Police Powers and Responsibilities and Other Legislation Amendment Bill 2018

Explanatory Notes

Short title

The short title of the Bill is the Police Powers and Responsibilities and Other Legislation Amendment Bill 2018 (the Bill).

Policy objectives and the reasons for them

Police Powers and Responsibilities Act 2000

The *Police Powers and Responsibilities Act 2000* (PPRA) provides police officers performing duties for the Queensland Police Service (QPS) with the powers necessary for effective modern policing and law enforcement. While significant amendments have been made to the PPRA since its commencement, recent reviews of the legislation, including a 2011 review of the evade police provisions by the Crime and Corruption Commission (CCC) (then the Crime and Misconduct Commission (CMC)), have identified a number of amendments aimed at enhancing the efficiency and quality of front line policing services. The Bill amends the PPRA to ensure that policing services remain responsive to contemporary community needs.

High-risk missing persons

In 2016/17, 8,292 people were reported missing to Queensland police. Of those persons reported missing, two were later found to be murdered and 31 were later found to have committed suicide. The Bill will introduce a new concept to missing person investigations, namely searching places for high-risk missing persons (HRMPs). A person is considered a HRMP if they are under 13 years of age or there is reasonable suspicion they may suffer serious harm if not found as quickly as possible. Factors to be considered in determining if a person is a HRMP include whether the missing person has a history of domestic violence or other relationship problems, recent behaviour that is out of character and any suspicious circumstances relating to the person's disappearance, such as no longer using bank accounts or social media.

In most missing person investigations, police are allowed by the consent of an occupier to enter the HRMP's residence or place of employment to conduct their investigations. However, for a diverse range of reasons, this consent may not always be forthcoming.

If consent is denied, police cannot enter a place by establishing a crime scene under the PPRA unless they hold a reasonable suspicion that a crime scene threshold offence has occurred. In many instances involving HRMPs there is insufficient information to reach the threshold that any offence has occurred, and as such, police are unable to enter a place without an occupier's consent.

The failure to enter a place in the crucial stages of a HRMP investigation can result in a loss of evidence or information particularly if the missing person leaves or is removed from the place, the place is cleaned, or exposure to the environment effects the place. Any delay in an investigation may result in a missed opportunity to gather information or intervene when a person is planning to take their life.

The Bill assists a police officer investigating the whereabouts of a HRMP by allowing the police officer to establish a missing person scene at a place to search for the missing person or to search for information about the person's disappearance. A police officer will be able to establish a missing person scene under a missing person warrant issued by a Supreme Court judge or a magistrate (the issuer), once the issuer is satisfied that the criteria necessary to ground the warrant power have been met. Prior to applying for the missing person warrant, the investigating police officer must obtain the authorisation of a commissioned police officer (a police officer of or above the rank of Inspector).

In circumstances where it is necessary as a matter of urgency to establish a missing person scene before obtaining a missing person warrant, a commissioned officer may authorise the establishment of a missing person scene if satisfied the criteria pre-requisite to exercising the powers have been met. Urgent circumstances might include the destruction of information about the disappearance of the missing person or the risk that the missing person will suffer serious harm should the powers not immediately be exercised. If a missing person scene is established via the authority of a commissioned officer in urgent circumstances, the police officer who establishes the scene must apply to a Supreme Court judge or a magistrate for a missing person warrant as soon as reasonably practicable after establishing the scene. This reflects the current responsibility of a police officer to apply for a crime scene warrant after establishing a crime scene, under existing crime scene powers.

Crime scenes

Other amendments in the Bill address the complicated manner in which crime scenes are defined under the PPRA. To understand the powers that may be exercised in relation to crime scenes, a police officer must examine the dictionary in schedule 6 of the PPRA and understand the definitions for the terms: crime scene; primary crime scene; secondary crime scene; serious violent offence; and seven-year imprisonment offence.

The Bill, consistent with other Australian jurisdictions, will simplify when a crime scene may be established. This will be achieved by dispensing with the multiple definitions currently used and by introducing the new term of a 'crime scene threshold offence'. The Bill will authorise crime scene powers to be exercised at a place where a crime

scene threshold offence has occurred or where there is evidence of a significant probative value that a crime scene threshold offence has occurred elsewhere.

The Bill will define a crime scene threshold offence to mean an indictable offence which carries a maximum penalty of at least four years imprisonment or an offence involving deprivation of liberty.

Storage devices

Investigative impediments associated with accessing locked storage devices which have been lawfully seized under a crime scene warrant have also been addressed in the Bill. Police are continually hampered in their investigation of serious criminal offences when they encounter locked electronic storage devices, such as mobile phones and computers. Police forensic examination of locked storage devices is extremely difficult. This means that incriminating evidence is often unable to be accessed.

Sections 154 and 154A of the PPRA currently allow for a search warrant to include an order requiring access to information stored on electronic devices. Modelled on these sections, the Bill provides police with the opportunity to apply to a Supreme Court judge or magistrate for an access approval order for a storage device that has been seized under a crime scene warrant. This allows evidence contained in storage devices to be obtained at the earliest opportunity.

A failure to comply with the access approval order is dealt with under section 205A of the Criminal Code and is punishable by a maximum penalty of five years imprisonment.

The Bill will also allow police to inspect electronic storage devices in the possession of a person who has been convicted of an offence of administering a child exploitation material website and/or encouraging the use of a child exploitation material website. These offences were included as reportable offences in the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* (CPOROPOA) on 9 December 2016 as a result of the *Serious and Organised Crime Legislation Amendment Act 2016* and meet the criteria for 'prescribed internet offences' under the PPRA.

Searching persons to be transported for a breach of the peace

Breaches of the peace have the potential to result in a heated confrontation which may or may not lead to the commission of a violent offence. Section 50 of the PPRA allows police to take reasonable steps to prevent a breach of the peace, including taking a person into custody for a reasonable amount of time. This intervention often calms a situation and is an alternative to arrest in many instances. However, police have no capacity to search a person who has been taken into custody to prevent a breach of the peace when they are required to be transported by police. This creates a potential risk if, while being transported from the scene of a breach of the peace, the person intends to self-harm or injure police with objects that were concealed on the person.

The search provision allows police to remove any items which could endanger the person or police prior to being transported. This provides an additional layer of safety and security for police officers and the person being transported by police.

New offence – Assault or obstruct a civilian watch-house officer

It is an unfortunate reality of modern day policing that the personal safety of civilian watch-house officers may be threatened by persons who assault or obstruct them. Unlike police who may proceed with a simple offence under section 790 of the PPRA against an offender who assaults or obstructs them, the only option for taking criminal action against an offender who assaults or obstructs a civilian watch-house officer is to prefer charges under the Criminal Code. In some instances, the circumstances of the assault or obstruct may not be so serious as to warrant proceedings under the Criminal Code. The Bill will introduce a new simple offence to appropriately deal with offenders in these cases.

Separate the offence of assault or obstruct police officers

Section 790 of the PPRA provides an offence where a person assaults or obstructs a police officer in the course of their duties. The section heading for this offence refers to both the terms 'assault' and 'obstruct'. This makes gathering and analysing statistical data difficult and may also lead to difficulties in interpreting a person's criminal history. For example, a person who only obstructed a police officer will have recorded on the person's criminal history the section heading for the offence that includes the word 'assault'. Separating the offences will address these issues.

Controlled operations and activities

Schedules 2 and 5 of the PPRA lists offences which may be investigated through conducting a controlled operation or controlled activity. Controlled operations and controlled activities are used by police to obtain evidence of the commission of a particular offence without themselves being liable for committing the offence.

Unlicensed bookmaking is an offence which can involve the operation of online or telephone based facilities which are used to advertise and take bets. While the *Racing Integrity Act 2016* (RIA) contains indictable and simple offences to address unlicensed activities, the subversive nature of unlicensed bookmaking makes it difficult to obtain evidence about these activities without police being at risk of committing offences under the RIA during the course of their investigations.

The Bill extends the scope of schedule 2 of the PPRA to include offences under sections 221 and 223 of the RIA relating to unlawful bookmaking and to opening, keeping, using or promoting an illegal betting place. Additionally, the Bill also extends the scope of schedule 5 of the PPRA to include section 225 of the RIA which prohibits the use of a service or a facility at an illegal betting place. This will allow authorised police to undertake controlled operations and controlled activities when investigating these offences. This will provide police with greater scope to investigate this illegal activity.

Evade police provisions

Police investigations into evade police offences, where the driver of a motor vehicle fails to stop at the direction of a police officer in a police vehicle, often result in the offence remaining unsolved. This is primarily due to police not being able to verify the driver at the time of the offence. Between 2014 and 2016, the number of reported evade police offences has increased from 3,249 to 5,031. In 2017, there were 4,628 reported instances of evade police offences. From the period 2014 to 2017, the percentage of unsolved evade police offences increased from 46% to 63%.

Drivers evade police interceptions for a number of reasons. For example, the driver may be unlicensed, intoxicated or have committed an offence and is evading police to prevent capture. The QPS pursuit policy encourages alternative options for apprehension, other than pursuit, against drivers who evade police interception. Pursuits are not the principal means of effecting apprehension due to risk based factors including the potential danger posed to members of the public, police officers and the occupants of the fleeing vehicle.

The evade police provisions in Chapter 22 'Provisions about evading police officers' of the PPRA aim to improve community safety by reducing the need for police to pursue fleeing drivers. When police allow a vehicle to flee, and in doing so avoid a potentially dangerous pursuit, the police may not know, or be able to positively identify, the driver at the time of the incident. The evade police provisions therefore provide police with investigative powers and tools to identify the driver of a fleeing/offending vehicle without the need to engage in a pursuit. These include the power to serve an evasion offence notice (EON) on the registered owner of the vehicle that requires the owner to provide certain information to investigating police.

The evade police provisions of the PPRA were subject to a review in 2011 by the (then) Crime and Misconduct Commission (CMC). The CMC review made 13 recommendations for change. Of these, seven required legislative amendments (Recommendations 1, 2, 6, 7, 8, 12 and 13). The Government's tabled response supported the recommendations. The Bill gives effect to the seven legislative recommendations of the CMC review.

Number plate confiscation notices

Number plate confiscation notices (NCNs) were introduced in 2013 and allow vehicles, which are subject to impoundment because of hooning type offences, to be kept at an address other than a holding yard such as the vehicle owner's residential address. The NCN scheme benefits vehicle owners by removing the costs associated with impounding a vehicle at a holding yard.

It is intended that vehicles that are kept at a place other than a holding yard as a consequence of a NCN are subject to the same constraints as if the vehicle was held at a holding yard. While the nature and operation of vehicle holding yards prevents owners from modifying, selling or disposing of impounded vehicles, this restriction has not been reflected in the NCN provisions. A new offence provision in the PPRA will

ensure vehicles subject to a NCN remain at the address without modification, sale or disposal until the NCN period ends.

Transporting an offender to take a photograph for a banning notice

Part 5A 'Police banning notices' of chapter 19 of the PPRA establishes a legislative regime that allows police to issue a police banning notice to a person whose behaviour or presence adversely affects the good order of a licensed premises or public place within a safe night precinct.

When the police banning notice is given to the person, police may detain the person for the purposes of taking the person's photograph. The photograph can be provided to the Commissioner for Liquor and Gaming, or an approved operator for an ID scanning system for recording on the ID scanning system or to particular licensed premises.

Section 602S of the PPRA authorises police to detain and photograph a person, who is a respondent for a police banning notice, at a police vehicle, watch-house or police station. However, section 602S does not provide police with a power to transport the person to those places to take the photograph. While officers who are in possession of a camera can photograph the person in situ and issue the banning notice immediately, those who are not, are required to wait until one can be made available. This can exacerbate an already volatile situation particularly when the person subject to the banning notice is intoxicated and has behaved in a manner that is disorderly, offensive, threatening or violent. The capacity to take the person from the scene for the purpose of taking their required photograph at a police vehicle, watch-house or police station is necessary to ensure the continued effectiveness of police banning notices.

Notice to appear for traffic offences

A notice to appear (NTA) for a traffic offence can be served by registered post to the licence or registration address of the alleged offender if it is served on the person in the way provided for under section 56(2)(a), (b) or (c) of the *Justices Act 1886* (JA).

However, these sections do not allow for the service of a NTA in circumstances where an alleged offender has recently moved to a new address and not updated his or her licence or registration address details with the Department of Transport and Main Roads within the 14 day requirement.

The Bill will overcome this difficulty by expanding the manner in which service of a NTA may be effected to also include service by registered post to the address of the alleged offender's place of business or residence last known to police.

Police Powers and Responsibilities Regulation 2012

The *Police Powers and Responsibilities Regulation 2012* (PPRR) supports the provisions of the PPRA. Schedule 9 of the PPRR sets out the code of responsibilities of police officers which includes detailing the police powers and responsibilities relating to search warrants, obtaining documents and crime scenes.

Changes to the PPRR have been made in relation to HRMPs, crime scene and information access orders for electronic storage devices to reflect those changes to the PPRA.

Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004

Schedule 1 of the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* (CPOROPOA) lists the offences which make a person a reportable offender. In so far as possible, the offences in Schedule 1 are nationally consistent. This allows reportable offenders to be managed across jurisdictions if required. During the May 2017 joint meeting of Attorneys-General, Justice and Police Ministers it was identified that some jurisdictions have not captured all of the Commonwealth child sex offences in their reportable offender legislation. An agreement was reached at that meeting that each jurisdiction would be compliant as soon as practicable.

There are 10 Commonwealth child sex offences under the *Criminal Code Act 1995* (Cwlth) that are not captured as reportable offences in Queensland legislation, including trafficking in children, sexual intercourse and activity with children outside Australia, dealing in child abuse material through the post, and some circumstances of aggravation offences. The Bill amends Schedule 1 of the CPOROPOA to now include the 10 Commonwealth child sex offences as reportable offences in Queensland.

Corrective Services Act 2006

On 26 May 2017, the *Corrective Services (Parole Board) and Other Legislation Amendment Act 2017* (CSPBOLA) was enacted. The CSPBOLA gave effect to the recommendations made by Walter Sofronoff QC in the 2016 review of the Queensland parole system. In particular, the CSPBOLA established a full-time, centralised, fully independent and professional parole board (Parole Board Queensland (PBQ)). The Bill provides some minor amendments to the 2017 legislation to allow the PBQ to more efficiently conduct its business.

Allow PBQ or prescribed board member to consider an immediate parole order suspension and issue warrant

The current framework for considering an urgent request to suspend a person's parole is not operating as originally intended. The intent of the framework was to allow an urgent request for the suspension of a person's parole to be considered by a single member of the PBQ when the full PBQ was not available (outside of business hours). The decision would then be forwarded to the PBQ for the parole to be cancelled and a warrant to be issued for the person's return to custody.

However, the manner in which the process operates prevents the PBQ from considering a request to suspend a person's parole as part of its daily meeting agenda. Rather, the request must first be considered by a single member and then referred to the PBQ for the final decision. The Bill stream-lines this process to maintain the efficiency of the PBQ.

Allow three sitting members of the PBQ to cancel the parole of a prescribed prisoner

Under the *Corrective Services Act 2006* (CSA) prescribed prisoners comprise of serious violent and serious sexual offenders. Currently the decision to cancel the parole of a prescribed prisoner must be made by five sitting members of the PBQ. However, only three sitting members of the PBQ are required to suspend a prescribed prisoner's parole.

Given the comparable decision making processes required to determine a cancellation and a suspension of a parole order for a prescribed prisoner, that is, the level of risk posed by the prisoner to the community, the Bill allows the three set members of the PBQ, the President or Deputy, a professional board member and a community board member, to make the decision, rather than five sitting members. This provides a flexible, consistent decision making process that maintains community safety. Decisions to approve parole applications for prescribed prisoners will still be made by the PBQ sitting as five members.

PBQ to decide when a life sentenced prisoner may re-apply for parole

Prisoners who are refused parole because of the risk they pose to community are able to re-apply for parole within six months. This includes approximately 85 life sentenced prisoners who are past their parole eligibility date. For some of these life sentenced prisoners the risk they pose to the community will not decrease within the six months between a parole application refusal and the next parole application date.

The Bill will allow the PBQ to determine a period within a 12-month period for which a life sentenced prisoner must not reapply for parole.

Proving delegations for evidentiary certificates under the Police Service Administration Act 1990, the Transport Planning and Coordination Act 1994, the Maritime Safety Queensland Act 2002, the Motor Accident Insurance Act 1994 and the State Penalties Enforcement Act 1999

Often in a court proceeding that relies on an evidentiary certificate, the evidentiary certificate is signed by an authorised officer pursuant to an instrument of delegation authorised under the relevant Act. Currently, the prosecution must tender proof of the instrument of delegation, and failure to provide this proof results in potential dismissal of charges that would be otherwise supported by evidence.

To facilitate proof of the instrument of delegation, certified copies are provided to prosecution corps throughout Queensland. Each year hundreds of offences are prosecuted and certified copies of the delegations provided, however very rarely are these certificates challenged by defendants in court. The Bill will remove the obligation for proof of a delegation to accompany an evidentiary certificate. This will have minimal impact on court proceedings but will result in efficiencies for prosecuting officials, particularly as certified copies are required to be re-issued each time a delegation is updated.

A defendant will retain the capacity to challenge the validity of a delegation by providing the relevant prosecution with a notice to challenge at least 10 business days before the hearing date.

Achievement of policy objectives

The Bill achieves its objectives by amending the following Acts and subordinate legislation:

- *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004;*
- *Corrective Services Act 2006;*
- Criminal Code
- *Maritime Safety Queensland Act 2002;*
- *Motor Accident Insurance Act 1994;*
- *Police Service Administration Act 1990;*
- *State Penalties Enforcement Act 1999;*
- *Transport Planning and Coordination Act 1994;*
- *Police Powers and Responsibilities Act 2000*; and
- *Police Powers and Responsibilities Regulation 2012*.

Police Powers and Responsibilities Act 2000

High-risk missing person powers

The Bill inserts part 3A into Chapter 7 of the PPRA. This part establishes a legislative framework for the investigation of HRMPs.

Division 1 - Preliminary

For the purpose of part 3A, the new section 179B defines a missing person as a person who is reported missing to police by another person who fears for the safety, or is concerned for the welfare of the person as they are unable to contact or locate them, and after police make reasonable inquiries to contact or locate the person, their whereabouts remain unknown to police.

A HRMP is a missing person who is under 13 years of age, or it is reasonably suspected the missing person may suffer serious harm if not found as quickly as possible. Serious harm means harm, including the cumulative effect of any harm, that endangers, or is likely to endanger, a person's life or is, or is likely to be significant and longstanding.

In determining whether a missing person is a HRMP, a police officer, Supreme Court judge or magistrate may, under section 179C, consider:

- the person's age;

- any disability of the person attributable to a cognitive, intellectual, neurological, physical or psychiatric impairment;
- evidence the person may commit suicide;
- the person's ability to interact safely with others or in an unfamiliar environment;
- the person's need for medication;
- an addiction the person may have;
- the person's recent behaviour that is out of character for the person;
- whether the person is suspected of being the victim of a crime;
- any history of domestic violence or other relationship problems;
- any ongoing bullying or harassment of the person;
- a previous disappearance or exposure to serious harm that affected the person;
- whether the person is experiencing any financial problems;
- a reason why the person may wish to go missing;
- if the person is suspected of being lost within a particular area, the climate or other environmental factors relevant to the area; and
- any suspicious circumstances relating to the person's disappearance, for example, the person has suddenly stopped his or her regular activities, including banking or social activities.

Division 2 – Establishment of missing person scenes

Sections 179D and 179E set the parameters for establishing a missing person scene. A police officer (the responsible officer) may establish a missing person scene at a place by:

- making an application to a Supreme Court judge or magistrate for a missing person warrant; or

- in urgent circumstances, through the authority of a commissioned police officer (commissioned officer) before applying for the warrant.

Where a missing person scene is established under the authority of a commissioned officer in urgent circumstances, the police officer establishing the missing person scene must, as soon as reasonably practicable, apply to a Supreme Court judge or a magistrate for a warrant to confirm the missing person scene.

A commissioned officer who authorises a missing person scene prior to a warrant being issued for the missing person's residence, place of employment or vehicle must reasonably suspect the HRMP may be at the place or an inspection of the place may provide information about the person's disappearance. For any other place, the commissioned officer must reasonably believe the HRMP may be at the place or an inspection of the place may provide information about the person's disappearance. The commissioned officer must also be satisfied that it is reasonably necessary to exercise missing person powers at the place to search for the person or to gather information about the person's disappearance. Additionally, the commissioned officer must be satisfied that it is necessary to establish a missing person scene before obtaining a missing person warrant due to the urgency of the circumstances.

A missing person warrant is not required for a public place. However, if a place is a public place only while it is open to the public and the occupier of the place requires police to leave, police must apply for a missing person warrant.

When establishing a missing person scene, the responsible officer for the scene must identify the missing person scene, decide the boundaries necessary to protect the scene and mark the limits of the scene to sufficiently identify it to the public. Immediately after establishing a missing person scene the responsible officer must take the steps reasonably necessary to protect anything at the scene from being damaged, interfered with or destroyed. For example, ensuring only essential people enter the scene, preventing unnecessary movement inside the boundaries of the scene and establishing a safe walking area in the scene. The responsible officer must ensure a record of the name of each person who is present when the missing person scene is established, or enters it after it has been established.

A place stops being a missing person scene at the end of 48 hours after it is established, unless a missing person warrant issued for the place is extended under section 179M. In that case, the place stops being a missing person scene at the end of the extension. Also, the place stops being a missing person scene before the end of 48 hours or any extension if a judge or magistrate refuses to issue a missing person warrant for the place, or the missing person has been found, or is no longer high risk, or the responsible officer decides there is no longer a need to exercise the missing person powers at the place.

Division 3 - Missing person warrants

A missing person warrant expires 48 hours after a missing person scene has been established. A police officer can apply to a judge or magistrate to have the warrant extended for a further 48 hours.

The occupier of the place, named in the application for a missing person warrant must be given notice that an application is being made, unless it is not reasonably practicable or notice would hinder the HRMP investigation. This provides the occupier with the opportunity to attend the hearing of the application and make submissions about the application to the judge or magistrate.

An occupier of a place named in a missing person warrant may also apply to a judge or magistrate to have the warrant revoked if the occupier did not know about the application or had a genuine reason for not being present during the hearing of the application.

If present when the application is made, the occupier may make submissions to the judge or magistrate, but not submissions that will unduly delay the consideration of the application. When a police officer exercises powers under a missing person warrant at an occupied place, the officer must give the occupier a copy of the missing person warrant and a statement of the occupier’s rights as soon as reasonably practicable. If the occupier is not present, the officer must leave the documents in a conspicuous place.

Division 4 - Powers at missing person scenes

A responsible officer for a missing person scene, or a police officer acting under their direction, may do any of the following in relation to the scene:

- enter the scene;
- if reasonably necessary, enter another place to gain access to the scene;
- perform any necessary investigation, including, for example, a search and inspection of the scene and anything in it for the missing person or to obtain information about the person's disappearance;
- open anything at the scene that is locked;
- take electricity for use at the scene;
- remove or cause to be removed an obstruction from the scene;
- photograph the scene and anything in it; and
- seize all or part of the thing that may provide information about the missing person's disappearance.

Where necessary, the responsible police officer may extend a power to an authorised assistant. For example, police may need the assistance of a locksmith in order to open a locked cupboard at the search scene. However, an authorised assistant may either only enter the missing person scene or if reasonably necessary enter another place to gain access to the missing person scene if asked to do so by the responsible officer.

Structural damage to a building at a HRMP scene can only occur if it is authorised by a Supreme Court judge.

The responsible officer, or an officer acting under their direction also has the power to direct a person to leave the missing person scene or not to enter the scene. This extends to vehicles and animals. The responsible officer can also direct the occupier (if the missing person scene is a place) to maintain a continuous supply of electricity to the scene.

As an accountability measure, officers who exercise any of the powers at a missing person scene must electronically record the use of those powers where practicable. This will ensure an accurate record is made when the new powers are exercised.

Division 5 – General provisions about high-risk missing persons

A new section 179S requires the police commissioner to provide an occupier of a dwelling which is a missing person scene with alternative accommodation for the period the occupier cannot reside at the dwelling. The alternate accommodation is to be of a similar standard to the dwelling and in the same locality if reasonably practicable.

As a further accountability measure, a new section 879 of the PPRA will require the CCC to review the effectiveness of the HRMP scheme after five years from commencement. The CCC is required to consult with the Minister for Police and Minister for Corrective Services during the preparation of the report and the report is to be tabled in the Legislative Assembly.

Crime scenes

The Bill introduces new sections 163A and 163B of the PPRA which provide new definitions of what constitutes a crime scene. Section 163A reduces the crime scene threshold offence from an indictable offence for which the maximum penalty is at least 7 years imprisonment, or an offence involving the deprivation of liberty, to an indictable offence that carries a maximum penalty of at least 4 years imprisonment or an offence involving deprivation of liberty. Section 163B removes the previous distinction between primary and secondary crime scenes. The amendments allow a crime scene to be declared at a place where the relevant offence happened, or another place if there may be evidence at that place of a significant probative value of the commission of a crime scene threshold offence.

This amendment will align Queensland with other Australian jurisdictions that do not distinguish between primary and secondary crime scenes.

Access to information on a storage device seized under a crime scene warrant

The Bill inserts section 178A to allow police to apply to a Supreme Court judge or a magistrate for an access information order for any storage devices which have been seized or are to be seized under a crime scene warrant. A judge or magistrate may make an access information order only if satisfied there are reasonable grounds for suspecting that information stored on the storage device may be evidence of the commission of the offence for which the crime scene was, or is to be, established.

An access information order will require a specified person to give a police officer access to the storage device (for example, via a password or pin number) and access to the information stored on the device. A police officer who is given access to a storage device can examine, copy and convert information on the device in order to process evidence of the crime scene offence.

Failure to give this information is an offence under section 205A (Contravening order about information necessary to access information stored electronically) of the Criminal Code which carries a maximum penalty of five years imprisonment. The new section is similar to existing powers under sections154 and 154A of the PPRA.

Controlled Operations and Controlled Activities

Schedule 2 of the PPRA contains a list of relevant offences for police controlled operations and surveillance device warrants for chapter 10 of the PPRA. The Bill extends schedule 2 to include sections 221 (Unlawful bookmaking other than by racing bookmaker etc.) and 223 (Prohibition on opening, keeping open, using or promoting an illegal betting place) of the *Racing Integrity Act 2016* (RIA).

The Bill also extends schedule 5 of the PPRA which lists the controlled activity offences for chapter 11 of the PPRA to include section 225 (Using an illegal betting place) of the RIA.

The amendments will allow police to investigate these offences covertly without being at risk of committing offences against those sections.

Service address for a notice to appear for traffic offences

The Bill amends section 382(4) of the PPRA to allow an NTA for a traffic offence to be served by registered post at a person's last known place of business or residence, as provided for by section 56(1)(a) of the JA. This, in addition to the current service provision under section 56(2)(a) to (c) of the JA, will provide greater scope for the service of NTAs.

Searching a person to be transported who is detained for a breach of the peace

The Bill extends section 442 (Application of ch 16) of the PPRA to allow a police officer to search a person who has been detained for a breach of the peace under section 50 of the PPRA and is to be transported to another place. The amendment ensures the safety of the person detained under section 50 and the detaining police if the person is required to be transported to another location to defuse the breach of the peace.

Transporting for the purposes of taking photographs for banning notices

An amendment to section 602S (Power to detain and photograph) of the PPRA clarifies that police are able to transport a person who is a respondent for a police banning notice for the purposes of having a photograph of the person taken. The transport is limited to a police vehicle, watch-house or police station and the detention lasts only for the period necessary to take the photograph.

Evasion offence notices

The Bill extends the information that is required to be provided to police by the owner of a vehicle involved in an evade police offence in response to an evasion offence notice (EON). The owner of a vehicle is required to provide the following additional information in their declaration if they do not know who was driving the vehicle:

- where the owner was when the evasion offence happened;
- the usual location of the vehicle when it is not being used;
- the name and address of each person (a potential driver) known by the owner to have access to drive the vehicle when the evasion offence happened;
- the way each potential driver has access to drive the vehicle;
- how frequently each potential driver normally uses the vehicle and for how long each potential driver normally uses the vehicle;
- whether each potential driver uses the vehicle in connection with a business or for private use.

If the vehicle was sold before the evasion offence occurred, the owner only has to provide the information about the new owner including their name and address as well as when the vehicle was sold. Similarly, if the owner purchased the vehicle after the evasion offence, the new owner need only provide information about the previous owner, including their name and address as well as when the vehicle was purchased. If the owner believes the vehicle was stolen when the evasion offence happened the statutory declaration need only state that situation.

The owner must comply with the requirement within 14 business days of receiving the EON unless they have a reasonable excuse. The existing deeming provisions contained in section 756 (Who may be prosecuted for evasion offence if no response to evasion offence notice) of the PPRA will still apply if the person given the EON does not give a declaration as required. That is, the person will be taken to be the driver of the vehicle at the time the evasion offence occurred.

To support the investigative importance that police place on receiving a declaration, the Bill creates a new simple offence in section 755(5) of the PPRA punishable by a maximum penalty of 100 penalty units where the owner of a vehicle involved in an evasion offence fails to give the statutory declaration within 14 business days. Conviction of the owner for the new offence does not prevent a proceeding for the evasion offence being started against the owner, including being started because of the deeming provisions in section 756, or a punishment being imposed on the owner if convicted of the evasion offence.

Consistent with CMC recommendation number 7 and the Government response, the Bill amends section 756 to preclude the owner of the vehicle (or nominated person) from relying on evidence in their defence in subsection (4) that is information the person was required to include in their statutory declaration but did not provide. However, the person may give the prosecuting authority a notice of their intention to seek leave to rely on the evidence at least 21 business days before the day the hearing starts.

Number plate confiscation notices

The Bill amends section 74H of the PPRA to allow a number plate confiscation notice (NCN) to be attached to a vehicle without a number plate allowing the vehicle to be held at a place other than a holding yard for the period of the impoundment.

The Bill also inserts an offence provision to prevent vehicle owners modifying, selling or disposing of a vehicle subject to a NCN for the period of the notice. The maximum penalty of 40 penalty units is consistent with section 106A (Offence to modify, sell or dispose of motor vehicle subject to vehicle production notice) of the PPRA. The amendment imposes similar constraints as applied to vehicles impounded in a holding yard.

Assault or obstruct a civilian watch-house officer

The Bill inserts section 655A (Offence to assault or obstruct watch-house officer) of the PPRA which applies where a person assaults or obstructs a civilian watch-house officer in the performance of their duties. The new offence is a simple offence which is separated into two parts, subsection (a) deals with assaulting a civilian watch-house officer and subsection (b) deals with obstructing a civilian watch-house officer. The separate offences will ensure that an offender's criminal history accurately reflects the behaviour. The new offence carries a maximum penalty of 40 penalty units or six months imprisonment, which is commensurate with the offence of obstructing or assaulting a police officer under section 790 of the PPRA.

Separate the offence of assault or obstruct a police officer

The Bill amends section 790 (Offence to assault or obstruct police officer) of the PPRA by separating the offence of assaulting or obstructing a police officer in the performance of their duties into two distinct offences. This is an administrative amendment which not only improves data analysis, it ensures that an offender's criminal history accurately reflects the title of the offence.

Include two new offences as prescribed internet offences for section 21B of the PPRA

The Bill extends section 21B (Power to inspect storage devices for the CPOROPOA) to include sections 228DA (Administering a child exploitation material website) and 228DB (Encouraging use of child exploitation material website) of the Criminal Code as prescribed internet offences. These offences are directly linked to child sex offending through an online forum and as such are suitable for inclusion in section 21B.

Police Powers and Responsibilities Regulation 2012

Amendments are made to Schedule 9 (Responsibilities code) of the PPRR support changes to the PPRA.

Amendments to the Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004

Expanding Schedule 1 of the CPOROPOA

The Bill amends Schedule 1 (Prescribed offences) of the CPOROPOA by including the following ten Commonwealth child sexual offences under the *Criminal Code Act 1995* (Cwlth) as reportable offences in Queensland:

- section 271.4 'Offence of trafficking in children';
- section 271.7 'Offence of domestic trafficking in children';
- section 272.12 'Sexual intercourse with young person outside Australia – defendant in position of trust or authority';
- section 272.13 'Sexual activity (other than sexual intercourse) with young person outside Australia – defendant in position of trust or authority';
- section 273.7 'Aggravated offence – offence involving conduct on 3 or more occasions and 2 or more people';
- section 471.20 'Possessing, controlling, producing, supplying or obtaining child abuse material for use through a postal or similar service';
- section 471.22 'Aggravated offence – offence involving conduct on 3 or more occasions and 2 or more people';
- section 471.26 'Using a postal or similar service to send indecent material to person under 16';
- section 474.24A 'Aggravated offence – offence involving conduct on 3 or more occasions and 2 or more people'; and
- section 474.25B 'Aggravated offence – child with mental impairment or under care, supervision or authority of defendant'.

The inclusion of these offences gives effect to a decision made in May 2017 by the Joint Meeting of the Attorneys-General, Justice and Police Ministers as part of the Law, Crime and Community Safety Council.

Corrective Services Act 2006

An immediate parole suspension to be considered by either the Parole Board Queensland or a board member

The Bill amends sections 208B (Prescribed board member may suspend parole order and issue warrant) and 208C (Parole board must consider suspension) of the CSA to allow the Parole Board Queensland (PBQ) to consider an immediate suspension of a person's parole, without the matter first being considered by a single PBQ member. The current two stage decision making process is inefficient and does not recognise the authority of the PBQ in the first instance.

A further amendment to section 208B(5) replacing the word 'must' with 'may' removes the requirement for a prescribed member of the PBQ to issue a warrant when parole is suspended. This takes into account persons already in Queensland Corrective Services custody that consequently do not require that a warrant be issued.

PBQ to consider the cancellation of a prescribed prisoner's parole while sitting as three members

The Bill amends section 234 of the CSA to allow the PBQ, sitting as three members, to cancel a prescribed prisoner's parole order. The three members are prescribed as the President or Deputy President, a professional board member and a community board member.

Currently, section 234 of the CSA provides that the *application* for, or *cancellation* of, a prescribed prisoner's parole order must be determined by PBQ sitting as five members, whereas a *suspension* of a prescribed prisoner's parole order may be determined by PBQ sitting as three members. The requirement for the PBQ sitting as five members to determine prescribed prisoner matters is consistent with recommendation 45 of the Sofronoff Review.

However, the cancellation or suspension of a prescribed prisoner's parole order is comparable in terms of decision making given both involve the same considerations as to the level of risk posed by allowing the prisoner to remain in the community.

Further, there is no requirement for the PBQ to set a suspension timeframe which means, in practice, a suspension can have the same effect as a cancellation in terms of the length of time the offender remains in custody.

Under the proposed amendment, if a decision is made to cancel the prescribed prisoner's parole order, the prisoner can submit a new parole application, which would be considered by the PBQ sitting as five members.

The amendment creates consistency across section 234 which allows three PBQ members to suspend a prescribed prisoner's parole but not to cancel that parole.

Extend the time in which a prisoner serving a life sentence can re-apply for parole

The Bill amends section 193 (Decision of parole board) of the CSA to provide the PBQ with the discretion to set an appropriate timeframe (up to 12 months) for prisoners serving a life sentence, who have previously been refused parole and continue to pose risk to the community. While the amendment doubles the current timing of parole applications for this particular group of prisoners, it will not impact a prisoner's ability to apply for exceptional circumstances parole.

Police Service Administration Act 1990, Maritime Safety Queensland Act 2002, Motor Accident Insurance Act 1994, State Penalties Enforcement Act 1999 and Transport Planning and Coordination Act 1994

Proof of delegation for evidentiary certificates

The Bill amends sections 4.10 and 10.12 of the *Police Service Administration Act 1990* (PSAA), section 11A of the *Maritime Safety Queensland Act 2002* (MSQA), sections 87W, 87X and 90 of the *Motor Accident Insurance Act 1994* (MAIA); sections 157 and 162 of the *State Penalties Enforcement Act 1999* (SPEA) and section 37 of the *Transport Planning and Coordination Act 1994* (TPCA) by removing the necessity to prove an instrument of delegation for an evidentiary certificate in a proceeding unless challenged by the defendant. Removing the obligation for a delegation to accompany an evidentiary certificate will have minimal impact on court proceedings but will result in efficiencies for prosecuting officials who are required to re-issue certified copies of delegations each time they are updated.

The amendment retains the defendant's right to challenge a delegation. A defendant who wishes to challenge the delegation must do so at least 10 business days before the hearing date.

Alternative ways of achieving policy objectives

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

Estimated cost for government implementation

There are no foreseeable increased financial implications for government expenditure resulting from the implementation of this proposal.

Consistency with fundamental legislative principles

The Bill has been drafted with due regard to the fundamental legislative principles (FLPs) outlined in the *Legislative Standards Act 1992* (LSA) by achieving an appropriate balance between individual rights and liberties and the protection of the broader Queensland community through the exercise of police powers. There are however, a number of proposals that may be perceived to be inconsistent with FLPs, particularly in regard to apparent breaches of rights and liberties of individuals (LSA sections 4(2)(a) and 4(3)).

These provisions, explanations for the inconsistencies and in-built safeguards are addressed below.

Whether legislation has sufficient regard to the rights and liberties of individuals – LSA s 4(2)(a) and s (4)(3)

Missing person search warrants

The Bill provides for a new legislative scheme in Chapter 7 of the PPRA to establish a missing person scene and exercise limited investigative powers, similar to crime scene warrant powers, in order to locate the HRMP or obtain information as to their whereabouts. The initial establishment of the missing person scene would require the approval of a commissioned police officer of the rank of Inspector or higher. This is distinguishable from current crime scene powers that are exercisable where a police officer of any rank reasonably suspects a place is a crime scene. The approving commissioned officer will confirm that the missing person is a HRMP and that it is necessary to establish a missing person scene at a place.

Police are then required to obtain a missing person warrant from a Supreme Court judge or a magistrate. The issuing judge or magistrate is to have regard to the nature and seriousness of the disappearance of the missing person and the likely extent of interference to the occupier of the place including any submissions made by the occupier. The judge or magistrate must have regard to the time for which it is reasonable to maintain a missing person scene.

The judge or magistrate may issue the warrant if satisfied the missing person is high-risk and there are grounds for reasonably suspecting the person may be at their residence, place of employment, or vehicle, or reasonably suspects an inspection of one of those places may provide information about the person's disappearance. For any other place, the judge or magistrate must reasonably believe the missing person may be at the place or an inspection of the place may provide information about the person's disappearance.

The judge or magistrate must also be satisfied it is reasonably necessary to exercise the missing person powers at the place to search for the person or to gather information about the person's disappearance. Upon application for a missing person warrant an occupier may make submissions to the issuing judge or magistrate.

The warrant will be limited to a maximum period of 48 hours which is considered a reasonable time to maintain the scene, distinguishable from current crime scene warrants that can be issued for up to seven days. This judicial oversight ensures an appropriate and transparent level of independent scrutiny is placed on all missing person warrant applications and the subsequent use of police powers.

Similar to crime scene powers, in urgent circumstances police will be able to establish a missing person scene at a place before obtaining a missing person warrant. In such instances, police will be required to obtain the prior authorisation of a commissioned officer who must be satisfied the missing person is high-risk and also hold the requisite level of suspicion/belief to search the place. The commissioned officer must also be satisfied it is reasonably necessary to exercise the missing person powers at the place

before obtaining a warrant due to the urgency of the matter. After establishing the missing person scene, police must as soon as reasonably practicable obtain a missing person warrant from a Supreme Court judge or magistrate to confirm the missing person scene.

As an additional safeguard, where practicable, police must electronically record the use of the powers at a missing person scene. This will ensure an accurate and accountable record is made when these powers are utilised.

To ensure the HRMP legislative scheme is independently reviewed, the Bill will provide that the CCC is to review the operation of the new part and prepare a report in consultation with the Minister to be tabled in the Legislative Assembly. The review must be started as soon as practicable after five years from commencement.

The Bill will affect the rights and liberties of some individuals as it may be necessary to exercise missing person scene powers at private premises, excluding the occupants for the duration of the use of the powers. In this regard, police have a legislative obligation to inform the occupier of their right to suitable alternative accommodation for the time the occupier cannot live in their dwelling, and the commissioner must arrange for suitable accommodation if requested to do so by the occupier. Potential breaches of FLPs are justified in order to ensure that police have the ability to search a place for the HRMP and quickly locate them or obtain information as to their whereabouts before they may suffer serious harm.

It is recognised that not everyone who is reported missing to police will be classified as high-risk. However, there are occasions where a missing person may be considered high-risk, due to factors such as being at increased risk of serious harm associated with ongoing domestic violence, immature age, significant intellectual health issues or physical impairments. The Missing Persons Unit, located within the Homicide Group of the QPS is highly adept in making a risk assessment of a missing person. Numerous factors such as sudden inactivity on social media, non-use of bank accounts and/or travel cards and the way in which the person is reported missing can contribute to the Missing Persons Unit categorising a person as a HRMP.

In 2016/17 there were 8,292 persons reported missing. Of those missing persons, two were the victim of homicide and a further 31 committed suicide. This represents less than 1% of all the reported missing persons for that year. While it is difficult to estimate the number of times the new HRMP powers will be exercised, senior investigators from the Missing Persons Unit and the Homicide Investigation Unit advise the new missing person scene powers are likely to be engaged on approximately 10 occasions per year in relation to those persons who were reported missing and are later located deceased. Additionally, the powers are likely to be used in a limited number of other occasions in relation to other HRMPs who are at risk of serious harm if they are not found as quickly as possible and consent cannot be obtained to gain entry to search the place. In the majority of cases, consent is given by an occupier to police to search a place that may reveal information about the whereabouts of a missing person. Although HRMP powers will cover a small percentage of HRMP cases where consent is not provided, or cannot be provided, the benefits of the powers are substantial in

that the exercise of the powers may reveal the location of a person who is about to commit self-harm or prevent the destruction of evidence in missing persons cases that become homicide investigations.

It is envisaged that in most instances, police will obtain a missing person warrant from a Supreme Court judge or a magistrate before establishing a missing person scene, however, there may be instances where it is necessary to establish a missing person scene prior to obtaining a warrant due to the urgency of the circumstances. In such instances, the police powers of entry and search of a place for the HRMP or for information as to their whereabouts may be seen as being inconsistent with the FLP requiring a warrant issued by a judge or judicial officer (s 4(3)(e) of the LSA). However, these powers are considered justifiable in order to ensure the whereabouts of HRMPs can be established as soon as is reasonably practicable before the person may suffer serious harm. Where it is necessary to establish the missing person scene before applying for the warrant, the same level of judicial oversight will apply when the warrant is applied for.

Notwithstanding that establishing a missing person scene could cause individuals short term inconvenience and intrusion into their lives, providing police with access to the HRMP's residence, place of employment, vehicle or another place to establish if the person is at the place, or there is information as to their disappearance, has the capacity to save lives.

Lowering the offence threshold to establish a crime scene

The Bill lowers the general offence threshold required to establish a crime scene from an indictable offence punishable by a maximum of seven-year imprisonment to a four-year imprisonment offence. The lowering of the threshold will capture a number of offences such as unlawful stalking under the Criminal Code, discharging a firearm in a public place under the *Weapons Act 1990* and repeat breaches of domestic violence orders. In such instances, police officers are currently unable to utilise crime scene powers. The ability to establish crime scenes for a broader range of offences will ensure a thorough investigation of all serious offences.

The amendment will affect the rights and liberties of some individuals as it may be necessary to exercise crime scene powers at private premises, excluding the occupants for the duration of the use of the powers. Likewise, it may be necessary to exclude persons from a public place for the duration of a crime scene. Upon application for a crime scene warrant an occupier may make submissions to the issuing judge or magistrate, which must be taken into consideration before the warrant is issued. Potential breaches of FLPs are justified in order to ensure the scene of a serious crime is protected from contamination and thorough investigation can take place in order to identify and exculpate suspects.

Addition of Racing Integrity Act offences to controlled operations and controlled activities Schedules

The Bill inserts three offences under the *Racing Integrity Act 2016* (RIA) into the controlled operations and controlled activities Schedules of the PPRA. The indictable

offences under section 221 (Unlawful bookmaking other than by racing bookmakers etc.) and section 223 (Prohibition on opening, keeping, using or promoting an illegal betting place) will be included in the controlled operations schedule. The simple offence under section 225 (Using an illegal betting place) of the RIA will be included in the controlled activities Schedule.

While the inclusion of these offences as controlled operations and activities could be seen as breaching section 4(3)(h) of the LSA by conferring immunity from a proceeding or prosecution, it is considered justified as unlicensed bookmaking is secretive in nature and difficult to investigate without the option of engaging in covert policing strategies. Unlicensed bookmaking operations often use online or telephone based facilities to advertise and take bets. The authorisation of controlled conduct to investigate RIA offences will provide crucial evidence, necessary to effectively investigate such complaints.

New search powers for police after detaining persons for a breach of the peace for transport

The Bill provides that a police officer has the power to search a person who has been detained under section 50 (Breach of the Peace) of the PPRA for the purpose of transportation. Section 442 of the PPRA already allows a police officer to search a person who is detained under another Act as well as in many instances in the PPRA where a police officer has the power to detain a person. The power ensures the safety of police officers and persons who have been detained for a breach of the peace and are to be transported.

This may be considered to impact on the privacy of an individual, but it is justified when consideration is given to the limited circumstances in which a detention for breaching the peace can be utilised and the need for police to ensure the detained person does not possess anything that could be used to harm themselves or others when being transported. Additionally, the legislative safeguards contained in Chapter 20, Part 3, Division 1 of the PPRA ensures that as far as reasonably practicable, the way the person is searched is to cause minimal embarrassment to them, and unless necessary, the search is to be restricted to an examination of outer clothing.

Strengthening of evade police provisions

The evade police investigative provisions in Chapter 22 of the PPRA can be applied when a police officer using a police service motor vehicle gives a direction to another driver to stop. If the driver of the other vehicle fails to stop as soon as reasonably practicable, they have committed an evasion offence. The 2011 Crime and Misconduct Commission (CMC) review, the Queensland Government response and the QPS review of evade police provisions all concurred that the lack of information required by an evasion notice was reducing the chances of a successful police investigation into an evasion offence. It is proposed to place additional responsibility on the recipient of an evasion offence notice to provide additional information to police.

Responding to an evasion offence notice

Consistent with CMC recommendation number 6 and the Government response, the Bill amends the PPRA to expand the information required in a statutory declaration in response to an evasion offence notice. If the identity of the driver is unknown the owner of the motor vehicle is to provide the following additional information in a declaration:

- where the owner was when the evasion offence happened;
- the usual location of the vehicle when it is not in use;
- the name and address of each person (potential driver) known by the owner to have access to drive the vehicle when the evasion offence happened;
- the way each potential driver has access to drive the vehicle (e.g. they possess a key for the vehicle and have access to where the vehicle is kept);
- how frequently, and for how long, each potential driver normally uses the vehicle;
- whether the vehicle is used by each potential driver for business or private use.

The additional requirements may be seen as adversely affecting the rights and liberties of individuals to be provided appropriate protection against self-incrimination (s 4(3)(f) of the LSA). However, this information is necessary to solve evasion offences which are prevalent in Queensland and is basic information within the knowledge of every responsible vehicle owner. It is also essential information to assist a police investigation to identify an offending driver.

Limiting the defence when deeming provisions engaged

Consistent with CMC recommendation number 7 and the Government response, section 756(5) of the PPRA provides that the owner of a vehicle, or nominated person, is precluded from relying on evidence in their defence under subsection (4) if that evidence is information the person was required to include in their statutory declaration in response to an evasion offence notice but did not provide.

This places a strong onus on the owner of a vehicle to cooperate with police in the investigation and be accountable for the use of their vehicle. Given the potential danger to the community of police pursuits and the prevalence of evasion offences, robust legislation is required. Limiting the use of the rebuttal provision will strengthen the onus on vehicle owners and limit the opportunity for defendants to waste prosecution and court time and resources.

However, to ensure the discretion of the courts to allow evidence in appropriate circumstances is maintained, section 756 has been further amended to allow a defendant to seek leave of the court to rely on evidence in their defence that would otherwise be excluded. This is limited to instances where the person has a reasonable excuse for not giving the statutory declaration as required under section 755(2)(b), or such evidence came to their knowledge after they were required to provide a statutory declaration (within 14 days of receipt of the evasion offence notice), or it is in the interests of justice the person be able to rely on the evidence. Allowing a defendant to seek leave of the court in these instances ensures the discretion of the court is maintained where a defendant may seek to rely on evidence that would otherwise be excluded. The defendant may not rely on the evidence in the defence unless they give the prosecuting authority a notice of their intention to seek leave to rely on the evidence

at least 21 business days before the day the hearing starts and the court grants the person leave to rely on the evidence.

This amendment appropriately balances reasonable law enforcement powers with the rights of the accused.

New offence for failing to give a statutory declaration

The Bill provides for a new offence in section 755(5) of the PPRA for the owner failing to give a statutory declaration in response to an evasion offence notice within 14 business days. The new offence is in addition to any proceeding that may be started against the owner if they are deemed to be the driver of the vehicle at the time of the evasion offence. The offence further reinforces the investigative importance that police place on receiving a declaration from the owner or nominated person in response to an evasion offence notice and is considered reasonable and proportionate. The owner can still rely on the reasonable excuse provision contained in section 755 to negate the offence. The new offence is a simple offence punishable by a maximum of 100 penalty units.

Evidentiary provision - certificate evidence

Consistent with CMC recommendation 13 and the Government response, the Bill amends section 757 (Evidentiary provisions) of the PPRA to make the formal details about service of the evasion offence notice, and the formal details of the receipt of the statutory declaration, as evidentiary in their own right. The amendment will reduce any unnecessary evidentiary burden on the prosecution to prove service of an evasion offence notice, and receipt of a statutory declaration unless challenged by the defendant.

This could be seen as being inconsistent with the principles of natural justice (s 4(3)(b) of the LSA) as the defendant should have all the relevant and admissible evidence presented at the person's trial. However, these rights and liberties are protected by the provision that allows a defendant to challenge the service details of the evasion offence notice, or the receipt details of the statutory declaration prior to the hearing. The requirement to give notice within 10 business days of a hearing is reasonable in order to allow sufficient time to present the relevant service and receipt facts. This balances the rights of review by an individual while alleviating any unnecessary evidentiary burden placed upon prosecution services when prosecuting an evasion offence.

New simple offence provisions for assaulting or obstructing civilian watch-house officers

The Bill will give appropriate recourse to a civilian watch-house officer who is assaulted or obstructed while performing their duties. Currently, if a watch-house officer is assaulted or obstructed in the course of their duties, the only option for charging an offender is under the Criminal Code. This may result in the watch-house officer not making any complaint of assault, or result in a disproportionate charge against a person as there is no simple offence alternative.

The creation of new simple offences for assaulting or obstructing a watch-house officer may be seen as further impinging a person's rights and liberties when there is already an indictable offence provision that captures the person's unlawful act. In this regard the new offences will ensure that any penalty issued by the courts and any consequent criminal history is reflective of the offence being a simple offence and not indictable. The Office of the Director of Public Prosecutions' Guidelines state that where the same criminal act could be charged as a summary or an indictable offence, the summary offence should be preferred unless the conduct could not be adequately punished other than as an indictable offence. The new offence will afford watch-house officers the avenue for a proportionate complaint against offenders who assault or obstruct them.

Evidence of a Delegation of Authority

The Bill will reduce the administrative burden associated with providing evidence of the delegation of authority in a proceeding against nominated police, transport and state penalties legislation unless the defence gives notice the authority is to be challenged. This could be viewed as being inconsistent with the principles of natural justice (s 4(3)(b) of the LSA) as the defendant should have all the relevant and admissible evidence presented at the person's trial.

However, these rights and liberties are protected by the provision that allows a defendant to challenge the authority of delegation by giving notice prior to the hearing. The requirement to give notice within 10 business days of a hearing is reasonable in order to allow sufficient time to complete the administrative tasks required to obtain a certified copy of an instrument of delegation and supply it to the defendant. This balances the rights of review by an individual while alleviating the current administrative burden placed upon prosecution services and courts around the state.

Inclusion of two child sex offences as prescribed internet offences

Section 21B(1)(b) (Power to inspect storage devices for the Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004) of the PPRA allows police to inspect any storage device in the possession of a reportable offender convicted of a prescribed internet offence up to four times in a 12-month period to ensure compliance with the provisions of the CPOROPOA.

The Bill amends section 21B(6)(a) of the PPRA to include sections 228DA (Administering child exploitation material website) and 228DB (Encouraging use of child exploitation material website) of the Criminal Code. This will ensure police tasked with monitoring reportable offenders in the community are able to utilise the inspection powers under section 21B for these internet based child sex offences.

As this inspection power is being conducted without a warrant issued by a judge or other judicial officer, it could be seen as breaching section 4(3)(e) of the LSA. In this regard, the inspection power includes significant protective mechanisms to ensure the rights of reportable offenders are not unduly abrogated. An inspection for internet based offenders is limited to four occasions in a 12-month period.

There is no capacity for police to seize or remove a device unless there is a reasonable suspicion that an offence has been committed. Any subsequent enforcement action which is taken by police will be subject to judicial oversight. Each inspection will be required to be entered on the register of enforcement acts.

The amendment in the Bill aligns with the purposes of the child protection legislation and also supports contemporary policing strategies aimed at disrupting and preventing crime.

Parliament has also ensured that section 21B of the PPRA is reviewed by the Police Commissioner as soon as practicable after the end of each financial year. The Commissioner must prepare and give the Minister a report about the use by police officers of powers under section 21B during the financial year. Within 14 sitting days after receiving the report, the Minister must table a copy of the report in the Legislative Assembly.

Judicial order to gain access information to storage devices seized under a crime scene warrant

The Bill creates a new section 178A (Order for access information for a storage device at or seized from a crime scene) of the PPRA to allow police to apply to a Supreme Court judge or magistrate for an access approval order for storage devices seized when executing crime scene powers.

Currently, sections 154 and 154A of the PPRA allow a police officer to apply for an access approval order only when applying for a search warrant, or after a search warrant has been executed. An access approval order made under section 178A of the PPRA is modelled on these sections and must state the time and place where the information or assistance must be provided. Any conditions that apply to the person can only be made if the judge or magistrate is satisfied there are reasonable grounds for suspecting there is information on the storage device that may be evidence of the commission of the offence for which the crime scene was, or is to be, established. The order must also state that if a person fails to comply with the order they may be dealt with under section 205A (Contravening order about information necessary to access information stored electronically) of the Criminal Code.

While this could be considered a breach of the person's fundamental right to privacy, it is warranted in the circumstances where a police officer needs to access a storage device in order to obtain electronically stored information that is linked to a crime scene offence (a 4-year imprisonment offence or an offence involving the deprivation of liberty). Police often lawfully seize storage devices such as mobile telephones and computers at crime scenes under section 176 of the PPRA when investigating matters such as serious assaults and murder. At times the devices are locked and the person in possession will not voluntarily provide police with the access information to unlock the device. Currently, sections 154 and 154A of the PPRA provide access information orders but these powers are limited to seizures under a search warrant and do not extend to crime scene warrants.

A number of limitations and safeguards are built into section 178A of the PPRA to minimise the impact on the person's privacy, namely, when seizing the device police must comply with the safeguards in Chapter 20 of the PPRA (receipt for seized property, police officer to supply their details, return of the item when no longer required etc.).

The oversight of a judge or magistrate issuing the order ensures an appropriate and transparent level of independent scrutiny is placed on all applications for access information orders.

Corrective Services Act 2006 - Extend applications for parole consideration from up to six to 12 months for prisoners sentenced to life imprisonment

Section 193(5) of the *Corrective Services Act 2006* requires Parole Board Queensland (PBQ) to decide a time, of not more than six months, after the refusal for parole, within which a further application for a parole order by the prisoner must not be made without the Board's consent.

The Bill will enable the Board, if it refuses to grant parole for a prisoner serving a sentence of life imprisonment, to decide a period of time of not more than 12 months within which a further application for parole (other than an exceptional circumstances parole request) by the prisoner must not be made without the Parole Board's consent.

This proposal raises potential breaches of the FLPs in so far as the proposal would adversely impact the existing rights and liberties of prisoners serving a sentence of life imprisonment (see section 4(2)(a) of the LSA).

The safe guard in this proposal is that the proposed amendment would allow the Board discretion to set a timeframe of less than 12 months for a further application if the Board considered appropriate. Further, this amendment would not impact on the ability of the life sentence prisoner to apply for exceptional circumstances parole.

Consultation

A consultation draft of the Bill was sent to the following key community stakeholders:

- Aboriginal and Torres Strait Islander Legal Service (ATSIL);
- Bar Association of Queensland (BAQ);
- Crime and Corruption Commission (CCC);
- Queensland Council for Civil Liberties (QCCL);
- Queensland Law Society (QLS);
- Queensland Police Commissioned Officer's Union of Employees (QPCOUE);
- Queensland Police Union (QPU); and
- The State Coroner.

The stakeholders were advised that any comment they wished to make in relation to the draft Bill would be held in confidence. The consultation process was undertaken confidentially to ensure stakeholders could make uninhibited comment on the proposed Bill without concern that their responses would be made public.

All stakeholders made submissions in relation to the Bill.

A number of amendments were made to the Bill as a result of the comments provided by stakeholders, including:

- clarifying there is a positive obligation on police to advise the occupant of a dwelling of their entitlement to alternative accommodation should that person be unable to live in the dwelling due to the exercise of crime scene powers or the new missing person powers;
- clarifying that the new power to search a person for a breach of the peace is limited to the occasions where the detained person is required to be transported by police; and
- clarifying that an access information order for a storage device seized in relation to a crime scene warrant limits a police officer to information stored on or accessible only by using the storage device.

Consistency with legislation of other jurisdictions

Generally, provisions in this Bill amend legislation that is specific to the State of Queensland and is not part of uniform national legislation.

Clause 23 amends the definition of a crime scene to remove the distinction between a primary and secondary crime scene, and lower the offence threshold to establish a crime scene from an indictable offence punishable by a maximum of seven year imprisonment to an indictable offence punishable by a maximum of four years imprisonment. The crime scene threshold offence will continue to capture an offence involving the deprivation of liberty. This aligns Queensland with all other Australian jurisdictions that currently do not distinguish between primary and secondary crime scenes. Lowering the offence threshold also better aligns Queensland with New South Wales and Western Australia that have a crime scene offence threshold of five years imprisonment or longer. Remaining Australian jurisdictions have a threshold lower than four years imprisonment. In the Australian Capital Territory, a police officer may establish a crime scene if they reasonably suspect an offence punishable by imprisonment has been committed, however if the occupier of the premises does not consent to a crime scene being established the threshold rises to an offence punishable by imprisonment for five years or longer.

The HRMP provisions are not replicated elsewhere in Australia.

Notes on provisions

Part 1 Preliminary

1. Short title

Clause 1 provides that, when enacted, the Bill may be cited as the *Police Powers and Responsibilities and Other Legislation Amendment Act 2018.*

2. Commencement

Clause 2 provides that section 22, which inserts new section 105CA (Offence to modify, sell or dispose of motor vehicle during number plate confiscation period) into the *Police Powers and Responsibilities Act 2000*, will commence on a day to be fixed by proclamation.

Part 2 Amendment of Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004

3. Act amended

Clause 3 states that this part amends the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*.

4. Amendment of sch 1 (Prescribed offences)

Clause 4 amends Schedule 1, item 6 of the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* by including the following ten *Criminal Code Act 1995* (Cwlth) offences as prescribed offences:

- section 271.4 (Offence of trafficking in children);
- section 271.7 (Offence of domestic trafficking in children);
- section 272.12 (Sexual intercourse with young person outside Australia—defendant in position of trust or authority);
- section 272.13 (Sexual activity (other than sexual intercourse) with young person outside Australia— defendant in position of trust or authority);
- section 273.7 (Aggravated offence—offence involving conduct on 3 or more occasions and 2 or more people);
- section 471.20 (Possessing, controlling, producing, supplying or obtaining child abuse material for use through a postal or similar service);
- section 471.22 (Aggravated offence—offence involving conduct on 3 or more occasions and 2 or more people);

- section 471.26 (Using a postal or similar service to send indecent material to person under 16);
- section 474.24A (Aggravated offence—offence involving conduct on 3 or more occasions and 2 or more people); and
- section 474.25B (Aggravated offence—child with mental impairment or under care, supervision or authority of defendant).

The inclusion of these offences will ensure that Queensland adopts a consistent approach in relation to other Australian jurisdictions about the management and reporting obligations or reporting offenders under the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*.

Part 3 Amendment of Corrective Services Act 2006

5. Act amended

Clause 5 states that this part amends the *Corrective Services Act 2006*.

6. Amendment of s 193 (Decision of parole board)

Clause 6 amends section 193(5)(b) by allowing the parole board to decide the period of time within which a further application for a parole order by a prisoner must not be made without the board's consent.

Clause 6 inserts section 193(5A) to specify the period of time decided under subsection (5)(b) must not be more than 12 months for a prisoner serving a life sentence or otherwise six months.

Clause 6 does not apply to exceptional circumstances parole orders. All other parole applications made by prisoners not serving a life sentence can still be re-considered at a stated time within six months of a refusal by the Parole Board.

7. Replacement of s 208B (Prescribed board member may suspend parole order and issue warrant)

Clause 7 replaces section 208B. The replacement section 208B removes the two-stage decision making process where a request by the chief executive for an immediate suspension of a prisoner's parole was first considered by a prescribed board member and then forwarded to the parole board for final consideration.

The parole board or a prescribed board member is now required to consider a request by the chief executive to suspend a prisoner's parole order as a matter of urgency. The amendment does not remove the powers of a prescribed board member to consider the request outside of a parole board meeting.

A parole order can only be suspended if the parole board or a prescribed board member reasonably believe the prisoner has failed to comply with the parole order or poses a serious risk of harm to another person or a serious risk of committing an offence or is preparing to leave Queensland without the authority to do so.

A decision whether or not to suspend a parole order under section 208B(3) is taken to have been made under section 205(2) of the *Corrective Services Act 2006*. Section 205(2) provides the authority for the parole board to make a written order to amend, suspend or cancel the parole order under certain circumstances.

Where the parole board or prescribed board member decides not to suspend a parole order, the board or member must give the chief executive a written notice of that decision. Where the decision to suspend the parole order is made by a prescribed member, the member may also issue a warrant for the prisoner's arrest.

A prisoner who is arrested must be taken to a prison until the end of the suspension.

8. Amendment of s 208C (Parole board must consider suspension)

Clause 8 amends the heading of section 208C to include 'by prescribed board member'. The amendment better reflects the decision making and procedural process which allows prescribed board members to consider matters in the same way as the parole board when a request for an immediate suspension is considered under section 208B.

9. Amendment of s 234 (Meetings about particular matters relating to parole orders)

Clause 9 amends section 234(1) and (3) by relocating the provisions regarding the parole board's consideration of an application to cancel a parole order for a prescribed prisoner from subsection (1) to subsection (3).

The amendment streamlines the parole board's administration and decision making processes by allowing a cancellation of a prescribed prisoner's parole order to be dealt with in the same manner as a suspension of the prisoner's parole order. That is by three sitting members of the parole board. The parole board, sitting as three members, must be comprised of the president or deputy president, a professional board member and a community board member.

Part 4 Amendment of Criminal Code

10. Act amended

Clause 10 states that this part amends the Criminal Code.

11. Amendment of s 205A (Contravening order about information necessary to access information stored electronically)

Clause 11 amends section 205A of the Criminal Code to include new section 178A (Order for access information for storage device at or seized from a crime scene) of the PPRA. The amendment to section 205A will allow the offence provision to apply to access information orders made for a storage device seized under a crime scene warrant.

Part 5 Amendment of Maritime Safety Queensland Act 2002

12. Act amended

Clause 12 states that this part amends the *Maritime Safety Queensland Act 2002*.

13. Amendment of s 11A (Delegation of functions of general manager)

Clause 13 amends section 11A to remove the need for a proof of delegation by the general manager for Maritime Safety Queensland in a proceeding before a court, unless the delegation is challenged by the defendant.

Clause 13 inserts subsections (2A) and (2B). Subsection (2A) removes the requirement to prove that a function of the general manager has been delegated to another person in a proceeding under the *Transport Operations (Marine Pollution) Act 1995* or the *Transport Operations (Marine Safety) Act 1994* unless a notice to challenge the delegation is given to the entity responsible for prosecuting the proceeding at least 10 business days before the hearing date.

Subsection 2(B) requires the notice to challenge the delegation to be in a form approved by the general manager.

Clause 13 renumbers section 11A. The new subsections (2A) and (2B) will be renumbered as subsections (3) and (4) respectively.

Part 6 Amendment of Motor Accident Insurance Act 1994

14. Act amended

Clause 14 states that this part amends the *Motor Accident Insurance Act 1994.*

15. Amendment of s 87W (Proceedings)

Clause 15 amends section 87W by inserting new subsections (4) and (5). Subsection (4) removes the requirement to prove an authorisation by the commissioner or the Attorney-General unless a notice to challenge the authority is given to the prosecuting entity at least 10 business days before the hearing date.

Subsection (5) requires a challenge of the authority to be made in the form approved by the commission or transport administration.

16. Amendment of s 87X (Evidentiary certificates given by the commission and transport administration)

Clause 16 amends section 87X by inserting new subsections (5) to (7). Subsection (5) states that subsections (6) and (7) apply if there is an authorisation by the commission or transport administration under subsection (4)(b) of a power to give a certificate under subsection (1) or (2).

Subsection (6) removes the obligation to prove an authorisation in a proceeding, unless the defendant provides notice of intention to challenge at least 10 business days before the hearing date.

Subsection (7) requires that a notice to challenge must be in the form approved by the commission or transport administration.

17. Amendment of s 90 (Transport administration to provide certain information)

Clause 17 amends section 90 by inserting new subsections (3) to (5).

Subsection (3) states that subsections (4) and (5) apply if there is a delegation by transport administration of the power to give a certificate under subsection (2).

Subsection (4) removes the requirement to prove a delegation in a proceeding unless the delegation is challenged by the defendant. A defendant who challenges the delegation must give the prosecuting entity a notice of intention to challenge at least 10 business days before the hearing date.

Subsection (5) requires that a notice to challenge must be in the form approved by transport administration.

Part 7 Amendment of Police Powers and Responsibilities Act 2000

18. Act amended

Clause 18 states that this part amends the *Police Powers and Responsibilities Act 2000*.

19. Amendment of s 21B (Power to inspect storage devices for the Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004)

Section 21B (Power to inspect storage devices for the Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004) of the PPRA allows police to inspect a storage device in the possession of a reportable offender under certain

circumstances. One of those circumstance is if the reportable offender has been convicted of a 'prescribed internet offence'.

Clause 19 expands the definition of 'prescribed internet offence' to include the following Criminal Code offences:

- section 228DA (Administering child exploitation material website); and
- section 228DB (Encouraging use of child exploitation material website).

These offences are prescribed offences for the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* and fit the parameters for what is considered to be a prescribed internet offence under section 21B.

20. Amendment of ch 4, pt 2, div 1B, sdiv 2, hdg (Removal and confiscation of number plate powers)

Clause 20 amends the heading of chapter 4, part 2, division 1B, subdivision 2 to only refer to the confiscation of number plates from motor vehicles. The amendment reflects changes to the number plate confiscation powers that will apply regardless of whether the vehicle has number plates attached.

21. Amendment of s 74H (Power to remove and confiscate number plates)

Clause 21 replaces section 74H(2) which allowed a police officer to remove and confiscate the number plates of a motor vehicle in circumstances where the vehicle may be impounded under chapter 4 of the PPRA and the police officer decides that it is appropriate for the vehicle to be kept at a place other than a holding yard for the impoundment period.

The new subsection (2) provides that police may attach a number plate confiscation notice to the motor vehicle and outlines the information that is required to be included in the number plate confiscation notice.

A new subsection (2A) requires a police officer to remove and confiscate any number plates that are attached to the motor vehicle if the police officer has attached a number plate confiscation notice to the vehicle. This section acknowledges that not all motor vehicles subject to a number plate confiscation notice will have number plates attached.

Clause 21 also inserts a new subsection (4) which clarifies that a number plate confiscation notice may be attached to a motor vehicle whether or not number plates are attached to the vehicle.

22. Insertion of new s 105CA

Clause 22 inserts a new section 105CA (Offence to modify, sell or dispose of motor vehicle during number plate confiscation period). This offence provision prohibits the owner of the motor vehicle subject to section 74H from, without a reasonable excuse, modifying, selling or disposing of the motor vehicle during the number plate confiscation period. The new offence is consistent with the existing section 106A

(Offence to modify, sell or dispose of motor vehicle subject to vehicle production notice) and is punishable by a maximum of 40 penalty units.

23. Insertion of new ch 7, pt 3, div 1AA

Clause 23 inserts a new Division 1AA (Preliminary) into chapter 7, part 3 (Crime scenes). Division 1AA contains definitions which apply to part 3.

New section 163A (Definitions for part) guides the reader to section 163B for the definition of *crime scene*. The section defines the term *crime scene threshold offence* as an indictable offence with a maximum penalty of at least four years imprisonment, or an offence involving the deprivation of liberty. The section guides the reader to section 165(1) for the definition of *responsible officer*.

New section 163B contains the definition of a *crime scene*. For the purposes of section 163B(a) a place is a crime scene if either a crime scene threshold offence happened at the place; or there may be evidence at the place, of a significant probative value, of the commission of a crime scene threshold offence that happened at another place. Section 163B(b) requires that there also be a necessity to protect the place for the time reasonably necessary to search for and gather evidence of the crime scene threshold offence.

24. Amendment of s 164 (Gaining access to crime scenes)

Clause 24 removes the previous distinction between primary or secondary crime scenes in section 164. The amendment aligns section 164 with the new definition of crime scene under section 163B.

25. Insertion of new s 178A

Clause 25 of the Bill inserts a new section 178A (Order for access information for a storage device at or seized from a crime scene) to allow a police officer to apply to a Supreme Court judge or a magistrate for an access information order for a storage device situated at a crime scene, or seized from a crime scene under crime scene powers.

Subsection (2) provides that the judge or magistrate may make the access information order only if satisfied there are reasonable grounds for suspecting that information stored on the storage device may be evidence of the commission of the offence for which the crime scene was, or is to be, established. Information stored on the storage device includes any information that may be stored on or is accessible through the storage device.

Subsection (3) provides that the access information order must state:

- the time at or by which the specified person must give the police officer the information or assistance; and
- the place where the specified person must provide the information and assistance; and
- any conditions to which the provision of the information or assistance is subject; and

- that failure to comply with the order may be dealt with under section 205A of the Criminal Code.

Subsection (4) additionally allows the access information order to be made at the same time the police officer applies for a crime scene warrant for the crime scene and the judge or magistrate may include the order in the crime scene warrant.

Subsection (5) provides definitions for the terms *access information*, *access information order*, *specified person*, *storage device* and *stored*.

This is consistent with similar provisions under section 154 (Order in search warrant about information necessary to access information stored electronically) and section 154A (Order for access information after storage device has been seized) of the PPRA.

Clause 25 also includes a new section 178B (Compliance with access information order) providing that a person is not excused from complying with an access information order on the ground that complying with it may tend to incriminate the person or make them liable to a penalty. This is consistent with section 154B (Compliance with order about information necessary to access information stored electronically) of the PPRA.

26. Amendment of s 179 (Alternative accommodation to be provided in some cases)

Clause 26 removes section 179(2) and inserts new subsections (1A) and (2). The new sections place an obligation on police to inform the occupier of their right to suitable alternative accommodation for the time the occupier cannot live in the dwelling as a result of a direction given at a crime scene, or damage caused to the dwelling as a result of crime scene powers being exercised.

27. Insertion of new ch 7, pt 3A

Clause 27 inserts new part 3A (Searching places for high-risk missing persons) into chapter 7 to establish a legislative scheme that provides police with powers under a missing person warrant to search places for high-risk missing persons or for information as to their whereabouts in the early critical stages of their disappearance.

Division 1 Preliminary

s 179A (Definitions for part)

Clause 27 inserts section 179A that defines the following terms used in part 3A: *commissioned officer*, *missing person*, *missing person powers*, *missing person scene*, *missing person warrant*, *residence* and *responsible officer*.

s 179B (Who is a *missing person*)

Clause 27 inserts section 179B which defines a missing person for the purpose of part 3A. A person is defined as a missing person if the person is reported missing to police by a person who fears for the safety, or is concerned for the welfare, of the person as

they are unable to contact or locate them and police cannot determine the person's whereabouts after making reasonable inquiries to contact or locate the person.

s 179C (When a missing person is high-risk)

Clause 27 inserts section 179C to provide criteria for a police officer, Supreme Court judge or magistrate to consider when deciding whether a missing person is high-risk under divisions 2 or 3. All missing persons under 13 years of age may be classified as a high-risk missing person. Additionally, a police officer, Supreme Court judge or a magistrate may be satisfied a missing person is a high-risk missing person if they reasonably suspect the person may suffer serious harm if not found as quickly as possible.

Serious harm is defined in subsection (4) to mean harm, including the cumulative effect of any harm, that endangers, or is likely to endanger, a person's life; or is, or is likely to be, significant and longstanding.

Subsection (3) provides a number of factors that the police officer, Supreme Court judge or magistrate may have regard to when deciding if the missing person may suffer serious harm if not found as quickly as possible, namely:

- the person's age;
- any disability of the person attributable to a cognitive, intellectual, neurological, physical or psychiatric impairment;
- evidence the person may commit suicide;
- the person's ability to interact safely with other persons or in an unfamiliar environment;
- the person's need for medication;
- an addiction the person may have;
- the person's recent behaviour that is out of character for the person;
- whether the person is suspected of being the victim of a crime;
- any history of domestic violence or other relationship problems affecting the person;
- any ongoing bullying or harassment of the person;
- a previous disappearance or exposure to serious harm that affected the person;
- whether the person is experiencing any financial problems;
- a reason why the person may wish to go missing;
- if the person is suspected of being lost within a particular area, the climate or other environmental factors relevant to the area; and
- any suspicious circumstances relating to the person's disappearance, for example, the person may have suddenly stopped regular activities including banking or social activities.

Division 2 Establishment of missing person scenes

s 179D (Establishing missing person scene)

Clause 27 inserts section 179D to allow a police officer (the *responsible officer*) to establish a missing person scene at a place if the officer is authorised to do so under a missing person warrant, or under section 179E (Authorisation if, as a matter of urgency, it is necessary to establish missing person scene before obtaining missing person warrant).

Subsection (2) provides that if another police officer assumes control of the missing person scene, the police officer becomes the responsible officer for the scene instead of the other officer. This subsection ensures that at all times a police officer will be considered to be a responsible officer for a missing person scene by making allowances for such things as a shift change within a specialist unit managing a missing person scene or a higher ranked officer assuming control of a missing person scene.

Subsection (3) allows the responsible police officer to establish the missing person scene in any way that makes it clear to any other person that it is a missing person scene. Examples are provided which include having a police officer prevent entry, placing barricades around the scene or displaying a written notice prohibiting unauthorised entry.

s 179E (Authorisation if, as a matter of urgency, it is necessary to establish a missing person scene before obtaining missing person warrant)

Clause 27 inserts section 179E which allows a police officer to establish a missing person scene without a warrant if satisfied a missing person is high-risk, and it is necessary, as a matter of urgency, to establish a missing person scene at a place before obtaining a missing person warrant.

Subsection (2) provides that a police officer may establish the missing person scene if authorised to do so by a commissioned officer.

Subsection (3) provides that a commissioned officer may authorise establishing the missing person scene if satisfied that the missing person is high-risk and:

- for a place that is the missing person's residence, place of employment or vehicle, the officer must reasonably suspect the person may be at the place or an inspection of the place may provide information about the person's disappearance; or
- for any other place, the officer must reasonably believe the person may be at the place, or an inspection of the place may provide information about the person's disappearance.

The commissioned officer must also be satisfied as a matter of urgency it is necessary to establish the missing person scene at the place before obtaining a missing person warrant. For example, the situation may be urgent as information pertaining to the

person's whereabouts may be lost or because of the risk of serious harm to the missing person.

s 179F (Responsibility after establishing missing person scene before obtaining missing person warrant)

Clause 27 inserts section 179F which applies if a police officer establishes a missing person scene at a place before obtaining a missing person warrant.

Subsection (2) provides that as soon as reasonably practicable after establishing the missing person scene, a police officer must apply under section 179J to a Supreme Court judge or a magistrate for a missing person warrant.

Subsection (3) clarifies police do not have to apply for a missing person warrant if the place is a public place, unless the place is a public place only while it is ordinarily open to the public and the occupier of the place requires a police officer at the place to leave that place. An example of places that are public places only while they are open to the public include a cinema, shop or restaurant. These places cease to be public places when they are not open.

The public place provision is generally consistent with other search provisions, such as section 178 (Exercise of crime scene powers in public place) of the PPRA.

s 179G (Deciding limits of missing person scene)

Clause 27 inserts section 179G which provides that when establishing a missing person scene, the responsible officer must identify the scene, decide the boundaries necessary to protect the scene and mark the limits of the scene in a way that sufficiently identifies to the public it is a missing person scene.

The section allows the responsible officer to set boundaries (an outer cordon) to prevent a person from venturing near the perimeter of the missing person scene.

s 179H (Restricting access to missing person scene)

Clause 27 inserts section 179H. Section 179H recognises that it is essential to an investigation that a missing person scene is restricted to all persons who are not required as part of the investigation.

The section requires the responsible officer to take the immediate steps reasonably necessary to protect anything at the scene from being damaged, interfered with or destroyed. Although not exhaustive, these steps may include ensuring non-essential people (including police officers) do not enter the missing person scene, preventing unnecessary movement inside the boundaries of the scene and establishing a safe walking area to reduce the risk of damage to the scene.

Subsection (2) provides that a person, other than the responsible officer, must not enter the missing person scene unless: the person has a special reason associated with the investigation for entering the scene; or the person is a police officer who is asked by the responsible officer or an investigating police officer to enter the scene; or is an authorised assistant, for example, an electrician or locksmith; or is a person

whose presence is necessary to preserve life or property at the scene; or the person is authorised to enter by the responsible officer.

Subsection (4) requires the responsible officer to ensure that a record is made of each person who is present at, or entered the missing person scene. This allows for future analysis of the reasons for entry of persons into the missing person scene.

s 179I (When place stops being a missing person scene)

Clause 27 inserts section 179I that provides a missing person scene will cease 48 hours after it is established, unless the missing person warrant is extended under section 179M.

Further, under subsection (3), a place stops being a missing person scene before the end of the 48 hours, or prior to the end of a warrant extension, if: a judge or magistrate refuses to issue a missing person warrant for the place; or a missing person warrant for the place stops having effect under section 179M; or the responsible officer becomes aware the missing person has been found; or the missing person is not likely to be high-risk; or there is no longer a need to exercise missing person powers at the place.

Division 3 Missing person warrants

s 179J (Applying for missing person warrant)

Clause 27 inserts section 179J that allows a police officer, once authorised by a commissioned officer, to apply to a Supreme Court judge or magistrate for a missing person warrant to either establish a missing person scene at a place, or to confirm a missing person scene previously established without a warrant under section 179E.

To ensure natural justice is provided, subsection (4) requires that a police officer must, if reasonably practicable, give notice of the making of the application to the occupier of the place.

Subsection (5) provides that subsection (4) does not apply if the police officer reasonably suspects giving the notice would frustrate or otherwise hinder the investigation.

Subsection (6) enables the occupier, if present when the application is made to make submissions to the judge or magistrate (the issuer) but not submissions that would unduly delay the consideration of the application.

Subsection (7) provides that the issuer may refuse to consider the application until the police officer gives the issuer all the information the issuer requires in the way the issuer requires.

s 179K (Considering application and issuing missing person warrant)

Clause 27 inserts section 179K which outlines the considerations to be taken into account by the Supreme Court judge or magistrate when considering whether to make a missing person warrant for a place.

Subsection (2) provides that the judge or magistrate must have regard to the nature and seriousness of the disappearance of the missing person, the likely extent of interference caused to the occupier of the place, the time reasonable to maintain the missing person scene, and any submission made by the occupier.

Subsection (3) provides that the judge or magistrate (the issuer) may issue the missing person warrant if satisfied that the missing person is high-risk and:

- for a place that is the missing person's residence, place of employment or vehicle, the issuer reasonably suspects the person may be at the place or an inspection of the place may provide information about the person's disappearance; or
- for any other place, the issuer reasonably believes the person may be at the place, or an inspection of the place may provide information about the person's disappearance.

The issuer must also be satisfied it is reasonably necessary to exercise missing person powers at the place to search for the person or to gather information about the person's disappearance.

Subsection (4) provides that if the place ceases to be a missing person scene before the application is considered, the judge or magistrate may issue the missing person warrant for the period of time the place was a missing person scene.

s 179L (What missing person warrant must state)

Clause 27 inserts section 179L which requires that a missing person warrant must stipulate that a stated police officer may establish a missing person scene and exercise missing person powers at the scene. The warrant must also state that the warrant ends not more than 48 hours after the missing person scene was first established.

If a Supreme Court judge issues the warrant, the warrant must specify whether or not a police officer may, under the warrant, cause structural damage to a building.

s 179M (Duration, extension and review of missing person warrant)

Clause 27 inserts section 179M. Section 179M outlines the time when a missing person warrant stops and allows a Supreme Court judge or a magistrate to extend the warrant for no more than 48 hours on the application of a police officer. The police officer must bring the application before the missing person warrant stops having effect.

s 179N (Review of missing person warrant)

Clause 27 inserts section 179N which provides that where an occupier was not present at the making of the application because they were not aware of it, or had a genuine reason for not being present during the hearing of the application, the occupier may apply to a judge or magistrate to revoke the warrant. The making of an application or the review of the warrant does not stay the effect of the warrant.

s 179O (Copy of missing person warrant to be given to occupier)

Clause 27 inserts section 179O which requires a police officer exercising missing person powers under a missing person warrant at a place that is occupied, to give the occupier a copy of the missing person warrant and a statement summarising the occupier's rights and obligations under the missing person warrant. This must be done as soon as reasonably practicable. If the occupier is not present, these documents must be left in a conspicuous place.

Division 4 Powers at missing person scenes

s 179P (Powers at missing person scene)

Clause 27 inserts section 179P. Subsection (1) outlines the following powers that a responsible officer, or a police officer acting under the direction of a responsible officer, may use at a missing person scene:

- enter the missing person scene;
- if reasonably necessary, enter another place to gain access to the missing person scene;
- perform any necessary investigation, including for example, a search and inspection of the scene and anything in it for the missing person or to obtain information about the person's disappearance;
- open anything at the scene that is locked;
- take electricity for use at the scene;
- remove or cause to be removed an obstruction from the scene;
- photograph the scene and anything in it;
- seize all or part of a thing that may provide information about the missing person's disappearance.

Subsection (2) requires that if the use of a power under subsection (1) may cause structural damage to a building, then a Supreme Court judge must issue the warrant before the thing is done and the warrant must authorise the doing of the thing.

Subsection (3) provides that an authorised assistant at a missing person scene may perform any of the functions mentioned in subsection (1) if asked by the responsible officer. However, subsection (4) clarifies that an authorised assistant may only enter

the missing person scene, or if reasonably necessary, enter another place to gain access to the missing person scene, if asked to do so by the responsible officer.

s 179Q (Powers of direction etc. at missing person scene)

Clause 27 inserts section 179Q which allows the responsible officer, or a police officer acting under the direction of a responsible officer, to direct the movement of people, vehicles and animals at a missing person scene. In particular, the officer can direct a person to leave the scene or direct a person to remove a vehicle or animal from the scene.

Where a person fails to comply with the direction of a responsible officer, or a police officer acting under the direction of the responsible officer, to leave a missing person scene, or remove a vehicle or animal from a missing person scene, the responsible officer, or officer acting under the direction of the responsible officer, can have the person, vehicle or animal removed from the scene.

The responsible officer, or a police officer acting under the direction of the responsible officer, may direct a person not to enter the scene.

The responsible officer, or officer acting under the authority of the responsible officer, can also prevent a person from removing anything from the scene, or otherwise interfering with the scene or anything in it. If required, the responsible officer, or officer acting under the responsible officer's authority can detain and search the person for the purpose of preventing anything being removed from the scene or to prevent a person otherwise interfering with the scene.

Furthermore, the officer may also direct the occupier, or the person who is apparently in the charge of the place that is the missing person scene, to maintain a continuous supply of electricity at the place for the purposes of exercising the missing person powers.

s 179R (Exercising missing person powers to be electronically recorded)

Clause 27 inserts section 179R. Section 179R requires a police officer exercising a missing person power at a place, to electronically record the use of that power if practicable. This will provide an accurate and accountable record of how and when these powers are used.

Division 5 General

s 179S (Alternative accommodation to be provided in some cases)

Clause 27 inserts section 179S which applies if the occupier of a dwelling cannot continue to live in the dwelling while a missing person scene is established because of a direction given at a missing person scene, or because of damage caused to the dwelling in the exercise of missing person powers.

Subsection (2) provides that a police officer must inform the occupier of their right to suitable alternative accommodation for the time the occupier cannot live in the dwelling.

Subsection (3) requires that the commissioner must arrange suitable alternative accommodation for the time the occupier cannot live in the dwelling, if requested to do so by the occupier.

The accommodation must be in the same locality and of at least a similar standard to the occupier's dwelling, if reasonably practicable. However, section 179S does not apply to an occupier who is detained in lawful custody.

28. Amendment of s 382 (Notice to appear may be issued for offence)

Clause 28 amends section 382(4) by allowing a notice to appear for particular traffic offences to be served in accordance with section 56(1)(a) of the *Justices Act 1886*. Section 56(1)(a) of the *Justices Act 1886*, allows a notice to be served by registered post to the person's place of business or residence last known to police. The amendment is in addition to the existing service options under sections 56(2)(a) to (c) of the *Justices Act 1886* that allow for service at an address stated on the person's driver licence or current certificate of registration for the person's motor vehicle.

This amendment will provide police with an alternative method of effecting the service of a notice to appear in these circumstances.

29. Amendment of s 389 (Court may order immediate arrest of person who fails to appear)

Section 389 (Court may order immediate arrest of person who fails to appear) authorises a court to order a warrant for the arrest of person who fails to appear before a court as required by a notice to appear served on the person. Subsection (5) allowed a court to delay the issue or execution of a warrant for the arrest of a person to allow the person a further opportunity to appear before the court. The interpretation of subsection (5) led to some magistrates noting court files and not issuing a fail to appear warrant pending the location of the defendant, while other magistrates issued the warrant and allowed it to lie on file pending the location of the defendant.

Clause 29 amends subsection (5) to ensure consistency by removing the option to delay the issue of a fail to appear warrant under this section. The courts will continue to be able to postpone the enforcement of a warrant for the arrest of the relevant person if they choose.

30. Amendment of s 442 (Application of ch 16)

Clause 30 inserts new subsection (cc) into section 442 to provide police with a power to search a person who has been detained under section 50 (Dealing with breach of the peace) in relation to a breach of the peace and the person is to be transported to a place by a police officer.

The amendment provides a clear power for police to search a person prior to transporting them after they have been detained in relation to a breach of the peace. This ensures the safety of police and the detained person.

31. Amendment of s 597 (Powers for reportable deaths)

Clause 31 rectifies a minor drafting omission by clarifying that section 597 authorises a police officer to search for anything at a place that is reasonably suspected of being relevant to an investigation of a death by a coroner excepting if the officer reasonably believes the death was from natural causes. The amendment rectifies a minor drafting omission from the *Police Powers and Responsibilities and Other Acts Amendment Act 2006.*

32. Amendment of s 602S (Power to detain and photograph)

Clause 32 amends section 602S to clarify that police have the power, where necessary, to detain and transport a respondent for a police banning notice for the purpose of having their photograph taken at a police vehicle, watch-house or police station.

The clause ensures that in instances where police do not have a suitable photographic device at hand to take a photograph, they are able to detain and transport the person in order to have their photograph taken at a police vehicle, watch-house or police station.

33. Insertion of new s 655A

Clause 33 inserts new section 655A (Offence to assault or obstruct watch-house officer) which prohibits a person from assaulting or obstructing a civilian watch-house officer in the performance of their duties.

These offences provide an alternative to the more serious offence provisions of unlawful assault or wilful obstruction of a public officer under section 340 (Serious assaults) of the Criminal Code. The new offences are a simple offence with a maximum penalty of 40 penalty units or six months imprisonment, which is commensurate with the offences of assaulting or obstructing a police officer under section 790.

34. Amendment of s 705 (Destruction of drug matter soon after it is seized etc.)

Clause 34 amends s 705(1)(a) to refer to *cannabis* as opposed to *Cannabis sativa*. This is consistent with the terminology used within the *Drugs Misuse Act 1986*.

35. Amendment of ch 22, pt 1, div 1, hdg (Explanation)

Clause 35 amends the division title from *Explanation* to *Purpose* to reflect the amendments made in clause 36.

36. Replacement of s 746

Clause 36 replaces section 746 (Explanation of ch 22) with new section 746 (Purpose of chapter) to better describe the intent of the evade police provisions. The intent of the evade police provisions are to improve community safety by reducing the need for police to pursue fleeing drivers and to assist police in the investigation of evasion police offences. This amendment supports recommendation 1 of the (then) 2011 Crime and Misconduct Commission (CMC) report titled: *An Alternative to Pursuit: A review of the evade police provisions* (the CMC Report) and the tabled Government response.

37. Amendment of s 747 (Definitions for ch 22)

Clause 37 amends section 747 to expand the definition of *nominated person* in a statutory declaration made under section 755 (When evasion offence notice may be given to owner of motor vehicle involved in offence). The amended definition captures not only the person believed to be driving the motor vehicle at the time the evasion offence happened, but also the person to whom the motor vehicle was sold after the offence was committed, and the person from whom the motor vehicle was purchased. This amendment supports recommendation 6 of the CMC Report and the Government response.

Clause 37 also amends the definition of *owner* to allow police to serve an evasion offence notice on any registered owner of the vehicle, rather than just the first registered owner. This will allow investigating police to serve an evasion notice on any registered owner should there be joint or multiple registered owners of the vehicle involved in the evasion offence. This amendment supports recommendation 12 of the CMC Report.

38. Amendment of s 754 (Offence for driver of motor vehicle to fail to stop motor vehicle)

Clause 38 amends section 754 by changing the section title to '*Evasion offence'*. This supports recommendation 2 of the CMC Report to better reflect the offending behaviour and avoid confusion with section 60 of the PPRA that provides the offence for stopping vehicles for prescribed purposes.

39. Amendment of s 755 (When evasion offence notice may be given to owner of motor vehicle involved in offence)

Clause 39 supports recommendation 8 of the CMC report by increasing the time in which the owner of a vehicle has to respond with a statutory declaration under section 755 from four business days to 14 business days. This will allow the owner adequate time to respond to the expanded declaration requirements and, if necessary, obtain any legal advice.

Section 755(3) is amended to ensure the evasion offence notice also states the consequences if the owner does not comply with the requirement within the 14 business days, including an explanation of section 756 (Who may be prosecuted for evasion offence if no response to evasion offence notice). This ensures that

procedural fairness is provided to the owner by making them aware of the deeming provisions of section 756 and the new limitation on the defence of not being the driver of the motor vehicle if they could have provided identifying information of who the driver was under section 755A in their statutory declaration within 14 days.

Clause 39 further amends section 755 by inserting new subsections (5) and (6). The new subsection (5) creates a new offence for the owner, or nominated person, to fail to give a statutory declaration in response to an evasion offence notice within 14 business days as required by section 755(2)(b), unless the person has a reasonable excuse. This offence imposes a maximum penalty of 100 penalty units. Section 755(6) removes any doubt that an owner, or nominated person, can be charged with the new offence of failing to give the declaration in response to the evasion offence, in addition to being deemed the driver of the vehicle for the evasion offence.

40. Insertion of new s 755A

Clause 40 inserts a new section 755A (Information to be stated in statutory declaration responding to evasion offence notice) that prescribes the information to be provided in a statutory declaration by the vehicle owner in response to an evasion offence notice. These details were previously located in section 747 and have been expanded to include the following required information should the owner not know who was driving the motor vehicle when the evasion offence happened:

- where the owner was when the evasion offence happened;
- the usual location of the vehicle when it is not being used;
- the names and address of each person (a potential driver) known by the owner to have access to drive the vehicle when the evasion offence happened;
- the way each potential driver has access to drive the vehicle (e.g. they possess a set of keys to the vehicle and had access to where the vehicle is kept);
- how frequently, and for how long, each potential driver normally uses the vehicle; and
- whether the vehicle is used by each potential driver for business or private purposes.

This amendment supports recommendation 6 of the CMC Report.

To ensure that these additional requirements are only required when appropriate, the new section 755A(4) provides that where the owner had sold the motor vehicle before the evasion offence happened, or the owner had purchased the vehicle after the offence happened, the person need only state the name and address of the person whom they sold the vehicle to, or purchased it from, and when this happened. Similarly, if the owner believes the motor vehicle was stolen when the offence occurred, the owner is only required to state that situation.

41. Amendment of s 756 (Who may be prosecuted for evasion offence if no response to evasion offence notice)

Clause 41 amends section 756 to clarify that the declaration mentioned in section 756(1)(b) is a statutory declaration.

Clause 41 includes a new subsection (5) that provides that the person deemed to be the driver is precluded from relying on evidence in their defence under subsection (4) if that evidence is information the person was required to include in their statutory declaration in response to an evasion offence notice but did not provide.

This amendment supports recommendation 7 of the CMC Report. The CMC Report emphasised the lack of an obligation on the part of an owner of a motor vehicle used in an evasion offence to comply with the declaration and provide police with information that may lead to the identification of the driver of the vehicle.

Section 756 has been further amended by inserting new subsections (5)(a) to (7) that allow a defendant to seek leave of the court to rely on evidence in their defence that would otherwise be excluded if the person has a reasonable excuse for not giving the statutory declaration as required under section 755(2)(b), or such evidence only came to their knowledge after they were required to provide a statutory declaration, or it is in the interests of justice the person be able to rely on the evidence.

The notice of the person's intention to seek leave of the court must be in the approved form stating the grounds on which the person seeks leave, and be accompanied by a statutory declaration that includes the information the person was required to include in the statutory declaration under section 755A.

The person must give the prosecuting authority the notice of their intention to seek leave to rely on the evidence, with the accompanying statutory declaration, at least 21 business days before the day the hearing starts. This will provide sufficient time for the offence to be re-investigated if needed, and to decide whether to continue with the prosecution.

The new subsections (8) to (10) provide that if a statutory declaration accompanying a notice to seek leave includes information that enables the identification of another person as the actual offender, then the period of limitation within which a proceeding for the relevant evasion offence may be started against the actual offender starts on the day the prosecuting authority receives the statutory declaration.

The new subsection (11) provides definitions for *prosecuting authority* and *relevant evasion offence*.

Allowing a defendant to seek leave of the court in these instances ensures the discretion of the court is maintained in instances where a defendant may seek to rely on evidence that would otherwise be excluded.

42. Amendment of s 757 (Evidentiary provision)

Clause 42 amends section 757(1) to provide evidentiary provisions for an evasion offence. In a proceeding for an evasion offence, this amendment will deem that a certificate signed by the commissioner is evidence that:

- a stated person was the owner of a stated motor vehicle on a stated day:
- a stated police officer gave a stated person an evasion offence notice on a stated day; or

- a stated person gave a stated police officer a statutory declaration under section 755 on a stated day.

The new section 757(4) provides that a defendant may only challenge whether an evasion offence notice was given to a person or whether a person gave a police officer a statutory declaration by giving written notice at least 10 business days before the hearing of the proceedings.

This amendment supports recommendation 13 of the CMC Report.

43. Amendment of s 790 (Offence to assault or obstruct police officer)

Clause 43 amends section 790(1) to separate the offence of assaulting or obstructing a police officer into two separate and distinct offences. This is a technical amendment that is not intended to change the elements of the offences or the liability an offender would face for committing this offence.

44. Insertion of new ch 24, pt 16

Clause 44 inserts transitional provisions within a new Chapter 24, Part 16 'Transitional provisions for Police Powers and Responsibilities and Other Legislation Amendment Act 2018'.

The clause inserts a new section 879 (Review relating to high-risk missing persons) that requires the Crime and Corruption Commission (CCC) to review the effectiveness of the high-risk missing person legislation after five years from commencement, and give a report on the review under the *Crime and Corruption Act 2001*. The CCC must consult with the Minister in the course of preparing the report, and give the report to the Speaker for tabling in the Legislative Assembly. The CCC report will ensure a thorough and accountable evaluation of the legislation is undertaken and any potential legislative and policy efficiencies can be identified.

The clause also inserts a new section 880 (Evasion offence notices given before commencement) to ensure that evasion offence notices given before the commencement of these amendments will continue to apply without being affected by the new provisions.

45. Amendment of sch 2 (Relevant offences for controlled operations and surveillance device warrants)

Clause 45 expands schedule 2 by including two offences under the *Racing Integrity Act 2016*, namely section 221 (Unlawful bookmaking other than by racing bookmakers etc.) and section 223 (Prohibition on opening, keeping, using or promoting an illegal betting place) as relevant offences for controlled operations and surveillance device warrants.

This amendment will allow authorised police officers to engage in controlled operations and use surveillance devices to investigate these offences.

46. Amendment of sch 5 (Additional controlled activity offences)

Clause 46 expands schedule 5 by including section 225 (Using an illegal betting place) of the *Racing Integrity Act 2016* as an additional controlled activity offence. This will allow authorised police officers to engage in a controlled activity when investigating this offence.

47. Amendment of sch 6 (Dictionary)

Clause 47 inserts the following definitions into schedule 6 (Dictionary) namely, *cannabis, commissioned officer, crime scene, crime scene threshold offence, missing person, missing person powers, missing person scene, missing person warrant, residence* and *responsible officer*.

Further, clause 47 amends schedule 6 by omitting reference to 'Cannabis sativa' and replacing it with 'cannabis' in the definition of *minor drugs offence* to ensure references to the term 'cannabis' in the *Drugs Misuse Act 1986*, *Drugs Misuse Regulation 1987* and the PPRA are consistent.

Part 8 Amendment of Police Powers and Responsibilities Regulation 2012

48. Regulation amended

Clause 48 states that this part amends the *Police Powers and Responsibilities Regulation 2012*.

49. Amendment of sch 9, s 7 (Crime scene warrant application)

Clause 49 amends schedule 9 (Responsibilities code), section 7 (Crime scene warrant application) to reflect the new crime scene threshold offence and definition of crime scene. It also removes references to primary and secondary crime scenes as they no longer form part of the definition of a crime scene.

50. Amendment of sch 9 (Responsibilities code)

Clause 50 amends schedule 9 to insert a new Part 2A (Powers and responsibilities relating to missing person scenes).

Section 11A (Who is an authorised assistant for missing person powers) provides a definition of an *authorised assistant*. An authorised assistant is a person who is not a police officer and, in the opinion of the responsible officer for the missing person scene, has specialised knowledge or skills of a kind necessary for exercising a power outlined in section 179P(1) of the PPRA at the missing person scene. An authorised assistant must be asked by the responsible officer or investigating officer to exercise a power at the scene.

Section 11B (Missing person warrant application) outlines the information that must be provided in a missing person warrant application under section 179J(1) of the PPRA.

Section 11C (Missing person warrant extension application) outlines the information that must be provided in a missing person warrant extension application.

The provisions of sections 11B and 11C are consistent with other provisions of the *Police Powers and Responsibilities Regulation 2012* that detail what must be included in search warrant applications.

51. Amendment of sch 9 (Responsibilities code)

Clause 51 amends schedule 9 by inserting a new section 48A (Missing person warrants—s 679(1)) to outline the information about a missing person warrant that must be included in the register of enforcement acts. Those details include:

- when and where the warrant was issued;
- the name of the missing person mentioned in the application for the warrant; and
- the benefits derived from the warrant, including, for example, any of the following—
    - if the missing person was found;
    - if information about the missing person's disappearance was found;
    - anything seized during a search relating to the warrant;
    - any proceeding started because of a search relating to the warrant.

Part 9 Amendment of Police Service Administration Act 1990

52. Act amended

Clause 52 states that this part amends the *Police Service Administration Act 1990*.

53. Amendment of s 4.10 (Delegation)

Clause 53 amends section 4.10 by inserting subsections (4) and (5). Subsection (4) removes the requirement for proof of a delegation by the commissioner in a proceeding, unless the defendant gives the prosecuting entity notice of their intention to challenge the delegation at least 10 business days before the hearing date.

Subsection (5) states that the notice of intention to challenge the delegation must be in the approved form.

54. Amendment of s 10.12 (Legal proceedings)

Clause 54 amends section 10.12 by omitting subsection (4) that required a person intending to question the power of the commissioner to act under a delegation to give the commissioner notice at least 7 days before the proceeding. Section 10.12(4) is no longer required because of the new notice requirements contained in clause 53.

Part 10 Amendment of State Penalties Enforcement Act 1999

55. Act amended

Clause 55 states that this part amends the *State Penalties Enforcement Act 1999*.

56. Amendment of s 157 (Evidentiary provisions)

Clause 56 amends section 157 by inserting subsections (4A) to (4C). Subsection (4A) states that subsections (6) and (7) apply if there is a delegation of power to give a certificate under subsection (2) or (3).

Subsection (4B) removes the requirement for proof of a delegation in a proceeding unless the defendant gives the prosecuting entity notice of their intention to challenge the delegation at least 10 business days before the hearing date.

Subsection (4C) requires that notice of intention to challenge the delegation must be in the approved form.

Finally, clause 56 renumbers subsections 157(4A) to (5) to subsections 157(5) to (8) respectively.

57. Amendment of s 162 (Approval of forms by administering authority)

Clause 57 amends section 162 by including notices of an intention to challenge a delegation under section 157(6) as a form that may be approved by an administering authority.

Part 11 Amendment of Transport Planning and Coordination Act 1994

58. Act amended

Clause 58 states that this part amends the *Transport Planning and Coordination Act 1994*.

59. Amendment of s 37 (Delegation by the Minister or the chief executive)

Clause 59 amends section 37 by inserting new subsections (3) to (5). Subsection (3) removes the requirements for proof of delegation in a proceeding under the Act or a relevant transport Act unless the defendant gives the prosecuting entity notice of intention to challenge the delegation at least 10 business days before the hearing date.

Subsection (4) requires that the notice of intention to challenge the delegation must be in the form approved by the chief executive.

Subsection (5) outlines the relevant transport Acts.