* elsewhere in this Bill, are orders that may potentially, among other things, restrict a person from carrying on or engaging in a specific business, occupation or activity. This clause supports the introduction, elsewhere in this part, of a relevant control order as a determinant of suitability to hold a licence or registration certificate and as a trigger for immediate cancellation.

Clause 221 amends section 21 (Suitability of applicants and licensees—individuals). Section 21(1) provides the list of characteristics that define an individual as being not suitable to hold a licence. The clause removes identified participant in a criminal organisation as a characteristic that makes a person not suitable to hold a motor dealer licence. The clause also sets out that a person subject to a relevant control order (defined elsewhere in this part) is not suitable to hold a licence, by inserting 'is subject to a relevant control order' into the list of characteristics which make a person not suitable to hold a licence. The impact of a relevant control order on suitability applies to individual licences generally, and is not limited to the motor dealer licence. This amendment contributes to the over-arching intent of this part to

ensure that persons subject to relevant control orders are prevented from gaining or holding a licence or registration certificate.

Clause 222 amends section 22 (Suitability of applicants and licensees—corporations). Sections 22(1) and 22(2) provide lists of characteristics which if they apply to a corporation or executive officer of a corporation respectively, render that corporation not suitable to hold a licence. The clause amends section 22(1) to provide, in addition to the exiting characteristics, that a corporation subject to a relevant control order is not suitable to hold a licence. The clause also removes an executive officer being an identified participant in a criminal organisation as a characteristic that makes a corporation not suitable to hold a motor dealer licence. The clause further adds an executive officer being subject to a relevant control order as a characteristic which makes a corporation not suitable to hold a licence. The impact of a relevant control order on suitability applies to corporate licences generally, and is not limited to the corporate motor dealer licence.

Clause 223 amends section 23 (Chief executive must consider suitability of applicants and licensees) which sets out, among other things, the characteristics that the chief executive must consider when deciding whether a person is a suitable person to hold a licence. The clause removes the requirement to consider whether an individual is an identified participant in a criminal organisation (specific to a motor dealer licence), and inserts a requirement to consider whether an individual is subject to a relevant control order.

The clause also removes the requirement to consider whether an executive officer of a corporation is an identified participant in a criminal organisation and inserts requirements to consider whether a corporation, or its executive officers, are subject to relevant control orders, in relation to determining suitability to hold a licence.

The clause inserts section 23(1A) which sets out that the chief executive may not take into account criminal intelligence provided by the Commissioner of Police under the information-sharing provision (section 230A) inserted elsewhere in this part when deciding whether a person is a suitable person to hold a licence.

To protect the confidentiality of criminal intelligence that may underpin an identified participant notification, section 23(3) sets out that the *Acts Interpretation Act 1954* section 27B (which requires written reasons for a decision include findings on material questions of fact and referral to evidence on which those findings were based), does not apply to an information notice provided to a person in the event it is decided they are not a suitable person to hold a licence on the grounds of identified participant advice provided by the commissioner. Due to the removal of identified participant notifications as suitability considerations, the clause consequentially removes the redundant section 23(3) Acts Interpretation Act restriction. The clause renumbers inserted section 23(1A) and existing section 23(2) as sections 23(2) and 23(3) respectively.

Clause 224 supports the role of control orders and registered corresponding control orders as part of licensing decisions by ensuring that information about control orders and registered corresponding control orders accompany criminal history reports. The clause amends section 26 (Investigations about suitability of applicants, nominated persons and licensees) to require that where the commissioner provides the chief executive with a criminal history report about a person, and the person is, or has been, subject to a control order or registered corresponding

control order (both as defined elsewhere in this part), a copy or details of the order must be provided.

Clause 225 ensures that information about control orders and registered corresponding control orders accompany notices of change in criminal history. The clause amends section 27 (Notice of change in criminal history) to set out that where the commissioner provides the chief executive with a notice of change in a person's criminal history, and where that change includes the person becoming subject to a control order or registered corresponding control order, a copy or details of the order must be provided.

Clause 226 amends section 29 (Use of information obtained under s 26 or s 27) to limit the use of information about a control order or registered corresponding control order provided as part of a criminal history report (under section 26) about an applicant, licensee, nominated substitute licensee, or associate thereof. The clause also limits the use of information about a control order or registered corresponding control order provided as part of a notice of change in criminal history (under section 27) about an applicant, licensee or nominated substitute licensee. The clause provides that this information may only be used to make decisions about whether a person is or continues to be a suitable person to hold a licence. This restriction applies the existing restriction on use of information about a conviction of particular persons set out in section 29, to control orders and registered corresponding control orders.

Clause 227 removes section 30 (Requesting and using information from commissioner—identified participant) which sets out the requirement for the chief executive to ask the commissioner whether particular persons are identified participants in a criminal organisation when making decisions relevant to the suitability of a person to hold a motor dealer licence. The section 30 requirement is redundant given other amendments in this part which remove identified participant provisions contained in the Act.

The clause also removes section 31 (Confidentiality) which sets out requirements for confidentiality, destruction of records, and allowed disclosures relevant to public servants and the chief executive in dealing with criminal history reports, and notices of change in criminal history. Note: elsewhere in this part the insertion of new section 230B includes requirements in regard to confidentiality, destruction of records, and allowed disclosures applying to criminal history reports, notifications of change in criminal history and generally provides for the handling of personal information gathered in the course of administration of the Act.

Clause 228 amends section 36 (Chief executive may issue or refuse to issue licence) which provides that the chief executive may decide to issue a licence if satisfied that, among other things: the applicant, their business associates, and for a corporation each executive officer, are suitable persons to hold a licence. To protect the confidentiality of criminal intelligence that may underpin an identified participant notification, section 36(4) also sets out that the *Acts Interpretation Act 1954* section 27B, does not apply to an information notice provided to the applicant in the event they are refused a licence on the grounds of identified participant advice provided by the commissioner. Given other clauses which remove the reliance on identified participant notifications in determining suitability to hold a licence, this clause consequentially removes the section 36(4) Acts Interpretation Act restriction.

Clause 229 amends section 44 (Chief executive may renew or refuse to renew licence) which provides that the chief executive may decide to renew a licence if satisfied that, among other things: the applicant, their business associates, and for a corporation each executive officer,

are suitable persons to hold a licence. To protect the confidentiality of criminal intelligence that may underpin an identified participant notification, section 44(4) provides that the *Acts Interpretation Act 1954* section 27B, does not apply to an information notice provided to the applicant in the event the renewal is refused on the grounds of identified participant advice provided by the commissioner. Given other clauses which remove the reliance on identified participant notifications in determining suitability to hold a licence, the clause consequentially removes the section 44(4) Acts Interpretation Act restriction.

Clause 230 amends section 48 (Chief executive may restore or refuse to restore licence) which provides that the chief executive may decide to restore a licence if satisfied that, among other things: the applicant, their business associates, and for a corporation each executive officer, are suitable persons to hold a licence. To protect the confidentiality of criminal intelligence that may underpin an identified participant notification, section 48(4) sets out that the *Acts Interpretation Act 1954* section 27B, does not apply to an information notice provided to the applicant in the event the restoration is refused on the grounds of identified participant advice provided by the commissioner. Given other clauses which remove the reliance on identified participant notifications in determining suitability to hold a licence, this clause consequentially omits the section 48(4) Acts Interpretation Act restriction. The clause renumbers section 48(5) as 48(4).

Clause 231 amends section 53 (Chief executive may appoint or refuse to appoint substitute licensee) which provides that the chief executive may decide to appoint a person as a licensee's substitute licensee if satisfied that, among other things, the person is a suitable person to hold a licence. To protect the confidentiality of criminal intelligence that may underpin an identified participant notification, section 53(6) sets out that the *Acts Interpretation Act 1954* section 27B, does not apply to an information notice provided to the licensee if the appointment is refused on the grounds on the grounds of identified participant advice provided by the commissioner. Given other clauses which remove the reliance on identified participant notifications in determining suitability to hold a licence, this clause consequentially removes the section 53(6) Acts Interpretation Act restriction.

Clause 232 amends section 58 (Return of licence for suspension or cancellation) which requires a person whose licence has been suspended or cancelled by order of the Court or QCAT to return the licence to the chief executive within 14 days, but excludes from that requirement any cancellation where a requirement to return the licence is provided by another section, including cancellations of identified participants – section 63(5). As the requirement to immediately cancel the licence of an identified participant is removed with the omission of section 63 by another clause in this part, this clause consequentially removes the redundant reference to section 63(5) from section 58(2).

Clause 233 amends section 62 (Immediate cancellation) which provides, among other things, the events which cause a licensee's licence to be immediately cancelled. The clause expands those events to include the event of a licensee, or an executive officer of a corporate licensee, becoming subject to a relevant control order. This supports an over-arching intent of this part to ensure persons subject to relevant control orders are prevented from gaining or holding a licence or registration certificate.

Clause 234 omits section 63 (Cancellation of motor dealer licence—identified participant), and so removes the chief executive's power to immediately cancel a motor dealer licence in the event that a licensee or executive officer of a licensee corporation is an identified

participant in a criminal organisation. Section 63 is redundant given other clauses in this part which remove all reliance on identified participant notifications in determining suitability to hold a licence.

Clause 235 amends section 69 (Licensees to notify chief executive of changes in circumstances) which sets out the requirement for a licensee to provide written notice to the chief executive of a prescribed change (under a regulation) in the licensee's circumstances. The clause amends this section to provide greater flexibility to licensees by allowing them to provide oral or written notice of a prescribed change.

Clause 236 amends section 155 (Particular persons can not make application) which provides, among other things, that a 'disqualified person' can not make an application for a registration certificate during the period of their disqualification. The clause expands the definition of a 'disqualified person' (a person disqualified by consequence of a QCAT or court order), to include a person subject to a relevant control order.

Clause 237 amends section 157 (Suitability of applicants). Section 157(1) provides the list of characteristics that define an individual as being not suitable to hold a registration certificate. The clause removes a person being an identified participant in a criminal organisation as a characteristic that makes the person not suitable to hold a registration certificate as a motor salesperson. The clause also amends section 157 to provide that a person subject to a relevant control order is not suitable to hold a registration certificate.

Clause 238 amends section 158 (Chief executive must consider suitability of applicants) which sets out the characteristics the chief executive must consider when deciding whether a person is a suitable person to hold a registration certificate. The clause removes the requirement to consider whether an individual is an identified participant in a criminal organisation. The clause also adds whether a person is subject to a relevant control order as a characteristic that must be considered when determining suitability.

The clause also inserts new section 158(1A) stating that the chief executive may not take into account criminal intelligence provided by the commissioner under the information-sharing provision section 230A inserted elsewhere in this part when deciding whether a person is a suitable person to hold a registration certificate.

To protect the confidentiality of criminal intelligence that may underpin an identified participant notification, section 158(3) sets out that the *Acts Interpretation Act 1954* section 27B (which requires written reasons for decision to include findings on material questions of fact and referral to evidence on which those findings were based) does not apply to an information notice provided to a person in the event it is decided they are not a suitable person to hold a registration certificate on the grounds of identified participant advice provided by the commissioner. Due to the removal of identified participant notifications as suitability considerations, the clause also consequentially removes the redundant 158(3) Acts Interpretation Act restriction. The clause renumbers inserted section 158(1A) and existing section 158(2) as sections 158(2) and 158(3) respectively.

Clause 239 supports the role of control orders and registered corresponding control orders as part of registration decisions by ensuring that information about control orders and registered corresponding control orders is provided with criminal history reports. The clause amends section 159 (Investigations about suitability of applicants) to require that where the

commissioner provides the chief executive with a criminal history report about a person, and the person is, or has been, subject to a control order or registered corresponding control order, a copy or details of the order must be provided.

Clause 240 ensures that information about control orders and registered corresponding control orders is provided with notifications of changes in criminal history. The clause amends section 160 (Notice of change in criminal history) to require that where the commissioner provides the chief executive with a notice of change in a person's criminal history, and where that change includes the person becoming subject to a control order or registered corresponding control order, a copy or details of the order must be provided.

Clause 241 amends section 162 (Use of information obtained under s 159 or s 160) to limit the use of information about control orders or registered corresponding control orders provided as part of a criminal history report (under section 159) or a notice of change in criminal history (under section 160) about an applicant or motor salesperson. This clause provides that the information may only be used to make decisions about whether a person is or continues to be a suitable person to hold a registration certificate. This restriction maintains the existing restriction on use of information about convictions set out in section 162 and extends it to control orders and registered corresponding control orders.

Clause 242 omits section 163 (Requesting and using information from commissioner—identified participant), and so removes the requirement that the chief executive ask the commissioner for information as to whether a particular person is an identified participant in a criminal organisation when making decisions relevant to the suitability of a person to hold a registration certificate.

The clause also removes section 164 (Confidentiality of criminal history) which sets out the requirements for confidentiality, destruction of records, and allowed disclosures relevant to public servants and the chief executive in dealing with criminal history reports, and notices given under section 160(2) (notification of change in criminal history). Please note: elsewhere in this part the insertion of section 230B provides requirements in regard to confidentiality, destruction of records, and allowed disclosures applying to criminal history reports, notifications of change in criminal history and generally provides for the handling of personal information gathered in the course of administration of the Act.

Clause 243 amends section 166 (Chief executive may issue or refuse to issue registration certificate) which provides that the chief executive may decide to issue a registration certificate if satisfied that, among other things: the applicant is a suitable persons to hold a registration certificate. To protect the confidentiality of criminal intelligence that may underpin an identified participant notification, section 166(4) provides that the *Acts Interpretation Act 1954* section 27B, does not apply to an information notice provided to the applicant in the event they are refused a registration certificate on the grounds of identified participant advice provided by the commissioner. Given other clauses which remove the reliance on identified participant notifications in determining suitability to hold a registration certificate, this clause consequentially removes the section 166(4) Acts Interpretation Act restriction.

Clause 244 amends section 169 (Chief executive may renew or refuse to renew registration certificate) which provides that the chief executive may decide to renew a registration certificate if satisfied that, among other things: the applicant is a suitable persons to hold a

registration certificate. To protect the confidentiality of criminal intelligence that may underpin an identified participant notification, section 169(4) provides that the *Acts Interpretation Act 1954,* section 27B, does not apply to an information notice provided to the applicant in the event renewal is refused on the grounds of identified participant advice provided by the commissioner. Given other clauses which remove the reliance on identified participant notifications in determining suitability to hold a registration certificate, this clause consequentially removes the section 169(4) Acts Interpretation Act restriction.

Clause 245 amends section 172 (Chief executive may restore or refuse to restore registration certificate) which provides that the chief executive may decide to restore a registration certificate if satisfied that, among other things: the applicant is a suitable persons to hold a registration certificate. To protect the confidentiality of criminal intelligence that may underpin an identified participant notification, section 172(4) provides that the *Acts Interpretation Act 1954* section 27B, does not apply to an information notice provided to the applicant in the event restoration is refused on the grounds of identified participant advice provided by the commissioner. Given other clauses which remove the reliance on identified participant notifications in determining suitability to hold a registration certificate, this clause consequentially omits the section 172(4) *Acts Interpretation Act 1954* restriction. The clause renumbers section 172(5) as 172(4).

Clause 246 amends section 178 (Return of registration certificate for suspension or cancellation) that requires a person whose registration certificate has been suspended or cancelled by order of the Court or QCAT to return the certificate to the chief executive within 14 days, but excludes cancellations where a requirement to return the certificate is provided by another section, including cancellations of identified participants – section 182(5). As the requirement to immediately cancel the registration certificate of an identified participant is removed with the omission of section 182 elsewhere in this part, this clause consequentially omits the redundant reference to section 182(5) in section 178.

Clause 247 amends section 181 (Immediate cancellation) which provides, among other things, the events which cause a motor salesperson's registration certificate to be immediately cancelled. The clause expands those events to include the event of the motor salesperson becoming subject to a relevant control order.

Clause 248 omits section 182 (Cancellation—identified participant), and so removes the chief executive's power to cancel a motor salesperson's registration certificate in the event they are an identified participant in a criminal organisation. Section 182 is redundant given other clauses in this part which remove any reliance on identified participant notifications in determining suitability to hold a registration certificate.

Clause 249 amends section 188 (Motor salespersons to notify chief executive of changes in circumstances) which sets out the requirements for a motor salesperson to provide written notice to the chief executive of a prescribed change (under a regulation) in their circumstances. The clause amends section 188 to provide greater flexibility to registration certificate holders by allowing a motor salesperson to provide oral or written notice of a prescribed change.

Clause 250 Division 2 in Part 7, which contains sections 202 (Confidentiality of criminal intelligence in proceedings), and section 203 (Application of Judicial Review Act 1991). Section 202 which protects criminal intelligence comprising or underpinning identified

participant notifications during QCAT or Supreme Court review proceedings for licensing or registration decisions that were based on identified participant notifications. Elsewhere in this part, amendments are made which remove identified participant notifications as relevant factors in licensing or registration decisions, and further amendments preclude the use of criminal intelligence that might be provided under new information-sharing arrangements in licensing or registration decisions. Given those changes, the mechanism to secure criminal intelligence during review proceedings provided by section 202 is redundant.

Section 203 sets out that part 4 of the Judicial Review Act does not apply to licensing and registration decisions of the chief executive that were based on identified participant notifications, and places substantial restrictions on the capacity for further review or appeal of those licensing and registration decisions. The removal of section 203 means that the Act does not within itself restrict the *Judicial Review Act 1991*.

Clause 251 inserts new section 230A (Exchange of information) in Part 10. The section provides for the establishment of an 'information-sharing arrangement' with another 'relevant agency'. The information must be of a type that assist the chief executive to perform their functions under the Act, or assists the relevant agency to perform its functions. The chief executive and relevant agency are authorised, despite another Act or law, to ask for and receive information held by or accessible by the other party, and are similarly authorised to disclose information to the other party. A 'relevant agency' is defined as the commissioner, the chief executive of a department, a local government, or a person prescribed by regulation.

Inserted section 230A limits the use of criminal intelligence (defined elsewhere in this part) that is given to the chief executive by the commissioner under an information-sharing arrangement, to use in monitoring compliance with the Act.

The clause also inserts section 230B (Confidentiality), which provides for comprehensive confidentiality and record destruction requirements applying to 'confidential information' gained through administration of the Act. The section provides a definition of 'confidential information' that includes information about a person's affairs, but does not include information that could not reasonably be expected to identify the relevant person.

The section sets out the circumstances in which a person gains confidential information through involvement in administration of the Act: by being the chief executive or member of their staff, being engaged by the chief executive for the Act, or being a public service employee employed in the department. It provides that a person may record or disclose confidential information: for the Act; to discharge a function under another law; for a proceeding in court or QCAT; if authorised by a court or QCAT in the interests of justice; if required or permitted by law; or for information that is not criminal intelligence, if the person is authorised in writing by the person to whom the information relates. A penalty of 35 units is defined for recording the information, or disclosing the information to another person, for any other purpose.

Section 230B also provides that the chief executive must destroy as soon as practicable after they are no longer needed: criminal history reports, copies of control orders, and notices of change in criminal history.

Clause 252 inserts a new division in Part 11, Division 1 (Transitional provisions for repeal of PAMDA) to separate the exiting transitional section 237 (Transitional provisions for the repeal of PAMDA) from transitional provisions inserted elsewhere in this part.

Clause 253 inserts a new division in Part 11, Division 2 (Transitional provisions for *Serious and Organised Crime Legislation Amendment Act 2016*).

The clause inserts section 238 (Definitions for division) which provides a definition of *repealed*, in relation to a provision of the Act, as the provision in force immediately before commencement. The definition is used in creating references to sections omitted in this part that are relied upon by transitional sections inserted in this part.

The clause inserts new section 239 (Applications not finally decided) which provides that licensing and registration decisions (issue, renewal or restoration) or substitute licensee decisions that are not decided finally before commencement must be decided under the Act as in force after commencement. This will ensure that applications not finally decided will be determined with regard to the amended framework for determining applicant suitability which does not have regard to whether a person is an identified participant in a criminal organisation, but does have regard to whether a person is subject to a relevant control order, and which includes new serious offences relevant to relevant to licensing or registration decisions.

The clause inserts new section 240 (Proceedings not finally decided) which sets out how proceedings that had been started but not finally dealt with upon commencement are dealt with. Given the substantial changes to the licensing and disciplinary framework relevant to the removal of identified participant notifications as a determinant of suitability or trigger for cancellation, it is appropriate that particular proceedings be remitted to the chief executive to be re-decided, while other proceedings should continue under the Act as in force after commencement.

The inserted section provides that disciplinary proceedings under section 195 must be decided under the Act as in force after commencement. However review proceedings before QCAT or the Supreme Court mentioned in repealed section 202(1) (which concern a decision made as a result of identified participant advice given by the commissioner), are discontinued and remitted to the chief executive to decide again under the Act as in force after commencement. The section provides that a proceeding had not been finally dealt with if immediately before commencement QCAT or the Supreme Court: had not made a decision; or had made a decision but the appeal period had not ended; or had made a decision and an appeal had started but not ended. The inserted section also sets out that QCAT or the Supreme Court must return to the commissioner any *criminal intelligence* relating to the proceeding in their possession or control. *Criminal intelligence* is defined for the section as criminal intelligence within the meaning of repealed section 202(6).

The clause also inserts new section 241 (Reapplying for licences and registration certificates), that allows persons refused issue of a licence or registration certificate before commencement solely on the grounds of identified participant advice given by the Commissioner to apply for the licence or registration certificate inside the 3 month restriction on application that would otherwise apply. Sections 19(3) and 155(2) provide that where a person was refused a licence or registration certificate, the person can not make another application for the licence or registration certificate within 3 months of the decision, or within 3 months of QCAT

confirming the decision by review. Inserted section 241 sets out that decisions to refuse to issue a licence or registration certificated based on identified participant notifications are not decisions to refuse to issue for the purposes of section 19(3) or section 155(2).

Inserted section 241 also provides that where a corporate licence was cancelled solely on the basis of an identified participant notification, the corporation may apply for the licence despite section 19(2) which would otherwise prevent the application.

Clause 254 amends Schedule 2 (Decisions subject to review). The clause replaces the reference to section 23(2) with section 23(3), and the reference to section 158(2) with section 158(3), consequential to the renumbering of these sections elsewhere in this part. The clause also omits references to section 63(1) and section 182(1), which both deal with immediate cancellation due to identified participant notifications, consequential to the removal of those sections elsewhere in this part.

Clause 255 amends Schedule 3 (Dictionary), which provides a dictionary of terms for the Act. The clause removes definitions for *criminal organisation* and *identified participant* consequential to the removal of all reliance on these terms elsewhere in this part. The clause inserts the following definitions for terms required to support sections amended or inserted elsewhere in this part:

- *control order* – see the *Penalties and Sentences Act 1992*, section 161N.
- *criminal intelligence* – see the Criminal Code, section 86(3).
- *registered corresponding control order* – see the *Penalties and Sentences Act 1992*, section 161N.
- *relevant control order* – in relation to a licence or registration certificate, means a control order or registered corresponding control order that restricts the person to whom the order applies from carrying on a business, engaging in an occupation or performing an activity that requires the licence or registration certificate.

The clause also provides an expanded definition of *serious offence* which retains the existing set of offences that are punishable by 3 or more years imprisonment and which are described by the nature of the offence, and adds offences created elsewhere in this Bill. The new offences included as serious offences are:-

- an offence against the Criminal Code, section 76
- an offence mentioned in the Criminal Code, part 2, chapter 9A
- an offence that is a prescribed offence within the meaning of the *Penalties and Sentences act 1992*, section 161N and is committed with a serious organised crime circumstance of aggravation within the meaning of the *Penalties and Sentences Act 1992*, section 161Q.

Part 17 Amendment of Peace and Good Behaviour Act 1982

Clause 256 states that this Part amends the *Peace and Good Behaviour Act 1982.*

Clause 257 inserts new sections 3 and 3A.

New Section 3 provides that there is a dictionary at Schedule 1 to the Act which defines particular words used in the PGBA.

New Section 3A provides the objects of the Act.

Clause 258 replaces the current heading for Part 2 with the heading 'Peace and good behaviour orders' and creates a new Division 1 for Part 2 which provides for the making of orders.

Clause 259 amends section 4 (Complaint in respect of breach of peace) to reflect the fact that the Dictionary inserted in the Act by this Bill at schedule 1 defines 'court' to mean a Magistrates Court.

Clause 260 amends section 6 (Magistrates Court may make order) to reflect the fact that the Dictionary inserted in the Act by this Bill at schedule 1 defines 'court' to mean a Magistrates Court.

Clause 261 amends sections 7 (Where defendant does not appear) to reflect the fact that the Dictionary inserted in the Act by this Bill at schedule 1 defines 'court' to mean a Magistrates Court.

Subclause (3) makes an amendment consequential to the renumbering of sections 3A to 12 in a later clause in this Bill.

Clause 262 makes a consequential amendment to section 8 (Application of the Justices Act) to take into account the renumbering of sections 3A to 12 which is provided by a later clause in this Bill.

Clause 263 repeals the current Part 3 heading and creates a new Division 2 heading for Part 2 of the Act, titled 'Offences'.

Clause 264 makes a consequential amendment to section 10 (Offences for breach of order) to take into account the renumbering of sections 3A to 12 which is provided by a later clause in this Bill.

Clause 265 amends section 11 (Court may make further order).

Subclauses (1) and (4) make consequential amendments to take into account the renumbering of sections 3A to 12 which is provided by a later clause in this Bill.

Subclauses (2) and (3) reflect the fact that the Dictionary inserted in the Act by this Bill at Schedule 1 defines 'court' to mean a Magistrates Court.

Clause 266 provides for the renumbering of sections 3A to 12 as sections 4 to 13.

Clause 267 Provides for the replacement of the current Part 4 with a new Part 3 titled 'Public safety orders'.

New Division 1 of Part 3 of the Act, titled 'Preliminary', contains new sections 14, 15 and 16.

New section 14 provides the definition of 'respondent' to an application for a public safety order in Part 3.

New section 15 provides the object of Part 3.

New section 16 provides that an order under Part 3 does not affect the *Peaceful Assembly 1982*.

New Division 2 of Part 3, titled 'Making of orders by commissioned officers', contains new sections 17 to 24.

New section 17 sets out the facts a commissioned officer must be satisfied of and the things a commissioned officer must have regard to before making a public safety order. The term 'commissioned officer' is defined in the Dictionary that is inserted into Schedule 1 by this Bill.

New section 18 provides for the conditions that may be contained in a public safety order made by a commissioned officer. Subsection (2) clarifies that a condition of a public safety order does not stop the respondent from entering the respondent's principal place of residence.

New section 19 provides that there are certain orders that cannot be made by commissioned officer without the authorisation of the Magistrates Court.

Subsection (1) sets out the types of orders that cannot be made by a commissioned officer without the Magistrates Court's authorisation. This provision supports the intended operation of Part 3, that is:

- public safety orders made by a commissioned officer that are of 72 hours duration or longer should be able to be appealed to the Magistrates Court; and
- public safety orders that are longer than 7 days in duration should be made by the Magistrates Court.

Subsection (2) provides that a commissioned officer can apply to the Magistrates Court for an order authorising them to make the type of order mentioned in subsection (1). Subsection (3) provides that a commissioned officer's application for an authorisation order under this section can be made without notice to any person (which includes a respondent). Subsection (4) provides that the grounds for the commissioned officer's application for an authorisation order must be verified by an affidavit. Subsection (5) provides that a commissioned officer may apply to the Magistrates Court for authorisation under this section by telephone.

Subsubsection (5)(a) provides that the commissioned officer must inform the Magistrates of their name and rank and that they are a commissioned officer.

Subsubsection (5)(b) provides that if the Magistrate is satisfied that there is a sufficient degree of urgency, the Magistrate can deal with the authorisation application without requiring the personal attendance of the commissioned officer. The Magistrate may deal with the application by way of orally questioning the commissioned officer or any other available witness on the telephone.

Subsubsection (5)(c) provides that if the Magistrate determines it is appropriate to require the personal attendance of the commissioned officer, the Magistrate may adjourn the hearing of the application to a time and date to be fixed by the Magistrate.

Subsubsection (5)(d) provides that if an authorisation order application is heard by a Magistrate without requiring the commissioned officer's personal attendance, the officer must inform the magistrate of: the grounds on which officer proposes to make the public safety order; and the conditions proposed for the order.

Subsubsection (5)(e) provides for what the Magistrate must do if they are satisfied it is appropriate to authorise the commissioned officer to make the order.

Subsubsection (5)(f) provides that the Magistrate may note on the authorisation order the facts that justify, in the view of the Magistrate the making of the public safety order.

Subsubsection (5)(g) provides that the commissioned officer must as soon as practicable after the authorisation order is made, forward to the magistrate an affidavit verifying the facts mentioned in subsubsection 5(e).

Subsection (6) provides that upon receiving the information set out in subsubsection (5)(a) the Magistrate may assume, without making further inquiry that the commissioned officer is authorised to make an application under this section.

New section 20 provides for the requirements as to the form and content for a public safety order issued by commissioned officer.

New section 21 provides for how a public safety order issued by a commissioned officer must be served.

New section 22 provides for how public safety orders issued by a commissioned officer in urgent circumstances must be served.

New section 23 provides for the limits on the duration (including when an order takes effect) of a public safety order issued by a commissioned officer.

New section 24 provides for the records that must be kept with respect to public safety orders that are issued by a commissioned officer. Subsection (1) provides that the Commissioner of Police must record the particulars of each public safety order issued and lists the information that must be included in the particulars. Subsection (2) states that the record in subsection (1) must be made a soon as practicable after the public safety order is made. Subsections (3) and (4) provide that the Commissioner must keep the information required to be recorded under this section in the records of the police service and provide the public interest monitor with access to those records. Subsection (5) defines the term 'public interest monitor'.

New Division 3 of Part 3, titled 'Making of orders by court', contains new sections 25 to 30 of the Act.

New section 25 provides that a senior police officer may apply to the Magistrates Court for a public safety order and sets out how that application must be made and served on a

respondent. The term 'senior police officer' is defined in the Dictionary inserted by this Bill into Schedule 1.

New section 26 provides that respondent may file a response to an application and sets out how that response must be made and served on the applicant.

New section 27 provides that the Magistrates Court may make a public safety order if they are satisfied of certain things. It sets out the things the court is required to take into account when deciding to make an order but also provides that a court may consider any thing in addition to those required things that court considers relevant. It makes it clear that a public safety order may be made or extended whether or not the respondent is present or makes submissions.

New section 28 provides for the conditions that may be contained in a public safety order made by the Magistrates Court. Subsection (1) provides that the court can impose any condition that it considers necessary having regards to the grounds for making or extending the order. Subsections (2) does not limit subsection (1) but makes it clear that a condition of a public safety order made by a court can include any of things listed in that subsection (2). Subsections (3) and (4) provide that it is a condition that must be stated in each public safety order that a person must comply with every reasonable direction of a police officer for the purposes of the order. Subsection (5) empowers the court to impose a condition on the order about the use of the police powers set out at new section 31 (see below). Subsection (6) clarifies that a condition of a public safety order does not stop a respondent from entering the respondent's principle place of residence.

New section 29 provides for the duration of public safety orders made by the Magistrates Court. Subsection (1) provides for when a public safety order made by the court takes effect. Subsection (2) provides how a public safety order made by the court must be served. Subsection (3) provides the information that must be included in the public safety order. Subsection (4) provides for the period during which a public safety order made by the court remains in force. Subsection (5) provides that public safety orders cannot be extended by the court for a period exceeding 6 months.

New section 30 provides for the revocation or variation of public safety orders made by the Magistrates Court. Subsection (1) provides that the court can vary or revoke a public safety order at any time on the application of a senior police officer. Subsection (2) sets out what the application must state. Subsection (3) provides that the application must be accompanied by any affidavit the senior police officer intends to rely on at the hearing of the application. Subsections (4), (5) and (6) provide the service requirements for an application to vary or revoke a public safety order made by the court.

New Division 4 of Part 3, titled 'Police Powers for enforcing public safety orders', contains new sections 31. This division applies to both public safety orders that are made by the Magistrates Court and public safety orders issued commissioned officer.

New section 31 provides a police officer with certain powers if a police officer reasonably suspects an offence against new section 32 (see below) has been committed, is being committed or is about to be committed in relation to a public safety order. Subsection (2) sets out the powers provided to a police officer if the conditions precedent in subsection (1) are met. Subsection (3) sets out certain things a police officer must do before exercising the

powers in subsection (2). Subsection (4) provides that a police officer may issue directions that are reasonably necessary to exercise a power under subsections (2) or (3). Subsection (5) provides that directions given under this section are taken to be directions given under the *Police Powers and Responsibilities Act 2000*. Subsection (6) provides the circumstances in which a person does not commit an offence under section 791 of the Police Powers and Responsibilities Act for failing to comply with a direction made under this section. Subsection (7) provides a definition of 'public safety place' for use in this section.

New Division 5 of Part 3, titled 'Offence', contains new sections 32 of the Act.

New section 32 provides that a person commits a misdemeanour if without reasonable excuse they knowingly contravene a public safety order made against them personally or as a member of a group. The misdemeanour is punishable by a maximum penalty of 300 penalty units or three years imprisonment. Subsection (2) clarifies that a person 'knowingly' contravenes a public safety order if they do an act or make an omission the person knows (i.e., a subjective assessment) or ought reasonably to know (ie, an objective assessment) is a contravention of a public safety order.

New Part 4 provides for Restricted Premises Orders.

New Division 1 of Part 4, titled 'Preliminary', contains new section 33 which provides definitions for some key terms for Part 4, namely, 'disorderly activity', 'prescribed place', 'prohibited item', 'respondent' and 'restricted premises'.

New Division 2 of Part 4 titled 'Making of orders', contains new sections 34 to 39.

New section 34 provides that a senior police officer may apply to the Magistrates Court for a restricted premises order for a stated premises other than a licensed premises. The term 'premises' is defined in the Dictionary which is inserted by this Bill into Schedule 1. Subsection (2) sets out what the application must state. Subsection (3) provides that the application must be accompanied by any affidavit the senior police officer intends to rely on at the hearing. Subsection (4) provides the requirements for filing and serving of the application. Subsection (5) defines the term 'licensed premises' for the purpose of this section.

New section 35 provides that a respondent to an application may file a response. Subsection (2) provides the information that must be stated in the response. Subsection (3) provides the requirements for filing and serving the response. Subsection (4) provides that the response must be accompanied by any affidavit the respondent intends to rely on at the hearing of the application.

New section 36 provides for when a Magistrates Court may make a restricted premises order. Subsection (1) sets out the things the court must be satisfied of before making the order. Subsection (2) sets out the things the court must have regard to when deciding whether or not to make the order. Subsection (3) clarifies that in addition to the things the court *must* consider the court may consider anything it considers relevant when deciding whether to make the order. Subsection (4) makes it clear that a restricted premises order may be made whether or not an owner or occupier of the premises is present or makes submissions.

New section 37 provides for the conditions of a restricted premise order. Subsection (1) provides the court with the discretion to impose conditions it considers to be necessary having regard to the grounds for making the order. Subsection (2) sets out the conditions that must be included in a restricted premises order. Subsection (3) clarifies that a restricted premises order does not stop the respondent from entering their principal place of residence.

New section 38 provides for the duration of restricted premises orders. Subsection (1) provides for when a restricted premises order takes effect. Subsection (2) provides for what the requirements for service of a restricted premises order. Subsection (3) sets out the information that must be stated in the order that is served on the respondent. Subsection (4) sets out the period during which a restricted premises order will be in force.

New section 39 provides that the Magistrates Court can at any time make an order revoking or varying a restricted premises order upon the application of a senior police officer. Subsection (2) sets out what the order must state. Subsection (3) provides that the application must be accompanied by any affidavit the senior police officer wishes to rely on at the hearing. Subsections (4) to (6) set out the requirements for service of the application.

New Division 3 of Part 4 titled, 'Prescribed Places', contains new sections 40 to 48.

New section 40 provides definitions of key terms in this division, namely, 'extended period', 'extension order', 'initial period' and 'respondent'.

New section 41 provides for a regulation making power that allows a place to be prescribed as a 'prescribed place' for the purposes of this division. Subsection (2) provides after the commencement of this section of this Bill a regulation made under subsection (1) may only omit a place that was prescribed by regulation at the date this Bill commences. Subsubsection (2)(b) makes it clear that no new places can be prescribed under subsection (1) once this section in this Bill has commenced.

New section 42 provides for prescribed places to be restricted premises for two years from the date this section in this Bill commences. Subsection (2) deems that an owner or occupier of a prescribed premises is taken to be served with a restricted premises order at the date this section in this Bill commences. Subsubsection (2)(b) deems that a restricted premises order for 'prescribed place' is taken to be in force for the initial period. Subsection (3) removes any doubt that if a regulation is made after the commencement of this section in this Bill which removes a prescribed place from the regulation that place stops being a prescribed place.

New section 43 provides that a senior police officer may apply to the Magistrates Court for an extension order that a prescribed place be taken to be a restricted premises for a further stated period of at least 6 months and not more than two years. This does not prevent another extension order being made after the first extension order. Subsection (2) provides for when the application must be made. Subsection (3) provides the information that the application must state. Subsection (4) provides that the application must be accompanied by any affidavit the senior police officer intends to rely on at the hearing. Subsections (5) and (6) set out the requirements for filing and service of the application. Subsection (7) removes any doubt that a senior police officer may make an application from time to time as occasion requires.

New section 44 provides that the owner or occupier against whom the application is made may file a response to the application. Subsection (2) sets out the information that must be stated in the response. Subsection (3) sets out the requirements for filing and serving the response. Subsection (4) provides that the response must be accompanied by any affidavit that the respondent intends to rely on at the hearing.

New section 45 provides for when a Magistrates Court may make an extension order. Subsection (1) sets out the things the court must be satisfied of before making an order. With respect to the things the court must be satisfied of that are listed in subsection (1)(a) the legislation is intentionally retrospective in application in so far as the court may consider disorderly activities that occurred on the premises both before and after the commencement of this Bill. Subsection (2) sets out the things that the court must have regard to in deciding whether or not to make the order. Subsection (3) clarifies that in addition to the things the court must have regard to the court may have regard to anything the court considers relevant. Subsection (4) makes it clear that an extension order may be made whether or not the owner or occupier of the premises is present or makes submissions.

New section 46 sets out what the effect the making of an extension order has for a prescribed place.

New section 47 provides for the duration of an extension order for a prescribed place. Subsection (1) states when an extension order takes effect. Subsection (2) provides for the service requirements for an extension order. Subsection (3) sets out the information that must be stated in the extension order. Subsection (4) sets out the period of time during which the extension order is in force.

New section 48 provides that the Magistrates Court can make an order to revoke or vary an extension order at any time on the application of a senior police officer. Subsection (2) sets out what the application must state. Subsection (3) provides that the application must be accompanied by any affidavit that the senior police officer intends to rely on at the hearing.

New Division 4 of Part 4 titled 'Police Powers for enforcing restricted premises orders', contains new section 49.

New section 49 sets out a police officer's powers to search a restricted premises without warrant. Subsection (1) provides a list of the things a police officer is empowered to do when exercising the power to search a restricted premises without a warrant. Subsection (2) removes any doubt that the powers can be exercised from time to time and as occasion requires.

New Division 5 of Part 4 of the PGBA titled 'Application to court by owner for return of seized items', contains new sections 50 and 51.

New section 50 provides for when an owner of an item seized under Part 4 of the Peace and Good Behaviour Act can apply to the Magistrates Court for the return of a prohibited item. Subsection (1) sets out when this section applies. Subsection (2) provides for who can make an application and what they can apply to the court for. A person who can apply only has 21 days after the prohibited items seizure to make an application. Subsection (3) sets out the requirements for service of an application under this section. Subsection (4) provides a definition of 'prohibited item' for the purpose of this section.

New section 51 provides for when a Magistrates Court can order that a prohibited item seized under Part 4 can be returned. Subsections (1) and (2) set out the things the court must be satisfied of before an order to return the seized item can be made. Subsection (3) sets out the circumstances in which a court must not order the return of a seized item. Subsection (4) provides for definitions of the terms 'applicant', 'confiscation proceeding' and 'nominee' for the purposes of this section.

New Division 6 of Part 4 titled 'Forfeiture of prohibited items', contains new sections 52 and 53.

New section 53 sets out when division 6 applies.

New section 53 provides that the Commissioner of Police may forfeit prohibited items to the State. Subsection (2) provides what happens when the prohibited item is forfeited. Subsection (3) clarifies that without limiting subsection (2) that the Commissioner may destroy or dispose of the prohibited item. Subsections (4), (5) and (6) deal with what must occur if the Commissioner proposes to sell the prohibited item.

New Division 7 of Part 4 titled 'Offence', contains new section 54.

Section 54 provides that an owner or occupier commits a misdemeanour in the circumstances set out in subsection (1)(a) to (c). The misdemeanour is punishable by a maximum penalty of 150 penalty units or 18 months imprisonment for the first offence or 300 penalty units of three years imprisonment for each subsequent offence. Subsection (2) provides a specific defence for this offence for an owner or an occupier. Subsection (3) provides a specific defence to this offence for an owner only.

New Division 8 of Part 4 titled 'Evidentiary matters', contains new section 55.

New section 55 provides for an evidentiary provision that deems disorderly activity to have happened in certain circumstances. Subsections (1) and (2) set out the circumstances in which this section applies. Subsection (2) provides that if the events in section 1(b) and (2) occur it is evidence that disorderly activity has taken place at the premises unless proven otherwise. Subsection (4) sets out definitions of 'assault', 'function', 'obstruct'. And 'relevant proceedings'.

New Division 1 of Part 5 of the Act titled, 'Preliminary', contains new section 56 of the Act.

New section 56 provides definitions of 'fortification' and 'respondent' for this Part of the Act.

New section 57 provides for the relationship between this part of the Act and the *Sustainable Planning Act 2009*.

New Division 2 of Part 5 of the Act titled 'Making of orders', contains new sections 58 to 63 of the Act.

New section 58 provides that a senior police officer may apply to the Magistrates Court for a fortification removal order for stated premises. Subsection (2) sets out what the application

must state. Subsection (3) provides that the application must be accompanied by any affidavit the senior police officer intends to rely on at the hearing. Subsections (4) sets out the requirements for filing and service of the application.

New section 59 provides that the owner or occupier against whom the application is made may file a response to the application. Subsection (2) sets out the information that must be stated in the response. Subsection (3) sets out the requirements for filing and serving the response. Subsection (4) provides that the response must be accompanied by any affidavit that the respondent intends to rely on at the hearing.

New section 60 provides that a Magistrates Court may make a fortification removal order. Subsection (1) sets out the things that the court must be satisfied of before making the order. Subsection (2) sets out things that the court must have regard to in deciding whether or not to make the order. Subsection (3) clarifies that in addition to the things the court must have regard to the court may have regard to anything the court considers relevant. Subsection (4) makes it clear that a fortification removal order may be made whether or not the owner or occupier of the premises is present or makes submissions.

New section 61 sets out the conditions that can be imposed by the Magistrates Court in a fortification removal order.

New section 62 provides for when a fortification removal order takes effect.

New section 63 provides that the Magistrates Court can make an order to revoke or vary a fortification removal order at any time on the application of a senior police officer. Subsection (2) sets out what the application must state. Subsection (3) provides that the application must be accompanied by any affidavit that the senior police officer intends to rely on at the hearing. Subsections (4) – (6) set out the requirements for service of the application.

New Division 3 of Part 5 of the Act titled, 'Police powers for enforcing fortification removal orders', contains new sections 64 to 68 of the Act.

New section 64 provides for when this division applies.

New section 65 provides a police officer may remove or modify a fortification that is the subject of fortification removal order to the extent required under the order. Subsections (2), (3) and (4) set out the powers a police officer has to facilitate the taking of enforcement action as defined in subsection (1).

New section 66 sets out the procedure to be followed by a police officer for entry to a fortified premises. Subsection (1) states when this section applies. Subsection (2) sets out what a police must do or make a reasonable attempt to do before entering a fortified premises. Subsection (3) provides that subsection (2) does not apply if the fortification makes it impracticable to do the thing set out in subsection (2). Subsection (4) provides for a definition of 'ancillary powers' the purpose of this section.

New section 67 provides for the circumstance in which a police officer may enter a building to take 'enforcement action' as defined in new section 65(1). Subsection (1) provides that a police officer may only enter a building if the police officer reasonably believes it is

necessary to so in order take enforcement action. Subsection (2) provides that a police officer may only enter a person's residence in the circumstance set out in subsection (2).

New section 68 provides that noise made or caused by enforcement action as defined in new section 65(1) does not constitute an offence against section 440Q of the *Environmental Protection Act 1994*. Subsection (2) provides that this exemption does not apply if the enforcement action is taken at a time prohibited by a condition under a fortification removal order.

New Division 4 of Part 5 of the Act titled 'Forfeiture of fortifications', contains new sections 69 to 74 of the Act.

New section 69 states when this division applies.

New section 70 provides for definitions of key terms used in this division, namely, 'net proceeds' and 'responsible person'.

New section 71 provides that the Commissioner of Police may forfeit a removed fortification to the State. Subsection (2) provides for what happens when the removed fortification is forfeited. Subsection (3) clarifies that without limiting subsection (2) the Commissioner may destroy or dispose of the removed fortification. Subsections (4) to (7) deal with what must occur if the Commissioner proposes to sell the removed fortification.

New section 72 provides for the State to be able to recover from a responsible person (as a debt) the cost of taking enforcement action as defined in new section 65(1).

New section 73 provides for the circumstance in which an owner can claim compensation from the State to pay for the cost of repairing any damage to or restoring the condition of fortified premises after the removal or modification of fortifications under this Part. Subsections (3) and (4) provide for how the compensation can be claimed by on owner and ordered by a court.
New section 74 provides for the circumstances in which the State can recover from a responsible person (as a debt) the costs of any order for compensation made against the state pursuant to new section 73.

New Division 5 of Part 5 of the Act titled, 'Offence', contains new section 75 of the Act.

New section 75 provides that a person commits a misdemeanor if they do an Act or make an omission with intent that hinders the removal or modification of a fortification under a fortification removal order or the taking of enforcement Action (as defined by new section 65(1)). The maximum penalty for this offence if five years imprisonment. Subsection (2) provides for definitions for the purpose of this section.

New Division 6 of Part 5 of the Act titled, 'Evidentiary matters', contains new sections 76 and 77 of the Act.

New section 76 gives a commissioned officer the power to issue a stop and desist notice in the approved form to an owner or occupier to stop and desist from installing stated fortifications of the premises. Subsection (2) provides that a commissioned officer may give a

stop and desist order only if the police officer has a reasonable belief about the things set out at sub-subsections (2)(a) and (b). Subsection (3) provides for when the notice takes effect.

New section 77 provides that noncompliance with a stop and desist notice will be evidence that the grounds for making a fortification removal order exists unless proven otherwise.

New Part 6 of the Act provides for Court proceedings.

New Division 1 of Part 6 of the Act titled, 'Jurisdiction', contains new sections 78 and 79 of the Act.

New section 78 confers jurisdiction on the Magistrates Court to hear and decide applications and perform any other function or power conferred on the court under the Act.

New section 79 provides that a court exercising jurisdiction under the Act must be constituted by a Magistrate.

New Division 2 of Part 6 of the Act titled, 'Proceeding for orders', contains new sections 80 to 83 of the Act.

New section 80 provides that the *Uniform Civil Procedure Rules 1999* applies to applications made to a court under the Act to the extent that the rules are consistent with the Act.

New section 81 provides that a question of fact under the Act other than proceedings for an offence is to be decided on the balance of probabilities.

New section 82 provides for the way in which service by public notice must be performed where it is required or authorised under the Act.

New section 83 provides for the affidavits of service that must be filed where personal service or service by public notice is required or authorised under the Act. Subsection (1) states when this section applies. Subsection (2) applies to personal service and provides when a police officer must file an affidavit of service and who the affidavit must be made by. Subsection (3) applies to service by public notice and provides when a police officer must file an affidavit and sets out the information that must be contained in that affidavit. Subsection (4) clarifies that an affidavit in subsection (3) must be accompanied by a copy of the published notice. Subsections (5) an (6) provides the requirements for service of the affidavits.

New Division 3 of Part 6 of the Act titled, 'Proceeding for offences', contains new sections 84 to 86 of the Act.

New section 84 provides that an offence against the Act not defined as a crime or misdemeanour is a summary offence.

New section 85 provides for the manner in which proceedings for indictable offences must to be dealt with under the Act.

New section 86 provides for the manner in which proceedings for summary offences must be dealt with under the Act.

New Division 4 of Part 6 of the Act titled, 'Appeals', contains new sections 87 to 92 of the Act.
New section 87 provides a definition of 'appellate court' the purpose of this division.

New section 88 provides for who may appeal a decision made under the Act.

New section 89 provides for the way in which an appeal must be started.

New section 90 provides that certain orders made under the Act are not stayed by the beginning of appeal proceedings. Subsections (1) and (2) provide that appeal proceedings brought in relation to an order made under parts 3, 4 or 5 of the Act will not affect the operation of the order or prevent the taking of action to implement the order. Subsection (3) provides that the court may order the suspension of an order or stay any proceedings under an order if the court considers it would be appropriate to do so having regard to the things provided for in sub-subsections (3)(a) and (b).

New section 91 provides for the procedures for the hearing of an appeal. Subsection (1) provides that an appeal must be decided on the evidence and proceedings before the court that made the decision being appealed. Subsection (2) provides that however, the appellate court may order that the appeal be heard afresh, in whole or part.

New section 92 provides for the powers of an appellate court deciding an appeal against a decision made under the Act.

New Part 7 of the Act provides for general provisions.

New Division 1 of Part 7 of the Act titled, 'General safeguards for things in possession of police service', contains new sections 93 to 95 of the Act.

New section 93 states when division 1 applies.

New section 94 provides for the manner in which receipts must be given for a thing after it is seized by a police officer in the circumstances set out in new section 93.

New section 95 provides for the responsibilities of a police officer who takes possession of a thing in the circumstances set out in new section 93.

New Division 2 of Part 7 of the Act titled, 'Miscellaneous', contains new sections 96 to 100 of the Act.

New section 96 provides that the Commissioner of Police may delegate a function of the commissioner under this Act to a police officer. Subsection (2) provides that the Commissioner's power of delegation in subsection (1) may permit a subdelegation of the power to a police officer. Subsection (3) provides for a definition of 'function' for the purpose of this section.

New section 97 provides for certain protections against liability. Subsection (1) provides that a member of the police service does not incur civil liability for an act done or an omission made honestly and without negligence under the Act. Subsection (2) provides that if

subsection (1) does prevent civil liability attaching to a member of the police service, the liability attaches instead to the State. Subsection (3) provides for a definition of 'member of the police service' for the purposes of this section.

New section 98 provides for the review of the act (with the exception of Part 2 of the Act) as soon as practicable five years after the commencement of this clause of the Bill. Subsection (1) provides that this section applies when the Minister appoints a retired judge to review the operation of the consorting provisions under section 736 of the Criminal Code. Subsection (2) provides that the Minister must also appoint a reviewer to review and the operation of this Act (with the exception of Part 2 of the Act) and prepare and give to the Minister a written report on the outcome of the review. Subsection (3) states that the terms of reference for the review will be decided by the Minister. Subsection (4) provides for the matters that must be addressed in the review. Subsection (5) provides that the reviewer has access to and the Commissioner may disclose to the review the information mentioned in sub-subsection (4)(c) despite any other law. Subsection (6) states that the Minister must table a copy of the review in the Legislative Assembly within 14 days after having received the review. Subsection (7) provides definitions of 'consorting provisions' and 'register of enforcement acts' for the purpose of this section.

New section 99 provides that forms may be approved for use under the Act. Subsection (2) provides for who may approve the forms. Subsection (3) provides a definition of 'chief executive (magistrates court)' for the purpose of this section.

New section 100 provides that regulations may be made under this Act.

The new Schedule 1 Dictionary provides definitions of key terms used throughout the Act.

Part 18 Amendment of Peace and Good Behaviour Regulation 2010

Clause 268 states that this Part amends the *Peace and Good Behaviour Regulation 2010.*

Clause 269 inserts a new section 11A which sets out places that are declared to be prescribed places for the purposes of new Division 3, Part 4 of the *Peace and Good Behaviour Act 1992*.

Part 19 Amendment of Penalties and Sentences Act 1992

Clause 270 states that this Part amends the *Penalties and Sentences Act 1992.*

Clause 271 amends section 3 (Purposes) to insert new subsection (ba) to expand the purposes of the Act to include: encouraging particular offenders to cooperate with law enforcement agencies in proceedings or investigations about major criminal offences. This extension of the Act's purposes is consequential to the insertion of new Part 9D (Serious and organised crime), under the Bill. Subclause (2) renumbers the section as a result of this insertion.

Clause 272 amends section 4 (Definitions) to omit and replace the definition of 'prescribed offence', and amends the existing definitions of 'Crown prosecutor' and 'prosecutor', consequential to the insertion of new Part 9D (Serious and organised crime), under the Bill. A number of new definitions which are anchored to the provisions under new Part 9D are

also inserted, namely: 'benefit', 'commissioner', 'corresponding control order', 'court', 'criminal organisation', 'honorary member', 'major criminal offence', 'office holder', 'participant', 'prescribed offence', 'prospective member', 'registered corresponding control order', 'registrar', 'senior police officer', 'serious criminal activity', 'serious organised crime circumstance of aggravation'. These new terms are further defined in Part 9D.

Clause 273 amends section 9 (Sentencing guidelines) to insert new subsection (2)(ga) to provide that in sentencing an offender, a court must have regard to (without limiting existing subsection (2)(g) - i.e. the presence of any aggravating or mitigating factor concerning the offender): whether the offender was a participant in a criminal organisation at the time the offence was committed or at any time during the course of the commission of the offence.

Subclause (2) adds the three new offences inserted into the Criminal Code; section 228DA (Administering child exploitation material website), section 228DB (Encouraging use of child exploitation material website), and section 228DC (Distributing information about avoiding detection), to the list of offences in section 9 (6A)(d) to which the principles in section 9(2)(a) do not apply. The principles in section 9(2)(a) are that a sentence of imprisonment should only be imposed as a last resort and a sentence that allows the offender to stay in the community is preferable. Including the new offences is consistent with the approach taken to the existing offences related to child exploitation material in sections 228A (Involving child in making child exploitation material), 228B (Making child exploitation material), 228C (Distributing child exploitation material), 228D (Possessing child exploitation material) of the Criminal Code

Subclause (3) inserts new subsection (7A) to remove any doubt and to make it clear that the principles under existing subsection (2)(a) do not apply to the sentencing of an offender under new Part 9D (Serious and organised crime), inserted by the Bill. That is, the principles that a sentence of imprisonment should only be imposed as a last resort and a sentence that allows the offender to stay in the community is preferable, do not apply to the sentencing of an offender under Part 9D. (Note: the principles mentioned under subsection (2)(a) were reinserted by the *Youth Justice and Other Legislation Amendment Act (No. 1) 2016* and commenced on 1 July 2016).

Clause 274 amends section 15 (Information or submission for sentence) consequential to the establishment of the new control order regime under Part 9D, Division 3, inserted by the Bill. New subsection (1A) ensures that, without limiting existing subsection (1), in imposing a sentence a court may receive any information, or a sentencing submission made by a party to the proceedings, that the court considers appropriate to enable it to decide whether to make a control order for the offender; and/or to enable it to decide the appropriate conditions of the control order which it must (or may) make for the offender. This may be pertinent in the context of the court considering the making of a control order under new section 161W (When court may make order – offender who was participant in criminal organisation), given the offender's participation in a criminal organisation need not be related to the indictable offence for which the offender is being sentenced (see new section 161W(2)).

Clause 275 amends section 160 (Definitions for div 3) to make a consequential change to the definition of 'parole eligibility date' as a result of the amendment to section 160B under the Bill (see later clause).

Clause 276 amends section 160A (Application of ss 160B-160D) consequential to the amendments made to the *Corrective Services Act 2006* as a result of the insertion of new Part 9D, under the Bill.

Clause 277 inserts new section 160AA (Reduction of minimum period of imprisonment for particular offenders) consequential to the insertion of new Part 9D, under the Bill. The section applies if:

- a court is imposing a term of imprisonment on an offender for a prescribed offence committed with a serious organised crime circumstance of aggravation; and

- either, the term of imprisonment imposed is imprisonment for life or the offender is serving a term of imprisonment for life; and

- section 13A or 13B applies for the sentence (see section 161S in relation to the application of sections 13A and 13B for the sentencing of such an offender).

The court may fix a date under section 160C or 160D that: reduces the minimum period of imprisonment the offender must otherwise serve under the *Corrective Services Act 2006*, section 181(2A) or (2B) or 181A(3) or (4); but does not reduce the minimum period of imprisonment the offender must serve under section 181(2) or 181A(2) of that Act.

No date fixed by the court as mentioned above can reduce the minimum period of imprisonment the offender must serve under the Corrective Services Act, section 181(2) or 181A(2). This section applies despite section 160A(5).

Clause 278 amends section 160B (Sentence of 3 years or less and not a serious violent offence or sexual offence) to insert new subsections (5), (6) and (7) consequential to the insertion of new Part 9D, under the Bill.

New subsection (5) provides that: Despite subsections (2) and (3), the court must fix the date the offender is eligible for parole under subsection (6) if—

(a) the offender is sentenced to a term of imprisonment under section 161R(2); and

(b) in imposing the base component of the sentence under that section, the court would, apart from this subsection, be required to fix a date for the offender under subsection (2) or (3).

Subsection (6) provides that: The date the offender is eligible for parole is the day that is worked out by adding the relevant further period to the date the court would otherwise fix for the offender under subsection (2) or (3) if the term of imprisonment imposed on the offender under section 161R(2) consisted only of the base component of the sentence imposed under that section.

New subsection (7) provides that: the 'relevant further period', for an offender sentenced to a term of imprisonment under section 161R(2), means the period of the mandatory component of the sentence imposed on the offender under that section.

Clause 279 inserts new Part 9D (Serious and organised crime).

Part 9D, inter alia, defines what it means to be a 'participant in a criminal organisation'. It provides for the new Serious Organised Crime circumstance of aggravation and sets out the new mandatory targeted sentencing regime which applies to offenders convicted of a 'prescribed offence' (see - new Schedule 1C, inserted by the Bill) committed with the circumstance of aggravation. Part 9D also sets out the only means by which these particular convicted offenders can have their punishment ameliorated or mitigated.

Part 9D establishes a new sentencing order under the Act, called a Control Order, which applies to particular offenders. Provision to enable the recognition of corresponding control orders made under a law of another State, is also included. Further, Part 9D, in conjunction with the *Police Powers and Responsibilities Act 2000*, provides the enforcement powers necessary to ensure against contravention of the new control orders (or a registered corresponding control order).

Division 1 Preliminary

New section 161N (Definitions for part) is the definition provision for new Part 9D. It provides definitions for: 'benefit', 'commissioner', 'control order', 'corresponding control order', 'criminal organisation', 'honorary member', 'office holder', 'participant', 'prescribed offence', 'prospective member', 'registered corresponding order', 'senior police officer', 'serious criminal activity', and 'serious organised crime circumstance of aggravation'.

The terms 'criminal organisation' and 'participant' in a criminal organisation provide cross-references to new sections 161O and 161P, respectively.

The term 'benefit' includes property, advantage, service, entertainment, the use of or access to property or facilities, and anything of benefit to a person whether or not it has any inherent or tangible value, purpose or attribute. This definition is consistent with the definition of 'benefit' under section 1 of the Criminal Code.

The terms 'honorary member', 'office holder' and 'prospective member' are relied upon in the definition of participant under new section 161P.

An 'honorary member' of an organisation, includes a person who is a member of the organisation, but has not paid a fee to be a member of the organisation.

An 'office holder' of an organisation, means –

(a) a person who is a president, vice-president, treasurer, secretary, director or another office holder or a shareholder of the organisation; or

(b) a person who (whether by words or conduct, or in any other way) asserts, declares or advertises that the person holds a position of authority of any kind within the organisation; or

(c) a person who is in control of all or a substantial part of the activities of the organisation; or

(d) if the organisation appoints a person to be in charge of an activity of the organisation or keep order at a meeting or gathering of the organisation—the person appointed.

Examples—
• a person appointed to administer a child exploitation material website
• a person appointed to supervise the call centre of a cold-call investment fraud operation
• a person appointed as the sergeant-at-arms of a motorcycle club

A 'prospective member' of an organisation, means a person who has started, but not completed, the process of becoming a member of the organisation.

The term 'serious criminal activity' means conduct constituting an indictable offence for which the maximum penalty is at least seven years imprisonment.

New section 161O (Meaning of criminal organisation) defines the term 'criminal organisation' for the purposes of Part 9D; but is also relied upon across the Queensland statute book to define this term.

A 'criminal organisation' is a group of three or more persons, whether arranged formally or informally—

- who engage in, or have as their purpose (or one of their purposes) engaging in, serious criminal activity; and

- who, by their association, represent an unacceptable risk to the safety, welfare or order of the community.

To remove doubt, the section expressly provides that it does not matter whether the group of persons:
- has a name; or
- is capable of being recognised by the public as a group; or
- has an ongoing existence as a group beyond the serious criminal activity in which the group engages or has as a purpose; or
- has a legal personality.

To remove doubt, the section also expressly provides that it does not matter whether the persons comprising the group:
- have different roles in relation to the serious criminal activity (for example: of the persons comprising a methyl amphetamine syndicate, different persons might be responsible for different roles such as: supplying the cold and flu tablets; extracting the pseudoephedrine from the tablets; supplying other necessary ingredients for the production process; cooking the ingredients to produce methyl amphetamine); or

- have different interests in, or obtain different benefits from, the serious criminal activity (for example: of the persons comprising a group that engages in serious criminal activity:, one person might obtain the profit from the activity and pay the other persons an amount for engaging in the activity);

- change from time to time (for example, as can be the case with networked online child exploitation forums).

The term 'engage in' serious criminal activity is defined for the purposes of the section to include: organise, plan, facilitate, support, or otherwise conspire to engage in, serious criminal activity; or obtain a material benefit, directly or indirectly, from serious criminal activity.

The definition addresses the interpretation given to the term (and/or concept) of 'group' in *R v Hannan, Hannan, Gills, Murrell & Hannan* [2016] QSC 161. To remove any doubt, the scenario illustrated by that case is intended to be caught by the definition under new section 161O.

New section 161P (Meaning of participant) defines the term 'participant' in a criminal organisation (see new section 161O for meaning of 'criminal organisation'). A person is a *participant*, in a criminal organisation, if:

- the person has been accepted (whether informally or through a process set by the organisation, including, for example, by paying a fee or levy) as a member of the organisation and has not ceased to be a member of the organisation; or

- the person is an 'honorary member' of the organisation (see new section 161N definition); or

- the person is a 'prospective member' of the organisation (see new section 161N definition); or

- the person is an 'office holder' of the organisation (see new section 161N definition); or

- the person identifies him or herself in any way as belonging to the organisation (for example, using a theme-based naming convention or icon to establish a screen name or profile for an online child exploitation forum; or wearing or displaying the patches or insignia a criminal organisation); or

- the person's conduct in relation to the organisation would reasonably lead someone else to consider the person to be a participant in the organisation (for example, doing any of the following for a criminal organisation involved in the production and sale of heroin: sourcing the heroin; or packaging the heroin for sale; or selling the heroin; or laundering the profits from the sale of the heroin; or managing the day-to-day business of the organisation).

New section 161Q (Meaning of serious organised crime circumstance of aggravation) establishes the Serious Organised Crime circumstances of aggravation to apply to a list of prescribed offences, which are set out in new Schedule 1C.

The section provides that it is a circumstance of aggravation for a prescribed offence of which an offender is convicted that, at the time the offence was committed, or at any time during the course of the commission of the offence, the offender:

(a) was a participant in a criminal organisation (see new sections 161O and 161P for definitions); and

(b) knew, or ought reasonably to have known, the offence was being committed—

(i) at the direction of a criminal organisation or a participant in a criminal organisation; or

(ii) in association with one or more persons who were, at the time the offence was committed or at any time during the course of the commission of the offence, participants in a criminal organisation (to remove any doubt, this one or more persons do not need to be participants in the same criminal organisation as the offender; or each other); or

(iii) for the benefit of a criminal organisation. An offence is committed for the benefit of a criminal organisation if the organisation obtains a benefit, directly or indirectly, from the commission of the offence (see new section 161N for definition of *benefit*).

Note: an indictment charging a prescribed offence with the Serious Organised Crime circumstance of aggravation cannot be *presented* without the consent of a Crown Law Officer. That is, the Attorney-General or Director of Public Prosecutions.

The consequences of conviction of a prescribed offence committed with the Serious Organised Crime circumstance of aggravation is provided for under new section 161R. New section 161S dictates the only means by which the punishment imposed under new section 161R can be altered.

Part of the intention underpinning the new Serious Organised Crime circumstance of aggravation with its targeted sentencing regime, is to encourage these particular offenders to cooperate with law enforcement agencies in proceedings or investigations about major criminal offences.

Division 2 Term of imprisonment for particular offenders

New section 161R (Court must impose term of imprisonment) applies to the sentencing of an offender convicted of a 'prescribed offence' (defined under new section 161N) committed with a 'serious organised crime circumstance of aggravation' (defined under new section 161N).

Subsection (2) states that the court must impose on the offender a 'term of imprisonment' (see existing definition under section 4) consisting of the following components:

(a) a *sentence* of *imprisonment* for the prescribed offence imposed under the law apart from this part and without regard to the following (the ***base component***):
(i) the sentence that must be imposed on the offender under paragraph (b);
(ii) the control order that must be made for the offender under section 161V;

(b) (other than if a sentence of life imprisonment is imposed as the base component or the offender is already serving a term of life imprisonment) a sentence of imprisonment (the ***mandatory component***) for the lesser of the following periods:
(i) 7 years; or

(ii) the period of imprisonment provided for under the maximum penalty for the prescribed offence.

For an offender sentenced to life imprisonment as the base component or who is already serving a term of life imprisonment – see sections 181(2A) and (2B); and 181A(3) and (4) of the *Corrective Services Act 20016* (as amended by the Bill).

Subsection (3) provides that the mandatory component:

- must be ordered to be served cumulatively with the base component; and

- despite any other provision of this Act under which another sentence may be ordered, must be ordered to be served wholly in a corrective services facility (‘*despite any other provision of this Act under which another sentence may be ordered’* addresses the interpretation in *Forbes v Jingle* [2014] QDC 204); and

- must not be mitigated or reduced under this Act or another Act or any law.

Subsection (4) provides that if the offender is serving, or has been sentenced to serve, imprisonment for another offence, the mandatory component must be ordered to be served cumulatively with the imprisonment for the other offence.

If the base component does not require the offender to immediately serve a sentence of imprisonment in a corrective services facility, the offender is to immediately begin to serve the mandatory component; and the base component is to have effect, so far as practicable, at the end of the mandatory component.

If the court is sentencing the offender for more than one prescribed offence committed with a serious organised crime circumstance of aggravation, the court must impose the mandatory component for only one of the offences. However, when deciding which prescribed offence to use for imposing the mandatory component, the court must choose the offence that will result in the offender serving the longest period of imprisonment available under this Act or another Act for the offences.

<u>New section 161S</u> (Cooperation with law enforcement agencies) provides the only means by which the sentence imposed upon an offender convicted of a prescribed offence committed with a serious organised crime circumstance of aggravation can be ameliorated or mitigated.

The section provides that, subject to subsections (2) and (3), sections 13A and 13B apply for the sentencing of an offender who is convicted of a prescribed offence committed with a serious organised crime circumstance of aggravation. Section 161S applies, despite section 161R(3) or (4).

Subsection (2) states that, for section 13A, an offender (i.e. as mentioned in section 161S(1)) is taken to have undertaken to cooperate with law enforcement agencies in a proceeding about an offence, including a confiscation proceeding, only if:

(a) the offender has undertaken to cooperate with law enforcement agencies in a proceeding about a *major criminal offence* (which is defined to mean: an indictable offence for which the maximum penalty is at least five years imprisonment); and

(b) the court is satisfied the cooperation will be of significant use in a proceeding about a major criminal offence.

Subsection (3) states that, for section 13B, an offender (i.e. as mentioned in section 161S(1)) is taken to have significantly cooperated with a law enforcement agency in its investigations about an offence or a confiscation proceeding only if:

(a) the offender has significantly cooperated with a law enforcement agency in its investigations about a major criminal offence; and

(b) the court is satisfied the cooperation has been, is or will be of significant use to the law enforcement agency or another law enforcement agency in its investigations about a major criminal offence.

Division 3 Control orders

Subdivision 1 Making of orders

New section 161T (Court may make control order whether or not conviction recorded or other order made) provides that a court may make a control order under this subdivision for an offender whether or not it records a conviction or makes another order for the offender under this Act or another Act.

New section 161U (Conditions) sets out the types of conditions the court may impose in framing a control order.

The court may impose any conditions it considers appropriate to protect the public by preventing, restricting or disrupting the offender's involvement in serious criminal activity; and any conditions the court considers necessary to enforce the order.

Without limiting the types of conditions that may be imposed, a condition may:

- prohibit the offender from associating with a stated person or a person of a stated class, including a person with whom the offender has a personal relationship (if the offender has a personal relationship with the stated person, the court must consider the effect of the condition on the relationship and whether the prohibition should relate only to a particular class of activity or relate to activities generally); or

- prohibit the offender from entering or being in the vicinity of a stated place or a place of a stated class; or

- prohibit the offender from acquiring or possessing a stated thing or a thing of a stated class; or

- restrict the means by which the offender communicates with other persons; or

- require the offender to give a police officer or another stated person stated information by a stated time or at stated intervals (for example, the offender's computer passwords) or to attend before a police officer or another stated person by a stated

time or at stated intervals (for example, attending before the officer in charge of a stated police station at weekly intervals).

The control order must require the offender, within 24 hours after the order takes effect, to deliver to the commissioner's custody at a stated police station anything the offender is prohibited from possessing under the order unless the offender has lawfully disposed of possession of the thing before the end of that period (see also new sections 161ZJ (Initial power to search and seize particular things) and 161ZK (Things seized within the first 24 hours)).

For a control order imposed under new section 161X (i.e. based on a conviction for the offence of habitually consorting) the types of conditions that may be imposed are restricted, in effect, to anti-association conditions and place restriction conditions, and those necessary to enforce the order (i.e. the conditions under subsections (1)(b), (2)(a)(i) or (ii), or (2)(b)).

If the control order requires the person to give stated information, the order must require the information to be given in writing.

Further, the control order may not require the offender to give information (which includes a document) if giving the information:

- would disclose information that is the subject of legal professional privilege;
- would be a contravention of another Act; or
- if the offender is an individual— relates to an offence with which the offender is charged.

Note also new section 161ZH for restrictions on the admissibility in a proceeding of information given under a control order.

The Bill provides for mandatory control orders and discretionary control orders:

- Mandatory control orders

New section 161V (When court must make order) provides for mandatory control orders. That is, a court sentencing an offender for a prescribed offence (as listed under new Schedule 1C) committed with the Serious Organised Crime circumstance of aggravation under section 161Q, must make a control order for the offender. The court retains discretion as to the conditions and duration (subject to the maximum length of up to five years; see new section 161ZB). If section 13A or 13B applies for the sentencing of the offender (i.e. pursuant to new section 161S), the court may, but need not, make a control order for the offender.

- Discretionary control orders

New section 161W (When court may make order – offender who was participant in criminal organisation) provides that a court sentencing an offender for an indictable offence (i.e. *any* indictable offence; this section is not anchored to the prescribed offences under new Schedule

1C, and it does not matter whether the matter proceeded summarily or on indictment) may make a control order for the offender if:

- section 161R does not apply to the sentencing of the offender (i.e. the provision that applies to the sentencing of an offender convicted of a prescribed offence committed with a serious organised crime circumstance of aggravation); and

- the court is satisfied the offender was, at the time the offence was committed or at any time during the course of the commission of the offence, a participant in a criminal organisation (it does not matter whether the offender is a participant in a criminal organisation at the time of conviction and/or sentence); and

- the court considers that making the order is reasonably necessary to protect the public by preventing, restricting or disrupting the offender's involvement in serious criminal activity.

To remove any doubt, the offender's participation in a criminal organisation need not be related to the indictable offence for which the offender is being sentenced. (Note: the consequential amendment to section 15 in relation to the information and sentencing submissions the court may receive for sentencing the offender, inserted by the Bill).

New subsection 161X (When court may make order – offender convicted of habitual consorting) provides that a court sentencing an offender for an offence new section 77B (Habitual consorting) of the Criminal Code may make a control order for the offender if: section 161R does not apply to the sentencing of the offender (i.e. the provision that applies to the sentencing of an offender convicted of a prescribed offence committed with a serious organised crime circumstance of aggravation), and the court considers that making the order is reasonably necessary to protect the public by preventing, restricting or disrupting the offender's involvement in serious criminal activity.

New section 161Y (When court may make order – offender convicted of contravening order) provides that a court sentencing an offender for an offence against section 161ZI (i.e. an offence of contravening of a control order) may make a control order for the offender if the court considers that making the order is reasonably necessary to protect the public by preventing, restricting or disrupting the offender's involvement in serious criminal activity.

All three 'discretionary control orders' may be made on the court's own initiative or on an application by the prosecutor. However, if the prosecutor intends to make an application for a control order under new section 161W, the prosecutor must inform the court as soon as practicable after the offender has been convicted of the indictable offence.

New section 161Z (Control order to be explained) requires the court, before making a control order, to explain (or cause to be explained) to the offender, the purpose and effect of the control order, what may follow if the offender contravenes the control order, and that the control order may be amended or revoked on their application or on the application of a 'Crown prosecutor', a 'senior police officer' or an 'authorised corrective services officer' (the latter three terms are defined). The explanation must be made in language or in a way likely to be readily understood by the offender.

New section 161ZA (Offender subject to existing control order) provides that in making a further control order for an offender subject to an existing control order, the court must have regard to the conditions already imposed on the offender. This is, in part, to ensure the overall impact of the control orders upon the person is not crushing.

New section 161ZB (Duration) sets out the length of a control order. A control order can be for up to five years; or for up to two years if made under new section 161X (i.e. a control order based on a conviction for habitually consorting). The control order takes effect either on the day the order is made or upon the offender's release from custody (depending upon the circumstances as set out in the section). In effect, the time under the control order does not start until the offender is released from actual prison. The duration of a control order may also be extended under section 161ZI (contravention of order).

New section 161ZC (Effect if offender is detained on remand or imprisoned) applies if, while a control order is in force for an offender, the offender is detained in custody on remand or is serving a term of imprisonment. The control order is suspended for the period the offender is detained or imprisoned.

Subdivision 2 Amendment and revocation of orders

New section 161ZD (Application for amendment or revocation) provides the circumstances under which an application to amend or revoke a control order may be made and the process that must be followed.

An amendment or revocation application may be made by: a Crown prosecutor, a senior police officer, an authorised corrective services officer, or the person subject to the control order. The application must be made to the court of equivalent jurisdiction to the court that made the control order; or a court of higher jurisdiction if the person is before the court.

An application to amend or revoke the control order that is being made by the person subject to the control order may only be made if: the person can no longer reasonably comply with the order and the person's inability to comply is because of a material change in the person's circumstances since the order was made (or if previously amended, since the order was last amended).

New section 161ZE (Court may amend or remit application) provides the circumstances under which the court may amend a control order upon application to do so.

The court may amend the control order, upon application of a Crown prosecutor, senior police officer or authorised corrective services officer, only if the court considers the person subject to the order can no longer reasonably comply with the order and it is reasonable in all of the circumstances to amend the order.

The court may amend the control order, upon application of the person subject to the order, only if the court considers the person can no longer reasonably comply with the order; and their inability to comply is because of a material change in their circumstances (since the order was made, or if previously amended, since the order was last amended); and it is reasonable in all of the circumstances to amend the order.

If the application to amend is made to a court of higher jurisdiction than the court that made the control order, the court may, instead of deciding the application, remit the application to the court that made the order (or a court of equivalent jurisdiction to that court).

New section 161ZF (Court may revoke order) provides that a court may, on application, revoke a control order only if the court considers the person subject to the order can no longer reasonably comply with the order; and the person's inability to comply with the order is because of a material change in the person's circumstances since; and it is reasonable in all of the circumstances to revoke the order (the same criteria for revocation applies irrespective of the applicant). The order revoking the control order takes effect when the order is made.

New section 161ZG (Order amending or revoking control order to be given to interested persons) a copy of the amendment or revocation order must be given, by a proper officer of the court, to: the person subject to the control order, the Director of Public Prosecutions or someone authorised to accept the order on the Director's behalf (if the prosecutor who appeared when the control order was made was a Crown prosecutor), the Commissioner of Police or someone authorised to accept the order on the Commissioner's behalf, and the Chief Executive (corrective services). A failure to comply with these requirements does not invalidate the order.

Subdivision 3 Restrictions on use of particular information

New section 161ZH (Restrictions) applies to information (which includes a document) given by a person in compliance with a condition of a control order, or a registered corresponding control order, that requires the person to give stated information.

The information given is not admissible as evidence against the person in a proceeding other than:

a) a proceeding against the person for an offence against section 161ZI (i.e. contravention of a control order or registered corresponding control order); or

b) a proceeding in which the person has adduced the information.

The section abrogates the person's right to claim privilege against self-incrimination to the extent that the information given relates to a contravention of the control order, or registered corresponding control order, under which the person is required to give the information (i.e. to ensure compliance with its conditions); or a proceeding in which the person has themselves adduced the information.

For example, a person may be subject to a control order which has two conditions: that the person not reside within a specified distance of a school and that they provide their residential address to police every month. The person cannot refuse to provide their residential address to police on the basis that to do so would tend to expose them to conviction of an offence (i.e. because to give the information to police will reveal that they are in fact living beside a school). The giving of the address to the police, in compliance with the conditions of the control order, is admissible as evidence against that person in a proceeding for the contravention of the control order. However, this information cannot be used as direct evidence against that person in a proceeding for a contravention of their conditions under Child Protection (Offender Reporting) Act 2004 (CPORA) (i.e. separate to the conditions of the control order, the person may also be subject to requirements under the CPORA).

To remove any doubt, this section does not restrict the derivative use of any information given by a person in compliance with a condition of a control order or registered corresponding control order.

The section does not otherwise remove the person's right to claim privilege against self-incrimination (with the exception of a proceeding in which the person has adduced the information).

Subdivision 4 Enforcement

New section 161ZI (Contravention of order) makes it an indictable offence for a person to contravene a control order or a registered corresponding control order, made for the person. A first offence is a misdemeanour punishable by up to three years imprisonment; and a later offence is a crime punishable by up to five years imprisonment. A later offence means an offence against this section committed after the person is convicted of an earlier offence against this section in relation to the same control order or same registered corresponding control order.
The contravention of the order can happen in or outside Queensland. That is, the provision expressly provides for its extraterritorial application.

It is a defence for the person to prove that the person had a reasonable excuse for contravening the control order or the registered corresponding control order.

It is not a reasonable excuse for the person to not comply with a condition of the order requiring them to give stated information that complying with the condition might tend to incriminate the person or expose the person to penalty (i.e. a contravention of the control order offence). However, see new section 161ZH for the restrictions applying to the use of that information as evidence against the person.

If the contravention relates to a non-association condition, it is irrelevant whether or not the association related to the commission or potential commission of an offence. That is, the association does not need to be in any way related to criminal activity to constitute a contravention of the condition.

If the contravention relates to a non-association condition that has an exception about associating with a person with whom they have a personal relationship with, it is for the person subject to the order to prove that they in fact had a person relationship with the person at the relevant time.

Without limiting the punishment set out under subsection (1) of the provision, if a person contravenes a control order, the court may (instead of making a new control order under new section 161Y) amend the existing control order for the person by:

- extending the order by not more than two years if the control order was made under new section 161X (i.e. a control order imposed upon conviction of habitual consorting) or extending the order by not more than five years, otherwise; or

- imposing any further conditions the court could impose if a further control order were made for the person.

New section 161ZJ (Initial power to search and seize particular things) provides an entry, search and seizure power to police, consistent with the approach under the repealed *Criminal Organisation Act 2009* in this regard. Restrictions are placed on the exercise of this power. The powers are only exercisable in relation to a person subject to a control order that takes effect when it is made or a registered corresponding control order, and must be exercised within the first seven days of the making of the control order or of the registered corresponding control order being given to the person. The police are authorised to enter premises occupied by the person, and search for and seize anything the person is prohibited from possessing under the order.

The provision makes it clear that before entering the premises, the police officer must do, or make a reasonable attempt to do, the following: locate the person, identify herself or himself to the person, tell the person the purpose of the entry and their authorisation and powers, and give the person an opportunity to allow the police officer to enter without using force. The definitions of 'enter' and 'premises' are included in the section.

New section 161ZK (Things seized within the first 24 hours) is consistent with the approach under the repealed *Criminal Organisation Act 2009* in this regard. The section applies if a person possesses a thing the person is prohibited from possessing under a control order that takes effect when the order is made or a registered corresponding control order. It authorises a police officer to seize the thing within that first 24 hour period. The seized thing must be kept in the Commissioner's custody while the order remains in force and returned to the person when the control order stops having effect, if the person is entitled to lawful possession of the thing at that time.

New section 161ZL (Police powers for preventing contravention of control order) applies if a police officer reasonably suspects an offence against section 161ZI (i.e. contravention of a control order or registered corresponding control order) has been committed, is being committed, or is about to be committed.

In such circumstances the police officer may exercise any one or more of the following powers in relation to the person:

(a) if the order prohibits the person from associating with a stated person or a person of a stated class—require the person subject to the order to leave a place where the stated person or person of the stated class is present and not to return to the place within a stated reasonable time of not more than 24 hours;

(b) if the order prohibits the person from entering or being in the vicinity of a stated place or a place of a stated class—require the person subject to the order to leave the stated place or a place of the stated class or its vicinity.

However this requirement does not apply if requiring the person to leave the place may endanger the safety of the person or someone else.

To remove any doubt, a requirement made under this section is taken to be a requirement made under the *Police Powers and Responsibilities Act 2000* (Note: failure to comply with a requirement made under this section is an offence against section 791 of that Act). However, a person does not commit an offence against section 791 of the Police Powers and

Responsibilities Act if the court is not satisfied that the police officer, at the time of giving the direction, had the requisite suspicion.

New section 161ZM (Authorised corrective services officer may give direction) provides that if a control order, or registered corresponding control order, for a person includes a condition requiring the person to comply with a reasonable direction given by an authorised corrective services officer about a stated matter, an authorised corrective services officer may give the person a reasonable direction about the stated matter. In doing so, the authorised corrective services officer is subject to the directions of the court that made the control order (or in the case of a registered corresponding control order, the Supreme Court).

New section 161ZN (Proceeding after order no longer in force) makes it clear that a proceeding for a contravention of a control order, or a registered corresponding control order, may be taken, and the offender may be dealt with, for the contravention even if the order is no longer in force (for example, the alleged contravention might occur close in time to the end date for the control order; or the person might fail to appear at a proceedings relating to the alleged contravention of the control order and not re-appear before the court for some time – these circumstances will not prevent the contravention offence from being dealt with at a later date, according to law).

The Bill makes provision for the contravention offences, which are indictable, to be dealt with summarily or on indictment. The following new sections give effect to this:

- New section 161ZO (Charge must be heard and decided summarily on prosecution election) provides that a charge before a Magistrates Court of an offence against section 161ZI (i.e. contravention of control order offence), the charge must be heard and decided summarily upon the prosecution's election (subject to the circumstances under which the Magistrates Court must abstain from jurisdiction – see new section 161ZQ).

- New section 161ZP (Constitution of Magistrates Court) ensures that a Magistrates Court that summarily deals with a charge under new section 161ZO must be constituted by a Magistrate.

- New section 161ZQ (When Magistrates Court must abstain from jurisdiction) provides that a Magistrates Court must abstain from dealing summarily with a charge if satisfied, at any stage, and after hearing any submissions by the prosecutor and the defence, that because of the nature or seriousness of the offence or any other relevant consideration the defendant, if convicted, may not be adequately punished on summary conviction. In such circumstances, the proceeding for the charge must be conducted as a committal proceeding.

- New section 161ZR (Charge must be heard and decided where defendant arrested or served) provides that without limiting the places at which a charge may be heard summarily under new section 161ZO, the charge may also be heard and decided at a place appointed for holding magistrates courts within the district in which the defendant was arrested on the charge or served with the summons for the charge under the *Justices Act 1886*.

- New section 161ZS (Time for prosecution) if a Magistrates Court hears and decides a charge summarily under new section 161ZO, the Magistrates Court has jurisdiction despite the time that has elapsed from the time when the matter of complaint of the charge arose (that is, there is no time limit on prosecution of the charge).

- New section 161ZT (Maximum penalty for offence dealt with summarily) provides that the maximum penalty that may be imposed on a summary conviction for an offence against section 161ZI (i.e. contravention of a control order or registered corresponding control order) is 3 years imprisonment. This does not limit section 161Y (i.e. the ability of the sentencing court to make a control order on an offender convicted of the contravention offence). However, a person cannot be punished more than if the offence had been dealt with on indictment.

- New section 161ZU (Appeals against decision to decide charge summarily) applies if a person is summarily convicted or sentenced under section 161ZO. The grounds on which the person may appeal include that the Magistrates Court erred by deciding the conviction or sentence summarily. The grounds on which the Attorney-General may appeal against sentence include that the Magistrates Court erred by deciding the sentence summarily. On an appeal against a sentence relying on a ground that the Magistrates Court erred by proceeding summarily, the court deciding the appeal may, if it decides to vary the sentence, impose the sentence the court considers appropriate up to the maximum sentence that could have been imposed if the matter had been dealt with on indictment.

Subdivision 5 Corresponding control orders

The provisions to enable the recognition of corresponding control orders (i.e. an order made under a law of another State which has the same or similar effect as a Queensland made control order) largely replicates the approach taken under Part 8 of the repealed *Criminal Organisation Act 2009* (repealed under the Bill).

New section 161ZV (Definitions for subdivision) provides definitions of 'court' (which is a reference to the Supreme Court), 'registrar' and 'respondent'.

New section 161ZW (Regulation may prescribe orders) provides that a regulation may prescribe an order to be a corresponding control order if the order: is made under a law of another State and the order has the same or similar effect as a control order (which is a reference to a Queensland made control order).

New section 161ZX (Application for registration of order) allows the Commissioner of Police to apply to the registrar of the Supreme Court for the registration of a corresponding control order. The application must be accompanied by certain documents and must include whether the Commissioner believes it is necessary for the corresponding control order to be adapted or modified for its effective operation in Queensland and if so, the details of such.

New section 161ZY (Registration of order) applies if the registrar is satisfied that the corresponding control order is in force and it was served (or was taken to have been served) on the person for whom it was made under the law of the State in which the order was made. If so, the registrar must register the corresponding control order, whether or not the respondent is given notice of the application. The corresponding control order is registered

for the period during which the order, as originally made, is in force. A regulation may prescribe the way in which a registrar is to register such an order, and for the keeping of a register and access to it.

New section 161ZZ (Referral of order to court for adaptation or modification) applies if the application to register a corresponding control order states an adaptation or modification is necessary or the registrar believes it is necessary. The registrar must refer the corresponding control order to the Supreme Court for adaptation or modification. The provision sets out the obligations of the Commissioner in this regard. The application may be heard in the respondent's absence if the court is satisfied the respondent has been given the requisite documents. That is, the respondent may appear at the application for adaptation or modification, but they do not have to; and if they do not, the application can nevertheless continue.

The Supreme Court is empowered to amend the corresponding control order for the purposes of its registration by adapting or modifying it in a way the court considers necessary or desirable for its effective operation in Queensland. The provision sets out matters the court must consider in this regard. The registrar must register the corresponding control order as amended by the court.

New section 161ZZA (Action by the registrar and commissioner after registration of order) provides that within two business days after registering a corresponding control order, the registrar must give the Commissioner a certificate of the registration. The Commissioner must, as soon as practicable after receiving a copy of the registered corresponding control order, give the respondent a copy of it. Failure by the Commissioner to meet this obligation does not affect validity of the registration; however the registered corresponding control order has no effect on the respondent until the respondent is given a copy of the registered order.

New section 161ZZB (Effect of amended order if respondent not notified of amendment) provides that if a registered corresponding control order is amended, the amendment has no effect until the respondent is notified of the amendment and until that time, the order is enforceable against them as if it had not been amended.

New section 161ZZC (Amendment or cancellation of registered order) provides that the court, on application, may amend or cancel a registered corresponding control order. If the registration of a corresponding control order (or an amended corresponding control order) is cancelled, the order stops having effect in Queensland.

New section 161ZZD (Operation of order not affected) provides that section 161ZZA(4) and 161ZZB(2) do not affect any operation that a corresponding control order would, apart from this part, have in Queensland.

Subdivision 6 Miscellaneous

New section 161ZZE (Order not affected by appeal) provides that the starting of an appeal against the making of a control order for a person does not affect the order.

Clause 280 amends section 171 (Review – periodic) consequential to the insertion of new Part 9D under the Bill.

Clause 281 amends section 187 (Disqualification from holding Queensland driver licence) to repeal subsection (2) which gave the section mandatory application to a person convicted of a prescribed offence. The clause also inserts a new subsection (2) to state that subsection (1) applies regardless of whether or not a conviction is recorded, and makes a consequential amendment to repeal subsection (4).

Clause 282 inserts new Division 16 under existing Part 14 to provide for the transitional application of the Bill.

Subdivision 1 provides the transitional arrangements for the repeal of the *Vicious Lawless Association Disestablishment Act 2013* (VLAD Act), to make provision for the prisoners already sentenced under the Act.

New section 243 (Definitions for subdivision) provides the definitions for the subdivision. 'Commencement' is a reference to the commencement of the Bill, part 35 (Repeals); and 'repealed VLAD Act' means the VLAD Act repealed by the Bill.

New section 244 (Application of subdivision) provides that subdivision 1 applies if a court has in, or in connection with a criminal proceeding, including a proceeding on appeal, sentenced a person as a vicious lawless associate for a declared offence under the repealed VLAD Act, section 7.

New section 245 (Application to Supreme Court to reopen sentencing proceedings) sets out the application process whereby the person may apply to the Supreme Court to reopen the proceedings to the extent only of the 'further sentence' imposed upon them (under the repealed VLAD Act – i.e. a further sentence of 15 years imprisonment and/or a further sentence of 10 years for being an office bearer, to be served wholly in a corrective services facility). The person has three months from commencement to make their application. However, the Supreme Court may at any time extend the time to apply. Within 10 business days after the making of the application to reopen the 'further sentence' component of the sentence, the court must give directions to enable the application to be heard.

New section 246 (Supreme Court may reopen sentencing proceedings) sets out the orders that the Supreme Court must make on a successful application by the person to reopen their sentence in accordance with new section 245. In effect, it is only the 'further sentence' component of the sentence that can be altered; and the person is to be resentenced in that regard to the a further sentence as if the law applicable to that were the law under new section 161R(2)(b) (that is, the mandatory component of the new sentencing regime applying to the Serious Organised Crime circumstance of aggravation under new section 161Q, inserted by the Bill); or as if the law applicable to the further sentence were the *Corrective Services Act 2006* (i.e. if the person sentenced under the repealed VLAD Act was sentenced to life imprisonment or an indefinite sentence).

The section also sets out the material to which the Court may have regard. The section also provides that, if the person did not make their application to reopen under this subdivision within the three months post commencement, the Court may allow the reopening at the point in time when their original sentence proceeding is being reopened on account that they have failed to honor their undertaken to cooperate as given in accordance with section 13A (i.e. see existing section 188(4) of the Penalties and Sentences Act). Therefore, a failure to make the

application to reopen immediately following commencement of this Bill will not prevent the person from making such application at a later point in time.

New section 247 (Appeals) sets out the person's appeal rights.

New section 248 (No cause of action) makes it clear that no cause of action may be started or continued against the State in relation to any period of imprisonment the person may have actually served that is more than the period of imprisonment the person would have served if originally sentenced to the further sentence imposed under new section 246.

Subdivision 2 (Other transitional provisions) provides the transitional application of particular amendments made to the Penalties and Sentences Act under the Bill.

New section 249 (Making of control order for offender convicted of committing indictable offence before commencement) provides that new section 161W applies to the sentencing of an offender convicted of an indictable offence after the commencement whether the offence was committed before or after the commencement. Accordingly, section 161W applies with partial retrospective effect.

New section 250 provides the transitional arrangements for the amended section 187 (Disqualification from holding Queensland driver licence). The amended section 187 will apply to the sentencing of an offender for an offence whether or not the proceeding for the offence was started before or after commencement of the Bill.

New section 251 (Application of section 161Q to particular prescribed offences) provides that in the case of an offender convicted of a 'prescribed offence' (see definition under new section 161N) against one or more of the sections identified (which are, or are potentially, continuing offences) and it was committed partly, but not wholly after commencement of the Bill, the new Serious Organised Crime circumstance of aggravation applies so long as the person was a participant in a criminal organisation and knew or ought reasonably to have known a matter mentioned in new section 161Q(1)(b), at a time after the commencement.

Clause 283 amends Schedule 1 (Serious violent offences) to re-insert the offence of trafficking in a dangerous drug (section 5 of the *Drugs Misuse Act 1986*) if the offender is sentenced on or after the commencement of the amendment, regardless of whether the offence or conviction happened before, on or after the commencement.

Clause 284 inserts new Schedule 1C (Prescribed offences) which sets out the list of offences to which the new Serious Organised Crime circumstance of aggravation, under new Part 9D as inserted by the Bill, applies to. The list includes offences under the Criminal Code, the *Criminal Proceeds Confiscation Act 2002*, the *Drugs Misuse Act 1986*, and the *Weapons Act 1990*. The types of offences predominantly relate to: violence, sexual offending and child exploitation, drugs, prostitution and weapons, and offending that may undermine the administration of justice

Part 20 Amendment of Penalties and Sentences Regulation 2012

Clause 285 states that this Part amends the *Penalties and Sentences Regulation 2012*.

Clause 286 inserts new section 9A (Corresponding control orders – Act s161ZW) to provide that the following orders are prescribed, for the purposes of new section 161ZW, to be a corresponding control order:

- serious crime prevention order under the Crimes (Serious Crime Prevention Orders) Act 2016 (NSW);

- control order under the Serious Crime Control Act (NT), if the order is made on the ground mentioned in section 23(1)(d) of that Act;

- control order under the Serious and Organised Crime (Control) Act 2008 (SA), if the court is satisfied of the matter mentioned in section 22(2)(c) of that Act.

For each of these orders made under the law of another State, the order is imposed against the person and is based on their antecedents and their actual (or alleged) behaviour or conduct, as distinct from a control order that is made on the basis of a declaration that an entire organisation, of which the person may be a member of or a participant in, is criminal (as was the approach under the repealed Criminal Organisation Act 2009 (Qld)).

Part 21 Amendment of Police Powers and Responsibilities Act 2000

Division 1 Preliminary

Clause 287 states that this Part amends the *Police Powers and Responsibilities Act 2000.*

Division 2 Amendments commencing on assent

Clause 288 amends section 30 (Prescribed circumstances for searching persons without warrant) to provide two new prescribed circumstance for searching a person without warrant. Section 30(g) provides the new prescribed circumstance where the person has committed, is committing, or is about to commit an offence against section 161ZI (Contravention of order) of the *Penalties and Sentences Act 1992*. Section 30(h) provides the new prescribed circumstance where the person has committed, or is committing, an offence against section 10C (Wearing or carrying prohibited item in a public place) of the *Summary Offences Act* 2005.

Clause 289 amends section 31 (Searching vehicles without warrant) by omitting section 32(b) and inserting section 32(1)(b) due to renumbering.

Clause 290 amends section 32 (Prescribed circumstances for searching vehicle without warrant) to provide two new prescribed circumstance for searching a vehicle without warrant. Section 32(1)(n) provides the new prescribed circumstance where there may be evidence of the commission of an offence against section 161ZI (Contravention of order) of the *Penalties and Sentences Act 1992*. New section 32(2) provides the new prescribed circumstance where the driver or passenger has committed, or is committing, an offence against section 10C (Wearing or carrying prohibited item in a public place) of the Summary Offences Act.

Clause 291 amends the Chapter 4A heading by removing ‘particular’ from the title.

Clause 292 omits the definition of 'criminal organisation offence' in section 123B (Meaning of criminal organisation offence) subsection (1) and replaces it with an amended definition that removes references to sections 60C and 72 offences of the Criminal Code and section 754 of the *Police Powers and Responsibilities Act 2000*. Reference to sections 60A and section 60B of the Criminal Code remain. Section 123B(2) is also amended to limit the application of the new criminal organisation offence where the vehicle is used by the offender in connection with the commission of the offence, including, for example, using the vehicle during the commission of the offence.

Clause 293 amends section 123G (Impounding motor vehicles for criminal organisation offence) to amend the note in provision to remove reference to the omitted sections 123B(1)(b) and (c).

Clause 294 amends section 123X(9) (Decision on application for release of impounded motor vehicle on basis of severe hardship) by replacing the word *and* with *either* to improve readability. Subsection (9)(c) omitted as section 123B(1)(b) and (c) have been removed.

Clause 295 amends section 123Z(7) (Decision on application for release of impounded motor vehicle on basis criminal organisation offence happened without owner's consent) by replacing the word *and* with *either* to improve readability.

Clause 296 amends section 123ZB(7) (Decision on application for release of impounded motor vehicle on basis that offender not a participant in a criminal organisation) by replacing the word *and* with *either* to improve readability. Subsection (7)(c) omitted as section 123B(1)(b) and (c) have been removed.

Clause 297 omits section 123ZS(2)(c) (State's liability to pay costs of impounding) as section 123B(1)(b) and (c) have been removed.

Clause 298 omits section 123ZX(1)(c) (Release of motor vehicle if driver found not guilty etc.) as section 123B(1)(b) and (c) have been removed.

Clause 299 omits section 123ZZC(1)(a) (Compensation for disposal of motor vehicle if driver found not guilty etc.) by replacing the word *and* with *either* to improve readability. Subsection (1)(a)(iii) is omitted as section 123B(1)(b) and (c) have been removed.

Clause 300 amends section 150AA (Definitions) by replacing the definition of 'criminal organisation control order property' with a new definition of 'control order property' as the *Criminal Organisation Act 2009* has been repealed.

Section 150AA is also amended to include definitions for the terms 'access information', 'employee', 'issuer', 'relevant evidence', 'specified person', 'storage device' and 'stored'. The terms are used in new sections inserted by the Bill that provide for a police officer to apply to a court for an order in a search warrant.

Clause 301 amends section 150 (Search warrant application). This section provides that a police officer may apply for a search warrant and how the search warrant is to be made.

Section 150(1)(d) is amended to remove reference to criminal organisation control order property and replaces it with control order property as a result of the *Criminal Organisation Act 2009* being repealed. Part 9D, Division 3 of the *Penalties and Sentences Act 1992* provides for control orders to be issued.

Section 150(3)(d) is omitted and replaced with a reference to control orders as a result of the *Criminal Organisation Act 2009* being repealed.

Section 150(5)(b)(i) to (ii) is renumber as section 150(5)(b)(i) to (iii).

Clause 302 amends section 154 (Order in search warrant about information necessary to access information stored electronically) to provide that a magistrate or judge (the issuer) may include an order in a search warrant requiring a specified person to give 'access information' (such as passwords or other like information) to a police officer to allow the officer to, in addition to the current power to gain access and examine or copy information on a storage device, convert information stored on a storage device. The clause also provides that an order can apply to a specified person even if the storage device has been removed from the specified person's place. In this instance, the amendment provides that the order must state the time and place where the information or assistance must be provided and any conditions that apply to the person.

Clause 303 inserts a new section 154A (Order for access information after storage device has been seized) and section 154B (Compliance with order about information necessary to access information stored electronically). The new section 154A provides that if a search warrant did not contain an order requiring a person to provide access information or if a search warrant did contain an order and further access information is required to gain access after a storage device has been seized, an authorised officer may make an application, to a judicial officer of the same jurisdiction that issued the original warrant, for a new or additional order. An order under this section must state the time and place where the information or assistance must be provided and any conditions that apply to the person can only be made if the magistrate or judge is satisfied there are reasonable grounds for suspecting there is information on the storage device that may be relevant evidence. The order must also state that if a person fails, without reasonable excuse, to comply with the order they may be dealt with under new section 205A (Contravening order about information necessary to access information stored electronically) of the Criminal Code (inserted by the Bill). New section 154B provides that a person will not be excused from complying with an order made under sections 154 or 154A on the ground that compliance would tend to incriminate the person or make them liable to a penalty.

Clause 304 amends section 156 (What search warrant must state).

Subclause (1) amends section 156(1)(b)(iv) to insert the words 'or immobilise' for consistency with the balance of the subsection.

Subclause (2) provides that section 156(1)(b)(v) is omitted and replaced with a reference to control order property as a result of the *Criminal Organisation Act 2009* being repealed.

Subclause (3) provides that the search warrant must state that if a person fails, without reasonable excuse, to comply with an order made under section 153 (Order in search warrant about documents) or 154(1) or (2) (Order in search warrant about information necessary to

access information stored electronically) they may be dealt with under new section 205A (Contravening order about information necessary to access information stored electronically) of the Criminal Code (inserted by the Bill).

Clause 305 amends section 180 (Production notices) to provide that, in addition to a magistrate, a police officer may apply to a justice for the issue of a production notice. The section is also amended to provide that, in addition to a magistrate, a justice may refuse the application until the police officer gives all the information the justice or magistrate requires.

Clause 306 amends section 181 (Issue of production notice) consequential to the amendment to section 180.

Clause 307 amends section 754(2) (Offence for driver of motor vehicle to fail to stop motor vehicle) by removing the minimum penalty where the driver is a participant in a criminal organisation who fails to stop the vehicle for police.

Clause 308 amends Schedule 6 (Dictionary) by deleting the definitions for 'criminal organisation' and 'participant' and replacing them with new definitions.

Schedule 6 is also amended to insert the terms 'access information', 'employee', 'issuer', 'relevant evidence', 'specified person', 'storage device', 'stored' and 'warrant evidence or property' and provide reference that the terms are defined in the new section 150AA (Definitions) or section 150 (Search warrant application).

Division 3 Amendments commencing 3 months after assent

Clause 309 omits section 29(1A) (Searching persons without warrant) three months after assent of the Bill. Section 29(1A) provides that a police officer who reasonably suspects a person is a participant of a criminal organisation may, without warrant, stop, detain and search the person and anything in the persons possession for anything that may provide evidence of the commission of an offence.

Clause 310 amends section 30 (Prescribed circumstances for searching persons without warrant) to insert new prescribed circumstances for searching a person without warrant.

Clause 311 amends section 32 (Prescribed circumstances for searching vehicle without warrant) to provide a new prescribed circumstance for searching a vehicle without warrant.

Clause 312 omits section 40(2A) to (2C) (Person may be required to state name and address) three months after assent of the Bill. Section 40(2A) to (2C) provides that a participant of a criminal organisation or a person at a prescribed place may be detained by a police officer for a reasonable time to confirm correctness of their stated name and address and where necessary take the identifying particulars of the person to confirm the correctness.

Clause 313 omits section 41(ba) (Prescribed circumstances for requiring name and address) three months after assent of the Bill. Section 41(ba) provides that it is a prescribed circumstance for a police officer to require a participant of a criminal organisation, or persons at a prescribed place or event, to state their name and address. Subclause (2) and (3) are technical drafting amendments. Subclause (4) provides a new prescribed circumstance for requiring name and address when a police officer is about to give, is giving, or has given a

person a public safety order, a restricted premises order or a fortification removal order. Additionally, it is a prescribed circumstance when a police officer reasonably suspects a person has consorted, is consorting, or is likely to consort with 1 or more recognised offenders.

Clause 314 provides for a new section 41A (Power to require identifying particulars of person for official warning for consorting) for a police officer to require the identifying particulars for an official warning for consorting where the officer reasonably suspects a person has consorted, is consorting, or is likely to consort with 1 or more recognised offenders, and the officer has required the person to give evidence of the correctness of the person's stated name and address and the person cannot provide evidence of correctness when the requirement is made or at another convenient location.

Clause 315 provides for a new section 43B (Power to require date of birth of person for official warning for consorting) for a police officer to require the date of birth of a person the officer reasonably suspects has consorted, is consorting, or is likely to consort with 1 or more recognised offenders. Additionally, the officer may require the person to give evidence of the correctness of the stated date of birth if, in the circumstances, where it would be reasonable to expect the person to be in possession of evidence of correctness of the stated date of birth, or to be otherwise able to give the evidence.

Section 43B(2) provides that the police officer may require the person to allow the officer to take or photograph all or any of the person's identifying particulars for the purpose of establishing the name, address and date of birth of the person. Section 43B(3) provides that the identifying particulars must be destroyed, in the presence of a justice, as soon as practicable after establishing the name, address and date of birth of the person. Section 43B(4) provides that the person does not commit an offence against section 791(Offence to contravene direction or requirement of police officer) if the person was required to do something under subsection (2) and the court is not satisfied that the police officer at the time of making the requirement had the power under subsection (1) to make the requirement.

Clause 316 inserts a new Chapter 2, Part 6A dealing with the prevention of criminal consorting. Part 6A provides for the new sections 53BAA to 53BAE.

The new section 53BAA (Definitions for part) provides definitions for 'consort', 'offence of habitually consorting', 'official warning' and 'recognised offender'.

The new section 53BAB (Part does not apply to child) provides that the consorting offence does not apply to children.

The new section 53BAC (Police powers for giving official warning for consorting) provides a police officer with the power to give a person an official warning for consorting where the officer reasonably suspects a person has consorted, is consorting, or is likely to consort with one or recognised offenders.

Section 53BAC(2) provides that in such instances, the officer may stop the person and require the person to remain at the place where the person is stopped for the time reasonably necessary for the officer to confirm or deny the officer's suspicion, give the person an official warning for consorting, and if the warning is given orally to confirm the official warning in writing in accordance with subsection (5).

Section 53BAC(3) provides that before giving an official warning under subsection 2(b), the officer must consider whether it is appropriate to give the warning having regard to the object of disrupting and preventing criminal activity by deterring recognised offenders from establishing, maintaining or expanding criminal networks.

Section 53BAC(4) provides that if an official warning for consorting is given in writing, the warning must be in the approved form.

Section 53BAC(5) provides that where an official warning for consorting is given orally, the officer must, within 72 hours after giving the warning orally, confirm it by giving it in the approved form to the person in the prescribed way.

Section 53BAC(6) provides that unless the contrary is proved, an approved form given by post is taken to have been received by the person to whom the form was addressed when the form would have been delivered in the ordinary course of post. Additionally, an approved form given by electronic means is taken to have been received by the person the day the electronic message was sent to the electronic address nominated by the person.

Section 53BAC(7) provides that if practicable, the giving of an official warning under subsection (2)(b) must be electronically recorded.

Section 53BAC(8) provides that an official warning for consorting may be given to the person in relation to a recognised offender before, during or after the person has consorted with the recognised offender. Additionally, a failure to comply with subsection (3) does not affect the validity of an official warning for consorting.

Section 53BAC(9) provides for definitions of 'criminal activity', 'electronic address', 'electronic means', 'prescribed way', 'recognised offender' and 'SMS message'.

Section 53BAD(1) (Effect of official warning for consorting) provides that an official warning for consorting in relation to a recognised offender has effect until the stated person stops being a recognised offender. Section 53BAD(2) provides that if an official warning for consorting is given orally, and the warning is not confirmed under section 53BAC(5) with giving of an approved form, the official warning stops having effect 72 hours after it is given. Section 53BAD(3) provides that a person does not commit an offence against section 791 in relation to contravening a direction or requirement of a police officer if the person was required to do something under section 53BAC(2) and the court is not satisfied at the time of making the requirement, the officer had the suspicion mentioned in section 53BAC(1).

Section 53BAE(1) and (2) (Prevention of consorting with recognised offender) provide that if a police officer has given a person at a place an official warning for consorting at the place and the police officer reasonably suspects the person is consorting at the place with a with a recognised offender stated in the warning, the officer may require the person to leave the place and not return or be within the place within a stated reasonable time of not more than 24 hours. Section 53BAE(3) provides that subsection (2) does not apply if requiring the person to leave the place may endanger the safety of the person or somebody else. Section 53BAE(4) provides that a person does not commit an offence against section 791 in relation to contravening a direction or requirement of a police officer if the person was required to

leave the place under subsection (2) and the court is not satisfied the police officer at the time of making the requirement, had the power under subsection (1) to make the requirement.

Clause 317 amends section 60(3) (Stopping vehicles for prescribed purposes) by inserting four new prescribed purposes to enable a police officer to require the person in control of a vehicle to stop it. Subsection (3)(j) provides for the prescribed purpose of giving the person a public safety order, restricted premises order, or a fortification order under the *Peace and Good Behaviour Act 1982*. Subsection (3)(k) provides for the prescribed purpose to give the person, under section 53BAC, an official warning for consorting.

Clause 318 repeals Chapter 4A (Motor vehicle forfeiture for criminal organisation offences).

Clause 319 amends section 150 (Search warrant application) to insert a new subsection (1)(e) that provides that a senior police officer can make a search warrant application if a senior police officer reasonably believes one or more disorderly activities have taken place and are likely to take place again, and to find prohibited items at the place. Subclause (2) amends section 150(3) to insert subsection (e) to include a prohibited item. Subclause (3) amends section 150(5)(b) to insert a new subsection (ia) to provide that an application for a search warrant must include information required under the Responsibilities Code about any search warrant issued within the previous year in relation to an application relating to premises at which a senior police officer reasonably believes 1 or more disorderly activities have taken place and are likely to take place again.

Clause 320 amends section 151 (Issue of search warrant) that deals with the issue of search warrants. Section 151 is omitted and replaced with a new section that provides for the additional grounds for believing that prohibited items mentioned in section 150(1)(e) are at the place, or likely to be taken to the place within the next 72 hours.

Clause 321 amends section 156 (What search warrant must state) to insert a new subsection (1)(b)(vi) to provide that a search warrant must state (in addition to the requirements of section 156(1)(b), if the warrant is related to premises at which a senior police officer reasonably believes 1 or more disorderly activities have taken place and are likely to take place again – brief details of the disorderly activities.

Clause 322 amends section 686 (Application of pt 3). Section 686(2)(a) is amended to remove reference to Chapter 4A as a consequence of its repeal. New subsections (2)(h) to (j) are inserted providing that Part 3 does not apply to prohibited items seized under section 49 of the *Peace and Good Behaviour Act 1982*, or section 150(1)(e) of the *Police Powers and Responsibilities Act 2000*, or fortification removed under section 65 of the *Peace and Good Behaviour Act 1982.*

Clause 323 inserts a new section 740(1)(c) and (d) to provide that the public interest monitor may monitor the giving of official warnings for consorting and the making of public safety orders by commissioned officers under the *Peace and Good Behaviour Act 1982*.

Clause 324 inserts a new section 742(4) (Monitor's functions) to provide that the public interest monitor's functions include to gather statistical information about the use and effectiveness of official warnings for consorting, and public safety orders made by commissioned officers under the *Peace and Good Behaviour Act 1982*.

Clause 325 inserts a new section 743(3A) and (3B) (Monitor's annual report) that provides that the public interest monitors annual report must include details of official warnings for consorting and public safety orders made by commissioned officers under the *Peace and Good Behaviour Act 1982* and provide the responsible Minister with a copy of the report.

Clause 326 amends Schedule 2 (Relevant offences for controlled operations and surveillance device warrants) section 4 to include the new offence of section 77B (Habitually consorting with recognised offenders) of the Criminal Code as a relevant offence for controlled operations and surveillance device warrants.

Clause 327 amends Schedule 6 (Dictionary) three months after assent of the Bill by omitting the definition of 'criminal organisation' and inserting new definitions of 'consort', 'criminal organisation', 'disorderly activity, 'fortification removal order', 'offence of habitually consorting', 'official warning, 'prohibited item', 'public safety order', 'recognised offender', 'restricted premises order', stop and desist notice' and 'additional enforcement acts'.

Part 22 Amendment of Police Powers and Responsibilities Regulation 2012

Clause 328 states that this Part amends the *Police Powers and Responsibilities Regulation 2012.*

Clause 329 amends Schedule 9 (Responsibilities code). Schedule 9, section 48(b) and (da) are amended to include a reference to a disorderly activity that must be included in the register of enforcement acts in relation to search warrants.

Schedule 9 is amended by inserting new sections 52A to 52G that provide for additional information to be included in the enforcement acts register in relation to consorting, public safety orders, restricted premises orders, fortification removal orders and stop and desist notices.

Part 23 Amendment of Police Service Administration Act 1990

Clause 330 states that this Part amends the *Police Service Administration Act 1990.*

Clause 331 amends Part 10, Division 1 by omitting Subdivision 1A dealing with the disclosure of criminal histories relating to criminal organisations. Division 1A contains sections 110.2AAA to 10.2AAD.

Clause 332 amends the heading for Part 10, Division 1, Subdivision 2, by removing the words 'Other criminal', as subdivision 1A has been deleted.

Clause 333 amends section 10.2E (Relationship to other laws) be removing reference to subdivision 1A as it has been deleted.

Part 24 Amendment of Racing Act 2002

Clause 334 states that this Part amends the *Racing Act 2002.*

Clause 335 amends section 148 (Definitions for div 1) of the *Racing Act 2002* which contains definitions for Chapter 5, Part 1, Division 1 (Offences relating to administration of Act). The amendments to the definitions are consistent with the removal of provisions preventing a person identified by the police commissioner as being a participant in a criminal organisation, or an unsuitable corporation, from obtaining an eligibility certificate. These provisions were previously contained in the *Racing Act 2002* and similar provisions are included in the *Racing Integrity Act 2016*.

The clause inserts a definition of 'repealed section'. The new definition supports the ongoing confidentiality of criminal intelligence provided by the police commissioner under former provisions of the *Racing Act 2002*, which required the police commissioner to give the gaming executive information about whether a person was an identified participant in a criminal organisation or an unsuitable corporation.

The clause also amends the definition of 'confidential information' so that information previously provided by the police commissioner that a person is an identified participant in a criminal organisation, or an unsuitable corporation, continues to be treated confidentially under section 149 of the *Racing Act 2002*.

Clause 336 amends section 149 (Offence to disclose confidential information or copy background document). In general terms, section 149(2) prohibits a person from disclosing confidential information about a person (or a background document relating to a person) without a reasonable excuse. Section 149(3) sets out a number of reasonable excuses for the purposes of the section, including that the person subject to the information consents to its disclosure (section 149(3)(a)) and that the disclosure is of a statistical nature that could not be reasonably expected to result in the identification of the person to whom the information relates (section 149(3)(d)).

However, section 149(4) provides that section 149, subsections (3)(a) and (d) do not apply where the confidential information relates to whether the person is an identified participant in a criminal organisation or an unsuitable corporation. The amendment to section 149(4) changes the grammatical tense of the provision to ensure that confidential information previously provided by the police commissioner that a person is an identified participant in a criminal organisation, or an unsuitable corporation, is not subject to the list of reasonable excuses for disclosure of confidential information in section 149, subsections (3)(a) and (d).

Clause 337 omits the terms 'criminal organisation', 'identified participant' and 'unsuitable corporation' from Schedule 1 (Dictionary) as definitions for these terms are not required.

Part 25 Amendment of Racing Integrity Act 2016

Clause 338 states that this Part amends the *Racing Integrity Act 2016.*

Clause 339 amends section 81 (Suitability of applicants for racing bookmaker's licence). The clause omits the legislative note for the provision to reflect the removal of the provisions preventing a person identified by the police commissioner as a participant in a criminal organisation obtaining a licence or certificate under the Act.

Clause 340 amends section 83 (Other matters about suitability). Section 83 provides that the suitability requirements for an applicant for a bookmaker's licence (section 81) and business

associates or executive associates of the applicant (section 82) do not limit the matters the commission may have regard to when deciding matters to which sections 81 and 82 apply. The clause inserts a new provision to make it clear that the commission may not have regard to criminal intelligence in deciding matters to which sections 81 and 82 relate.

Clause 341 omits section 86 (Conditions for granting application). In general terms, section 86(1) provides that the commission may only grant an application if satisfied that the applicant is a suitable person to hold a licence and each business associate or executive associate of the licensee is a suitable person to be associated with the applicant. Subsection (2) provided that an applicant was not a suitable person if they were an identified participant in a criminal organisation or an unsuitable corporation. Also subsection (2) precluded an applicant from being a suitable person if a business associate or executive associate of the applicant was identified as participant in a criminal organisation, or, if the associate was a corporation, an unsuitable corporation. The provision is omitted as licensing decisions are no longer to be based on identified participant notifications.

Clause 342 omits section 88 (Information about whether persons are identified participants in criminal organisations). The provision is redundant, as the commission is not permitted to consider advice about whether a person is an identified participant when deciding an application for a licence.

Clause 343 amends section 89 (Criminal history reports for investigations) to ensure that criminal history reports include whether the person is, or has been, the subject of a control order or registered corresponding control order. The clause also provides that where a person is subject to a control order or registered corresponding control order, the report must state the details of the order or be accompanied by a copy of the order.

Clause 344 amends section 91 (Decision of application) to omit subsection (3). Subsection (3) provided that the *Acts Interpretation Act 1954*, section 27B, did not apply to the information notice for a decision to refuse to grant an application to the extent to which the decision was the result of advice that a person is an identified participant in a criminal organisation. Section 27B of the *Acts Interpretation Act 1954* requires a QCAT information notice to set out findings on material questions of fact and refer to the evidence or other material on which those findings were based. Subsection (3) is redundant because the commission may no longer rely on identified participant advice to decide an application. Accordingly, there is no longer a need to protect the confidentiality of this advice from being included in an information notice about a decision of the commission.

Clause 345 amends section 96 (Investigations into suitability of licence holder). Section 96 permits the commission to make investigations into a licence holder's suitability to hold, or to continue to hold, a racing bookmaker's licence. The clause omits subsections (3) to (5), which permitted the commission to obtain advice from the police commissioner about whether the licence holder was an identified participant in a criminal organisation, or whether a business associate or executive associate was an identified participant or, if applicable, an unsuitable corporation. Subsections (3) to (5) are redundant as the commission is no longer permitted to consider identified participant advice to determine whether a person is a suitable person to hold a bookmaker's licence. This clause also removes a reference to, the now repealed, subsection (3) from subsection (2).

Clause 346 amends section 97 (Investigation into suitability of associate of licence holder). Section 97 permits the commission to make investigations into a business associate or an executive associate of a racing bookmaker's licence holder to determine whether those persons continue to be appropriate persons to be associated with the licence holder. The clause omits subsections (3) to (5), which permitted the commission to obtain advice from the police commissioner about whether a business associate or executive associate is an identified participant in a criminal organisation or, if applicable, an unsuitable corporation. Subsections (3) to (5) are redundant as the commission is no longer permitted to consider identified participant advice to determine whether a person is a suitable person to be a licence holder's business or executive associate. The clause also removes a reference to, the now repealed, subsection (3) from subsection (2).

Clause 347 amends section 98 (Criminal history report for investigation) to ensure that criminal history reports include whether the person is, or has been, the subject of a control order or registered corresponding control order. The clause also provides that where a person is subject to a control order or registered corresponding control order, the report must state the details of the order or be accompanied by a copy of the order.

Clause 348 inserts new section 98A (Exchange of information). New section 98A enables the commission to enter into an information-sharing arrangement with the police commissioner, a chief executive of another government department, a local government, or a person prescribed by regulation. Section 98A facilitates the sharing of any information between the commission and a relevant agency that may assist in the exercise of the functions of the commission under the Act, or the functions of the relevant agency.

The new section 98A also includes that the commission may use criminal intelligence given to the commission by the police commissioner under an information-sharing arrangement only for monitoring compliance with the Act.

Clause 349 amends section 101 (Grounds for cancellation). Section 101 sets out the grounds for cancelling a racing bookmaker's licence. The clause omits subsection (1)(f), which provided that it was a ground to cancel a licensee's licence if the licensee had a business associate or executive associate who was an identified participant in a criminal organisation or an associated corporation is a criminal organisation. Subsection (1)(f) is redundant, as the commission is now unable to cancel a licence based on advice a person is an identified participant in a criminal organisation or a criminal organisation.

The clause also inserts new subsection (3) to make it clear that the commission must not cancel a licence by relying on criminal intelligence that may be provided under the new information-sharing provision (new section 98A).

Clause 350 omits section 102 (Immediate cancellation of racing bookmaker's licence), which required the commission to immediately cancel a racing bookmaker's licence if the licensee was identified as a participant in a criminal organisation or an unsuitable corporation.

Clause 351 amends section 103 (Show cause notice) which sets out the process the commission must follow when it reasonably believes a ground exists to cancel a racing bookmaker's licence. The clause omits subsection (3) which provided that the *Acts Interpretation Act 1954*, section 27B, did not apply to a decision to issue a show cause notice to the extent the show cause notice was issued as a result of advice from the police

commissioner that a person was identified as a participant in a criminal organisation or an unsuitable corporation. The clause omits subsection (3) as identified participant information will no longer be used to determine whether a person is, or continues to be, a person who is suitable to hold a licence under the Act. The clause will also renumber subsections (4) and (5) as a consequence of the omission of subsection (3).

Clause 352 amends section 106 (Cancellation). Subsection (1) provides the commission with discretion to cancel a licence after it has issued a licensee with a show cause notice. However, subsection (2) compelled the commission to cancel a licence if a business associate or an executive associate of a licensee was identified as a participant in a criminal organisation. Subsection (6) outlined that the *Acts Interpretation Act 1954*, section 27B, did not apply to the information notice for a decision that was the result of the identified participant advice. Consistent with other amendments in this part, subsections (2) and (6) are omitted to ensure a licensee's licence is not cancelled on the basis of identified participant advice. The clause will also renumber subsections (3) to (5) as a consequence of the omission of subsections (2) and (6).

Clause 353 amends section 107 (Return of cancelled racing bookmaker's licence). This is a minor editorial amendment that is necessary as a consequence of the omission of section 102, and the amendment to section 106.

Clause 354 amends section 108 (Censuring licence holder). Section 108 permits the commission to censure a licence holder if, after giving a show cause notice to a licence holder, the commission considers the cancellation of the licensee's licence is not warranted despite grounds existing to cancel the licence. However, subsection (2) provided that the commission could not issue a censure if the reason for giving a show cause notice related to advice that a business associate or executive associate of the licence holder is an identified participant in a criminal organisation or, if the associate is a corporation, a criminal organisation. The provision is redundant as licensing decisions may no longer be based on identified participant advice, as such subsection (2) is omitted.

Clause 355 omits Chapter 4, Part 2, Division 7 (Matters relating to review of decisions) which contained provisions that aimed to protect the confidentiality of criminal intelligence used by the commission to make a licensing decision in circumstances where the decision was subject to proceedings in QCAT or the Supreme Court. Sections 113 (Application of division), 114 (Confidentiality of criminal intelligence proceedings) and 115 (Application of Judicial Review Act 1991) are contained in this Division and are omitted as a consequence. Section 114 applied if a person sought a review of a commission decision that was based on advice that a person was an identified participant in a criminal organisation, or a corporation was determined to be an unsuitable corporation (which is, by its nature, criminal intelligence). Section 115 also limited the application of the *Judicial Review Act 1991* to decisions involving the use of identified participant or criminal organisation advice. Elsewhere in this part, amendments are made which remove identified participant and criminal organisation determinations as relevant factors in licensing or decisions, and further amendments preclude the use of criminal intelligence that might be provided under new information-sharing arrangements in licensing decisions. A transitional provision included elsewhere in this part, relating to QCAT and Supreme Court proceedings not yet finalised, ends the proceeding and requires any criminal intelligence relating to the proceeding be returned to the police commissioner. Given those changes, the mechanisms to secure criminal intelligence during review proceedings are redundant.

Clause 356 amends section 211 (Definitions of division) which sets out the definitions of a range of key terms for Chapter 6, Part 1, Division 1 (Offences relating to administration of Act). The clause inserts a definition of 'repealed section'. The new definition is necessary to protect the confidentiality of criminal intelligence it may have received under former sections 88, 96 or 97.

The clause also amends the definition of 'confidential information' to reflect that the commission may have previously received information that a person is an identified participant in a criminal organisation or an unsuitable corporation under the former provisions. The amendment to the definition ensures that commission may continue to maintain the confidentiality of identified participant or unsuitable corporation information.

Clause 357 amends section 212 (Offence to disclose confidential information or copy background document) which aims to maintain the confidentiality of particular sensitive information gathered in the course of the administration of the Act. Section 212(3) sets out a number of reasonable excuses a person may rely on to disclose, make a copy of, or provide access to information, including that the person subject to the information consents to its disclosure (section 212(3)(a)) and that the disclosure is of a statistical nature that could not be reasonably expected to result in the identification of the person to whom the information relates (section 212(3)(d)).

Section 212(4) provided that sections 212(3)(a) and (d) do not apply, where the confidential information relates to whether the person is an identified participant in a criminal organisation or an unsuitable corporation. The clause changes the grammatical tense of the provision to ensure that confidential information that relates to a notification previously received from the police commissioner that a person is an identified participant in a criminal organisation or an unsuitable corporation continues to be excluded from the list of reasonable excuses in section 212(3). The clause also amends section 212(3)(a) to make it clear the criminal intelligence may not be disclosed, copied or made accessible under any circumstances.

Clause 358 replaces the heading of Chapter 8 (Transitional provisions) with 'Transitional provisions for this Act'.

Clause 359 inserts new Chapter 9 (Transitional provisions for Serious and Organised Crime Legislation Amendment Act 2016).

New section 294 (Applications not finally decided) applies if the chief executive had not finally decided an application for the grant or renewal of a licence immediately before the commencement. New section 294 provides that the chief executive must decide the application under the Act as amended. The intention is to ensure licensing decisions are made on the basis of the new suitability requirements under the Act as amended.

New section 295 (Show cause process not finally decided) applies if, immediately before the commencement of the amendments, the chief executive had given a show cause notice to a licensee. The new provision clarifies that a show cause process that had not been finalised continues upon commencement of the amendments.

New section 296 (Proceedings not finally decided) applies if, prior to commencement, a person had started a proceeding before the QCAT or the Supreme Court for a review of a licensing decision that was the result of advice that the person is an identified participant in a criminal organisation. If a proceeding had not been finally dealt with, section 296 requires the proceeding to be discontinued and the matter to be remitted to the chief executive to decide again under the Act as amended. The referral of unresolved proceedings back to the chief executive ensures a person who had their licence cancelled because they were identified as a participant in a criminal organisation may have their licence assessed against the new licence suitability tests.

New section 296 also includes a provision requiring that any criminal intelligence held by the tribunal or court at the time the QCAT or Supreme Court proceedings are discontinued is to be returned to the police commissioner. This requirement ensures that the confidentiality of criminal intelligence continues to be maintained after proceedings are discontinued. The meaning of 'criminal intelligence', 'relevant decision' and 'repealed' are provided for this section.

Clause 360 amends schedule 1 (Dictionary) to omit the redundant definitions of 'commission decision', 'criminal organisation', 'identified participant' and 'unsuitable corporation'. The clause also inserts a new definition of criminal intelligence, which reflects the uniform definition of criminal intelligence inserted in the Criminal Code. The clause also amends schedule 1 to include the definition of 'control order', 'registered corresponding control order' and 'repealed section'.

Part 26 Amendment of Second-hand Dealers and Pawnbrokers Act 2003

Clause 361 states that this Part amends the *Second-hand Dealers and Pawnbrokers Act 2003.*

Clause 362 amends section 7 (Suitability of applicants and licensees). The clause omits section 7(1)(e) which provides that if a person has been identified as a participant in a criminal organisation, the person is not a suitable person to hold a licence and therefore may not hold a licence. The new section 7(1)(e) provides that if a person is subject to a relevant control order, the person is not a suitable person to hold a licence and therefore may not hold a licence.

The clause inserts a new section 7(1A), to provide that the chief executive must consider whether a person is subject to a control order or registered corresponding control order, has been convicted of an offence against sections 32, 54 or 75 of the Peace and Good Behaviour Act 1982 or section 161ZI of the Penalties and Sentences Act 1992 when deciding if the person is a suitable person to hold a licence.

The clause inserts a new section 7(1B), to provide that the chief executive, when deciding whether a person is a suitable person to hold a licence, may not have regard to criminal intelligence given by the Commissioner of Police to the chief executive under the new section 111 (Exchange of information).

The clause also renumbers the new section 7(1A) to 7(2) and the new section 7(1B) as 7(3). Section 7(2) becomes section 7(4) and section 7(3) becomes section 7(5).

Clause 363 amends section 8 (Investigations about suitability of applicants and licensees). The clause amends section 8(2) to provide that the chief executive has discretion to seek criminal history reports on applicants and licensees, and their associates, to assess their suitability for a licence. The current provisions require the chief executive to seek a criminal history report on all licence applications and licence renewals.

As licences under the Act can be renewed for one year or three years, currently the chief executive is required to conduct criminal history checks annually, on licensees renewing their licence annually, and triennially, on licensees renewing their licence every three years. The amendment allows the chief executive to exercise discretion in checking the criminal history of renewing licensees.

The clause deletes section 8(3) to remove the requirement for the chief executive to ask the commissioner if a person is an identified participant in a criminal organisation. The clause amends section 8(4), as a consequential amendment to the removal of section 8(3). The clause removes the reference to advice from the commissioner about whether a person is an identified participant in a criminal organisation.

The clause replaces section 8(7) with a new section 8(7). Section 8(7), which is omitted and inserted in the new section 9A elsewhere in this part, provides that the chief executive may only use a criminal history report provided by the commissioner to decide the suitability of a person to hold a licence. The new section 8(7) provides that if a person is, or has been, subject to a control order or a registered corresponding control order the criminal history report must state the details of the order or be accompanied by a copy of the order.

The clause also renumbers section 8(4) to (7), as section 8(3) to 8(6).

Clause 364 replaces section 9 (Confidentiality of report or information provided by the commissioner of the police service) with a new section 9 (Notice of change in criminal history) and new section 9A (Use of information obtained under section 8 or 9).

Section 9 (Confidentiality of report or information provided by the commissioner of the police service), which is omitted, provides confidentiality provisions for public service employees handling personal information about licence applicants and licensees. Section 9 is replaced with a new confidentiality provision for public service employees at the new section 112 (Confidentiality).

The new section 9 (Notice of change in criminal history) allows the commissioner to advise the chief executive of any changes to the criminal history of licence applicants and licensees (and their associates, as defined in section 5). This amendment improves the capacity of the chief executive to monitor the ongoing suitability of licensees.

The clause also inserts a new section 9A (Use of information obtained under section 8 or 9). The new section 9A provides that information obtained by the chief executive under section 8 and the new section 9, may only be used to determine suitability for a licence. The clause also provides that information about a charge against a person cannot be used to determine suitability of an applicant or a licensee.

Clause 365 amends section 12 (Decision on application for a licence) to delete subsection 12(5) which states that the Acts Interpretation Act 1954, section 27B, does not apply to a Queensland Civil and Administrative Tribunal (QCAT) information notice to the extent to which a decision is the result of advice given by the commissioner to the chief executive that a person is an identified participant in a criminal organisations.

The QCAT information notice must provide written reasons for the decision, including the findings on material questions of fact and refer to the evidence or other material on which the findings are based (section 157 of the *Queensland Civil and Administrative Tribunal Act 2009* and section 27B of the *Acts Interpretation Act 1954*). However, under section 12(5), the chief executive does not have to provide written reasons for the decision, if the decision is based on advice from the commissioner that a relevant person is an identified participant in a criminal organisation.

As identified participant provisions are removed from the Act as a result of changes implemented as part of the Bill, the amendment removes this exemption and requires the chief executive to provide a statement of reasons to all applicants who are given a conditional licence or refused a licence.

Clause 366 amends section 15 (Decision on application for renewal or restoration of a licence) to delete subsection 15(5) which states that the *Acts Interpretation Act 1954*, section 27B, does not apply to a QCAT information notice to the extent to which a decision is the result of advice given by the Commissioner to the chief executive that a person is an identified participant in a criminal organisations.

The QCAT information notice must provide written reasons for the decision, including the findings on material questions of fact and refer to the evidence or other material on which the findings are based (section 157 of the *Queensland Civil and Administrative Tribunal Act 2009* and section 27B of the *Acts Interpretation Act 1954*). However, under section 15(5), the chief executive does not have to provide written reasons for the decision, if a decision is based on advice from the commissioner that a relevant person is an identified participant in a criminal organisation.

As identified participant provisions are removed from the Act as a result of changes implemented as part of the Bill, the amendment removes this exemption and requires the chief executive to provide a statement of reasons to all licensees who are refused a renewal or restoration of a licence.

Clause 367 amends section 19 (Grounds for suspending, cancelling, refusing to renew or restore, or imposing conditions on a licence) to amend subsection 19(2). Under section 19(1), if the chief executive finds that a licensee is not a suitable person to hold a licence, the chief executive can suspend the licence, cancel the licence, refuse to renew the licence, refuse to restore the licence, or impose conditions on a licence.

The amendment removes the requirement under section 19(2), for the chief executive to immediately cancel a licensee's licence, if the reason why the licensee is not a suitable person to hold a licence, is based on advice from the commissioner that the person is an identified participant in a criminal organisation.

The amendment to section 19(2) reflects that the licensee's licence is automatically cancelled under new section 21A, if the reason why the licensee is not a suitable person, is because the person has been convicted of a disqualifying offence or is subject to a relevant control order.

Clause 368 omits section 20A (Immediate cancellation and return of licence). Section 20A requires the chief executive to cancel a licensee's licence if the chief executive is advised by the commissioner that the licensee is an identified participant in a criminal organisation.

Clause 369 amends section 21 (Return of licence), as a consequential amendment to the amendment of section 20A. The penalty for failure to return a licence under section 21(1) is amended to align with the new section 21A and sections 32 and 33

Clause 370 inserts a new section 21A (Automatic cancellation) which provides for automatic cancellation of a licence if the licensee, or an associate of the licensee is convicted of a disqualifying offence for which a conviction is recorded or becomes subject to a relevant control order. The new section 21A also requires the licensee to return the licence to the chief executive within 14 days, and failure to return the licence, will incur a penalty.

Clause 371 amends section 27 (Change of licensee's home address) to allow licensees to give the chief executive notice of a change of home address by phone or online, by removing the requirement for signed notice. This amendment reduces the regulatory burden on licensees. This clause amends the heading of section 27 to be 'change of licensee's address', to more accurately reflect that the amended section provides for change of address for home address and register address.

However, licensees will still be required to provide signed notice of a change of address of their transactions register or property register. Second-hand dealers are required to record their business transactions in a transactions register and pawnbrokers must record their business transactions in a property register. As licensees seeking to advise a change of address of a transactions register or property register need to return their licence for updating, a signed notice is required for a change of address of the transactions register or property register. On return of the licence, the chief executive reissues the licence stating the new address of the register.

Clause 372 removes section 107A (Confidentiality of criminal intelligence) and 107B (Application of Judicial Review Act 1991). Section 107A (Confidentiality of criminal intelligence) protects the confidentiality of advice given by the commissioner to the chief executive, that a person is an identified participant in a criminal organisation, in a review of decisions of the chief executive by the QCAT or the Supreme Court.

Elsewhere in this part, amendments are made which remove identified participant determinations as relevant factors in a licensing decisions. Further amendments made in this part, prohibit the chief executive from using criminal intelligence to make determinations about a person's suitability to hold a licence and criminal intelligence relating to a proceeding in QCAT or the Supreme Court that is in the possession of QCAT or the Supreme Court must be returned to the commissioner. Given those changes, the mechanism to secure criminal intelligence during review proceedings provided by section 107A is redundant.

Section 107B (Application of Judicial Review Act 1991) excludes the application of Part 4 of the *Judicial Review Act 1991*, which allows a person to apply to a court to request a statement

of reasons for a decision, to decisions of the chief executive mentioned in section 107A. The removal of section 107B means that the Act does not within itself restrict the *Judicial Review Act 1991*.

Clause 373 inserts a new section 111 (Exchange of information) and new section 112 (Confidentiality) into the Act. The new section 111 (Exchange of information) allows the chief executive to enter into an information-sharing arrangement with the commissioner, the chief executive of a department, a local government, or other person as prescribed by a regulation. The information shared is limited to information that assists the chief executive to perform their functions under the Act or assists the relevant agency to perform its function. In addition, the chief executive may only use criminal intelligence given to the chief executive by the commissioner under an information-sharing arrangement for monitoring compliance with the Act.

The new section 112 (Confidentiality), replaces section 9, and protects the confidentiality of information gathered by the chief executive to ensure the information is only used for the purposes of the Act or otherwise required or permitted by law. Public service employees can only record confidential information or disclose the confidential information to anyone, for the purposes of administration of the Act, or otherwise required or permitted by law.

The clause also requires the chief executive to destroy criminal history reports, copies of control orders, copies of corresponding control orders, and notices of a change in criminal history, as soon as practicable after the information is no longer needed for the purpose for which it is given.

Clause 374 inserts a new Division 5 in Part 9 (Transitional provisions for Serious and Organised Crime Legislation Amendment Act 2016), setting out transitional provisions for the Serious and Organised Crime Legislation Amendment Act 2016.

The new section 140 (Applications not finally decided) provides that if before the commencement of the new section 140, the chief executive had not finally decided an application for the grant, renewal or restoration of a licence, the chief executive must decide the application under the Act, as in force after the commencement of the new section 140.

The new section 141 (Proceedings not finally decided) relates to the review by QCAT or the Supreme Court of licensing decisions, which are based on information provided by the commissioner that a person is an identified participant in a criminal organisation. Where the proceedings have not been finally dealt with, they must be discontinued and the matter remitted for the chief executive to be decided under the Act, as in force after the commencement of the new section 141.

The new section 141 also includes a provision requiring any criminal intelligence held by the tribunal or court at the time that the QCAT or Supreme Court proceeding is discontinued, to be returned to the control of the Queensland Police Service. This requirement ensures that the ongoing confidentiality of criminal intelligence, after court or tribunal proceedings are discontinued.

Clause 375 amends Schedule 1 (Disqualifying offence provisions under the Criminal Code). The offence provision under the Criminal Code which are listed in Schedule 1 are included in the definition of 'disqualifying offence' in Schedule 3, the dictionary.

The clause adds the new chapter 9A of the Criminal Code (Consorting) as item 1A of Schedule 1 and adds the new section 76 of the Criminal Code (Recruiting person to become participant in criminal organisation) as item 1B of Schedule 1.

The clause deletes item 8, which relates to chapter 42 of the Criminal Code (Frauds by trustees and officers of companies and corporations – false accounting) as this chapter of the Criminal Code has previously been deleted.

The clause renumbers the items from 1A to 12 in Schedule 1, to items 1 to 13.

Clause 376 amends the dictionary at Schedule 3. The clause omits the definitions 'criminal organisation' and 'identified participant' from the dictionary at Schedule 3. The clause also inserts new definitions of 'criminal intelligence', 'control order', 'registered corresponding control order' and 'relevant control order' in the dictionary at Schedule 3.

The clause also amends the definition of 'disqualifying offence' in the dictionary at Schedule 3, to include prescribed offences under section 161N of the *Penalties and Sentences Act 1992* which are committed with a serious organised crime circumstance of aggravation under section 161Q of the *Penalties and Sentences Act 1992*.

Part 27 Amendment of Security Providers Act 1993

Clause 377 states that this Part amends the *Security Providers Act 1993.*

Clause 378 amends section 11 (Entitlement to licences – individuals). Section 11 deals with the entitlement to obtain a licence for individuals. The clause replaces subsection (3) with a new subsection (3), which limits the matters the chief executive may consider when deciding if a person is an appropriate person to hold a licence. New subsection (3) also prevents the chief executive from considering criminal intelligence when deciding if a person is an appropriate person to hold a licence.

The clause also omits subsection (4)(b), which required the chief executive to consider whether a person associates with a criminal in a way that indicates involvement in unlawful activity. This amendment ensures a person is not disqualified from holding a licence solely on the basis of the people they associate with.

Subsections (4)(f) and (4)(g) are also omitted and replaced with new subsection (4)(f). New subsection (4)(f) clarifies the information that the chief executive must consider when deciding if a person is an appropriate person to hold a licence. In particular, subsection (4)(f) requires the chief executive to consider whether a person is a risk to public safety, or whether the holding of a licence by a person would be contrary to the public interest. This amendment ensures the chief executive may consider any information provided by the Commissioner of Police under the new information sharing provision (new section 48) that indicates the grant of a licence to a person would conflict with the public interest.

Subsection (5) explicitly states that a person is not an appropriate person to hold a licence if the person, within 10 years of applying for a licence, has been convicted of a disqualifying offence for which a conviction has been recorded. The clause expands subsection (5) to clarify that a person who is subjected to a relevant control order (defined as a control order or

registered corresponding control order that restricts a person from carrying on a business, engaging in an occupation or performing an activity that requires the person to hold a security provider licence) is also not an appropriate person to hold a licence.

The clause also omits subsection (6) from section 11. Section 11(6) provided that a person is not an appropriate person to hold a licence if the person is an identified participant in a criminal organisation. Subsection (6) is omitted to ensure that a person is not excluded from holding a licence solely on the basis that the person is an identified participant in a criminal organisation. The clause also renumbers the remaining subsections of section 11.

Clause 379 amends section 12 (Inquiries about person's appropriateness to hold licence). In general terms, section 12 provides for inquiries to be made by the chief executive to assist in determining a person's appropriateness to hold a licence. Subsection (2)(a) imposed an obligation on the chief executive to ask the commissioner whether a person who had applied for a licence was an identified participant in a criminal organisation. Subsection (2)(b) allowed the chief executive to ask the commissioner during the term of a licence whether the licensee was an identified participant in a criminal organisation. Subsection (2) is omitted to ensure that the commissioner is not required to make an assessment of every application for the grant of a licence. The omission of subsection (2) is also necessary as advice that a person is an identified participant is no longer being used in licensing decisions under the Act.

The clause also inserts a new subsection (5) into section 12 to require the commissioner to supply the chief executive with a copy of any control orders or registered corresponding control orders (or details of any such orders) that form part of a person's criminal history. The clause also renumbers the remaining subsections of section 12.

Clause 380 amends section 12AA (Costs of criminal history report). This is a consequential amendment required due the renumbering of subsections in the amended section 12.

Clause 381 amends section 12A (Notice of change in criminal history). Section 12A permits the commissioner to notify the chief executive of a change in the criminal history of an applicant or a licensee. The clause amends section 12A to provide that, if the commissioner provides a notice of a change in a person's criminal history, the notice must (if applicable) include a copy or details of any control orders or registered corresponding control orders, the person is subject to.

Clause 382 omits section 12B (Commissioner may give investigative information). Section 12B enabled the commissioner to provide the chief executive with investigative information about the possible commission of a disqualifying offence by the holder of, or applicant for, a security provider licence. Section 12B is replaced with a new information sharing provision (new section 48), which enables the commissioner to share relevant information to assist the chief executive to perform their functions under the Act.

Clause 383 amends section 12C (Use of information obtained under s12, 12A or 12B). Subsection (2) is amended to limit the use of information received about the conviction of a person, or about the person being subject to a control order or registered corresponding control orders. Subsection (2) provides that the use of the stated information is limited to making decisions about the appropriateness of a person to hold a licence.

The clause also omits section 12C(4). Subsection (4) ensured that information that a person is an identified participant in a criminal organisation is only used for deciding whether the person is, or continues to be, an appropriate person to hold a security licence. A person will not have their licence cancelled or refused solely on the basis of a notification that they are an identified participant in a criminal organisation. As identified participant notifications are no longer considered in licensing decisions, the limit on identified participant advice is not needed.

Subsection (8) requires the chief executive to destroy information obtained under sections 12, 12A or 12B as soon as practicable after it is no longer needed for the purpose for which it was requested or given. However, subsection 8 was drafted in a way so as to provide discretion to the chief executive to maintain advice received from the commissioner that a person is an identified participant in a criminal organisation. The clause amends subsection (8) to remove the words '*other than information about whether the person is an identified participant in a criminal organisation'.* Identified participant notifications are no longer provided by the commissioner and, therefore, the chief executive does not require discretion to decide whether to maintain or destroy identified participant notifications.

Finally, the clause adds a new subsection (9) to section 12C to make it clear that the *Public Records Act 2002* does not apply to information the chief executive is required to destroy. As a consequence of the omission of section 12B, the clause also renumbers section 12C, amends the title of the section and makes minor editorial amendments to its remaining subsections.

Clause 384 amends section 13 (Entitlement to licences – corporations or firms). The clause replaces section 13(3A) with a new subsection (3A), that no longer contains the requirement to consider investigative information as the new section 48 (Exchange of information) will be relied on for obtaining information from the commissioner. Subsection (3A) requires the chief executive to consider any available information indicating that a corporation is a risk to public safety, or whether the holding of a licence to a corporation would be contrary to the public interest. The chief executive must also consider whether the corporation has been convicted of a disqualifying offence.

Subsection (3A) also prevents the chief executive from considering criminal intelligence that may be provided by the commissioner under a new information sharing arrangement when deciding whether a corporation is an appropriate person to hold a licence.

The clause also makes minor editorial amendments to section 13(5). These changes are required as a consequence of the renumbering of other provisions in the Act. Finally, the clause amends subsection (6) to further include that a corporation is not an appropriate person to hold a licence if the corporation is subject to a relevant control order. Elsewhere, a definition of relevant control order is inserted into the dictionary for this Act.

Clause 385 amends section 14 (Decision of application). Section 14 requires the chief executive to consider an application for the grant of a licence, and to make a decision to grant or refuse to grant the licence. Generally, if the chief executive refuses to grant a licence, the chief executive must provide the person with a statement of reasons for the decision in the form of a QCAT information notice. Section 27B of the *Acts Interpretation Act 1954* requires the QCAT information notice to set out the findings on material questions of fact and refer to the evidence or other material on which those findings were based.

The clause omits subsection (7), which protected the confidentiality of criminal intelligence that may have been used by the chief executive when making a licensing decision. In particular, subsection (7) stated that the *Acts Interpretation Act 1954*, section 27B, did not apply to the QCAT information notice for a decision to refuse to grant a licence to the extent to which the decision is the result of advice given by the commissioner to the chief executive that a person is an identified participant in a criminal organisation. The chief executive will no longer consider advice that a person is an identified participant in a criminal organisation when making a licensing decision. As such, the clause omits redundant subsection (7) and renumbers subsection (8) as subsection (7).

Clause 386 amends section 21 (Grounds for suspension, cancellation or refusal to renew). The clause replaces section 21(3) with new subsection (3). Section 21 sets out the grounds for the suspension, cancellation or refusal to renew a licence. Generally, if the chief executive considers grounds exist to cancel, suspend or refuse to renew a licence, the chief executive must issue a licensee with a show cause notice (as set out in section 22). Subsection (3) clarified that a show cause process did not apply to circumstances where the person was identified as a participant in a criminal organisation, or had been convicted of a disqualifying offence. Instead, the Act required the person's licence to be cancelled automatically.

Subsection (3) is amended to remove the identified participant provision and insert a relevant control order provision. New subsection (3) makes it clear that a show cause process does not apply if a person is convicted of a disqualifying offence for which a conviction is recorded, or if the person becomes subject to a relevant control order.

Clause 387 amends section 22 (Procedure for suspension, cancellation or refusal to renew). Section 22 provides that, if the chief executive considers grounds exist to suspend, cancel or refuse to renew a licensee's licence, the chief executive must first give the licensee a show cause notice setting out the proposed action, the grounds for taking the action and the facts and circumstances forming the basis of the chief executive's beliefs. The show cause notice must allow the licensee a period of not less than 28 days to show cause as to why the proposed action should not be taken. Subsection (2) permits the chief executive to carry out the action stated in the show cause notice if the chief executive reasonably considers grounds still exist to suspend, cancel or refuse to renew a licence after considering any representations made during the show cause period.

Subsection (3) provided that the show cause process as set out in subsections (1) and (2) did not apply to a decision to refuse to renew a licence based on advice that the licensee was an identified participant in a criminal organisation. Subsection (4)(a) contained a legislative note referring to the automatic cancellation process in section 23A for decisions based on identified participant information.

The clause omits subsection (3) and the legislative note in subsection (4)(a). These provisions are redundant as licensing decisions can no longer be based on advice that a person is an identified participant in a criminal organisation. The clause also omits subsection (6), which limited the information a person received when notified of a decision to refuse to renew their licence based on advice they were an identified participant in a criminal organisation. Due to the removal of identified participant provisions, this subsection is also redundant

Clause 388 omits section 23A (Cancellation of licence – identified participant in criminal organisation). Section 23A required the chief executive to immediately cancel a licensee's licence if, after the licence was granted, the chief executive was advised by the commissioner that the licensee was a participant in a criminal organisation. As a consequence of amendments made as part of this Bill, a person can no longer be excluded from holding a licence on the advice from the commissioner that they are an identified participant in a criminal organisation. Consequently, the redundant mandatory cancellation process for identified participants in a criminal organisation is omitted.

Clause 389 replaces section 24 (Automatic cancellation on conviction) with new section 24 (Automatic cancellation). Elsewhere in this part, amendments are made to make it clear that a person is not a suitable person to hold a licence if the person is convicted of a disqualifying offence (for which a conviction is recorded), or the person becomes subject to a relevant control order. The clause amends section 24 to provide that a licensee's licence is automatically cancelled if the person is convicted of a disqualifying offence (for which a conviction is recorded), or the person becomes subject to a relevant control order. If a licensee's licence is cancelled under section 24, the licensee must return their licence to the chief executive within 14 days after they are convicted or become subject to the relevant control order. As a consequence of the expansion of the circumstances requiring the cancellation of a licence to include a relevant control order, the clause also amends the title of section 24.

Clause 390 omits sections 26A (Confidentiality of criminal intelligence in proceedings) and 26B (Application of Judicial Review Act 1991). Section 26A protected criminal intelligence (i.e. identified participant notifications) during QCAT or Supreme Court review proceedings for licensing decisions that were based on identified participant notifications. Elsewhere in this part, amendments are made to remove identified participant provisions. Further amendments made in this part prohibit the chief executive from using criminal intelligence to make determinations about a person's suitability to hold a licence and require criminal intelligence relating to a proceeding in QCAT or the Supreme Court that is in the possession of QCAT or the Supreme Court to be returned to the commissioner. As a consequence of those amendments, the protection of criminal intelligence during review proceedings offered by section 26A is redundant.

The clause also removes section 26B which provided that part 4 of the *Judicial Review Act 1991* does not apply to licensing and registration decisions of the chief executive that were based on identified participant notifications. The removal of section 26B means that the Act does not within itself restrict the *Judicial Review Act 1991*.

Clause 391 replaces section 48 (Confidentiality of information) with new sections 48 (Exchange of information) and 48A (Confidentiality). New section 48 enables the chief executive to enter into an information sharing arrangement with the commissioner, a chief executive of another government department, a local government, or a person prescribed by regulation. New section 48 facilitates the sharing of information between the chief executive and a relevant agency that may assist in the exercise of the functions of the chief executive under the Act, or the functions of the relevant agency. The new provision also empowers each party to an information sharing arrangement to ask for and receive any information the other agency possesses or has access to, despite another Act or law. While criminal intelligence may be provided to the chief executive under an information sharing arrangement, new section 48 makes it explicit that criminal intelligence may only be used by

the chief executive to monitor compliance with the Act, thus prohibiting any use of criminal intelligence in licensing decisions.

New section 48A replaces section 48. New section 48A prevents the disclosure of confidential information gathered in the course of the administration of the Act. Section 48A provides that a person involved in the administration of the Act must not make a record of, or disclose, confidential information gathered in the course of the administration of the Act. Confidential information is defined to include information about a person's affairs but does not include information that could not reasonably be expected to result in the identification of the person to which the information relates. A person who contravenes the confidentiality provision is liable for a maximum penalty of 35 penalty units. Section 48A also provides for circumstances where the disclosure of confidential information may be permissible, including for any proceedings in a court or QCAT, for the purposes of the Act or to comply with the requirements of another law.

Clause 392 inserts new Part 10 (Transitional provisions for Serious and Organised Crime Legislation Amendment Act 2016).

New section 69 (Applications not finally decided) applies if the chief executive had not finally decided an application for the grant or renewal of a licence immediately before the commencement. Section 69 provides that the chief executive must decide the application under the Act as amended. The intention is to ensure licensing decisions are made on the basis of the new suitability requirements under the Act as amended.

New section 70 (Show cause process not finally decided) applies if, immediately before the commencement of the amendments, the chief executive had given a show cause notice to a licensee. The provision clarifies that a show cause process that had not been finalised continues upon commencement of the amendments.

New section 71 (Proceedings not finally decided) applies if, prior to commencement, a person had started a proceeding before the QCAT or the Supreme Court for a review of a licensing decision that was the result of advice that the person was an identified participant in a criminal organisation. If a proceeding has not been finally dealt with prior to commencement, section 71 requires the proceeding to be discontinued and the matter to be remitted to the chief executive to decide again under the Act as amended. The referral of unresolved proceedings back to the chief executive ensures a person who had their licence cancelled because they were identified as a participant in a criminal organisation may have their licence assessed against the new licence suitability tests.

New section 71 also includes a provision requiring that any criminal intelligence held by the tribunal or the Supreme Court at the time the QCAT or Supreme Court proceeding is discontinued is to be returned to the control of the Commissioner of Police. This requirement ensures that the confidentiality of criminal intelligence continues to be maintained after proceedings are discontinued. Definitions of 'criminal intelligence' and 'repealed' are also inserted to support the construction of the provision.

Clause 393 amends schedule 1 (Disqualifying offence provisions under the Criminal Code) to provide that the new offences relating to serious and organised crime, as set out in chapter 9A of the Criminal Code, are disqualifying offences. As a result of this amendment, persons convicted of the new offences relating to serious and organised crime will have their licence

cancelled immediately. A person convicted of an offence relating to serious and organised crime for which a conviction was recorded is also ineligible to hold a licence within 10 years after their conviction for the offence. The clause also makes minor editorial amendments to schedule 1 to ensure the disqualifying offences accurately reflect the current version of the Criminal Code.

Clause 394 amends schedule 2 (Dictionary) to omit the redundant definitions of 'criminal intelligence', 'criminal organisation', 'identified participant' and 'investigative information'.

The clause inserts a new definition of 'criminal intelligence' to reflect the definition of criminal intelligence included in the Criminal Code.

The clause also amends the definition of 'disqualifying offence' to include the new prescribed offences under the *Penalties and Sentences Act 1992* to which the new serious organised crime circumstance of aggravation applies. Schedule 2 is also amended to include definitions of 'control order' and 'registered corresponding control order' (which reflect the definitions included in the *Penalties and Sentences Act 1992*). The clause also inserts a definition of *relevant control order*, which is a control order or registered corresponding control order that restricts the person to whom the order applies from carrying on a business, engaging in an occupation or performing an activity that requires a security provider licence.

Part 28 Amendment of State Penalties Enforcement Regulation 2014

Clause 395 states that this Part amends the *State Penalties Enforcement Regulation 2014.*

Clause 396 amends schedule 1 (Infringement notice offences and fines for nominated laws), specifically the entries for the *Motor Dealers and Chattel Auctioneers Act 2014*, *Second-hand Dealers and Pawnbrokers Act 2003* and *Tattoo Parlours Act 2013*.

The clause amends the *Motor Dealers and Chattel Auctioneers Act 2014* entry to omit entries for sections 63(5) and 182(5). These sections, and the related offences, are repealed by the Bill.

The clause also amends the *Second-hand Dealers and Pawnbrokers Act 2003* entry, to amend the number of penalty units relating to section 21(1), by reducing the number of penalty units from 5 penalty units to 2 penalty units. The reduced number of penalty units for an infringement notice fine aligns proportionately with the reduced penalty for the relevant offence in section 21(1) of the *Second-hand Dealers and Pawnbrokers Act 2003*, as amended by the Bill.

The *Second-hand Dealers and Pawnbrokers Act 2003* entry is further amended to insert a new entry for section 21A(2). New section 21A creates an offence for not returning a licence, within the specified timeframe, following automatic cancellation. This new entry has an associated infringement notice fine of 2 penalty units which is proportionate to the relevant offence in the nominated law.

The clause also amends the *Tattoo Parlours Act 2013* entry to insert a new entry for section 34A(2). New section 34A of the *Tattoo Parlours Act 2013* creates an offence for not

returning a licence, within the specified timeframe, following automatic cancellation. This new entry has an associated infringement notice fine of 2 penalty units which is proportionate to the relevant offence in the nominated law.

The *Tattoo Parlours Act 2013* entry is further amended to update the entry for section 11(6). The section reference is updated to section 11(11) to align with amendments made to the *Tattoo Parlours Act 2013* by the Bill.

Finally, the clause amends the *Tattoo Parlours Act 2013* entry to remove a reference to 'Parlours' in both the title of the entry and the meaning of an authorised person for the service of infringement notices, and replace it with 'Industry'. This aligns with an amendment made by this Bill to change the short title of the Act to the *Tattoo Industry Act 2013*.

Part 29 Amendment of Summary Offences Act 2005

Clause 397 states that this Part amends the *Summary Offences Act 2005*.

Clause 398 inserts a new Part 2, Division 1B about wearing or carrying particular clothing, jewellery or accessories in public places. Part 2, Division 1B provides for new sections 10B to 10E.

Section 10B (Objects of division) provides for the objects of Division 1B to be as far as practicable to ensure members of the public may lawfully use and pass through public places without experiencing fear or intimidation because others are visibly wearing or carrying prohibited items. The objects also seek to, as far as practicable, reduce the likelihood of public disorder or acts of violence in public places.

Section 10C(1) (Wearing or carrying prohibited item in a public place) provides the new offence that a person in a public place must not wear or carry a prohibited item so that the item can be seen. Section 10C(2) provides that a person who is in or on a vehicle that is in a public place must not wear or carry a prohibited item so that the item can be seen from the public place. Section 10C(3) provides the definition of 'prohibited item' by referring to section 173EA of the *Liquor Act 1992*.

Section 10D (Defence for s 10C) provides that for section 10C(1) and (2), it is a defence for the person to prove the person engaged in the conduct for a genuine artistic, educational, legal, or law enforcement purpose and the person's conduct was, in the circumstances, reasonable for that purpose.

Section 10E (Forfeiture of prohibited item to which offence relates) provides for the forfeiture of the prohibited item that is lawfully in the possession of the Queensland Police Service if the person is convicted of an offence against section 10C. This section also provides a note in provision to make it clear that a police officer has existing powers under the *Police Powers and Responsibilities Act 2000* for seizure of a thing that may provide evidence of an offence in particular circumstances.

Part 30 Amendment of Tattoo Parlours Act 2013

Division 1 Preliminary

Clause 399 states that this Part amends the *Tattoo Parlours Act 2013.*

Division 2 Amendments commencing on assent

Clause 400 amends section 11 (Licence applications) to remove the restriction on an individual who is a controlled person from applying for a licence. This is required as the *Criminal Organisation Act 2009*, which allows court ordered control orders to be made, is being repealed on assent.

Clause 401 omits the note referring to the *Criminal Organisation Act 2009* as that Act is being repealed by the Bill.

Clause 402 omits the note referring to the *Criminal Organisation Act 2009* as that Act is being repealed by the Bill.

Clause 403 omits the note referring to the *Criminal Organisation Act 2009* as that Act is being repealed by the Bill .

Clause 404 amends section 41 (Application for an exhibition permit) to remove the restriction on an individual who is a controlled person from applying for an exhibition permit. This is required as the *Criminal Organisation Act 2009*, which allows court ordered control orders to be made, is being repealed on assent.

Clause 405 amends section 42 (Decision about application for exhibition permit) to remove a mandatory requirement for the chief executive to decide not to grant an exhibition permit if the applicant is a controlled person. This is required as the *Criminal Organisation Act 2009*, which allows court ordered control orders to be made, is being repealed on assent. The new section 42(3) provides the chief executive with discretion to decide not to grant an exhibition permit if the chief executive is satisfied the application was not properly made.

Clause 406 amends section 44 (Application for visiting tattooist permit) to remove the restriction on an application for a visiting tattooist permit being made by an individual who is a controlled person. This is required as the *Criminal Organisation Act 2009*, which allows court ordered control orders to be made, is being repealed on assent.

Clause 407 amends section 45 (Decision about application for visiting tattooist permit) to remove the mandatory requirement for the chief executive to decide not to grant a visiting tattooist exhibition permit if the applicant is a controlled person. This is required as the *Criminal Organisation Act 2009*, which allows court ordered control orders to be made, is being repealed on assent. The new section 45(3) provides the chief executive with discretion to decide not to grant the exhibition permit if the chief executive is satisfied the application was not properly made.

Clause 408 amends section 56 (Review by QCAT of particular decisions of chief executive) to remove the reference to a controlled person. This is required as the Criminal Organisation Act 2009, which allows court ordered control orders to be made, is being repealed on assent.

Clause 409 amends Schedule 1 (Dictionary) to remove the definition of 'controlled person'. This is required as the *Criminal Organisation Act 2009*, which allows court ordered control orders to be made, is being repealed on assent.

Division 3 Amendments commencing 3 months after assent

Clause 410 amends the short title from the Tattoo Parlours Act 2013 to the Tattoo Industry Act 2013.

Clause 411 omits sections 3 (Definitions) and 4 (Meaning of close associate) and inserts new sections 3 (Main purpose of Act) and 4 (Definitions). New section 3 provides that the main purpose of the Act is to regulate the body art tattooing industry to minimise the risk of criminal activity in the industry. Although this Act has regard to other Acts that regulate the conduct of individuals and business operating in the tattoo industry, the main purpose of this Act is to minimise the risk of criminal activity in the tattoo industry.

The Act makes specific reference to the *Public Health (Infection Control for Personal Appearance Services) Act 2003* where orders are made under that Act. The purpose of the *Public Health (Infection Control for Personal Appearance Services) Act 2003* is to minimise the risk of infection that may result from the provision of personal appearance services. The *Public Health (Infection Control for Personal Appearance Services) Act 2003* achieves its purpose by; requiring business proprietors and operators to take reasonable precautions and care to minimise infection risks; requiring business proprietors whose business provides higher risk personal appearance services to hold a licence; requiring operators providing higher risk personal appearance services to hold an infection control qualification; and providing for compliance with the *Public Health (Infection Control for Personal Appearance Services) Act 2003* to be monitored and enforced.

The effect of the clause is to move section 3 (Definitions) to the new section 4 (Definitions), to allow for the insertion of the purpose of the Act in the new section 3. The new section 4 states that the dictionary in Schedule 1 defines particular words used in this Act.

The clause also omits section 4 (Meaning of close associate) which is not needed as 'close associate', as defined in the section and utilised in the Act, is no longer used in licensing decisions under the Act as a result of amendments made in this part.

Clause 412 amends section 6 (Body art tattooing businesses to be licensed) to provide that a person is able to carry on a body art tattooing business without an operator licence in circumstances otherwise prescribed under a regulation. This is to ensure the Act provides a contemporary and appropriate regulatory framework and to address emerging issues as they arise having regard to the main purpose of the Act which is to minimise the risk of criminal activity in the tattoo industry.

Clause 413 amends section 7 (Body art tattooists to be licensed) to provide that an individual is able to perform a body art tattooing procedure for fee or reward without a tattooist licence in circumstances prescribed under a regulation. This is to ensure the Act provides a contemporary and appropriate regulatory framework and to address emerging issues as they arise having regard to the main purpose of the Act which is to minimise the risk of criminal activity in the tattoo industry.

Clause 414 amends section 11 (Licence applications) to remove requirements relating to 'close associates' due to the removal of section 12 (Statement as to close associates of applicant for operator licence). Section 12 is removed as close associate, as defined in section 4 and utilised in the Act (e.g. in section 12), is no longer used in licensing decisions under the Act. The amended section 11(5)(d) retains the provision for a licence application to be accompanied by evidence of the applicant's identity, as well as an example of how the chief executive may determine that evidence of an applicant's identity is satisfactory

The clause also removes the requirement to provide specific information under section 11(e) and (f) when applying for an operator or tattooist licence, as these requirements are included in the new sections 11A (Additional information required for applications for operator licences) and 11B (Additional information required for applications for tattooist licences).

The clause inserts new provisions requiring the payment of costs and fees for a criminal history report and the taking of fingerprints and palm prints and also provides that an application for a licence may be considered by the chief executive only if the Commissioner of Police holds the fingerprints and palm prints or the applicant consents to having their fingerprints and palm prints taken by the commissioner.

New subsection 5A states that an application must be accompanied by the costs required to be paid, if the chief executive requires the payment of costs for a criminal history report (as inserted elsewhere in this part), before or when the application is made. This provides for the chief executive to cover the costs of obtaining a criminal history report from the commissioner under a new section inserted elsewhere in this part.

New subsection 5B provides that an application for a licence may only be considered by the chief executive if the applicant consents to having their fingerprints and palm prints by the commissioner, unless the commissioner already holds these. The taking of fingerprints and palm prints for a licence application is not a new requirement of the Act. This amendment simply clarifies this requirement by more prominently including it in the licence application process.

New subsection 5C provides that an application must also be accompanied by a fee for taking an applicant's fingerprints. The fee is to be prescribed by a regulation. The intent of this subsection is to allow the chief executive to recover the costs, on behalf of the commissioner, of the taking of an applicant's fingerprints. New subsection 5D provides that this fee is not required if the commissioner already holds the relevant person's fingerprints. New subsection 5E provides that, if an applicant's fingerprints are not taken for the application, the chief executive must refund the applicant the relevant fee. The section is subsequently renumbered to 11(6) to (13).

Clause 415 inserts new sections 11A (Additional information required for applications for operator licences) and 11B (Additional information required for applications for tattooist licences) into Part 3, division 2 (Licence applications and granting of licences).

New section 11A outlines additional mandatory information for an application for an operator licence including: details about the fixed or mobile premises proposed to be licensed; proposed employee details; proposed business name; and other pertinent details if the business to which the application relates is owned or operated by or on behalf of a corporation, partnership or trust. With the exception of details regarding mobile premises, the

requirements in section 11(5)(e), which is removed elsewhere in this part, is maintained in the new section 11A.

New section 11A allows the holder of an operator licence to conduct their business at mobile premises which is not provided for under the existing Act. The clause introduces a requirement for an application for an operator licence for mobile premises to include a description of the mobile premises proposed to be licensed and nominate a fixed premises at which records relating to the proposed body art tattooing business are to be kept for the purposes of inspection.

New section 11B inserted by the clause, outlines additional mandatory information for an application for a tattooist licence, specifically that the application is to be accompanied by evidence of previous, existing or impending employment as a body art tattooist. The new section 11B substantively replicates requirements in section 11(5)(f) which is removed elsewhere in this part.

Clause 416 omits section 12 (Statement as to close associates of applicant for operator licence) and replaces it with a new section 12 (Criteria for granting application). Section 12 (Statement as to close associates of applicant for operator licence) requires a written statement of close associates of an applicant for an operator licence. Statements of close associates are no longer used in licensing decisions under the Act.

New section 12 provides that the chief executive may only grant an application for a licence if the chief executive is satisfied that the criteria for granting an application have been met. The new section 12 includes probity requirements allowing the chief executive to grant a licence if the chief executive is satisfied that that the applicant is a fit and proper person to hold the licence and it would not be contrary to the public interest for the licence to be granted.

The chief executive must have regard to certain things in deciding whether the applicant is a fit and proper person, including the criminal history of the applicant, whether in dealings in which the person has been involved, the person has shown dishonesty or lack of integrity or used harassing tactics and information about the person that indicates that the person is a risk to public safety, or anything else relevant to the person's suitability to hold the licence.

The new subsection 12(3) includes mandatory disqualifiers for meeting the fit and proper person test. A person is not a fit and proper person to hold a licence if the person has been convicted of a prescribed offence within 10 years of applying for the licence or is subject to a relevant control order. Definitions for 'prescribed offence' and 'relevant control order' are inserted elsewhere in this part.

Subsection 12(4) expressly prohibits the chief executive from having regard to criminal intelligence when deciding whether a person is a fit and proper person, or if it would be contrary to the public interest for the licence to be granted.

The new section 12 also includes a subset of criteria, substantively reflecting a number of the provisions in section 17, which are being removed elsewhere in this part. These include, among other things, the chief executive being satisfied that the application has been properly made; whether a corporation to which the application relates is subject to a winding up order; whether the applicant has had a licence, permit or other authority, suspended, cancelled or

revoked under an Act administered by a relevant Minister or they are disqualified from holding such a licence; and whether the applicant is subject to an order under the *Public Health (Infection Control for Personal Appearance Services) Act 2003* made in connection with the carrying out of skin penetration procedures. The purpose of the *Public Health (Infection Control for Personal Appearance Services) Act 2003* is to minimise the risk of infection that may result from the provision of personal appearance services.

This clause also inserts new sections 12A (Additional criteria for operator licences) and 12B (Additional criteria for tattooist licences). New section 12A outlines additional criteria specific to an application for an operator licence which the chief executive must have regard to when deciding whether a person is a fit and proper person. The criteria replicates specific provisions relating to an operator licence from section 17 (which are being removed elsewhere in this part) which were not covered in the new section 12.

Similarly, new section 12B outlines additional criteria specific to an application for a tattooist licence which the chief executive must have regard to when deciding whether a person is a fit and proper person. The criteria replicates specific provisions relating to a tattooist licence from section 17 (which are being removed elsewhere in this part) which were not covered in new section 12.

Clause 417 amends section 13 (Fingerprinting and palm printing of applicants) to provide that fingerprinting and palm printing of applicants applies to both an applicant for a licence, and an applicant for a licence renewal. Amendments elsewhere in this part allow for the renewal of a licence which is not provided for by the existing Act. The clause also relocates section 13 to the new part 3, division 6B (Fingerprint and palm print procedures) and renumbers section 13 as section 35E.

Clause 418 relocates section 14 (Destruction of fingerprints and palm prints) to the new part 3, division 6B (Fingerprint and palm print procedures) and renumbers it as section 35F. The clause also amends a reference to 'section 13' to correctly reference the new section 35E.

Clause 419 omits sections 15 (Investigations, inquiries and referrals in relation to licence applications) and 16 (Chief executive or commissioner may require further information) which are replaced with new sections. The clause inserts new sections 15 (Inquiries about applicants, licensees and relevant persons), 15A (Costs of criminal history report), 15B (Notice of change in criminal history), 16 (Chief executive may require further information) and 16A (Use of information obtained under s 15, 15B, 16 or 61).

New section 15 provides for the chief executive to make enquiries about an applicant for a licence, a licensee or a relevant person. This will assist the chief executive in determining whether the person is, or continues to be, a fit and proper person to hold a licence and whether it is contrary to the public interest for the licence to be granted. The section provides that the commissioner must comply with a request by the chief executive for a criminal history report. The report must include details of, or a copy of, a control order or a registered corresponding control order for the applicant, licensee or relevant person. A meaning of applicant for a licence for section 15 is included to clarify that an applicant for a licence includes an applicant for the renewal of a licence. A meaning for offence is included for section 15 to clarify that an offence includes an alleged offence.

New section 15A provides that the chief executive may require an application for a licence or licensee to pay the reasonable costs of obtaining a criminal history report. The costs cannot be more than the actual cost of obtaining the report. It also provides that the chief executive must refund the applicant an amount paid under the previous subsection, if the chief executive refuses the application without asking for the criminal history report, or if the applicant withdraws the application before the chief executive asks for the report. A meaning of applicant for a licence for section 15A is included to clarify that an applicant for a licence includes an applicant for the renewal of a licence.

New section 15B enables the commissioner to notify the chief executive about changes in criminal history. This applies to a person that the commissioner reasonably expects is the holder of, or an applicant for, a licence. This section details information which must be included in the commissioner's written notice about the change in the person's criminal history. It clarifies that in this section, offence includes an alleged offence.

New section 16 substantively replicates provisions in section 16 (which is removed by this clause) that relate to an applicant for a licence, to also now apply to the renewal of a licence. Requirements relating to 'close associates' have not been replicated, as they are is no longer used in the Act. A meaning of information, relevant to this section, also includes financial and other confidential information.

New section 16A sets limits on the chief executive in the use of information obtained under sections 15 (Inquiries about applicants, licensees and relevant persons), 15B (Notice of change in criminal history), 16 (Chief executive may require further information) and 61 (Exchange of information). Information about a conviction of the person may be used only for making a decision as to whether the person is, or continues to be, a fit and proper person to hold a licence. Information about a charge made against the person for a prescribed offence may be used only for deciding whether to grant a licence to the person, or to suspend, or to refuse to renew, the person's licence.

The new section 16A also requires the chief executive to have regard to when the offence or alleged offence was committed, the nature of the offence or alleged offence and its relevance to the person carrying out a body art tattoo business, or body art tattoo procedures and anything else the chief executive considers relevant to the decision.

Clause 420 amends section 17 (Decision on application). The amended section expands what the chief executive may consider in relation to the applicant prior to determining whether to grant, or refuse to grant a licence. It also provides that the chief executive may defer making a decision if the applicant has been charged with a prescribed offence.

The clause removes mandatory factors which would result in the chief executive not granting a licence, as well as the list of discretionary factors that the chief executive may have regard to when deciding an application for a licence as these factors are substantively replicated elsewhere in this part. Subsections are subsequently renumbered.

Clause 421 amends section 18 (Term of licence). First, the clause inserts a note referencing the *Penalties and Sentences Act 1992*, section 161U. Section 161U of the *Penalties and Sentences Act 1992* allows conditions to be placed on a control order. Second, the clause omits section 18(5) which prohibits a licence from being renewed.

Clause 422 omits Part 3, division 3 (Role of commissioner). Part 3, division 3 includes provisions which enable the commissioner to make an adverse security determination (section 20), empower the commissioner to obtain further information from the licence or close associate of the licensee (section 21) and remove the requirement for the commissioner or chief executive to give reasons for determining a matter if the reasons would disclose the existence or content of a criminal intelligence report or other criminal information mentioned in section 20(3).

As the amendments included in this part establish a new licensing framework with new probity provisions where decision-making responsibility rests with the chief executive, and not the commissioner, sections 20, 21 and 22 are no longer needed and are removed.

Clause 423 amends section 25 (Change of licence particulars) to update the references within the definition of licensee's particulars to account for amendments made in this Bill.

Clause 424 amends section 27 (Changes in staff members) to provide that it is a condition of an operator licence for the licensee to include any other particulars prescribed by a regulation when giving the chief executive notice of changes in staff employment. This is to ensure the Act provides a contemporary and appropriate regulatory framework and to address emerging issues as they arise having regard to the main purpose of the Act which is to minimise the risk of criminal activity in the tattoo industry.

Clause 425 amends section 33 (Suspension of licence) to insert a note referencing the *Penalties and Sentences Act 1992*, section 161U. Section 161U of the *Penalties and Sentences Act 1992* allows conditions to be placed on a control order. The clause also removes a reference to section 22 as the section has been omitted elsewhere in this part.

Clause 426 amends section 34 (Cancellation of licence). The clause removes a mandatory requirement for the chief executive to cancel a licence if an adverse security determination is made by the commissioner. This concept no longer forms part of the amended Act. It also removes the list of discretionary factors that the chief executive may have regard to when deciding to cancel a licence as these factors are substantively replicated elsewhere in this part.

The clause inserts news sections 34(1) to (3) which state that the chief executive may cancel a licence, if the chief executive is satisfied that the licensee is not, or is no longer a fit and proper person to hold a licence. It also provides that when deciding whether a person is not, or is no longer, a fit and proper person to hold a licence, the chief executive may have regard to the factors outlined in sections 12 to 14. The chief executive must not have regard to criminal intelligence in deciding whether a person is not, or is no longer, a fit and proper person to hold the licence.

The clause also removes a reference to section 22 as the section has been omitted elsewhere in the part.

Clause 427 inserts new section 34A (Automatic cancellation on conviction) to provide that a person's licence is automatically cancelled if the person is convicted of a prescribed offence for which a conviction is recorded. A definition of 'prescribed offence' is included in the amended Dictionary. As outlined in the new probity requirements inserted elsewhere in this part a person is not a fit and proper person to hold a licence if they have been convicted with

a prescribed offence. This clause also makes it an offence for the person to not return the licence to the chief executive within 14 days after its cancellation. The offence carries a maximum penalty of 20 penalty units.

Clause 428 inserts a new Part 3, divisions 6A (Renewal of licences) and 6B (Fingerprint and palm print procedures). It also inserts new sections 35A (Renewal of licence), 35B (Term of renewed licence), 35C (Grounds for refusal to renew) and 35D (Procedure for refusal to renew) in the new division 6A.

The new section 35A provides that a licensee may apply to the chief executive for the renewal of their licence before the licence ends. The renewal of a licence was not previously allowed under the Act. The new section sets out that the application must be in an approved form, be accompanied by the fee prescribed by regulation and include a payment of costs for a criminal history report, if required.

Further, the chief executive may only consider the renewal application if the applicant consents to having their fingerprints and palm prints by the commissioner, unless the commissioner already holds the fingerprints and palm prints. The process regarding the taking of fingerprints and palm prints, including prescribing fees which the applicant must pay and provisions wherein this fee is to be refunded, align with those required for an initial application for an operator or tattooist licence.

New section 35A provides that the chief executive must grant a renewal of a licence unless reasonable grounds exist to refuse. Grounds for refusal to renew are outlined in a further subsection of this clause. It also provides that the chief executive may defer making a decision if the applicant has been charged with a relevant offence. The meaning of relevant offence is provided for this section which, amongst other things, includes a prescribed offence.

If a licence ends whilst an application for renewal of a licence is being decided, the section also provides for a licence to continue in force until the chief executive decides the application, or the licensee withdraws the application.

New section 35B provides that a renewal licence begins at the end of the day on which, apart from its renewal, the licence would have ended. A renewed licence is either for the term of 1 year or 3 years.

New section 35C outlines the grounds for refusal to renew a licence. These largely mirror the circumstances in which the chief executive may cancel a licence (as amended elsewhere in this part), including if the chief executive is satisfied that the licensee is not, or is no longer a fit and proper person to hold a licence. The chief executive may have regard to the matters outlined in sections 12 to 14 in deciding whether a person is not, or is no longer, a fit and proper person to hold a licence. A person subject to a relevant control order is not, or is no longer, a fit and proper person test to hold a licence. The chief executive must not have regard to criminal intelligence in deciding whether a person is not, or is no longer, a fit and proper person to hold a licence or, if it would be contrary to the public interest for the licence to be granted.

Additionally, the new Section 35C includes specific grounds for refusal to renew and operator licences if a closure order is, or has been, in force in relation to the licensed premises.

New section 35D outlines the procedure to be followed if the chief executive considers reasonable grounds exist to refuse to renew a licence. The chief executive must give the applicant a written notice that: states the chief executive proposes not to renew the licence; states the grounds for proposing not to renew the licence; and invites the person to show within a stated period, not less than 28 business days after the notice is given to the person, why the application should not be refused.

If, after considering all representations made within the stated period, the chief executive still believes that grounds not to renew the licence exist, the chief executive may decide to refuse to renew the licence. If the chief executive refuses to renew the licence the chief executive must give the applicant a QCAT information notice for the decision. The new section 35D also provides that the decision takes effect on the later of the day on which the notice is given to the licensee or the day stated in the notice.

Clause 429 amends section 38 (Way in which records for licensed premises to be kept) to require that the licensee under an operator licence must, for a licensed premises which is a mobile premise, keep records at the fixed premises stated in the application. The keeping of records at a fixed premises provides a known, fixed location for an authorised person to view the records for a mobile premises.

Clause 430 amends section 40 (Authority conferred by permit) to replace the term 'premises' with 'place'. This is to clarify that exhibitions may be held at places without a building or other structure (e.g. at a show ground or oval) or at premises (buildings or structures).

Clause 431 amends section 41 (Application for exhibition permit) to replace the term 'premises' to 'place' with regards to providing the address for the proposed exhibition. This is to clarify that exhibitions may be held at places without a building or other structure (e.g. at a show ground or oval) or at premises (buildings or structures).

Clause 432 amends section 42 (Decision about application for exhibition permit) to remove a requirement that the chief executive must take into account any adverse security determinations made by the commissioner in relation to the application. Adverse security determinations no longer form part of the new licensing framework. Instead, this subsection is replaced with a requirement that the chief executive must take into account whether the applicant has ever applied for a licence and, if so, any decision in relation to the application. This includes applications for an operator licence, tattooist licence or licence renewal.

This clause also inserts a new subsection 3A into section 42. Subsection 3A allows the chief executive additional discretion to decide not to grant an applicant an exhibition permit if it would result in more than two exhibition permits being granted within the same calendar year and the chief executive reasonably believes the individual is seeking to avoid being licensed. While allowing the granting of more the two exhibition permits, the provision aims to prevent individuals attempting to circumvent the requirement to be licensed when operating a tattooing business or tattooing.

This clause also removes section 42(10). Previously the chief executive was restricted to granting a maximum of two exhibition permits to the same individual, or an individual applying on behalf of the same corporation, partnership or trust in the same calendar year. This section is redundant due to the expanded discretionary requirements in new section 3A.

Clause 433 amends section 44 (Application for visiting tattooist permit) to provide that, if a visa has not been issued to the applicant to enter Australia, an application for a visiting tattooist permit can include evidence that the applicant has applied for the a visa. It clarifies that an application for a visa is to be made at least seven days before the proposed commencement date for the visiting tattooist permit. It is intended that this will allow flexibility for the chief executive to consider an application where a visa has not yet been issued. The section is also subsequently renumbered.

Clause 434 amends section 45 (Decision about application for visiting tattooist permit) to insert a new subsection 3A. Subsection 3A allows the chief executive additional discretion to decide not to grant an applicant a visiting tattooist permit if it would result in more than two visiting tattooist permits being granted within the same calendar year and the chief executive reasonably believes the individual is seeking to avoid being licensed. The provision aims to prevent individuals attempting to circumvent the requirement to be licensed when operating a tattooing business or tattooing, while allowing the issue of more than 2 visiting tattooist permits where appropriate.

Finally, the clause omits section 45(11). Previously the chief executive was restricted to granting a maximum of two exhibition permits to the same individual in the same calendar year. This section is redundant due to the expanded discretionary requirements in new section 3A. This section is subsequently renumbered.

Clause 435 amends the title of section 46 (Interim closure of unlicensed or illegal tattoo parlours) to remove a reference to a tattoo 'parlour' and replace it with 'body art tattooing business'. The amended section title reads "Interim closure of unlicensed or illegal body art tattooing business". This amendment aligns more closely with the amendment to the short title of the Act.

The clause also amends this section to specify where an interim closure order is to be posted in relation to fixed and mobile premises. For a licensed premises that is a fixed premise, an interim closure order is to be posted at the entrance to the licensed premises. For a licensed premises that is a mobile premises, an interim closure order is to be posted: on the mobile premises; or, at the entrance to the fixed premises specified in the licence particulars. It is intended that this will allow the commissioner to post a closure order at the mobile premises, at the fixed premises at which the records are kept, or both.

Clause 436 amends the title of section 47 (Long-term closure of tattoo parlours) to remove a reference to 'tattoo parlours' and replace it with 'body art tattooing businesses'. The amended section title reads "Long-term closure of body art tattooing businesses". This amendment aligns more closely with the amendment to the short title of the Act.

Clause 437 omits sections 57 (Confidentiality of criminal intelligence in proceedings) which protects criminal intelligence during QCAT or Supreme Court review proceedings for licensing decisions that were based on adverse security determinations. Given the changes to

the Act implemented elsewhere in this Bill, the mechanism to secure criminal intelligence during review proceedings provided by section 57 is redundant.

The clause also removes section 58 (Application of Judicial Review Act 1991) which sets out that part 4 of the Judicial Review Act 1991 does not apply to licensing decisions of the chief executive that were based on adverse security determinations, and places substantial restrictions on the capacity for further review or appeal of those licensing decisions. The removal of section 58 means that the Act does not within itself restrict the Judicial Review Act 1991.

Clause 438 amends section 59 (False or misleading statements) to clarify that the commissioner is an 'official' for this section.

Clause 439 amends section 60 (False or misleading documents) to clarify that the commissioner is an 'official' for this section.

Clause 440 replaces sections 61 (Exchange of information) and 62 (Confidentiality of information) with new sections 61 (Exchange of information) and 62 (Confidentiality).

New section 61 enables the chief executive to enter into an information sharing arrangement with the commissioner, a chief executive of another government department, a local government, or a person prescribed by regulation. New section 61 facilitates the sharing of information between the chief executive and a relevant agency that may assist in the exercise of the functions of the chief executive under the Act, or the functions of the relevant agency. The new provision also empowers each party to an information sharing arrangement to ask for and receive information, despite another Act or law. While criminal intelligence may be provided to the chief executive under an information sharing arrangement, new section 61 makes it explicit that criminal intelligence may only be used by the chief executive to monitor compliance with the Act, thus prohibiting any use of criminal intelligence in licensing decisions.

New section 62 replaces section 62. The new section 62 prevents the disclosure of confidential information gathered in the course of the administration of the Act. The new section 62 provides that a person involved in the administration of the Act must not make a record of, or disclose, confidential information gathered in the course of the administration of the Act. 'Confidential information' is defined to include information about a person's affairs but does not include information that could not reasonably be expected to result in the identification of the person to which the information relates. A person who contravenes the confidentiality provision is liable for a maximum penalty of 35 penalty units. The new section 62 also provides for circumstances where the disclosure of confidential information may be permissible, including for any proceedings in a court or QCAT, for the purposes of the Act or to comply with the requirements of another law.

Clause 441 amends section 63 (Protection from liability) to clarify that the commissioner is an 'official' for this section. The section is also subsequently renumbered.

Clause 442 amends section 70 (Regulation-making power) to clarify that a regulation may be made about the making, keeping and inspection of records in connection with the carrying on of a body art tattooing business. This regulation making power is in addition to the setting of fees payable under the Act.

Clause 443 repeals section 71 (Act to be reviewed). This section provides for the Act to be reviewed as reasonably as practicable after 3 years after the commencement of the section. The review undertaken by the Taskforce on Organised Crime Legislation makes section 71 obsolete.

Clause 444 replaces the heading for Part 8 (Transitional Provision). The new heading for part 8 reads "Transitional provisions". Additionally, it inserts a new part 8, division 1 (Transitional provision for Tattoo Parlours Act 2013).

Clause 445 inserts a new part 8, division 2 (Transitional provisions for Serious and Organised Crime Legislation Amendment Act 2106). New sections 73 (Applications not finally decided), 74 (Show cause process not finally decided), 75 (Proceedings not finally decided), 76 (Additional prescribed offences) and 77 (Transitional regulation-making power) are inserted in new part 8, division 2.

New section 73 provides that if, immediately before commencement of the Act, the chief executive had not finally decided an application for the grant of a licence or permit that the application is taken to have been withdrawn. This will ensure that all licence and permit applications will be withdrawn and new applications must be made for assessment under the amended Act as the Act has fundamentally changed as a result of amendments contained in this Bill.

New section 74 provides that if a QCAT notice has been given to a person immediately before the commencement, resulting from a decision to suspend or cancel a licence, the show cause process must continue under this Act as in force after the commencement.

New section 75 provides that a proceeding which has been initiated, but not finally decided, with regards to a decision mentioned in the now repealed section 57(1) is to be discontinued. This applies to a proceeding before QCAT or the Supreme Court. It also provides that any criminal intelligence relating to the proceedings is to be returned to the commissioner. A meaning of repealed is provided for this section.

New section 76 provides that the definition of prescribed offence for the Act, is taken to include a reference to sections 60A and 60B of the Criminal Code until their expiry.

New section 77 provides for a transitional regulation-making power in relation to this Bill to allow for a saving or transitional provision to be made by way of regulation subject to the requirements of this section. This power has a 'sunset' or 'automatic expiry' of 2 years after the date of commencement of the Bill. Definitions for amended Act, amending Act and pre-amended Act are also included for this section.

Clause 446 amends Schedule 1 (Dictionary) to remove definitions for 'adverse security determination' and 'close associate'. The clause also inserts definitions of 'charge', 'control order', 'convicted', 'criminal history', 'criminal intelligence', 'fixed premises', 'mobile premises', 'premises', 'prescribed offence', 'registered corresponding control order', 'relevant control order' and 'relevant person'.

Clause 447 renumbers sections 12A and 12B as sections 13 and 14.

Clause 448 renumbers Part 3, divisions 4 to 8 as Part 3, divisions 4 to 8. This is to ensure correct numbering new divisions inserted into the Act.

Part 31 Amendment of Tow Truck Act 1973

Clause 449 states that this Part amends the *Tow Truck Act 1973.*

Clause 450 amends section 4C (Who is an appropriate person) to remove elements reliant on identified participant or criminal organisation advice from the Commissioner of Police, introduce control orders as factors relevant to appropriate person considerations, and preclude the use of criminal intelligence in appropriate person considerations. The clause removes section 4C(1AA), which sets out that a person is not an appropriate person to hold or continue to hold a licence or certificate if the person is an identified participant in a criminal organisation; or the person is a criminal organisation; or for a corporation an executive officer is an identified participant in a criminal organisation.

The clause expands the list of things the chief executive must have regard to when deciding whether a person is an appropriate person to hold or continue to hold a licence or certificate in 4C(1), to include whether the person is or has been the subject of a control order or registered corresponding control order. The clause further amends section 4C to prohibit the chief executive from taking into account criminal intelligence provided by the commissioner under new section 36B when deciding whether a person is an appropriate person to hold or continue to hold a licence or certificate.

Clause 451 omits Subdivision 1 (Immediate cancellation), which contains section 21AA (Immediate cancellation—identified participant or criminal organisation) that deals with requirements for immediate cancellation of an authority, based on advice from the commissioner that the holder is an identified participant in a criminal organisation, or a criminal organisation. The clause also simplifies the structure of Part 4, Division 2 by omitting the subdivision 2 (Other provisions about cancellation, suspension, amendment and surrender) heading. The subdivision 3 heading is removed elsewhere in this Part.

Clause 452 amends section 21A (Cancellation or suspension of authorities) by removing a ground that the chief executive may cancel or suspend an authority held by a corporation if advised by the commissioner that an executive officer of the corporation is an identified participant in a criminal organisation. The clause also inserts a prohibition on the chief executive from cancelling or suspending an authority on the basis of criminal intelligence provided by the commissioner as part of an information-sharing arrangement under new section 36B.

Clause 453 amends section 21B (Immediate suspension of authority) by removing the ground to immediately suspend an authority held by a corporation if the chief executive is advised by the commissioner that an executive officer of the corporation is an identified participant in a criminal organisation.

The clause also removes a redundant exemption in section 21B(4)(c) from providing prescribed review information in a notice of immediate suspension where the authority holder is a corporation and the decision is made because the chief executive is advised by the commissioner that an executive officer of the corporation is an identified participant in a criminal organisation.

Clause 454 amends section 21D (Amending, suspending or cancelling authority) by removing an exemption from providing prescribed review information in a notice of immediate suspension where the authority holder is a corporation and the decision is made because the chief executive is advised by the commissioner that an executive officer of the corporation is an identified participant in a criminal organisation.

Clause 455 removes the heading for subdivision 3 (Delivery of cancelled or suspended authorities) of Part 4, Division 2 of the Act.

Clause 456 amends section 21G (Delivery of cancelled or suspended authority). Section 21G as it stands requires that where the chief executive cancels or suspends an authority the authority must be surrendered within the timeframe specified in a QCAT information notice, or a notice of cancellation or suspension. The clause amends section 21G to require the authority to be surrendered within the timeframe specified by the chief executive in the notice of cancellation or suspension, by omitting reference to the QCAT information notice.

Clause 457 removes the heading Division 1 (Review of decisions) of Part 6 of the Act and removes section 27A (Requirement to give QCAT information notice for particular decisions mentioned in schedule 1). Section 27A sets out requirements for the chief executive to give a QCAT information notice for particular decisions for which advice was provided by the commissioner that a person is an identified participant in a criminal organisation, or is a criminal organisation.

Clause 458 amends section 28 (Internal review of decisions) which provides the internal review process for decisions mentioned in schedule 1. Section 28 excludes decisions made where the chief executive was required under section 27A to give the authority holder a QCAT information notice. The clause removes that exclusion, consequential to the removal of section 27A.

Clause 459 amends section 29 (Review of decisions by QCAT) that sets out, among other things, that a person who has been given a QCAT information notice for a relevant decision may apply to QCAT for a review of the decision. The clause amends section 29 to limit its application to a person who has been given a QCAT information notice for a decision on review under section 28 of a decision mentioned in schedule 1. The clause removes section 29(3) which sets out that despite sections 22(3) of the QCAT Act, QCAT may not stay the operation of a decision made as a result of advice given by the commissioner that a relevant person is an identified participant in a criminal organisation, or a criminal organisation.

Clause 460 removes Part 6, Division 2 (Confidentiality and application of Judicial Review Act 1991), which includes removal of section 30 (Confidentiality of criminal intelligence in proceedings) and section 31 (Application of Judicial Review Act 1991). Section 30 protects criminal intelligence during QCAT or Supreme Court review proceedings for decisions that were based on advice that a person is an identified participant in a criminal organisation, or a criminal organisation. Elsewhere in this part, amendments are made which remove identified participant provisions and further amendments preclude having regard to criminal intelligence that might be provided under new information-sharing arrangements in making decisions. The new information-sharing arrangements also limit the use of criminal intelligence to compliance monitoring under the Act. Given those changes, the mechanism to secure criminal intelligence during review proceedings provided by section 30 is redundant.

Transitional provisions inserted elsewhere in this part provide for the return of criminal intelligence to the commissioner that may have been used in a proceeding.

The clause also removes section 31 (Application of Judicial Review Act 1991) which sets out that Part 4 of the *Judicial Review Act 1991* does not apply to particular decisions that were based on identified participant or criminal organisation advice, and places substantial restrictions on the capacity for further review or appeal of those decisions. By removing section 31, the amendments to this part do not, in themselves, restrict judicial review.

Clause 461 amends section 36 (Chief executive may obtain information from police commissioner—criminal history) to include that a person's criminal history includes information about whether a person is, or has been, the subject of a control order or registered corresponding control order. The clause also provides that where a person is subject to a control order or registered corresponding control order, a report on a person's criminal history must state the details of the order or be accompanied by a copy of the order.

Clause 462 amends section 36A (Notice of change in police information about a person—criminal history) to provide that where a person is subject to a control order or registered corresponding control order, a notice of change in police information must state the details of the order or be accompanied by a copy of the order.

Clause 463 removes section 36AA (Requesting and using police commissioner's advice—identified participants and criminal organisations). Section 36AA sets out when the chief executive must or may request, and how the chief executive may use, advice from the commissioner as to whether a person is an identified participant in a criminal organisation; or is a criminal organisation; or for a person that is a corporation, whether an executive officer is an identified participant in a criminal organisation.

Clause 464 removes section 36B (Chief executive may enter into arrangement about giving and receiving information with police commissioner) and replaces it with a new section 36B (Exchange of information). Section 36B provides for the establishment of an information-sharing arrangement with another relevant agency. The information must be of a type that assists the chief executive to perform functions under this Act, or assists the relevant agency to perform its functions. The chief executive and relevant agency are authorised, despite another Act or law, to ask for and receive information held by the other party, and are similarly authorised to disclose information to the other party. A relevant agency is defined as the police commissioner, a chief executive of a department, a local government, or a person prescribed by regulation.

The new section 36B limits the use of criminal intelligence, given to the chief executive by the commissioner under an information-sharing arrangement, to use in monitoring compliance with the Act.

Clause 465 amends section 36C (Confidentiality) to maintain the confidentiality of criminal intelligence. Under section 36C as it stands, a person may disclose, record or use information if, among other circumstances, it is authorised by the person to whom the information relates. The amendment provides that disclosure, recording or use of information cannot be so authorised if that information is criminal intelligence.

Clause 466 inserts a new Division 4 (Transitional provisions for Serious and Organised Crime Legislation Amendment Act 2016) in Part 8 and makes transitional arrangements for the Act. New section 47 (Definition for division) defines an authority to mean an assistant's certificate, driver's certificate or licence. New section 48 (Applications not finally decided) sets out that decisions on applications to grant or renew authorities not decided immediately before commencement must be decided under the Act as in force after the commencement. New section 49 (Show cause process not finally decided) provides that show cause proceedings initiated immediately before commencement must continue under the Act as in force after commencement.

The clause also inserts section 50 which provides that a QCAT review proceeding or Supreme Court proceeding that has not been finally dealt with, and where it concerns a relevant decision, is discontinued and remitted to the chief executive to decide again under the Act as in force after commencement. A relevant decision is a decision for which an information notice was given under repealed section 21AA or repealed section 27A: both dealing with decisions for which advice about a person being an identified participant or a criminal organisation was given by the commissioner. 'Repealed' is defined, in relation to a provision of the Act, as the provision in force immediately before the commencement.

Section 50 also provides that QCAT or the Supreme Court must return to the commissioner any criminal intelligence relating to the proceeding in their possession or control. Criminal intelligence is defined in the section by reference to the meaning of criminal intelligence in repealed section 30(7), as section 30 (Confidentiality of criminal intelligence in proceedings) defines criminal intelligence relevant to proceedings and is omitted elsewhere in this part.

Clause 467 omits references to sections 27A and 30, removed elsewhere in this part, from the list of authorising provisions in Schedule 1 (Reviewable decisions).

Clause 468 amends Schedule 2 (Dictionary) to remove definitions for 'criminal organisation' and 'identified participant'. The clause also inserts a definition of 'criminal intelligence', (for sections other than the transitional section 50 which contains its own definition) that aligns with the definition in the Criminal Code section 86(3). Definitions for 'control order' and 'registered corresponding control order' are provided by reference to the *Penalties and Sentences Act 1992,* section 161N.

Part 32 Amendment of Transport Operations (Passenger Transport) Act 1994

Clause 469 states that this Part amends the *Transport Operations (Passenger Transport) Act 1994.*

Clause 470 adds the three new offences inserted into the Criminal Code; section 228DA (Administering child exploitation material website), section 228DB (Encouraging use of child exploitation material website), and section 228DC (Distributing information about avoiding detection), to the list of offences in Schedule 1A (Driver disqualification offences). This is consistent with the approach taken to the existing offences related to child exploitation material in sections 228A (Involving child in making child exploitation material), 228B (Making child exploitation material), 228C (Distributing child exploitation material), 228D (Possessing child exploitation material) of the Criminal Code.

Part 33 Amendment of Weapons Act 1990

Clause 471 states that this Part amends the *Weapons Act 1990.*

Clause 472 omits section 10(3)(a)(iii) and (iv) and (b)(iii) and (iv) (Limitations on issue of licence) that makes reference that a criminal organisation and an identified participant of a criminal organisation cannot be issued of a licence.

Clause 473 omits section 10B(2A) (Fit and proper person – licensees) that makes reference to an identified participant in a criminal organisation for the issue, renewal or revocation of a licence.

Clause 474 omits section 10C(2A) (Fit and proper person – licensed dealer's associate) that makes reference to an identified participant in a criminal organisation is not a fit and proper person to be an associate of a licensed dealer.

Clause 475 omits sections 14(1A), 14(3A) and 14(9A) (Inquiries into application) that requires the authorised officer to ask the Commissioner of Police whether an applicant for a licence is a criminal organisation or a participant of a criminal organisation. Section 14(9) is amended by omitting reference to subsection (3A) that has been deleted.

Clause 476 omits section 18(4A) to (4C) (Renewal of licences) that requires the authorised officer to ask the Commissioner of Police whether an applicant seeking to renew a licence is a criminal organisation or a participant of a criminal organisation.

Clause 477 amends section 19(2) (Notice of rejection of application to issue or renew licence) to remove reference to sections 14(3A) and 18(4B) as those sections dealing with participants of criminal organisations are deleted. Section 19 provides that where an authorised officer rejects an application for a licence based on criminal intelligence the notice of rejection need only state the reason as 'confidential information'.

Clause 478 amends section 30(1A) (Suspension of revocation notice) by removing reference to section 18(4B) or subsection (1C) dealing with participants of criminal organisations that have been deleted. Section 30 provides for the issue of suspension or revocation notices.

Clause 479 amends section 50B (Unlawful supply of weapons) to insert new subsections (3) and (4) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 480 amends section 65 (Unlawful trafficking in weapons) to insert new subsections (3) and (4) to provide a cross-reference to the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*, inserted by the Bill; and to provide that presentation of an indictment charging an offence with the new Serious Organised Crime circumstance of aggravation requires the consent of a Crown Law Officer.

Clause 481 amends section 142AA (Notices must be QCAT information notices) by omitting subsection (3) as sections 14(3A), 18(4B) and 30(1C) have been deleted.

Clause 482 amends section 142A (Confidentiality of criminal intelligence) by inserting subsection 142A(2)(c) that provides that the court or tribunal deciding an appeal or reviewing a decision may as it considers appropriate take criminal intelligence evidence by way of an affidavit from a police officer of or above the rank of superintendent.

Section 142A is further amended by inserting sections (2A) and (2B) that allows the Commissioner to withdraw information that the court or tribunal considers has been incorrectly categorised as criminal intelligence. Information that has been withdrawn by the Commissioner under subsection (2A) must not be disclosed to any person or taken into consideration by the court or tribunal. Also, new section (2C) provides that the *Public Records Act 2002* does not apply to records made or kept by courts or tribunals that would otherwise require their disclosure under Act.

Clause 483 deletes section 143 (Additional confidentially requirements for particular criminal intelligence in proceedings) and section 144 (Application of Judicial Review Act 1991) as a result of criminal organisations, and participants of criminal organisations no longer being automatically refused a licence.

Clause 484 amends section 145 (Applicant may carry on business pending review) by deleting subsection (2). Subsection 2 is no longer required as sections 14(3A), 18(4B) and 30(1C) dealing with participants of a criminal organisation have been deleted.

Clause 485 amends section 161 (Proceedings for an offence) to insert new subsection (3A) which provides that an offence under sections 50B or 65 cannot be by way of summary proceedings where it is alleged that it was committed with the Serious Organised Crime circumstance of aggravation under new section 161Q of the *Penalties and Sentences Act 1992*. That is, with regards to these aggravated indictable offences, the Magistrates Court must abstain from jurisdiction.

Clause 486 amends Part 8, Division 5 (Transitional provision for Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013) as the transitional provision is no longer required as all decisions made prior to the amending Act have been finalised.

Clause 487 inserts a new Part 8, Division 7 (Transitional provisions for Serious and Organised Crime Legislation Amendment Act 2016) to provide transitional arrangements.

A new section 193 (Applications not finally decided) is inserted to provide that the authorised officer must determine an undecided application for the grant or renewal of an authority under the amended Act.

A new section 194 (Proceedings not finally decided) is inserted to provide that an undecided proceeding before QCAT, or the Supreme Court, for a review under the repealed section 143(1) of the *Weapons Act 1990* is discontinued and the matter is remitted back to an authorised officer to decide again under the amended *Weapons Act 1990*.

Clause 488 amends Schedule 2 (Dictionary) be removing definitions of 'criminal organisation' and 'identified participant' as both terms are no longer referred to.

Part 34 Amendment of Working with Children (Risk Management and Screening) Act 2000

Clause 489 states that this Part amends the *Working with Children (Risk Management and Screening) Act 2000.*

Clause 490 adds the three new offences inserted into the Criminal Code; section 228DA (Administering child exploitation material website), section 228DB (Encouraging use of child exploitation material website), and section 228DC (Distributing information about avoiding detection), to the list of offences in Schedule 2 (Current serious offences). This is consistent with the approach taken to the existing offences related to child exploitation material in sections 228A (Involving child in making child exploitation material), 228B (Making child exploitation material), 228C (Distributing child exploitation material), 228D (Possessing child exploitation material) of the Criminal Code.

Clause 491 adds the three new Criminal Code offences mentioned above to the list of offences in schedule 4 (Current disqualifying offences). This is consistent with the approach taken to the existing offences related to child exploitation material in sections 228A (Involving child in making child exploitation material), 228B (Making child exploitation material), 228C (Distributing child exploitation material), 228D (Possessing child exploitation material) of the Criminal Code.

Part 35 Repeals

Clause 492 provides for the repeal of the *Criminal Organisation Act 2009* and the repeal of the *Vicious Lawless Association Disestablishment Act 2013*. The Serious Organised Crime circumstance of aggravation, complemented by the targeted sentencing regime, inserted under the *Penalties and Sentences Act 1992* (new Part 9D) by the Bill, replaces the repealed *Vicious Lawless Associate Disestablishment Act 2013*.

Part 36 Minor and consequential amendments

Clause 493 provides that Schedule 1 amends the legislation it mentions.

Part 37 Other matters

Clause 494 relates to the making of the *Criminal Code (External Agencies) Regulation 2016*. Subclause (1) provides that the regulation that is set out in Schedule 2 of the Bill has effect as a regulation under the Criminal Code. Subclause (2) provides that the regulation, on commencement of Schedule 2, stops being a provision of this Bill and becomes a regulation made under the Criminal Code.

Clause 495 provides that for the purpose of section 22C of the *Acts Interpretation Act 1954* this Bill is an amending Act.

Schedule 1 Minor and consequential amendments

Schedule 1 makes minor and technical amendments to various Acts.

Schedule 2 Criminal Code (External Agencies) Regulation 2016

Schedule 2 establishes the *Criminal Code (External Agencies) Regulation* 2016 which lists the external agencies for the purposes of section 86 (Obtaining of or disclosure of secret information about the identify of informant) of the Criminal Code.